

# Influencing Redistricting in California

## Drawing Lines and Standing Up for Your Communities

Every ten years, California redraws the lines for its Congressional, State Assembly, State Senate, and Board of Equalization district maps. This process has started again in 2019 and will be ongoing through at least 2021, presenting powerful opportunities for nonprofits to advocate for the communities that they represent to have equitable voting rights.

California's redistricting process was established by voter-approved Constitutional amendment, and presents a critical opportunity for underrepresented communities to build political power. The process was designed to minimize the legislature's role in redistricting, which means that, for the most part, working to influence the process does not constitute lobbying under the IRS definition. Therefore, nonprofits and foundations have a lot of flexibility to participate in this impactful process, and given its importance in shaping public policy, nonprofit and foundation advocates should make their voices heard.

This factsheet explains the process of redistricting in California, as well as whether a variety of different kinds of redistricting advocacy constitute lobbying under both IRS rules and California lobbying disclosure rules.

## Selecting the Citizens Redistricting Commission

California's independent Citizens Redistricting Commission (CRC) was created by the Voters FIRST Act in 2008. The CRC, made up of 14 private citizens, is responsible for drawing the new maps. The commissioners of the next CRC will be selected by December 31, 2020.

### APPLICATIONS TO BE A COMMISSIONER

The process to establish a new CRC begins with applications from the general public to be one of 14 commissioners. The California State Auditor (CSA), a nonpartisan office, initiates and oversees the commissioner selection process. Registered California voters who meet [minimum requirements](#) are eligible to serve on the Commission, and must complete an application that includes several essay questions and three letters of recommendation.

After assessing the pool of applicants, the CSA posts the initial applicant pool on its website. Once the names have been published, and continuing throughout the remainder of the CRC selection process, the public has the opportunity to provide written comments to the CSA regarding applicants online at [shapecaliforniasfuture.auditor.ca.gov](https://shapecaliforniasfuture.auditor.ca.gov) in each applicant's profile.

### CONFLICTS CHECK

In the next stage, the CSA randomly selects three qualified independent auditors to make up the Applicant Review Panel (ARP), which screens applicants for conflicts of interest. Examples of conflicts of interest include having been a candidate for or having served in California congressional or state offices, or having been a registered lobbyist in California at the state or local level. Following the conflicts check, the ARP interviews all remaining candidates in Sacramento.

Then the ARP selects sixty of the most qualified applicants based on three subpools:

- 20 applicants registered with the largest political party in California based on registration (currently Democrats);
- 20 applicants registered with the second largest political party in California based on registration (currently Republicans); and
- 20 applicants who are not registered with either of the two largest political parties in California.

## LEGISLATIVE “STRIKES” AND FINAL SELECTION

Once narrowed to a field of 60, the CSA sends the list to the majority and minority leaders of the State Assembly and Senate. Each of these leaders may “strike” (remove) up to two applicants from each subpool. An applicant removed at this stage cannot appeal or seek reconsideration from the CSA. Following any legislative leader strikes, the CSA randomly chooses eight commissioners in a public drawing. Three commissioners must be selected from the Democratic subpool, three from the Republican subpool, and two from the remaining subpool. The eight new commissioners then convene to select the remaining six commissioners—two from each of the three subpools. Together, the 14 commissioners serve on the CRC for ten years and are responsible for redrawing California’s legislative districts.

### Is it lobbying to attempt to influence the CRC selection process?



Attempting to influence the selection of the Commissioners is not lobbying under IRS rules, and therefore does not require a public charity to track or report to the IRS.



Some actions attempting to influence the selection of the Commissioners would be lobbying under California rules, which is potentially reportable if the activity crosses certain expenditure thresholds.

## Federal law

Under federal tax law, 501(c)(3) public charities can lobby within generous specified limits. A public charity is lobbying, under the IRS definition, if it communicates with a government official in an attempt to influence specific legislation. Specific legislation includes bills or resolutions before a legislative body but does not include actions of administrative agencies. For more details on the IRS distinction between lobbying and administrative advocacy, please see our fact sheet [Administrative Advocacy: Influencing Rules, Regulations, and Executive Orders](#).

The selection of the CRC commissioners is not a legislative act but rather an administrative procedure primarily carried out by the CSA. That means a public charity submitting public comments to the CSA supporting or opposing a commissioner applicant during the conflict check stage would not be considered lobbying under federal rules and the act would not count against the organization’s IRS lobbying limits.

But what about the “strike” stage of the selection process? Although the people holding the power to remove applicants from the pool of 60 are legislators, the power they are exercising is not part of a legislative act of the Assembly or Senate, nor is the act of striking potential commissioners from consideration specific legislation. In the context of the commissioner selection process, these individual legislators are performing a limited role confined by the California Constitution.

Consequently, a public charity that communicates with the majority and minority leaders of the State Assembly and Senate to take a position on a commissioner candidate during the strike stage does not count as lobbying under federal law, so expenditures won't count against the charity's limits.

