NO. _____

IN THE SUPREME COURT OF CALIFORNIA

JULIE VANDERMOST

Petitioner,

vs.

DEBRA BOWEN, SECRETARY OF STATE
OF CALIFORNIA

Respondent,

CITIZENS REDISTRICTING COMMISSION

Real Party in Interest.

VERIFIED PETITION FOR EXTRAORDINARY RELIEF IN THE FORM OF MANDAMUS OR PROHIBITION EMERGENCY STAY REQUESTED; MEMORANDUM OF POINTS AND AUTHORITIERS IN SUPPORT THEREOF

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INTRODUCTION

1. This petition challenges certified maps for the California State Senate that were adopted on August 15, 2011 by the Citizens' Redistricting Commission ("Commission"), pursuant to the Commission's mandate under Article XXI, section 2 of the California Constitution to redistrict California following the decennial census of 2010. The petition seeks a writ of mandate or prohibition directed to California Secretary of State Debra Bowen, the Chief Elections Officer of the State of California, declaring the Senate maps unconstitutional or otherwise unlawful and unenforceable, and prohibiting the implementation of such Senate maps for the June 5, 2012 primary election or any election thereafter in the decade commencing 2011 and ending in 2021. The principal grounds are that the Senate maps violate State Constitutional criteria of compactness, contiguity and unnecessary divisions of two counties, and fail to draw districts that would afford Latino/Hispanic voters an opportunity to elect candidates of choice under Section 2 of the federal Voting Rights Act, 42 USC §1973(a).

2. The Petitioner seeks the priority ruling on her petition from this Court as provided in Art. XXI, §3(b)(3) ["The California Supreme Court shall give priority to ruling on a petition for a writ of mandate or a writ of prohibition filed pursuant to [Art. XXI, §2(b)]2."] The Petitioner respectfully requests that the Court forthwith appoint special masters to assist the Court in evaluating her substantive claims (set forth more fully in the First, Second, Third and Fourth Causes of Action herein).

3. This petition is filed at the same time that Petitioner VANDERMOST is conducting an effort to qualify a referendum against the certified Senate maps pursuant to Article II, § 9 and Article XXI, §§ 2(i), 2(j), and 3(b)(3) of the California Constitution. Pursuant to Article XXI, section 3(b)(3), the petition also seeks "relief" from this Court immediately upon the filing of supplemental notice that Petitioner's

referendum petition is "likely to qualify and stay" the implementation of the Commission's certified Senate map from going into effect. Under Article XXI, §§ 3(b)(3) and 2(j), Petitioner will seek the convening of Special Masters by this Court to "adjust the boundary lines" of the Senate district map for the June 5, 2012 primary election and the succeeding November 6, 2012 general election for State Senate districts.

4. Article XXI, § 2(j) further provides that "[U]pon its approval of the special masters' interim Senate map, the Court is required to certify the map to the California Secretary of State, which map shall constitute the certified map for the specific type of district."

The prayer for relief on this and the Petitioner's first claim is for the Court to further direct the Special Masters, upon the Court's receipt of further notification that the Petitioner VANDERMOST has submitted sufficient signatures that establish that her referendum is "likely to qualify and stay" the Commission-certified maps, to draw new district boundaries as set forth more fully in paragraphs 179-182 herein. The process requested in paragraphs 1 and 2 will best ensure timely and speedy implementation of the section 3(b)(3) and section 2(j) constitutional mandate to implement permanent boundaries with respect to the Petitioner's substantive challenge and "interim" boundaries upon qualification of a referendum for the June 5, 2012.

5. On information and belief, unless this Court issues a writ of mandate, Respondent Secretary of State will soon implement the Commission's unconstitutional or otherwise illegal Senate map as set forth more particularly herein.

PARTIES

6. Petitioner JULIE VANDERMOST (hereinafter "Petitioner") is a resident and registered voter in Orange County. Petitioner is the proponent of a referendum against the Commission's certified Senate map.

(Attorney General Ref. # 11-0028). (See Petitioner's Request for Judicial Notice ("RJN"), "Petitioner's Request for Referendum Title and Summary, Attorney General's Title and Summary (Attorney General Ref. # 011-0028 and Secretary of State Release re Referendum #11-0028/1499, RJN, Exhibit "A", pp. 001-050, incorporated by reference herein.)

7. Respondent DEBRA BOWEN ("Respondent") is the Secretary of State of the State of California and is sued in her official capacity. Respondent is the chief elections officer of the State of California and is responsible for certifying and implementing statutes that have been suspended by a lawfully qualified referendum petition, certifying statewide referendum measures for the ballot, and preparing, printing, and mailing the state ballot pamphlet for each statewide election, all of which are paid for by taxpayer funds.

8. Real Party CITIZENS REDISTRICTING COMMISSION (referred to as "the Commission" and "Real Party" herein) is the official governmental body charged by Article XXI, § 2(a) of the California Constitution with redistricting California after the 2010 decennial census. The Commission is also responsible for the defense of legal challenges concerning the constitutionality or legality of certified maps for the State Senate. (Art. XXI, § 3(a).) While the people removed redistricting from the Legislature's power, the Commission is not entitled to the deference this Court has afforded the Legislature as a coordinate branch under separation of powers principles.

JURISDICTION AND VENUE

9. This Court has original and exclusive jurisdiction and venue over challenges to the constitutionality or legality of the Commission's certified maps pursuant to this matter pursuant to Article XXI, § 3(b)(1) of the California Constitution.

GENERAL ALLEGATIONS

Proposition 11

10. On November 4, 2008, California voters adopted Proposition 11. (RJN, Exhibit "B", Excerpts from Official Voter Information Guide for the November 4, 2008 General Election, pp. 051-056, incorporated by reference herein.) Proposition 11 amended Article XXI of the California Constitution to substitute a newly-created Citizens Redistricting Commission in the place of the Legislature to "adjust the boundary lines" of State Legislative and Board of Equalization districts following each decennial census (Art. XXI, § 1) and provided that the Commission shall "conduct an open and transparent process enabling full public consideration of and comment on the drawing of district lines, [] draw district lines in accordance with the criteria in this article, [] and conduct themselves with integrity and fairness." (Art. XXI, § 2(b).)

11. Proposition 11 established a formula for composing the Citizens Redistricting Commission (Art. XXI, § (c)(2)-(6), and provided that the selection process for selecting Commissioners "is designed to produce a Commission that is independent from legislative influence and reasonably representative of the State's diversity." (Art. XXI, § 2(c)(1).)

12. In addition, Proposition 11 adopted amended Article XXI "criteria" for redistricting. Article XXI had provided that redistricting must first comply with the federal Constitution's equal population requirements and the California Constitution's reasonably equal population requirements, and pursuant to the federal Supremacy Clause, the federal Voting Rights Act of 1965, as amended. After these requirements, Proposition 11 adopted almost verbatim the criteria formulated by the California Supreme Court in the Court's *Legislature v. Reinecke,* 10 Cal 3rd 396 (1973)("*Reinecke*") and *Wilson v. Eu* 1 Cal.4th 707 ("*Wilson*") decisions.

13. The establishment of criteria for redistricting purposes dates from the 1973 ruling of the Supreme Court in *Reinecke*, in which the court laid out seven criteria to be followed by the Court Masters appointed that year because of the failure of the legislature and governor to agree on a redistricting plan. The relevant "state constitutional criteria" that have come down over the years include the following:

- The territory included within a district should be contiguous and compact.
- Insofar as practical counties and cities should be maintained intact.
- Insofar as possible the integrity of the state's basic geographical regions should be preserved.
- The community of interests of the population of an area should be considered in determining whether the area should be included within or excluded from a proposed district so that all of the citizens of the district may be represented reasonably, fairly and effectively.

(*Reinecke, supra*, 10 Cal.3d at p. 402.) (Declaration of Dr. T. Anthony Quinn, PhD ("Quinn"), ¶ 1.)

These criteria were used by the Court's Special Masters in forming the 1973 districts. They were the basis for Article XXI of the California Constitution, adopted by the people in 1980. It read in part:

- The geographical integrity of any city, county, or city and county, or of any geographical region shall be respected to the extent possible, without violating the requirements of any other subdivision of this section.

(Quinn Dec., ¶ 2.)

14. In 1991, this Court was again tasked with drawing legislative and congressional district lines. The 1991 Court Masters interpreted Article XXI in light of the 1973 *Reinecke* ruling, and it further refined the

Reinecke criteria. (Quinn Dec., ¶ 3.) The Masters discussed in detail four interrelated state constitutional criteria that evolved from *Reinecke* and Article XXI: contiguity, compactness, geographic integrity and community of interest.

