

DR. CHARLES T. MUNGER, JR.

May 7, 2021

California Citizens Redistricting Commission
c/o Public Comment
721 Capitol Mall, Suite 260
Sacramento, CA 95814

RE: Public Access to Citizens Redistricting Commission Proceedings

Honorable members of the Citizens Redistricting Commission:

My name is Charles T. Munger, Jr. I was a financial supporter of Proposition 11, and was the co-author, proponent, principal financial backer, and campaign chair of Proposition 20, which gave the Citizens Redistricting Commission the authority to establish congressional districts in addition to Assembly, Senate, and Board of Equalization districts.

I write to express my concern that the Commission's "outreach" efforts are being conducted in violation of the transparency provisions of these measures, specifically Government Code section 8253(a)(2) and (3). It is important both that this stop and that it not set a precedent for how the Commission conducts itself as maps are being drawn.

The purpose and intent behind the transparency provisions in both of Propositions 11 and 20 is the same: both measures create an open redistricting process that cannot be influenced in secret. Indeed, the stated purpose and intent of both Propositions 11 and 20 is that "every aspect of [the redistricting] process will be open to scrutiny by the public and the press." (emphasis added).

The transparency requirement is legally codified and required in Section 8253 of the Government Code, which states, in part:

(a) The activities of the Citizens Redistricting Commission are subject to all of the following:

(1) The commission shall comply with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3), or its successor. The commission shall provide not less than 14 days' public notice for each meeting held for the purpose of receiving public input testimony, except that meetings held in August in the year ending in the number one may be held with three days' notice.

(2) The records of the commission pertaining to redistricting and all data considered by the commission are public records that will be posted in a manner that ensures immediate and widespread public access.

(3) Commission members and staff may not communicate with or receive communications about redistricting matters from anyone outside of a public hearing. This paragraph does not prohibit communication between commission members, staff, legal counsel, and consultants retained by the commission that is otherwise permitted by the Bagley-Keene Open Meeting Act or its successor outside of a public hearing...

(7) The commission shall establish and implement an open hearing process for public input and deliberation that shall be subject to public notice and promoted through a thorough outreach program to solicit broad public participation in the redistricting public review process. The hearing process shall include hearings to receive public input before the commission draws any maps and hearings following the drawing and display of any commission maps. In addition, hearings shall be supplemented with other activities as appropriate to further increase opportunities for the public to observe and participate in the review process. The commission shall display the maps for public comment in a manner designed to achieve the widest public access reasonably possible. Public comment shall be taken for at least 14 days from the date of public display of the first preliminary statewide maps of the congressional, State Senatorial, Assembly, and State Board of Equalization districts, which shall be publicly displayed no later than July 1 in each year ending in the number one. The commission shall not display any other map for public comment during the 14-day period. The first preliminary statewide maps and all subsequent statewide maps shall comply, to the extent practicable, with the criteria set forth in subdivision (d) of Section 2 of Article XXI of the California Constitution. Public comment shall be taken for at least seven days from the date of public display of any subsequent preliminary statewide maps and for at least three days from the date of public display of any final statewide maps. (emphasis added).

I write to express my concern that the Commission's "outreach" efforts are being conducted in violation of Section 8253(a)(3).

Commission Outreach

First, it appears that the Commission has taken the position that any "meeting" of less than a majority of Commission members (i.e., a "sub-committee") is not subject to the Bagley-Keene Open Meeting Act, and therefore in such a "meeting" the other provisions of Section 8253 do not apply. That is not correct.

The language of Section 8253 is:

(a) The activities of the Citizens Redistricting Commission are subject to all of the following:
(1)...(2)...(3)...

There are 3 separate requirements, (1), (2), and (3), to which each of the "activities" (a very broad word that encompasses far more than merely "meetings," let alone "public meetings") of the Commission are subject.

Individual members meeting without a majority of Commission members present are still subject to certain provisions of requirement (1). As an example, the Bagley-Keene Act forbids members of a public commission, in a number sufficient to make a voting majority, to discuss the same issue outside a public meeting, even in a series of meetings or conversations no majority is present at one time. That provision, and others, continues to apply to the Commission even if no majority is ever present at any one meeting.

