

Comment for Voter-Initiative 25-0031

NOTICE: We are now in a different world, a world of AI. No AI platform or engine has been used in the creation of this document. Consequently, there may be a few typographical errors.

In this comment we will address the language of this proposed initiative by voter petition (voter-initiative) in accordance with the purpose of the comment period -- to provide the proponent with suggestions so as to enable the proponent to improve the language without having to re-file the voter-initiative. At the end of the comment period, the proponent has a 30-day window to address those suggestions, or not, by filing an amendment with germane changes to the language.

The proponent calls this voter-initiative the "The Fair, Independent and Nonpartisan Redistricting Act of 2026." By law, titles mean nothing.

The proponent is a lawyer. He's written a book about taxation in California. He might be considered somewhat of an activist. He may have consulted with other lawyers, perhaps even the Legislature's own Office of Legislative Counsel, in putting together the operative language for the amendment. Lawyers are known for thinking inside the box; they write ponderously. The approach, the language, and the dullness have lawyer written all over it.

Background:

This voter-initiative amends Section 4 of Article XXI of the California Constitution. That section was just added (most likely) by Proposition 50 (2025) at the November 4, 2025 election. This voter-initiative was filed the day after the election.

The purpose of this voter-initiative is to set in concrete the maps that the Legislature enacted in AB-604 for 2026 elections and then to restore the maps certified by the Citizens Redistricting Commission in 2021 for subsequent elections.

This voter-initiative is written with the expectation that it will be placed on the November 3, 2026 ballot. It was filed around the same time of year as

Comment: Initiative 25-0031

the Taxpayer Protection and Government Accountability Act (TPGAA) back in 2021. TPGAA was expected to be placed on the 2022 ballot. It missed the deadline. The deadline for 2026 is in June. It's possible that this voter-initiative could miss the deadline as well, which we describe in our conclusion. The next permissible election on which this voter-initiative could appear is November 2028 -- too little, too late, and certainly not worth anyone putting up money and effort to run a campaign against well-funded opponents.

If it were to pass in 2026, the restored maps might be effective for special elections subsequent to its effective date in late 2026 and 2027. We say 'might' because the language presupposes that congressional elections are only held in even-numbered years. Were it to pass, it would make congressional candidates scramble because residency in the district is not required by the United States Constitution. Since the counties have already assigned voters among the current maps, it should not be overly burdensome to reassign voters to the current maps.

Claims:

While this voter-initiative makes a trivial change to Section 4, subdivision (c), we'll only address the operative language of subdivision (b).

The effective language of this voter-initiative, if enacted, is below.

~~(b) In response to the congressional redistricting in Texas in 2025, and notwithstanding any other provision of this Constitution or existing law, the single-member districts for Congress reflected in Assembly Bill 604 of the 2025-26 Regular Session pursuant to the requirements of Chapter 5 (commencing with Section 21400) of Division 21 of the Elections Code as embodied in Proposition 50 (2025) shall temporarily be used for every congressional election for a term of office on or after the date this subdivision becomes operative before the certification of new boundary lines drawn by the Citizens Redistricting Commission pursuant to subdivision (d); the 2026 Congressional elections. The districts established by the Citizens Redistricting Commission in 2021 shall be used for the 2028 and 2030 Congressional elections.~~

This voter-initiative removes the first clause of the first sentence, the reference to Texas. Section 4(b) was a single, unwieldy sentence of 93 words. This voter-initiative changes the beginning and the end of that sentence and adds a second sentence for a total of 78 words.

In its bloviating way, Section 2 lays out the intent and purpose of the initiative.

(f) it is the intent of the people that the maps approved in Proposition 50 apply only to the 2026 Congressional elections and that the 2028 and 2030 Congressional elections be conducted pursuant to the principles of fair, independent, and nonpartisan redistricting as embodied in the districts established by the Citizens Redistricting Commission in 2021.

To put it simply, based on the purposes and effective language, it purports to revert congressional maps to those certified by the Citizens Redistricting Commission in 2021 for elections in 2028 and 2030.

Comment 1: Benefits of Passage of 25-0031

It will restrict the AB-604 maps to a single year 2026 (and maybe 2027) instead of the 2026 to 2031 continuum.

Comment 2: What Was the Problem to be Solved?

This is where our characterization of lawyers comes into play.

The claimed purpose and the actual text of the operative language of this voter-initiative are clearly to replace the Proposition 50 congressional district maps with the pre-existing Citizens Redistricting Commission maps.

It's fairly obvious that there is no text in the constitution that defines any maps, except by reference to a statutory provision in the Elections Code (AB-604). So why does the proponent create a voter-initiative that amends the Constitution. It requires signatures of 8% of the base-year voter turnout, versus 5% for a statutory-level voter-initiative. Consequently, it's going to be at least 60% more costly to gather signatures on petitions.

If the problem is statutory, why doesn't the proponent simply repeal AB-604?

We concede that it might not be quite as simple as that. The repeal of statutes customarily involves the statutory language to be printed on the voter-initiative petition. AB-604 has dozens of sections. Fifty-two of those sections describe map boundaries and are absolutely meaningless to voters without the aid of a geographic information system (like ESRI's ArcGIS Pro) to convert the words into maps.

This brings us to the legislative scheme that resulted in Proposition 50. Not a single section of AB-604 was in the statewide voter information guide (SVIG). The only thing that was in the SVIG were two sets of maps drawn at a scale that was also meaningless to voters.