- The territory within a district should be contiguous and compact, taking into account the availability and facility of transportation and communication between the people in a proposed district, between the people and candidates in a proposed district, and between the people and their elected representatives.
- Counties and cities within a proposed district should be maintained intact, insofar as possible.
- The integrity of California's basic geographical regions (coastal, mountain, desert, central valley and intermediate valley regions) should be preserved insofar as possible.
- The social and economic interests common to the population of an area which are probable subjects of legislative action, generally termed a "community of interest," should be considered in determining whether an area should be included within or excluded from a proposed district in order that all of the citizens of the district might be represented reasonable, fairly and effectively. Examples of such interests, among others, are those common to an urban area, a rural area, an industrial area or an agricultural area, and those common to areas in which people share similar living standards, use the same transportation facilities, have similar work opportunities or have access to the same media of communication relevant to the election process.
- These four criteria are all addressed to the same goal, the creation of legislative districts that are effective, both for the represented and the representative.

(*Wilson*, *supra*, 1 Cal. 4th 707, 714 & 719, Report and Recommendations of Special Masters on Reapportionment.) (Quinn Dec., ¶ 4.)

The Masters also "nested" two full Assembly Districts within one full Senate District, following the Special Masters' template in *Reinecke, supra*, 10 Cal.3d. at pp. 402 & 434. *Wilson, supra*, 1 Cal.4th at p. 714:

> As we indicated in *Wilson I, supra,* 54 Cal.3d at page 473, the Masters were directed to be "guided by" various standards and criteria, including ... the criteria developed by an earlier panel of special masters for the reapportionment plans adopted by the court in 1973.
> These 1973 criteria include ... (6) formation of state senatorial districts from adjacent assembly districts ("nesting")...."

15. In its opinion in *Wilson*, this Court specifically endorsed the Masters interpretation of the state constitutional standards. "The Masters carefully factored into their plans the additional criteria of contiguity and compactness of districts and respect for geographic integrity and community interests.... We endorse the Masters' thesis that in designing districts 'compactness does not refer to geometric shape but to the ability of citizens to relate to each other and their representatives, and to the ability of representatives to relate effectively to their constituency.'" (*Id.*) (Quinn Dec., ¶ 5.)

16. The authors of Propositions 11 were well aware of the 1991 Masters' criteria; as noted in paragraph 12 above, they adopted the 1991 language almost verbatim.

- Art. XXI, § 2(d)(3): "Districts shall be geographically contiguous."
- Art. XXI, § 2(d)(4): " The geographic integrity of any city, county, city and county, local neighborhood or local community of interest shall be respected in a manner that minimizes their division to the extent possible.... "

- Art. XXI, § 2(d)(5): "To the extent practicable, and where this does not conflict with the criteria above, districts shall be drawn to encourage geographic compactness such that nearby areas of population are not bypassed for more distant population."
- Art. XXI, § 2(d)(6): "To the extent practicable, and where this does not conflict with the criteria above, each Senate district shall be composed of two whole, complete and adjacent Assembly districts…."

(Quinn Dec., ¶ 6.)

17. Proposition 11 also provides specially for original and exclusive jurisdiction of the Supreme Court to hear claims against the Commission's certified maps. (Art. XXI, § 3(a).) Any voter was authorized to file a petition challenging the Commission's certified maps in the Supreme Court, within 45 days of the Commission's act of certification of the maps. (Art. XXI, § 3(b)(1).) The Court is authorized upon finding that a map of each type of district violated the federal or state constitutions or laws to authorize special masters to draw new boundaries for districts, and if the Court approved the special masters' boundaries, to certify these new boundaries for each type of district to the Secretary of State for implementation. (Art. XXI, § 3(b)(3).)

18. Proposition 11 left redistricting of Congressional districts to the Legislature. However, in November 2, 2010, after the proceedings to establish the Commission were underway, the People adopted Proposition 20, which authorized the Commission also to adopt Congressional district maps following the decennial census. (RJN, Exhibit "C", Excerpts from Official Voter Information Guide for the November 4, 2008 General Election, pp. 057-064, incorporated by reference herein.)

Proposition 20

19. Proposition 20 also defined the term "communities of interest" as used in Article XXI, section 2(d), and provided more specifically for procedures that would apply to the Supreme Court in the event a popular referendum were filed against one or more of the Commission's certified maps. (Art. XXI, § 3(b)(2) and (3) and Art. XXI, § 2(j).) Proposition 20 also moved the certification date for Commission action on district maps from September 15 of the year following the decennial census to August 15. (Art. XXI, § 2(g).)

20. Proposition 20 added the concept of respecting "local neighborhoods" and "local communities of interest." The Oxford American Dictionary 1980, page 388, defines "local" as "belonging to a particular place, or a small area; of the neighborhood and not long distance". In forming districts this means combining close-by areas, not distant populations that by their nature cannot be "local communities of interest." (Quinn Dec., ¶ 23.)

21. The constitutional requirements that "nearby areas of population are not bypassed for more distant population" and that districts must "respect local communities of interest" complement each other. They provide context for the term "compactness" in that districts must contain "local" and "nearby" populations. This rule, first defined by the Masters and expanded upon by both Propositions 11 and 20, is mandatory. This language was taken verbatim from the Masters report in *Wilson*, and the 1991 Masters noted that its origin was the 1973 *Reinecke* decision. (*Wilson, supra*, 1 Cal. 4th at pp. 719& 761, citing *Reinecke, supra*, 10 Cal.3d at p. 412.)

22. Finally, Proposition 20 established specifically the right of referendum against Commission-certified maps for each type of district. (Art. XXI, § 2(i)), providing for a stay of the effectiveness of Commission

maps against which a referendum petition is filed (Art. XXI, §3(b)(1) and (2)), and authorized a petition for interim "relief" if a referendum was "likely to qualify and stay" the effectiveness of any map. (Art. XXI, § 3(b)(3).) This provision of Proposition 20 addressed and clarified the rule for the Supreme Court to apply to resolve a conflict between the Supreme Court's contrasting holdings in *Assembly v. Deukmejian*, 30 Cal.3d 658 (1982)("*Assembly*") and *Reinecke*, and its practice in *Wilson*.

A. In *Reinecke*, the legislative process was truncated due to the Governor's veto of legislative drawn districts. This Court acknowledged that the existing legislative districts were unconstitutional under the equal protection clause of the 14th amendment, yet left the existing 1960s district lines in effect for the following 1972 elections, notwithstanding their unconstitutionality. Following the failure of the Legislature and Governor to agree on new district lines in 1973, the Court appointed three Masters who drew new district lines for the succeeding elections in 1974 through 1980.

B. In *Assembly*, the legislative process was truncated due to the qualification of referenda. This Court, on a 4-3 vote, declined to draw interim district lines and put into place the Legislature's state legislative districts that had been subject to qualified referenda, on grounds the existing district lines (the only statutes that remained in effect) were unconstitutional under the equal protection clause of the 14th Amendment. The Court also declined to draw "interim" district lines for the June 1982 primary and November 1982 general elections on the grounds it lacked adequate time to do so. The three dissenting Justices in *Assembly*, (Justices Mosk, Richardson and Kaus) believed that the *Reinecke* course kept the Supreme Court out of the "political thicket" by not allowing the maps that were part of the "truncated" legislative process to be used while they were subject to popular referendum vote.

C. In *Wilson*, the legislative process was incomplete – district plans enacted by the Legislature having been vetoed by the Governor as in 1971– and was "truncated." This Court unanimously ordered Masters to draw legislative districts for the 1992 elections and the remainder of the decade, acknowledging that if the Legislature and Governor were to consummate the legislative process leading to the enacting of districts, this Court would defer to that exercise of power by the coordinate branches of state government. (*Wilson v. Eu (I)*, 54 Cal.3d 471, 474; see *Wilson*, *supra*, 1 Cal.4th at p. 712.)

D. Proposition 20 resolves the conflict between precedent by making clear that in the truncated redistricting process, the Court may consider using Special Masters to correct the district lines if they are stayed by a "likely to qualify" referendum or if they are unconstitutional.

E. The Supreme Court is required to "give priority to ruling on a petition for writ of mandate or prohibition filed pursuant to [section 3(b)(2)] whether on the merits of a substantive legal challenge or on petition for "relief" relative to a referendum "likely to qualify." (*Id.*)

23. Upon the filing of a petition asserting that a referendum petition is "likely to qualify and stay" the operation of the Commission's certified Senate map, the "court shall fashion the relief that it deems appropriate, including but not limited to, the relief set forth in section 2 (j) of Section 2." Section 2(j) provides that this relief is "for an order directing the appointment of special masters to adjust the boundary lines of that map in accordance with the redistricting criteria and requirements set forth in subdivisions (d)[the criteria], (e)[Commission shall not take candidates' residence or party affiliation into account], and (f) [consecutive numbering of districts from north to south]."

