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Brainstorming between the lines

Redistricting: Seeking a solution, post-special election

Published 2:15 am PST Sunday, January 29, 2006

Although California voters last November rejected Proposition 77, which would have created a panel of retired judges to draw new political district lines, many voters say they still would like to see that job taken away from the Legislature and the governor. Democratic leaders in the Legislature, while opposing Proposition 77, pledged to offer an alternative this year.

On Jan. 19, The Sacramento Bee and the Commonwealth Club of California hosted a forum to explore the issue with representatives of several groups that have supported independent redistricting.

The discussion was moderated by Bee columnist Daniel Weintraub and included Ted Costa, CEO of People's Advocate, sponsor of Proposition 77, and author of a new proposed initiative on the same subject; Jeannine English, policy adviser for AARP; Francisco Estrada, director of public policy in Sacramento, Mexican-American Legal Defense and Education Fund (MALDEF); Kathay Feng, executive director, California Common Cause; Jay Hansen, legislative and political director, State Building and Construction Trades Council; Jackie Jacobberger, president, League of Women Voters of California; and Douglas Johnson, fellow, Rose Institute, Claremont McKenna College. Among those asking questions were David Holwerk, editor of the editorial pages, The Sacramento Bee; John Diaz, editorial page editor, San Francisco Chronicle; Juan Esparza, Vida en el Valle; and Phil Yost, San Jose Mercury News.

An edited transcript of the discussion follows.

Brainstorming between the lines

Weintraub: I guess I will just jump in. Most if not all of you here were either part of the movement behind and for Prop. 77, the late great Prop. 77, or during that campaign expressed sympathy with the goals of 77 but not with its specifics. As we all know, the Legislature, at least the legislative leaders, have expressed commitment to come up with a successor to 77 because they, too, endorsed its goals of ending the conflict in interest of having the Legislature draw its own district lines. ... Ted, you were the prime mover behind 77. And you've already come out with your own successor. Why don't you tell us where you are right now in that movement and what it is that you hope to accomplish on this issue this year.

Costa: We lost at the polls, so we went back to the drawing table and put every paragraph of it back on the table. We had input from many sources, some sitting at this table, and we

redrafted. We wanted to have true reform, and we think we have true reform. We are waiting to get comments back. We heard objection to judges and we scrapped the judges. People thought that the panel was too small, so it is now 11 members. We think that we have a formula for diversity. We hope that - it is tough to do, but we hope that we can solve the problem of communities of interest (which) cross county lines. ...

Weintraub: Jackie, the League of Women Voters, a very prominent organization, well respected in the state, long an advocate of independent districting but opposed to 77. Where do you stand today? What is your first reaction to Ted's new proposal?

Jacobberger: We haven't really analyzed the proposal yet, so I really wouldn't want to comment on it, that particular one. ... We want to see a legislative solution - we were committed to that last year. We worked from the beginning of last year trying to get the Legislature to come up with a solution and a proposal to go on the ballot. And that's what we are committed to do this year. That's why we're working within the coalition.

Weintraub: If the League were writing it, what would it look like?

Jacobberger: I think we would be looking at the independent commission. We don't have a particular composition or selection process that, you know, we would be in favor of at this point. But we want it to reflect the diversity of California, to be independent, like I say, from the Legislature and to reflect the various communities in California. I think it should be not just bipartisan but nonpartisan because we should have independent voters - they are such a big and growing number of voters. ...

Weintraub: MALDEF also was in the same position as the League of Women Voters in expressing some support for the concepts of independent redistricting but opposed to 77. What are your benchmarks for the ideal redistricting reform? What would you like to see in it?

Estrada: Well, our key concern is to ensure the protection of the rights of minority voters and ensure compliance with the Voting Rights Act. We want to make sure that whatever process is ultimately determined fully complies with the Voting Rights Act and make sure that we don't dilute the voting power of minorities. ...

Weintraub: Was there something in 77 that you thought would have done that which you would like to see stricken from any future reform?

Estrada: The three pieces in Prop. 77 that we had some concerns about were, one, the use of judges, retired judges, because we didn't feel that the judges would properly reflect the diversity of California. If an independent redistricting commission is going to be used, then we want to make sure that it reflects the geographic and ethnic diversity of California.

Two, we were opposed to the mid-decade for redistricting, which is probably off the table given the lateness of the decade, the fact that by the time any redistricting commission is established it will probably be too late to do that sort of mid-decade redistricting.

And, three, we want to ensure that the Voting Rights Act as a criteria is one of the top criteria for any redistricting process. ...

Weintraub: Kathay, National Common Cause endorsed 77, and there are more mixed feelings in the California group. Now you are helping, I guess to lead - to get everybody together. Why don't you summarize for us what it is in this document.