Not a single voter could possibly ascertain whether they or anyone other voter was in either the "before" districts or the "after districts" except possibly where a district included an entire county.

How did the Legislature get away with this? What did the voters actually approve when Proposition 50 passed? Was there a statute that allowed the Legislature (or the voters) to enact maps by reference? Of course, not one lawyer in California or anywhere in the English-speaking world raised this issue.

If the Legislature could do it (incorporate maps by reference), however, why can't the voters? Is there anything in the reserved initiative power that excludes voter-initiatives from enacting district maps? And yes, we are well aware of *Legislature v. Deukmejian* (1983) 34 Cal.3d 658. Unlike most people (including lawyers) who cite that case, we have actually read the opinions. The court's holding, unlike the pages of meaningless jawboning, was that the Legislature did not have the power to redraw district maps mid-decade and, consequently, neither did the voters by petition. But that ship has already sailed. In the past 30 years, the United States Supreme Court, as well as state constitutions and state laws and state courts (in many states), have all allowed redistricting at any time during the decade. In fact, federal courts, without any express constitutional authority, regularly draw district maps any time they deem necessary.

For Proposition 50, the only places the maps appeared was in the SVIG and the incompetent Secretary of State's million-dollar postcard *mea culpa*.

On what basis could anyone challenge a voter-initiative that repealed AB-604 by reference and included the same two sets of maps (the correct ones of course) as those provided in the Proposition 50 SVIG? The Secretary of State has a great amount of discretion to add relevant materials to the SVIG under the Political Reform Act.

But we may have an even better solution than that for the limited purposes that the proponent seems to desire.

One of the sections found in AB-604 is Elections Code section 21455. Here's how it reads.

21455. This chapter shall remain in effect only until a new map of congressional districts is certified by the Citizens Redistricting Commission pursuant to Section 2 of Article XXI of the California Constitution and, as of that date, is repealed.

That one section could be amended as.

21455. This chapter shall remain in effect only until November 3, 2026.

But our favorite voter-based solution remains a referendum. A referendum also requires only 5% of the voters as signers. A referendum has a shorter period of time to gather signatures -- 90 days versus 180 days for a voter-initiative. But its best feature is that, once enough signatures have been submitted, it suspends the underlying law until the referendum election. Currently referenda can only appear on general election ballots, unless the governor calls another statewide special election. That means that the law would likely be suspended for the entire 2026 election year. In real life, there is no way the governor could call even a statewide special election to put a referendum on the ballot and still have Proposition 50 effective for 2026 elections.

The proponent, however, seems to have the fixed idea that 2026 elections must use the AB-604 maps.

Comment 3: Conclusion

While the proponent's claims are most likely true, he depends upon energizing people who have just been handed, from their point of view, a devastating loss. We still contend that it is vague on special elections to fill vacancies in the House of Representatives.

A 180-day signature gathering period sounds like a long time. The problem remains that it is running up against a hard deadline of June 25, 2026 in order to qualify for the ballot in November. The attorney general's circulating ballot title and summary won't be provided earlier than January 5, 2026. That cuts 30 days off. Then there's the validation of signatures period by 58 different county registrars who will all be in midst of a statewide primary election on June 2, 2026 with ballot mailings in late April or early May followed by early voting and the never-ending vote counting ending in July.

Comment: Initiative 25-0031

Prior to that there is the candidate and measure filing deadline for the primary on March 6, 2026. (Quite a few counties ignore the law and start the process up to two months earlier.) Following the filing deadline will be public review periods that can last up to a month before the primary ballot can be finalized. There will likely also be special elections for measures and to fill vacancies, especially in March and May in several counties. The bottom line is that getting a voter-initiative on the ballot for November 3, 2026 likely means petitions would have to be submitted no later than the end of March.

While people may like the idea of fair maps, one can surmise that there is not a constituency out there that is chomping at the bit to bring back fair maps beyond 2026. If such a constituency actually exists, where was it in the just past election? Answering a poll question is not the same as taking the time and effort, however minuscule that is, to seek out and sign a petition. If the proponent doesn't happen to have \$8 to \$10 million handy to pay professional signature gatherers, this voter-initiative is likely dead on arrival.

The current situation for the opponents harkens back to Jimmy Carter's famous 'malaise' speech in 1979.

The symptoms of this crisis of the American spirit are all around us. For the first time in the history of our country a majority of our people believe that the next 5 years will be worse than the past 5 years. Two-thirds of our people do not even vote.

The abject failure of leadership on the side of the opposition in California is a symptom of the current malaise. Where was the alleged constituency? It didn't even vote.

Proponents of voter-initiatives often operative inside their own bubble. Like the outright propaganda and lies surrounding the voter ID initiative ([25-0007](#); see also [CA Voter ID Blog](#)) that is currently gathering petition signatures, they proclaim that if it gets on the ballot, it will pass because some generic polling says so. They never factor in the outsized influence of money coming from not only everywhere in the state, but also everywhere in the country.

All of those considerations make a referendum more attractive.

As a practical matter, however, any action attacking the maps by voter petition will likely end up in court. Filing court actions by the government is cheap and easy, since the taxpayers foot the entire bill.

Comment: Initiative 25-0031

The true solution, we contend, is an election contest based on printing and circulating ballots for Proposition 50 that used the proponents' arguments on the ballot using public moneys. It's not a slam dunk, but we contend that the grounds exist. A successful election contest would vitiate the election. What other kind of court proceeding goes from filing to trial in less than a month? Cheating on the ballot should and does have consequences. It's called karma.

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