Commission Certification of Senate District Maps

24. The full 14-member Commission was selected according to the processes set forth in Proposition 11 and established as of December 15, 2010. In the ensuing period from December 15, 2010 to August 15, 2011, the Commission hired an executive director and staff; hired demographic/line-drawing consultants, Voting Rights Act counsel and a special "racially polarized voting" consultant; held public meetings to hear comment and testimony from members of the public and groups and individuals who submitted proposed district maps of their own, prior to June 10, 2011, when it released the first draft maps for Congressional, state legislative and Board of Equalization districts; held subsequent public meetings prior to releasing "preliminary final maps" for these four types of districts on July 29, 2011; and adopted resolutions certifying the "final maps" (which were unchanged from the "preliminary final maps" that had been publicly-released on July 29, 2011) on August 15, 2011. (RJN, Exhibit "D" " Resolution of Certification for Senate Maps, Certified Map, Final Report & Appendices 1-6," dated August 15, 2011, pp. 065-238, incorporated by this reference herein; detailed report also available at < http://wedrawthelines.ca.gov/maps-final-draft-senate-districts.html> last viewed September 9, 2011.)

25. The Commission's Final Report, at pp. 42-51 (RJN, pp. 116-125, sets forth its findings and reasons for adopting the certified Senate maps, on a district-by-district basis. (See also <http://wedrawthelines.ca.gov/downloads/meeting_handouts_082011/crc_20110815_2final_report.pdf last viewed August 27, 2011.)

26. The Commission received substantial testimony from members of the public concerning the State Senate districts, in particular with respect to the Commission's adherence to the criteria set forth in Art. XXI, section 2(d), in particular, whether the proposed first draft maps

released on June 10, 2011 and preliminary final maps released on July 29, 2011 were fair and impartial; whether they achieved population equality standards of Art. XXI, §2(b); whether they complied with sections 2 and 5 of the Voting Rights Act (28 USCA §§ 1973(a) and 1973(c)); whether they were compact and contiguous; whether they unnecessarily divided geographic, city and county boundaries; what constituted communities of interest and whether these maps united or divided communities of interest, or combined populations that were not communities of interest. (Commission's Final Report, at pp. 7-26, RJN, Exhibit "D," pp. 081-100.)

27. Among notable, important submissions from the public, Professor Joaquin Avila submitted written testimony in support of creation of a section 2 district, or avoidance of a section 5 "intentional discrimination" finding, involving the pairing of AD 23 and 28, at the Commission's public hearing in San Jose, California on June 28, 2011, in opposition to the first draft Senate maps released on June 10, 2011. (RJN, Exhibit "E," p. 241, incorporated by this reference herein.) Professor Avila argued to the Commission that Voting Rights Act section 2 required the Commission to draw a Senate district that covered the East San Jose area in Santa Clara County and the Salinas area in Monterey County, a Section 5 county. This district would be composed in part of current Assembly Districts 23 and 28 that he estimated would have a 38.6% Latino Citizen Voting Age Population ("CVAP") percentage rather than simply keeping a Monterey County-centered Senate District (12, 15 or 16) at a Latino CVAP percentage of 16%. Professor Avila's analysis included historical information about racially-polarized voting in California and in the San Jose area in particular. His testimony was supported by a number of individuals who testified to the community of interest related to the Senate district proposal.

28. On August 10, 2011, Dr. Arturo Vargas of the National Association of Latino Elected Officials ("NALEO") submitted a letter to the Commission, opposing enactment of the "preliminary final" Senate map. This letter referenced NALEO's July 21, 2011 submission to the Commission, (RJN, Exhibit "F", incorporated by this reference herein), which detailed NALEO's objections, *inter alia*, that the Commission had failed to draw Voting Rights Act section 2 districts in Los Angeles County, had divided Latino/Hispanic voting interests in the western part of the San Fernando Valley, separating Latino voters from a San Fernando Valley Senate District (SD 18 (LASFE).) (Exhibit "F", pp. 21, 24-25, RJN, pp. 298, 301-302.) This resulted in placing them into a district largely composed of the eastern Ventura County communities of Thousand Oaks and Simi Valley and the Los Angeles County coastal community of Malibu (SD 27 (EVENT)), and in so doing had failed to create a potential Voting Rights Act section 2 district or an "influence district."

29. The Mexican American Legal Defense Fund ("MALDEF") submitted a letter to the Commission on May 26, 2011, objecting to the Commission's failure to draw potential Voting Rights Act section 2 districts that would afford Latino/Hispanic voters the opportunity to elect candidates of choice in a number of areas, including the Central Valley, Los Angeles, Riverside, San Bernardino and San Diego Counties. (RJN, Exhibit "G", pp. 329-362, incorporated by this reference herein.)

30. The California Republican Party submitted a letter to the Commission on August 12, 2011, opposing enactment of the "final" Senate map on the grounds the Commission had unduly divided Sacramento and San Bernardino Counties, which are split among six Senate districts each; agreeing with NALEO that the Commission had failed to draw a potential Voting Rights Act section 2 district as noted by NALEO and described more particularly in paragraph 25; and asserting that the Commission's

"final" Senate map had diluted Latino/Hispanic voting interests in the SD14 and SD17 districts (RJN, Exhibit "H", pp. 363-368, incorporated by this reference herein.)

31. The Commission's certified Senate map challenged herein did not reflect or respond to the criticisms of the Professor Avila, NALEO, MALDEF or the California Republican Party.

Referendum Against Certified Senate Map

32. On August 16, 2011, Petitioner VANDERMOST filed a request with the California Attorney General for title and summary for a referendum against the Resolution and Senate Map certified by the Commission on August 15, 2011. (RJN, Exhibit "A", pp. 008-050.)

33. On August 26, 2011, the California Attorney General issued a title and summary for the referendum against the Resolution and Senate Map certified by the Commission and assigned it an official number (No. 11-0028). (RJN, Exhibit "A", pp. 006-007.)

34. Petitioner VANDERMOST is circulating referendum petitions for signatures at the time of the filing of this Petition. On information and belief, the Petitioner VANDERMOST expects to collect and submit sufficient signatures to qualify the referendum No. 11-0028, on or before November 15, 2011.

35. Petitioner alleges, based on information and belief, that the number of petition signatures submitted by Real Party will likely result in the qualification of her referendum petition for the next regularly scheduled statewide election. (Cal.Const., art. II, § 9(c).)

36. Petitioner further alleges, based on information and belief, that Respondent will also order that the referendum appear on the next scheduled statewide election, which is June 5, 2012. (Cal. Const., art. II, § 9(c).)

FIRST CAUSE OF ACTION
Violation of California Constitution, Art. XXI, section 2(d)(3): Violation of Geographic Compactness and Contiguity Requirements

37. Petitioner realleges and incorporates by reference the allegations set forth in paragraphs 1 through 36 above.

38. The people in enacting Propositions 11 and 20 added a further criterion by defining geographic compactness. Art. XXI, § 2(d)(5) provides:

> To the extent practicable, and where this does not conflict with the criteria above, districts shall be drawn to encourage geographic compactness such that nearby areas of population are not bypassed for more distant population.

(Quinn Dec., ¶ 8.)

39. According to Dr. Quinn, this language is intended to prevent gerrymandering. For much of the last two centuries, gerrymandering has taken many forms. The most common is the reach for political advantage by combining far distant areas of population that share similar political characteristics. Racial gerrymandering involves either "cracking" (splitting apart) ethnic neighborhoods or "packing" (crowding them together to concentrate their populations and to dilute their influence on adjacent districts) both of which have the impact of diluting the influence of the targeted groups. Gerrymandering also can consist of uniting a small distant area of population with a much larger area in order to reduce the political influence of the smaller area. (Quinn Dec., ¶ 9.)

40. Proposition 11 requires that districts must be built by combining nearby areas of population, and nearby areas must not be bypassed to pick up distant populations. (Quinn Dec., ¶ 10.)

41. The sole exceptions in Art. XXI, section 2(d) from this anti-gerrymandering rule are set forth in Article XXI, section 2(d)(1), which permit deviation only if it is necessary to achieve reasonably equal

population districts or to conform with the federal Voting Rights Act. However, the Voting Rights Act envisions creation of majority minority districts from "compact populations." (*Thornburg v. Gingles*, 489 U.S. 30 (1986); *Wilson*, *supra*, 1 Cal. 4th at pp. 715-716.) As the 1991 Masters noted, "We find no conflict between the Voting Rights Act and the above state criteria." (*Id.*)

42. According to Dr. Quinn, the constitutional requirements that "nearby areas of population are not bypassed for more distant population" and that districts must "respect local communities of interest" complement each other. They provide context for the term "compactness" in that districts must contain "local" and "nearby" populations. This rule, first defined by the 1991 Masters and expanded upon by both Propositions 11 and 20, is mandated upon the Commission. (Quinn Dec., ¶ 12.) The thrust of this legal action is to challenge the constitutionality of those Senate districts where this rule was violated.