### **California Political Reform Act (PRA)**

The PRA governs lobbying at the state-level in California. Under the PRA, attempting to influence state-level legislative or administrative action is lobbying, which is potentially reportable if it crosses certain expenditure thresholds. Legislative action includes an action by a member of the state legislature acting in their official capacity on a bill, resolution, amendment, report, nomination, or other matter. Therefore, attempting to influence who state legislators strike (or do not strike) in their official capacity would likely be considered influencing state-level legislative action, requiring the charity to comply with reporting requirements under state law.

For information on the thresholds for reporting lobbying at the state-level in California, please see [Understanding California Lobbying Disclosure Rules](#).

## **Drawing the Maps**

The 14 CRC commissioners draw four maps—the district boundaries for Congress, State Assembly, State Senate, and the Board of Equalization. In formulating these maps, the CRC must comply with the Voting Rights Act. All CRC sessions devoted to creating these maps must be fully open and accessible to the public. Any official action by the CRC requires nine or more votes for approval. In addition, final maps must be approved by at least three commissioners from each subpool. When the CRC approves final maps, it presents them to the Secretary of State for certification.

The CRC is required to consider and incorporate public comments on the final maps.

### **Is it lobbying to attempt to influence the CRC's map-drawing?**



Attempting to influence the CRC's maps is not lobbying for IRS rules, and therefore does not require a public charity to track or report to the IRS.



Attempting to influence the CRC's maps is lobbying under California rules, which is potentially reportable if it crosses certain expenditure thresholds.

### **Federal law**

Attempting to influence the CRC's map-drawing is not lobbying under IRS rules. The CRC is a special purpose body and not a legislative body, and no legislative body has a role in approving or rejecting the maps at any point in the process. For this reason, no advocacy by a public charity directed at the CRC will count toward the organization's federal lobbying limits.

### **California PRA**

Attempting to influence actions by a state commission such as the CRC on any rule, regulation, or other action in any quasi-legislative proceeding is generally considered lobbying under the PRA. Therefore, commenting on CRC maps or submitting a public map would likely be considered attempting to influence state-level administrative action under the PRA, counting toward thresholds for reporting under state law.



## WHAT HAPPENS IF THE CRC FAILS TO APPROVE ANY OF THE FOUR MAPS? IS IT LOBBYING TO INFLUENCE THAT PROCESS?

If the CRC fails to approve a map, the California Supreme Court appoints special masters to draw a final map. Special master is a non-legislative position and advocacy directed toward the special master does not count against federal lobbying limits. The law is unclear as to whether advocacy directed toward a special master would be reportable under the PRA in this situation.



## Challenging the Maps

There are two mechanisms for challenging any of the redistricted maps certified by the Secretary of State—public referendum and court challenge. If any map is overturned by a referendum, the California Supreme Court appoints a special master to draw the map. If a court overturns any map, it will make an order to correct the errors, likely sending the process back to the CRC or directly to a special master.

### Is it lobbying to challenge the maps drawn by the CRC in court?

-  Challenging the CRC's maps in court is not lobbying for IRS rules, and therefore does not require a public charity to track or report to the IRS.
-  Challenging the CRC's maps in court is not lobbying under California rules.

### Is it lobbying to challenge the maps via a public referendum?

-  Challenging the CRC's maps by referendum is IRS lobbying under IRS rules, which means a public charity would have to stay within its limit, track, and report this activity to the IRS.
-  Challenging the CRC's maps by referendum is considered campaign activity under California law, which must be reported if it crosses certain thresholds.

## Federal law

If a public charity challenges any of the maps through a public referendum, efforts to support or oppose the challenge will generally count as lobbying under federal tax law (and direct lobbying for 501(c)(3)s that elect to [measure their lobbying under 501\(h\) of the tax code](#)).

If a 501(c)(3) public charity challenges one or more maps in court, it is not lobbying under federal law because litigation is not considered lobbying. Litigation expenditures would not count against the charity's lobbying limits.

## California PRA

In California, referenda are placed on the ballot by the same process as initiatives. Supporting or opposing a measure on the statewide ballot or at the local level is treated as campaign finance activity, and organizations must report ballot measure activities if they raise or spend above certain threshold amounts of money in connection with those activities. For more information on how

the PRA treats activities to qualify a measure for the ballot, please see [Initiating Policy Change: Circulating Ballot Initiatives in California](#). For more information on reporting thresholds, see our [Supporting or Opposing Ballot Measures in California: What Do You Need To Disclose?](#)

The PRA does not classify litigation as lobbying or campaign finance activity, so a 501(c)(3) public charity that challenges a CRC map in court would not have to report the activity to the state.

## The Multiplier Effect of Redistricting

Although the redistricting process is unique and somewhat detailed, it is critical for nonprofits to engage around this issue, “[b]ecause,” as Barack Obama stated, “for all the hard-fought progress we’ve achieved together, the lack of truly representative government has too often stood in the way of change.” By making your communities’ voices heard in the redistricting process, your nonprofit can help achieve the vision articulated by former Attorney General Eric Holder: “With fair maps and a more just electoral system, we can have leaders who are more likely to tackle the important issues facing our country and be more responsive to the needs and desires of the people they were elected to represent.” Your advocacy in this process can make an impact that will last a decade.



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