Members of the Commission are also bound by the requirements of (2) and (3) independent of the requirements of (1). For example, (2) says, "The records of the commission pertaining to redistricting

and all data considered by the commission are public records...” which clearly applies to any record, not just one that may be submitted or may appear in a meeting run under Bagley-Keene. And (3) states clearly:

Commission members and staff may not communicate with[,] or receive communications about redistricting matters from[,] anyone outside of a public hearing. [commas added for clarity, though there is no alternative to this interpretation of the clause.]

This on its face is a requirement that applies outside a public hearing. Under all circumstances, it is impermissible for a member of the Commission, or a member of its staff, to communicate about redistricting matters with anyone outside of a public hearing.

There appear to be many instances of one or more Commissioners meeting with interest groups in non-public meetings and without proper public notice, opportunity for public comment, or recordkeeping. Specific examples are too numerous to list here, but the most egregious, and the ones that compelled me to write this letter, are as follows:

- Most recently, the April 24, 2021 memorandum from Commissioners Sadhwani & Toledo describes stakeholder meetings held on both March 23, 2021 and April 21, 2021 to discuss the census timeline. The meetings were between the CRC governmental affairs subcommittee and such participants as “representatives from the Secretary of State’s office, the California Association of Clerks and Election Officials (CACEO), the Statewide Database, Democrat and Republican representatives of the Legislature, and Common Cause. Also joining the April 21st meeting were representatives of the Black Census and Redistricting Hub and Robin Johansen, a partner at the law firm Olson Remcho...” This meeting was clearly prohibited by Section 8253(a)(3) as it was not held as a public meeting. As one of the primary objectives of the Commission was to take the process of redistricting away from the hands of the Legislature, the public has a right to know exactly what the Legislature has told the Commission about the process. That is only achieved by complete transparency.
- At the April 12, 2021 Commission meeting, Commissioner Sadhwani referenced conversations had with Common Cause that were not made public: “The last time we met on the 29th of March, we had a panel of folks talking about the impact of the delayed census and delayed maps...last week I spoke with Karin MacDonald... and Lori Shellenberger from Common Cause. They are hearing that census will release the census legacy data between August 16-20 something. This puts us in a predicament because we have to set a date to deliver the maps because so many different components flow from the finalization of those maps. Given that it looks like it will be sometime in August... this would be put us somewhere Dec 31- Jan 4. My understanding from Ms. Shellenberger is that community groups are not liking that timeline...” Again, this conversation occurred in violation of the statute. While I am sure that Common Cause’s interest is noble (I have served on its Board), and it is nice that Commissioner Sadhwani reported on the content of the conversation, the statute requires such communication to occur at a public hearing. This example begs the question: What else was discussed and not reported by Commissioner Sadhwani and who else has she spoken to and not reported?
- At the March 16, 2021 Commission meeting, Commissioner Yee inquired as to where he should report “contacts made as commissioners,” and was informed a database would be created to track these communications. No such database exists and no such contacts are lawfully made.

- At the March 9, 2021 Commission meeting, Commissioner Sinay states: “There is confusion right now because we talk about outreach — sometimes we’re talking about public education sessions — which are the presentations (hosted by other groups) — and then all of us, within our zones and other places are doing outreach as well. To ask how should we do outreach? When we talk about it — we mix up the two — and I can understand why the community is confused. We should list all of our 1 on 1 conversations in addition to our presentations on the website.” Again, the substance of these conversations is nowhere to be found, but more importantly are not permissible.
- At the February 8, 2021 Commission meeting, also from Commissioner Sinay: “Last week was a fruitful week in doing outreach and connecting. I did want to share that we did speak with Facebook as well as Google. Both of them are open to having conversations on how we can help the public our redistricting efforts locally. They were really interested and so we will see how that goes...” I am sure that the public would like to know what the two social media giants think about redistricting too.