43. This petition alleges more specifically herein that certain Senate districts where adjacent populations were clearly bypassed for more distant population, thus rendering not only unfair and ineffective the districts that were so created but also rendering them unconstitutional.

Failure to Properly Divide the State into its Geographic Regions

44. The first step in meeting the state constitutional criteria is to divide the state into its geographic regions. The Commission failed to take the first step necessary to meet the state constitutional criterion of geographic compactness. That means recognizing the natural geographic divisions within the state. (Quinn Dec., ¶ 13.)

45. The 1991 Masters interpreted the community of interest language ("social and economic interests common to the population of an area (e.g.) an urban area, a rural area, an industrial area or an agricultural area") to mean that "districts should be contained, insofar as possible,

wholly within one of the major geographic regions of the state." (*Wilson, supra*, 1 Cal.4th at p. 719.) "The 1991 Masters applied this rule with vigor. Districts covering counties touching the San Francisco Bay were kept with the Bay Area. The coastal and intermediate mountain ranges were not breached. Districts did not wander across huge expanses of unpopulated areas to absorb far distant populations. The 1991 Masters also respected the natural corridors of transportation within California's regions. Since World War II our state has developed along transportation corridors, basically the highway system. More Californians commute longer distances between work and home than anywhere else in the country." (Quinn Dec., ¶ 14.) "The territory included within a district should be contiguous and compact, taking into account the availability of transportation and communication." (*Reinecke*, *supra*, 10 Cal.3d at p. 411; *Wilson, supra*, 1 Cal.4th at p. 761.)

46. The 1991 Masters language included in its report to the court, and taken as noted from this Court's original ruling in *Reinecke,* was endorsed by the court in *Wilson*. "The report and appended maps disclose that the Masters carefully factored into their plans the additional criteria of contiguity, the compactness of districts and respect for geographical integrity and community of interest." (*Id.*, at p. 719.)

47. This Court's decisions in *Reinecke* and *Wilson* are controlling upon the Commission, and districts that fail to conform to the criteria as interpreted by this Court in its rulings over the past 38 years are clearly unconstitutional.

48. Petitioner's expert witness, Dr. Quinn, after reviewing the methodology of the 1973 and 1991 Special Masters, identifies the proper division of California into geographic regions as follows:

- North Coast and Bay Area: This includes the north coastal counties that are united with the counties touching the San

Francisco Bay by Highway 101; the south Bay Area counties such as Santa Cruz, Monterey and San Benito, the Interstate 80 corridor counties of Solano and Yolo. The natural boundaries of this region are the inter-coastal mountains, the Altamont Pass, the Pacheco Pass and Big Sur. This region has a combined population of 8.4 million people, the exact population necessary for nine Senate districts.

- North and Central Interior: This region contains all the agricultural and mountain counties from the Oregon border through Kern County. The 1991 Masters built the districts covering these counties sequentially, from north to south, and avoided bypassing population centers. This region has approximately seven million people, sufficient population for 7.5 Senate districts.
- High Desert: The next region is the High Desert, defined by the Masters as the "Mojave and other desert areas east of the Sierra Nevada and north of the San Gabriel Mountains." This region consists of the Antelope Valley in Los Angeles County and the desert portions of Kern and San Bernardino Counties. The population is approximately one and half million people.
- Central Coast: This region consists of three counties: San Luis Obispo, Santa Barbara and Ventura. The population is one and a half million people. The 1991 Masters used the Monterey County-San Luis Obispo County boundary as a hard border between the Bay Area and the Central Coast, recognizing the reality that people from Monterey County look to the north, people from San Luis Obispo County look to the south.
- Urban Los Angeles County: The population of Los Angeles County is 9.8 million people. Some parts of this county must be

combined with other regions, such as the Antelope Valley and those communities bordering on Ventura County and San Bernardino County. The majority of the Senate districts must be drawn to conform to the Voting Rights Act, as the 1991 Masters recognized.

- Inland Empire: This is the urban and suburban portions of San Bernardino and Riverside Counties, and Imperial County. This area is united by a series of freeways, and districts should be built around the natural transportation corridors. This is a region of approximately four million people.
- Orange County: The population of Orange County is three million people. Camp Pendleton and a serious of mountain ranges effectively separate Orange County from Riverside and San Diego Counties. The county shares many characteristics with communities along its common border with Los Angeles County and with San Bernardino County.
- San Diego County: San Diego has a population of 3.1 million people. Because of its location, San Diego County must share districts with neighboring counties. The most sensible combinations are with Imperial and Riverside Counties.

(Quinn Dec., ¶ 15.) (See also Douzet, Frédérick and Kenneth P. Miller. (2008). "California's East-West Divide" in *The New Political Geography of California,* 9-43.)

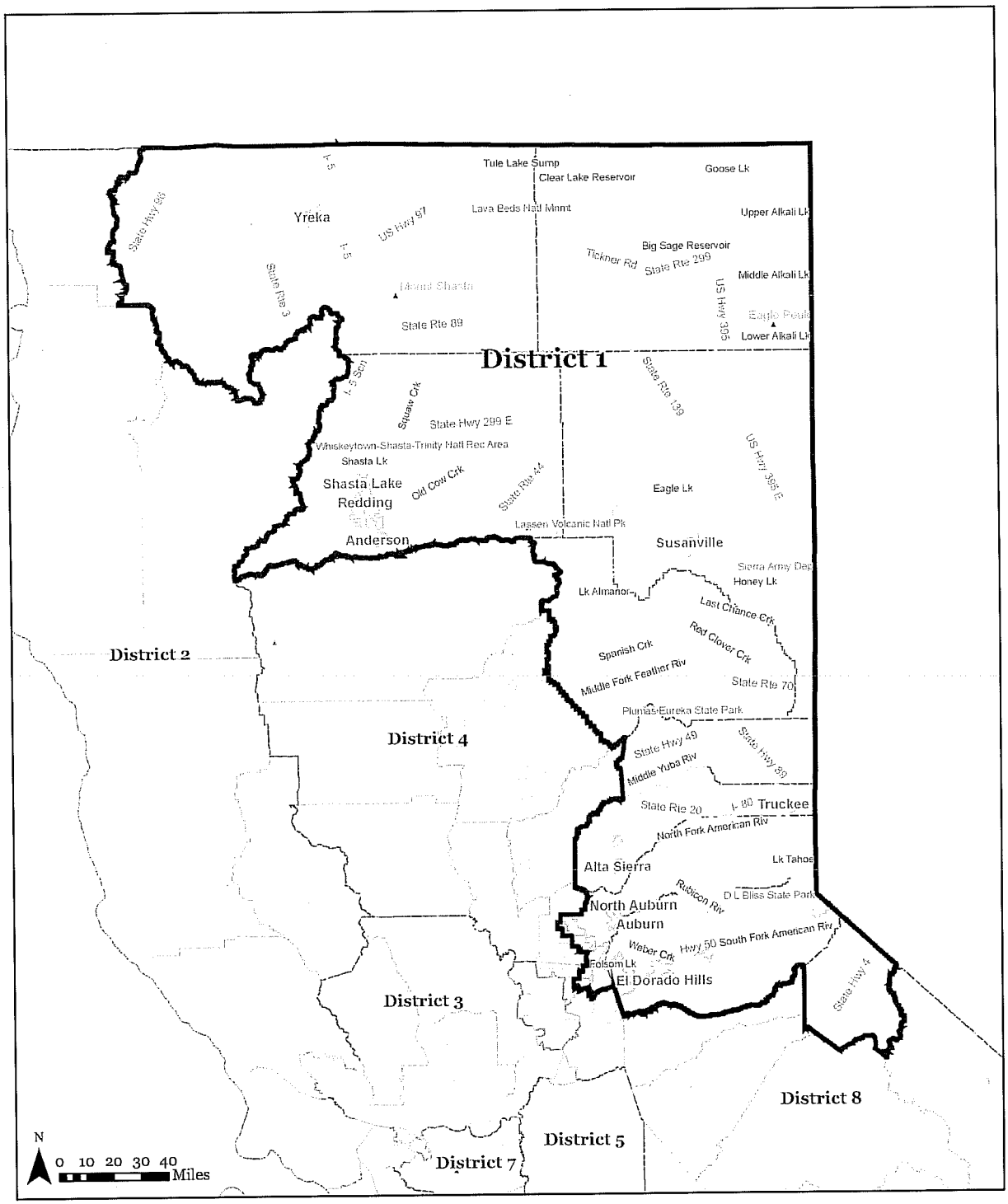
49. The Commission failed in its task of drawing compact and constitutional districts, because it chose to ignore the natural geographic divisions of California. Most of these regions are defined by counties, because Californians tend to relate to county governments. Every inch of California is assigned to a particular county; people pay county taxes, and tend to look to counties for specific services. (Quinn Dec., ¶ 14.)

