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April 17, 2019

The Honorable Ben Allen
California State Senate
State Capitol, Room 4076
Sacramento, CA 95814

**Re: SB 139 (Allen): Independent redistricting commissions
As amended 4/11/19 – Concerns
Set for hearing 4/24/19 – Senate Governance and Finance Committee**

Dear Senator Allen:

On behalf of the California State Association of Counties (CSAC), the Urban Counties of California (UCC), and the Rural County Representatives of California (RCRC), we write to share our “Concerns” position with your Senate Bill 139, which would require each county with a population over 250,000 residents to establish an independent redistricting commission to re-draw the boundaries of county supervisorial districts.

Like you, we are not blind to the purposely unfair districts that have made national news in recent years. The ongoing fights in some areas of the United States show us just how far some elected representatives will go to gain an advantage for themselves or their party, to the detriment of fair representation. In California, voter approval of both Proposition 11 and Proposition 20 took legislative redistricting power away from the Legislature and empowered an independent commission to craft legislative boundaries. The commission’s process was more transparent than had previously been the case and their product was widely praised as producing boundaries that more accurately reflected California’s demographic changes than the ones drawn in previous decades.

The county redistricting commissions contemplated in SB 139, like the state’s redistricting commission, would be constituted based on party registration. However, unlike state legislators, county supervisors’ offices are non-partisan. Their party preference, if they have one, is not allowed to be listed next to their names on the ballot. Likewise, the decisions they make are rarely partisan in nature. The defining partisan issue of our era—taxes—is one that county supervisors are essentially excluded from making decisions about due to voter-approved Proposition 13, Proposition 218, and Proposition 26, among others.

Instead, county supervisors decide whether the county should place a homeless shelter in one location or another, or whether to give a funding increase to the sheriff or the district attorney. They make decisions about zoning, agricultural land preservation, land use, code variances, and housing density. As we have seen recently in the Legislature, decisions about these issues do not fall neatly along partisan lines. Constituting a commission on a partisan basis to determine the districts for non-partisan offices

causes us some concern that the process could become more partisan than it currently is, not less, as you likely intend.

Related to this, SB 139 requires both that the redistricting commissioners' party registrations be proportionate to the county electorate's registration, but also that no party comprise a majority of the commissions. Given registration statistics in many counties, those requirements cannot both be met, subjecting the process to challenges no matter which way a county may decide to resolve the conflict. We welcome a discussion to clarifying this section of the bill in a way that does not place counties in such a difficult situation. We also note that the bill gives decision-making authority to the commission on a less-than-majority vote, by requiring ten commissioners and only requiring five affirmative votes to take official action. So even if one party does not constitute a majority, if the process becomes overtly partisan, a party with less than a majority of members could still act with impunity.

In approving Proposition 11, state voters weighed the pros and cons of establishing a redistricting commission and then voted to do so. The debate was robust and nuanced. SB 139, however, does not give the opportunity for that same debate to occur at the local level. County residents will not have the chance to consider the costs against the benefits before the system is imposed on them.

A mandate like the one found in SB 139 assumes that leaving the power with county supervisors will lead to a self-interested outcome, and it also assumes an independent commission will necessarily do better. Neither assumption is certain, but in areas where the community believes they would be better served by an independent commission, they already have the power to create one, just as they have the power to elect new supervisors, or change the number of supervisors to better represent their varied communities. One of our bedrock principles is our belief that communities should be free to make their own decisions about how they are governed and the level of taxation and services that they want. California largely allows them to do so, by permitting county charters, requiring popular votes for tax increases, and allowing local citizen initiatives. Thanks to your previous efforts, county residents have the explicit authority to implement independent redistricting commissions in their counties.

It appears that SB 139 might retain some flexibility for counties by leaving the provision in Elections Code §23003 that allows counties to prescribe the manner in which members are appointed to the commission, as long as they are not appointed directly by the board of supervisors and are open to all eligible residents. However, it is unclear because that code section and Section 23001, as your bill would amend it, both include the phrase "notwithstanding any other law". If our interpretation is incorrect, and the manner prescribed in the proposed Elections Code §23005 would be required, we would be concerned that those requirements are inflexible and costly. We would prefer retaining the permission to prescribe a manner that makes more sense locally, as your previous bills on this issue did.

Finally, because SB 139 is far-reaching and affects 23 counties across the state, we are concerned about the costs. The provisions of SB 139 constitute a clear mandate for which the state will be required to reimburse counties pursuant to Article XIII, Section 6 of the California Constitution. However, we are concerned that – as past experience has indicated – the state will avoid paying mandated costs by suspending the mandate, which leaves the statute apparently intact but actually optional. If that happens, either counties feel pressured to perform the activities without reimbursement, which is unfair, or they exercise the option not to perform them. To that end, we request amendments to provide appropriate funding to allow counties to meet the obligations set forth in the bill.

We acknowledge and appreciate the importance of a transparent and fair redistricting process, but if the new requirements are in fact issues of statewide importance, then the state should be willing to pay the cost. If not, then it would be better to leave the statute as is and allow each community to decide for itself whether it would like to create a commission to make the redistricting process more independent.

A striking statistic that has largely escaped public notice is that, while the state is currently wondering whether its financial position will be historically good or merely near-historic, over three-fourths of counties are still struggling to return to pre-recession levels of per capita tax revenue, in real dollars. This is not the time to pass large unfunded mandates down with promises to examine costs later.

For these reasons, CSAC, UCC, and RCRC respectfully request amendments to address the concerns we have outlined above for your SB 139. Please feel free to contact us if we can provide additional assistance.

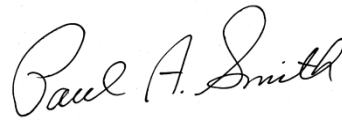
Sincerely,



Geoff Neill
Legislative Representative
CSAC



Jean Kinney Hurst
Legislative Representative
UCC



Paul A. Smith
Vice President, Government Affairs
RCRC

cc: Members and Consultants, Senate Governance and Finance Committee