Feng: ... We articulated that we would support a once-a-decade process, that we didn't want to change the rules in the middle of the game, and that we think that the selection process, whatever it is, should produce something that is diverse and representative, and by representative I mean not just ethnicity but also gender, regional, backgrounds, multiplicity of kinds of people who represent the diversity of California.

We did talk about - and I think a lot of people are leaning toward - a larger panel rather than a smaller one. And the numbers we've been kicking around are something like 11 people. Part of the reason is that the larger number allows for more diversity and also a balance within major party and minor party.

We want to make sure that there is transparency in the process and a meaningful opportunity for interested parties to participate. By that I guess I would allude to my own personal experience in the 2001 process where after months and months of organizing folks to participate in the hearings, the last two weeks really become the critical time when the Legislature was doing behind-the-scenes wheeling and dealing on how the lines would ultimately look. We want to make sure whatever process we create eliminates that back-door, behind-the-scenes process where legislators get some special access and that is entirely hidden from the public's eye. ...

We also felt it was really important to establish criteria and actually set a ranking. This, again, is subject to discussion, but a lot of people felt that equal population and the Voting Rights Act had to be the top two.

Contiguous districts was a natural, that the districts should be connected to each other - one part should be connected to another. Number four is respect for communities of interest and city and county boundaries. This was very important because I think in our experience, some of the most egregious examples of where incumbents drew in their favorite donor or cut out their competitor. The impact was to cut up a community that had articulated a clear interest in trying to stay whole.

Use of undivided census tracts and visible geographic features, and then finally geographic compactness. ...

We did not actually put competitiveness on this list. We recognize that competition is something that everybody is striving for as a goal, but at the same time it is something that is difficult to put a definition to or formula to. And so one of the things that we would like to continue discussing is whether competitiveness should be put in as part of the preamble saying if we can create a fair and open process that excludes people who have individual or personal interests, then we may end up with, and we hopefully will, a map that produces districts that naturally - some will be more competitive and others will be at least more competitive in the sense that it is not preferential to an incumbent.

Weintraub: Jeannine, did AARP take a position on Prop. 77?

English: No. AARP is very supportive of the principles, but from our perspective we really want a legislative option. So we are committed for 2006 only to a legislative alternative. We believe that the only way our members can really be heard and the issues can be well vetted is through a public hearing process and legislative alternatives, so that's why we are working with this coalition to do that. ...

Weintraub: Jay, the same question that Phil asked, what are you doing here?

Hansen: I represent a lot of members. Obviously we're involved in politics, but we find it's

difficult to engage our members all the time. There is a disengagement from the political process, so we're really here on (the) good government side. If districts ... can be more understandable for our members, for the voters, they are going to be more engaged in the political process. Forty, 50 percent of people aren't registered to vote, and 50 or 60 percent of them only participate. So we are left with a very small amount of people making policy for the entire state of California.

We think it would be better if more people are engaged, if districts are more understandable. There is some simplicity in the process. If you respect communities of interest, if you respect city and county boundaries as much as possible, make it more understandable for the voters to know who the Legislature is. If you grab 10 people outside, ask who their Assembly member or senator is, any one of us would be surprised if one out of 10 could do that. Why is that? That is not healthy for the government. It's not healthy for our democracy. ...

Weintraub: Doug, you participated in some studies of 77 and its potential effect on competitive districts, right? Have you looked at this set of guidelines and sort of eyeballed it with any sense of how it would or would not affect - I know you haven't done a formal study, but is it even possible to make that assessment?

Johnson: We went back to the '90s and '80s and '70s to say what happened in those cases, especially in the '70s and '90s when judges drew the lines and didn't use partisan data and said: OK, even when you ignore partisan data, do the general principles of good government redistricting result in competitive districts? Essentially, yes: If you draw districts in California based on communities, you both serve the true purpose of redistricting, which is to represent communities ... and you draw a lot of competitive districts. We saw in the '90s 11 congressional districts switch back and forth, and in the '70s when you had these kinds of fair districts Watergate kicked in and all the Democrats won. And Prop. 13 in '78 and the Reagan revolution kicked in and the Republicans took back those seats. So those were districts that weren't drawn with the goal of competitiveness, but when you draw community-oriented districts you get competitiveness. ...

Holwerk: Let me ask a question about competitiveness that comes from a different standpoint. This is a fairly well-documented and studied trend nationally, where you find people who think alike living more and more together. Republican precincts have gotten more Republican in the last 10 years. Democratic precincts have gotten more Democratic. ... Given that trend, do you still think that you can mechanically draw districts that become more competitive in the face of that?