50. The 1973 Masters report in *Reinecke, supra*, 10 Cal. 3d at p. 411-412 , and the 1991 Masters report in *Wilson*, *supra*, 1Cal. 4th at pp. 760-761, both recognized, "In many situations, city and county boundaries define political, economic and social boundaries of population groups.... Relationships ... are facilitated by shared interests and by membership in a political community, including a county or city."

51. In numerous instances, the Commission's Senate districts violate California's cities, counties and regions without justification. These districts combine widely-separated areas of population in ways that clearly violate the state constitutional criteria. The Commission drew far too many Senate districts that are hardly different than those created by the Legislature in 2001 which were widely criticized for achieving bi-partisan incumbent protections. (Quinn Dec., ¶ 16.)

Senate District 1 (MTCAP)

California State Senate District 1



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52. Senate District 1 (MTCAP) runs from the Oregon border through lightly population mountain areas to take in Placer County except Roseville and the northeastern suburbs of Sacramento County. The district bypasses hundreds of thousands of people to unite these far distant areas. (Quinn Dec., ¶ 18.)

53. The region from Sacramento to the Oregon border is an agricultural community of interest. It is separated from the north coast by the coastal mountain range. Its transportation corridors are two north-south highways, Interstate 5 and Highway 99. The Commission separates the northern most counties, Shasta and Siskiyou, from the rest of the region. It unites Redding with Sacramento suburban communities of Folsom, Fair Oaks and Orangevale, communities with nothing in common with agricultural Redding. (Quinn Dec., ¶ 19.) Nielsen Media Research has divided California into 14 television media markets. (Quinn Dec., Exhibit "A", Designated Market Areas, DMAs, Groups of Counties Assigned by Nielsen Media Research 2000, Polidata (R) www.polidata.us Map: CARDMABA, incorporated by this reference herein.) This district overlaps four different Nielsen market areas: Medford-Klamath Falls, Chico-Redding, Sacramento-Stockton-Modesto, and Reno.

54. The Commission's Final Report (pp. 42-43, RJN, Exhibit "D," pp. 116-117) says it is connected by "Highway 395 north and south and Highway 50 and Interstate 80 east and west". But the major transportation arteries for this region are Interstate 5 and Highway 99 that connect the northern interior counties. The district does not respect these corridors. (Quinn Dec., ¶ 24.) The Commission contends that "its shared economic interests include timber and recreation." In fact, most of the population is found in the Sacramento suburbs which have no timber or recreation. Shasta County is "timber," Lake Tahoe is "recreation" and the

Sacramento suburbs that are joined together in SD 1 share no timber and no recreational interests. (Quinn Dec., ¶ 24.)

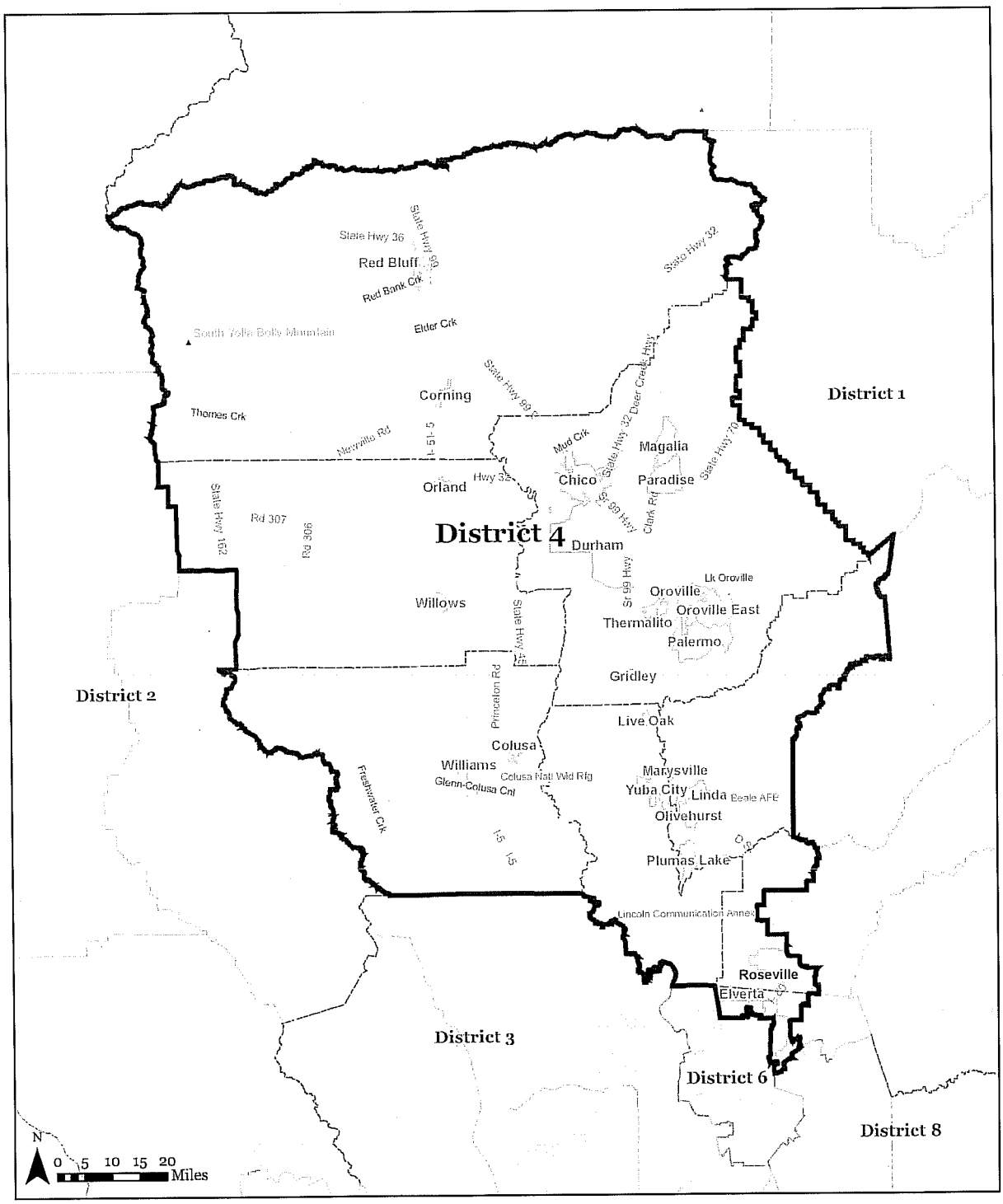
55. Finally, as evidence of the cavalier attitude of the Commission toward this part of California, the Commission describes the district as consisting of "a portion of Sacramento County, including Roseville." Roseville is in Placer County. (Quinn Dec., ¶ 25.)

56. The predecessor 1991 Masters district contained the rural northeastern portion of the state with the heaviest population in Nevada, Placer and El Dorado Counties. (*Wilson*, *supra*, 1 Cal.4th at p. 784.)

57. The Commission could have formed this district as the Masters did, with its population centered in Placer and El Dorado Counties. There is no justification for placing Redding into this suburban Sacramento and foothills district. (Quinn Dec., ¶ 27.)

Senate District 4 (YUBA)

California State Senate District 4



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58. Senate District 4 (YUBA) begins at Red Bluff in Tehama County, includes Roseville in Placer County and then extends to numerous suburban areas within Sacramento County. Red Bluff belongs with Redding to its north; not since the advent of the "one person-one vote" Senate districts in 1966 have Redding and Red Bluff been in separate districts. The Sacramento suburbs in this district should be with other communities in Sacramento County. (Quinn Dec., ¶ 28.) This district covers two separate Nielsen Designated Market areas, Chico-Redding and Sacramento-Stockton-Modesto. (Quinn Dec., Exhibit "A".)

59. The Commission's Final Report (p. 43, RJN, Exhibit "D," p. 117) describes this district as containing parts of "northeast Sacramento County, including Roseville." As noted above, Roseville is not in Sacramento County. (Quinn Dec., ¶ 30.) The Commission also asserts that, "This district shares the I-5 transportation corridor and reflects the interests in a Central Valley district that is primarily agricultural and rural." This is not true. The "agricultural and rural" counties account for about 500,000 people while suburban Roseville and the Sacramento suburbs like Rancho Cordova account for 430,000 people. These two areas have nothing in common. (Quinn Dec., ¶ 31.)

60. The 1991 Masters maintained the unity of the northern interior counties and brought this district south into portions of Yolo and Solano Counties. (*Wilson*, *supra*, 1 Cal. 4th at p. 784 .)