In each instance, there was no advance public notice about these meetings, which means there was no opportunity for the public to participate and witness the content of the conversations, submit comments, and there were no after-the-fact recordings or transcripts of these meetings. Yet, the law clearly states that “[c]ommission members and staff may not communicate with or receive communications about redistricting matters from anyone outside of a public hearing.” (Gov. Code, § 8253(a)(3).)

It is of course highly desirable that members of the Commission, and their staff, communicate their work to the widest possible audience; audio-visual recordings and documents, developed by the Commission and its staff and posted on the Internet for free and universal access, are both ideal for that purpose and entirely proper.

It also highly desirable that members of the Commission converse with, question, and receive information from anyone and everyone, and for that, some form of meeting is essential. However, there must be due notice to the public of these meetings, and the public is entitled to a complete record of what was said and presented, and of all other communications (documents, for example) that may have been shared. Even COVID-19 is no excuse for not complying with the law; it is perfectly possible to make an audiovisual recording of a public meeting, with callers participating remotely and not in person, and have that recording posted promptly to and maintained on the Internet.

For example, since the passage of Proposition 54 (also co-authored by me), the California Legislature has been required to make an audiovisual recording of each of its public proceedings, post that recording to the Internet within 24 hours, and maintain it for free download for 10 years. To my knowledge the Legislature has managed to comply despite COVID-19.

I had the honor of serving in California (2003-2007) on the grandly named Curriculum Development and Supplemental Materials Commission, which had the controversial tasks of drafting and revising the curriculum for the California public schools, grades K through 12, and recommending to the State Board of Education which instructional materials should be eligible for use in the public schools. Effectively, we on that commission were the gatekeepers to publishers’ access to public funds, which at the time ran \$400,000,000 a year. Under the Bagley-Keene provisions, we commissioners never met in private with the representative of a publisher, or with a teacher’s or parent’s or other association, or

any individual. We took no documents that did not go into the public record. We listened to everyone who came to our meetings, which were recorded, and we got the public's business done.

As an initiative proponent, I can state that this is the way the Commission was intended to work, and the way the law was written to make it work.

Failure to Post Transcripts of Meetings

Section 8253(a)(2) requires the Commission to make its record public "immediately." Despite this legislative mandate, it appears the Commission is not making transcripts or video recordings of its meetings available in a timely manner. My fear is that such recordings or transcripts may not even exist. For example, only a handful of outreach meeting videos are posted as part of the Commission's Outreach Calendar (wedrawthelinesca.org/outreach_calendar). This web page states that even recordings for upcoming or past presentations that are not open to the public will be posted on this calendar — and yet, there are a number of videos from earlier this year that are not posted. For example, there is no recording for the January 27, 2021 meeting hosted by Sierra Health Foundation, the February 10, 2021 meeting hosted by the Inland Empire Redistricting Hub, the February 19, 2021 meeting hosted by the Leadership Counsel for Justice and Accountability, and the March 3, 2021 meeting hosted by Miracosta Puente College. I understand these earlier sessions took questions and answers from the participants, yet the public has no knowledge or information about what these questions pertained to because there is no recording available.

Improper Conflict of Interest by Commission Counsel

Lastly, I recently learned that the Commission has retained the legal services of Strumwasser and Woocher LLP. I do not doubt that the lawyers in that firm are qualified to provide the Commission with the legal services it seeks. My concern is that the law firm also represents the California State Legislature, and has for many years. The primary objective of Propositions 11 and 20 was to remove the Legislature's power and influence over the drawing of their own legislative districts. The Legislature cannot be allowed to assert any influence over the process of redistricting directly or indirectly, through its trusted counsel. Since the interests of the public in having fair districts and of incumbents and factions to have easy election are necessarily not the same, I submit it is not credible that any one firm could act in good conscience when the advice it should give to one party is contrary to the interests of another; nor is it credible that the advice offered to the Commission could ever be uninfluenced by any firm's private knowledge of the concerns of another, and possibly more financially significant, client. One might as well hire the counsel for the California Democratic Party or the California Republican Party. I urge you to reconsider this decision as there is no shortage of competent counsel available to the Commission.

Sincerely yours,



Charles T. Munger, Jr.