Johnson: There is some trend of that. It is a very slow, gradual trend. What we saw in California in 2001 was just completely chopping the head off 10 competitive districts, really 11 competitive districts. In 2000 three or four seats flipped, the \ Bilbray (congressional) seat and the \ Rogan seat in California. Even in 2000 we had three seats flipping. And throughout the '90s seats were flipping throughout California. With the simple drawing of (new) lines, that all ended. That wasn't a national trend. That was the power of drawing the lines. ...

Diaz: Let me throw this out. You agreed on so many things, and you may not agree on this: Following up on Doug's point that people with a self-interest in a new redistricting plan are not just going to say, "Well, I guess it's going to be done without any influence from us." I mean, whether it is elected officials or political parties or special interests, there is going to be an attempt to manipulate this process.

So I think the key here, which has not really been addressed yet, is who is going to select ? One of the things I liked about your proposal, Ted, that is by forcing the Republicans to pick

Democratic judges and vice versa, it is pretty hard to manipulate that system to get your cronies or henchmen in there to do it. Who all - let's get ideas on the table of who is going to select these 11. Maybe we can start with Ted, how your proposal does it and some other ideas.

Costa: We select them from registered voters.

Diaz: Random? Who selects?

Costa: The secretary of state mails out letters to a small, small percentage of the population and asks them if they want to volunteer. If they say yes, they will volunteer. They put together a list and then legislative leaders can use their five silver bullets to get rid of a bunch. And they choose by lot the 11 members. ...

Weintraub: How would you like to see the panel selected?

Jacobberger: I think it is a little bit too early in the process to speak for the League on that one. I think it is something we are still talking about on our own organizational level. ...

Weintraub: Would you go with legislators appointing \ directly?

Jacobberger: No. I don't think so. I think we would like to see them independent from the Legislature. And I also don't think that would inspire confidence in the public, who feel like there has to be a change in the process. ...

Weintraub: Kathay, what do you think is the best way to appoint members to the committee?

Feng: To answer the question you asked earlier, in the last legislative season we put out two model bills and really tried to think outside the box in terms of how that appointing mechanism might happen. I think we do agree that the Legislature has to be involved in some way. But if we can create a multi-step process where the Legislature plays a role in narrowing the pool or selecting it - the final choice after the original candidates have been chosen by a more neutral body, we think that is a better way to go. ...

Diaz: Let me challenge the fundamental premise of why we are doing this for congressional seats. Certainly after our newspaper endorsed Prop. 77 - with reservations, but nevertheless - the bottom line is we supported it. I got a lot of hell from a lot of our readers who said, "You may be right. It's unfair the way we are doing it, but why should we be fair and give up Democratic seats when they are gerrymandering in Texas?" Should Congressional redistricting be done at a federal level where they are all playing by the same rules?

Feng: I think this is the biggest myth of the process - if nothing else, I hope that we debunk it by 2006; that is that somehow our redistricting process, as it is set up right now, protects. ... Democratic Party interests. ... Because, as we know, the 2001 process produced safe seats for 20 Republicans. And the flip side of it was those were protected at the expense of Democrats expanding their hold on between three to five seats, whether those were seats that were made more Democratic or potentially even made into swing districts.

And I would say that, you know, if - if there are readers of the newspapers who are concerned about the way that it plays out in terms of partisan balance in Congress, they should actually support an independent redistricting process because instead of individual members colluding to protect themselves, there actually might be a map created that would

be more representative of the partisan balance of California. And I would say that the '01 map doesn't do that at the congressional level.

Weintraub: Kathay, what's the next step for your coalition? You have these general principles. You are still meeting. Are you going to come up with anything more in public before the Legislature acts?

Feng: One of the things we're clearly going to be doing is some independent polling. We know that voters like the idea of some type of redistricting reform. We need to test some of our ideas out. Additionally, we are going to be talking to an expanded group of people.

While it is fantastic to have the Building and Trades Council and AARP and the League and MALDEF and so many other organizations, we have just begun to scratch the surface in terms of groups that are interested.

The third piece is we really want to talk to leadership, but we also need to be educating legislators at every different level. If we can build momentum from the rank and file there is a possibility that that keeps leadership ahead of the game instead of dragging their feet until the last days of August before throwing up their hands and saying that nothing can be done.

So we are definitely in a pushing forward movement. We will be meeting very shortly to actually look at Sen. \ Lowenthal's bill and providing very concrete suggestions for what should or shouldn't be in it. And I think that if there is a bill or a vehicle that we can all agree that we generally like, that could become a focus of everybody's efforts to pass this through the Legislature.

Hansen: I think we are also looking at something to gauge progress. We want to work with the Legislature, have them voluntarily give up power, which has never been done. We want to set a time-line so they don't run the clock out. There are no legislative deadlines when you are dealing with a (constitutional) amendment. We want to try to set up our own deadlines, and that way we can have some benchmarks to make sure we are making forward progress...

Weintraub: OK. Thank you very much.

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