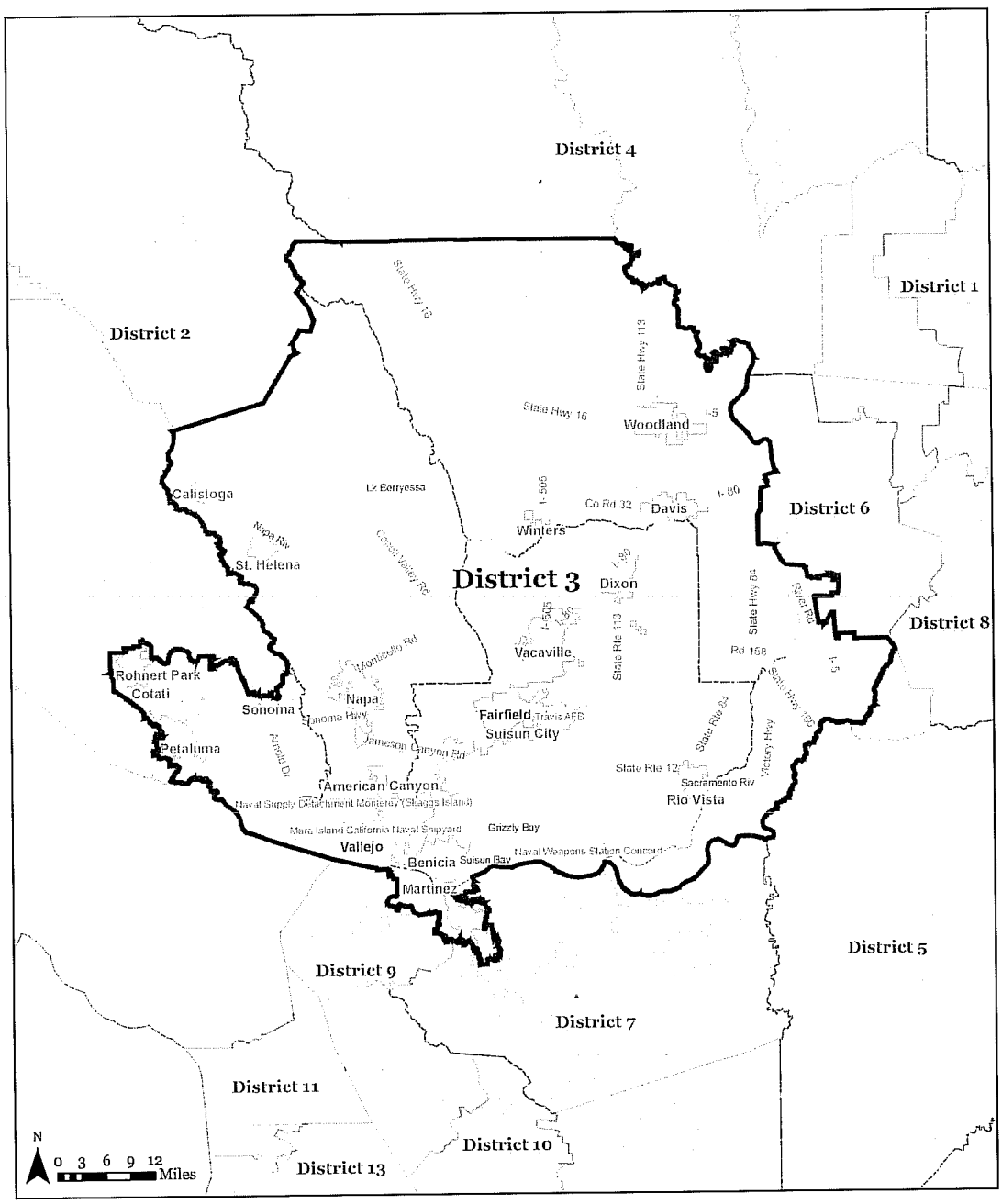
61. This region has grown since 1990 so bringing this district into Yolo and Solano Counties is unnecessary. A perfectly formed agricultural district could have been drawn from the Oregon border as far south as Sutter County. (Quinn Dec., ¶ 32.)

62. Senate District 4 and Senate District 1 specifically violate the constitutional mandate of Article XXI, section 2(d)(5) not to bypass adjacent populations in forming districts. District 1 should be a Sacramento

suburban district; District 4 should be a northern interior rural district. These two districts specifically violate the constitutional community of interest criterion of Art. XXI, section 2(d)(5).

Senate District 3 (WINE)

California State Senate District 3



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63. The 1991 Masters admonition that compactness "does not refer to geometric shapes but to the ability of citizens to relate to each other and their representatives, and to the ability of representatives to relate effectively to their constituency" (*Wilson, supra*, 1 Cal. 4th at p. 719) was completely ignored with Senate District 3. This district contains Rohnert Park, Cotati and Petaluma in Sonoma County, Martinez and Pleasant Hill in Contra Costa County and the Sacramento River Delta, small appendages that don't belong in the same district. (Quinn Dec., ¶ 34.) The district overlaps two Nielsen Designated Market Areas, Sacramento-Stockton-Modesto and San Francisco-Oakland-San Jose. (Quinn Dec., Exhibit "A".)

64. This district is forced to absorb these far distant areas by the rippling caused by the Commission's refusal to cross the Golden Gate Bridge. The population north of the bridge is greater than a single Senate district. So instead of the logical cross of the Golden Gate Bridge that would have united parts of Marin County and San Francisco, the Commission is forced to detach part of Sonoma County, Rohnert Park, and to combine it with far distant populations. Instead of crossing the Golden Gate Bridge, the Commission forces this district across both the Carquinez and the Benicia bridges. In so doing, it brings the working class communities in northern Contra Costa County into a district that extends all the way to Calistoga in Napa County and the Sonoma County wine country. (Quinn Dec., ¶ 35.)

65. The Commission's Final Report (p. 43, RJN, Exhibit "D," p. 117) notes that the district "includes a portion of Contra Costa County including the cities of Martinez and Pleasant Hill, to achieve population equality and are connected through the Benicia Martinez Bridge. The district is united by the I-5 and I-80 transportation corridors."

66. However, there are several problems with this justification. First, Martinez and Pleasant Hill are not connected by the Benicia Bridge;

they are both in Contra Costa County. Secondly, it is not united by the I-5 corridor; the district contains two separate pieces of Interstate 5 that pass through largely unpopulated area. (Quinn Dec., ¶ 38.)

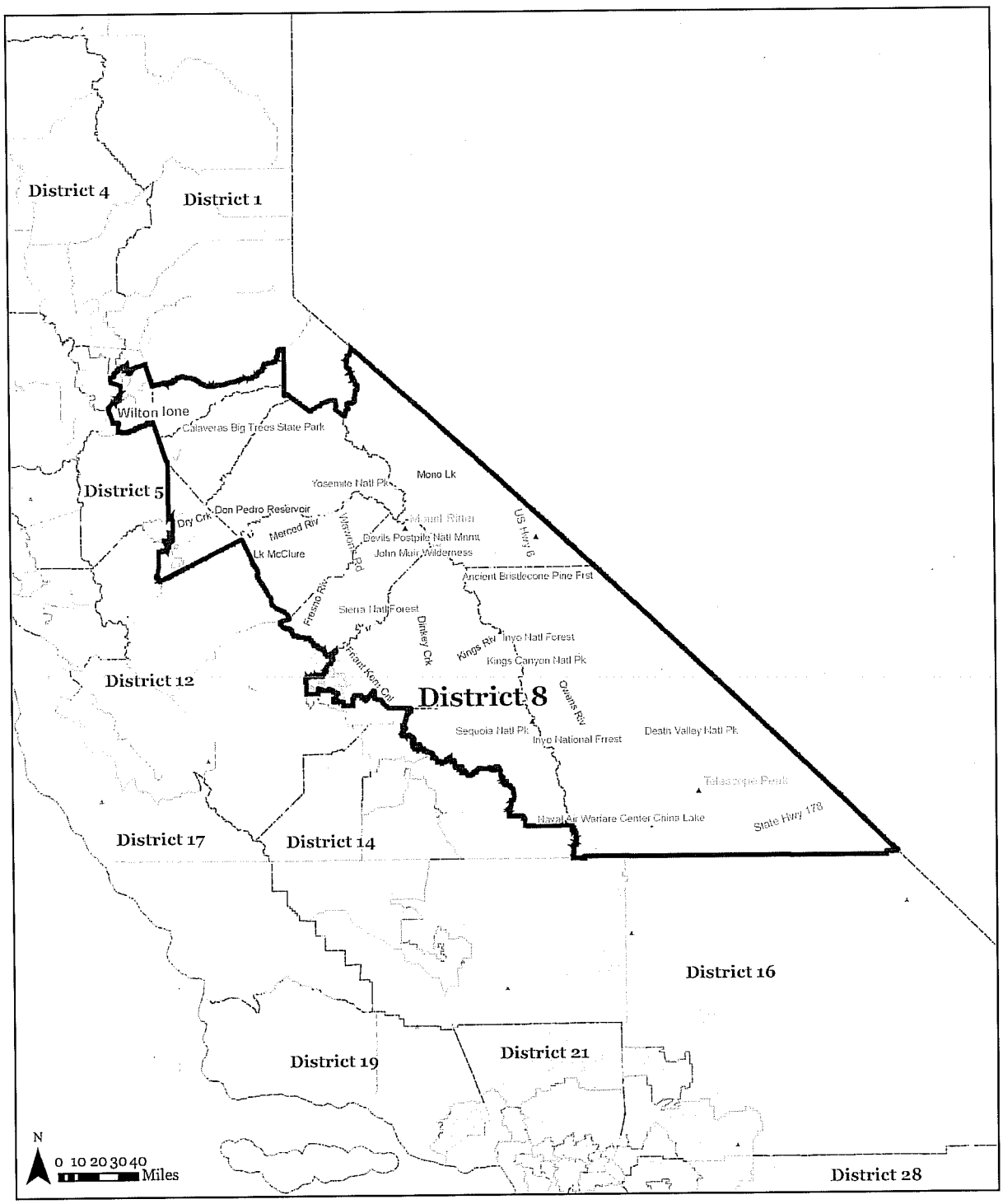
67. There is no 1991 Masters district that approximates this district. The master did properly cross the Golden Gate Bridge with then Senate District 3. (*Wilson, supra*, 1 Cal. 4th at p. 783) (Quinn Dec., ¶ 39.)

68. According to Dr. Quinn., a logical district would have combined all of Solano, Yolo and Napa Counties. Additional population could have been obtained from the Contra Costa County towns along the I-80 corridor. The Sacramento River delta, Rohnert Park and Martinez-Pleasant Hill do not belong in this district. (Quinn Dec., ¶ 40.)

69. Senate District 3 specifically violates the constitutional mandate of Article XXI, section 2(d)(5) not to bypass adjacent populations in forming districts. District 3 should be Solano, Yolo and Napa Counties. This district specifically violates the constitutional community of interest criterion of Art. XXI, section 2(d)(3).

Senate District 8 (FTHLL)

California State Senate District 8



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70. Senate District 8 (FTHL) begins in the Sacramento suburbs, moves south through the mountains to pick up parts of Stanislaus County, then much of Fresno County including large parts of the city of Fresno, and then wanders further south through Death Valley until it ends just a few miles from Las Vegas. "Senate District 8 is based on a theory that the foothills are a community of interest, but in fact the Sacramento suburbs and urban Fresno County – well away from any foothills – have nothing in common with Death Valley. This is certainly one of the oddest districts ever drawn in California." (Quinn Dec., ¶ 41.)

71. The Commission's Final Report (p. 44, RJN, Exhibit "D," p. 118) attempts to justify this district by noting the need to build two Voting Rights Act Section 5 districts just to the west, but in fact the drawing of Section 5 districts including Merced and Kings County do not require the rest of the Central Valley to be stretched across the map. (Quinn Dec., ¶ 43.) The Commission claims that "the district maintains the integrity of a southern foothills and mountain district to link the common issues interests of open space, water, the distinctions between the 'hills' and the 'flatlands' and the less densely populated areas that share a more rural and remote way of life."

72. According to Dr. Quinn., Senate District 8 does none of these things. Its population center is the city of Fresno and its northern suburbs, hardly areas sharing a "remote way of life." (Quinn Dec., ¶ 44.) The Commission received testimony that the people living in the Sierra counties shop and relate to nearby "flatland " counties, Tuolumne to Fresno, Calaveras to Modesto. Death Valley and Inyo County do not relate to Amador County. Also, in terms of the 14 Nielsen Designated Market Areas, this district crosses four of them: Sacramento-Stockton-Modesto, Reno, Fresno-Visalia, and Los Angeles. (Quinn Dec., Exhibit "A".) (Quinn Dec., ¶ 43.)

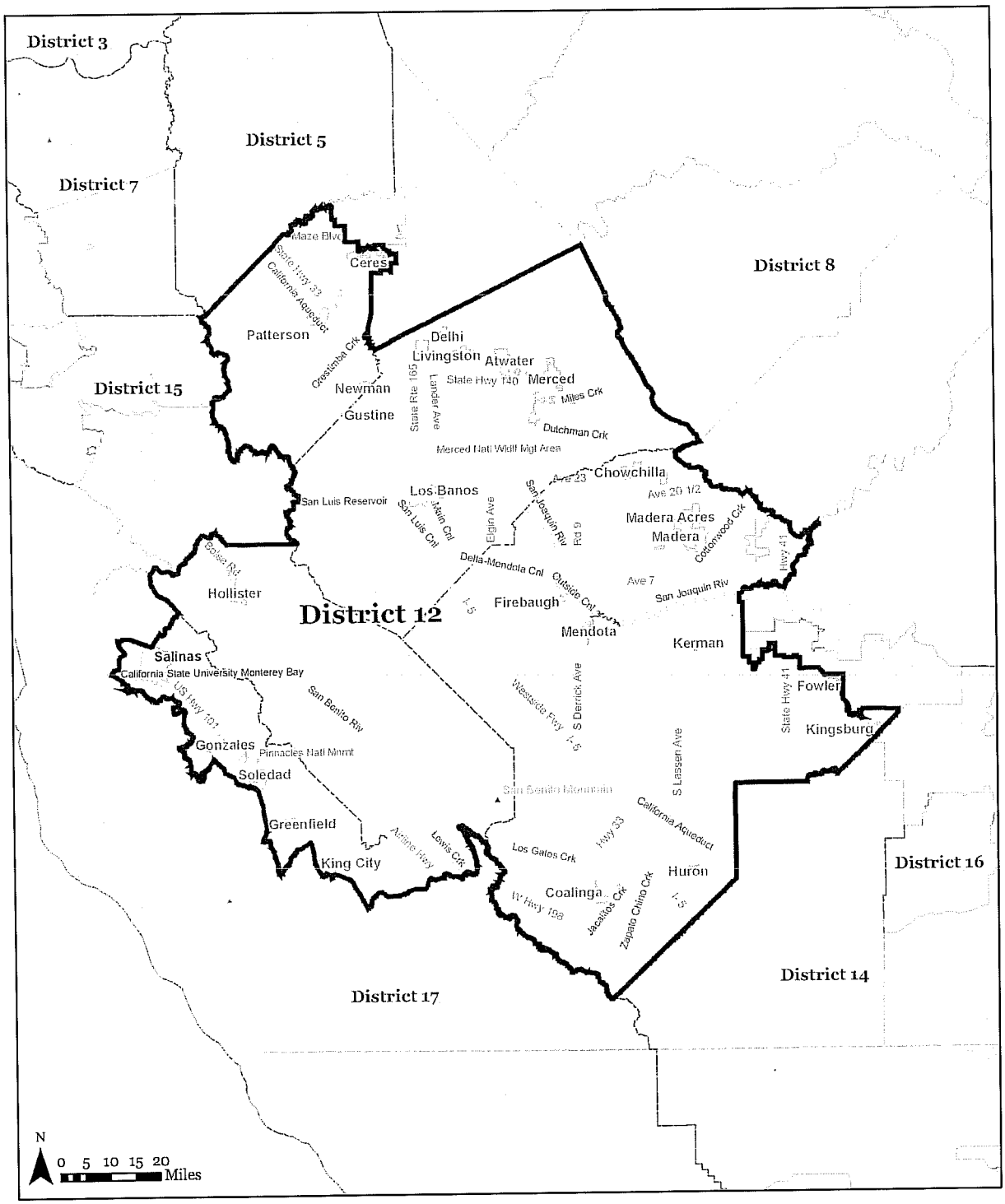
73. The 1991 Masters did not create any district remotely resembling this district. They combined "hill" populations with their nearby "flatland" populations. (*Wilson, supra*, 1 Cal. 4th at p. 784.) (Quinn Dec., ¶ 45.)

74. According to Dr. Quinn., the Sacramento County portion should have remained with Sacramento County, and this would have reduced the unjustified division of Sacramento County into six Senate districts. Oakdale and Turlock should have remained within a Stanislaus County district. Urban Fresno should have been combined with nearby communities and not run through the mountains to Death Valley. (Quinn Dec., ¶ 46.)

75. Senate District 8 specifically violates the constitutional mandate of Article XXI, section 2(d)(5) not to bypass adjacent populations in forming districts, and should be within Sacramento County, with Oakdale and Turlock in Stanislaus County in a Stanislaus County district. Urban Fresno should be combined with nearby communities and not run through the mountains to Death Valley. Senate District 8 specifically violates the constitutional community of interest criterion of Art. XXI, section 2(d)(3).

Senate District 12 (MERCED)

California State Senate District 12



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76 Senate District 12 (MERCED) maintains the 2001 gerrymander that united Salinas in Monterey County with parts of Stanislaus County and all of Merced County. (Quinn Dec., RJN Exhibit "I", Map of 2001 Senate District 12, incorporated by this reference herein.) (Quinn Dec., ¶ 46.) The Commission contends it was forced to retain this district because of Section 5 of the Voting Rights Act, Merced and Monterey being Section 5 counties.

77. But this was not necessary. The Voting Rights Act lays out the standard that a Section 5 districts must not regress minority voting opportunities. By leaving this district as it was drawn in 2001, the Commission did reduce the opportunities of Latino/Hispanic voters to elect their candidates of choice. (Quinn Dec., ¶ 47.)

78. The Commission received extensive testimony that the Central Valley should be combined with the Central Valley and the coast with the coast. (Quinn Dec., ¶ 48.) According to the Petitioner's expert, Dr. Quinn, "It is impossible to provide effective representation in a district partially on the coast and partially inland because the concerns and issues are so different. This is why the 1991 Masters did not combine any Valley districts with coastal counties." (*Wilson, supra*, 1 Cal. 4th at p. 768-769.) (Quinn Dec., ¶ 48.)

79. The Commission's Final Report (p. 45, RJN, Exhibit "D," p. 119), admits that "although this is the one district that crosses the coastal mountain range between the San Joaquin Valley and the west, this district is able to maintain a predominately agricultural base on both sides of the mountains, thus linking two areas together in a common interest." According to the Petitioner's experts, "this is fiction, because the farming, ranching and water concerns are totally different, and often in conflict." (Quinn Dec., ¶ 50.) "Salinas is an area of cool weather crops and adequate local water; the Central Valley consists of cattle ranches, cotton

and tree crops, and must import its water. They could not be more different, as the Commission was told at its public hearings." (Quinn Dec., ¶ 50.) This district covers three Nielsen Designated Market Areas: Monterey-Salinas, Fresno-Visalia, and Sacramento-Stockton-Modesto. (Quinn Dec., Exhibit "A".)

80. The Commission also justifies violation of state constitutional standards to meet Section 5. (Report, p. 45, RJN, Exhibit "D," p. 119) However, the Petitioner's expert disputes this contention. "In fact, Merced County could have been placed in the Central Valley Section 5 district (Senate District 14) and it could have been drawn to be more than 60 percent Latino (Merced County itself is 55 percent Latino)." (Quinn Dec., ¶ 51.) "Additionally, had heavily Latino Salinas been united with Latino areas in neighboring Santa Clara County, a Latino Senate seat could have been drawn, as Dr. Joaquin Avila noted in his testimony to the Commission. Neither Monterey nor Merced Counties has ever elected Latinos to the Senate, and in fact a Latina candidate was defeated in the current Senate District 12 in 2010. The Commission had an opportunity to meet Section 5 by drawing Latino Senate seat in San Jose and Salinas, and failed to do so." (Quinn Dec., ¶ 51.)

81. The 1991 Masters created a district entirely within the Central Valley, consisting of Tuolumne, Stanislaus, Mariposa and Merced Counties, and portions of Fresno, Madera and San Joaquin Counties. (*Wilson*, 1 Cal.4th at p. 784.) The 1991 approach met all the state constitutional criteria. (Quinn Dec., ¶ 53.)

82. According to Dr. Quinn., "The Commission should have created this seat entirely in the Central Valley. It should have attached Merced County to Kings County and Latino portions of Fresno and Kern Counties to meet Section 5 concerns (this district currently has a Latino Senator and there would be no Section 5 regression). The Commission

could then have taken the Latino portions of Monterey County, also Section 5, and created a Latino Senate district in combination with Santa Clara County Latinos. (The two overlapping Assembly Districts that would form this Senate district have Latino incumbents.) (Quinn Dec., ¶ 55.)

83. Senate District 12 specifically violates the constitutional mandate of Article XXI, section 2(d)(5) not to bypass adjacent populations in forming districts, by combining far distant and totally dissimilar communities. Senate District 12 specifically violates the constitutional community of interest criterion of Art. XXI, § 2(d)(3) by combining Merced and Monterey Counties which are different communities of interest.

Senate District 17(WMONT)

California State Senate District 17

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84. Senate District 17 (WMONT) replicates the 2001 gerrymander by uniting southern Santa Clara County, including Morgan Hill and Gilroy, with San Luis Obispo County hundreds of miles to the south. (Quinn Dec., Exhibit "B," 2001 Senate District Map.) This district bypasses hundreds of thousands of people in the Bay Area for San Luis Obispo County. The district combines Monterey County with San Luis Obispo County even though they are separated by an area of 100 miles of no population (Big Sur). (Quinn Dec., ¶ 56.) Senate District 17 also manages to cover three Nielsen Designated Market Areas: San Francisco-Oakland-San Jose, Monterey-Salinas, and Santa Barbara-Santa Maria-San Luis Obispo. (Quinn Dec., Exhibit "A".)(Quinn Dec., ¶ 49.)

85. According to Dr. Quinn, Senate District 17 is the result of several Commission errors: not crossing the Golden Gate Bridge which required pulling this Central Coast district north into Santa Cruz County, dividing Monterey County to send Salinas off to the Central Valley, and failure to recognize the Monterey-San Luis Obispo County line as the natural division between Bay Area districts and the Central Coast. (Quinn Dec., ¶ 57.)

86. The Commission's Final Report (p. 46, RJN, Exhibit "D," p. 120) attempts to justify this district by contending that, "strongly shared interests within the district include regional agricultural economies, coastal and open space preservation and environmental protection." However, as Dr. Quinn states, "These characteristics are shared by all coastal counties from Del Norte to San Diego and are hardly unique to this area. San Luis Obispo's agricultural economy actually has little in common with Monterey County, and much more in common with agriculture to the south in Santa Barbara and Ventura Counties. Monterey County's agricultural base has far more in common with Santa Cruz County (similar cool weather crops) than it has with San Luis Obispo County farmland hundreds of miles to the

south. (Quinn Dec., ¶ 60.) Most telling, San Luis Obispo County 'looks south'; its newspapers and television stations cover Santa Barbara County, and the major population concentrations in San Luis Obispo County are along its common border with Santa Barbara County. (Quinn Dec., ¶ 61.) The Commission met the community of interest criteria for Assembly and Congress. Its Assembly district unites San Luis Obispo County with northern San Barbara County; its congressional map consists of all of San Luis Obispo and Santa Barbara Counties. It is somewhat of a mystery why the Commission recognized the 'hard border' of Monterey and San Luis Obispo Counties for Assembly and Congress, but not for Senate." (Quinn Dec., ¶ 62.)

87. The 1991 Masters' northern Senate district consisted of all of Monterey and Santa Cruz Counties, and a portion of Santa Clara County. Its southern Senate district encompassed all of San Luis Obispo, Santa Barbara and western Ventura Counties. This is the constitutional way to divide the Central Coast. (*Wilson, supra,* 1 Cal.4th at pp.784-785.)

88. The Commission's Report contends it drew Senate District 17 in part to comply with section 5 of the Voting Rights Act. (*Id.*) However, according to Dr. Quinn, the Commission should have taken the Latino portions of Monterey County and united them with Latino portions of Santa Clara County. Coastal Monterey County should have been united with Santa Cruz County and perhaps the Silicon Valley communities along Highway17 or the coastal communities in San Mateo County. (Quinn Dec., ¶ 64.) The second district should have been formed exactly as the Masters formed the district (and the Commission formed the overlapping congressional district): all of San Luis Obispo County, all of Santa Barbara County and western Ventura County. San Luis Obispo County shares five television stations with Santa Barbara County, including the major networks. Monterey County also shares five television stations, but with

Santa Cruz County to its north. The Monterey and San Luis Obispo stations do not overlap at all. (Quinn Dec., ¶ 49.)

89. Senate District 17 specifically violates state constitutional criteria of contiguity and compactness in that it bypasses huge areas of population to reach for far distant population. It dilutes the influence of small San Luis Obispo County by placing it in a district whose population centers are 100 miles away, and with which San Luis Obispo County residents have nothing in common. (Quinn Dec., ¶ 58.) Senate District 17 thus unnecessarily combines San Luis Obispo County with different communities of interest, dividing it from its natural central coastal community of interest. (Art. XXI, § 2(d)(3).)

90. The reasons for the distortion created by Senate District 17, and Senate District 27 (see paragraphs 109-111, *infra*) largely can be attributed to the Commission's adoption of Senate districts proposed by the organization, the Central Coast Alliance for a Sustainable Economy ("CAUSE"). This action can be explained in part by the role of Commissioner Dr. Gabino T. Aguirre who had a significant undisclosed conflict of interest as an advisory board member of CAUSE, as alleged more particularly below.

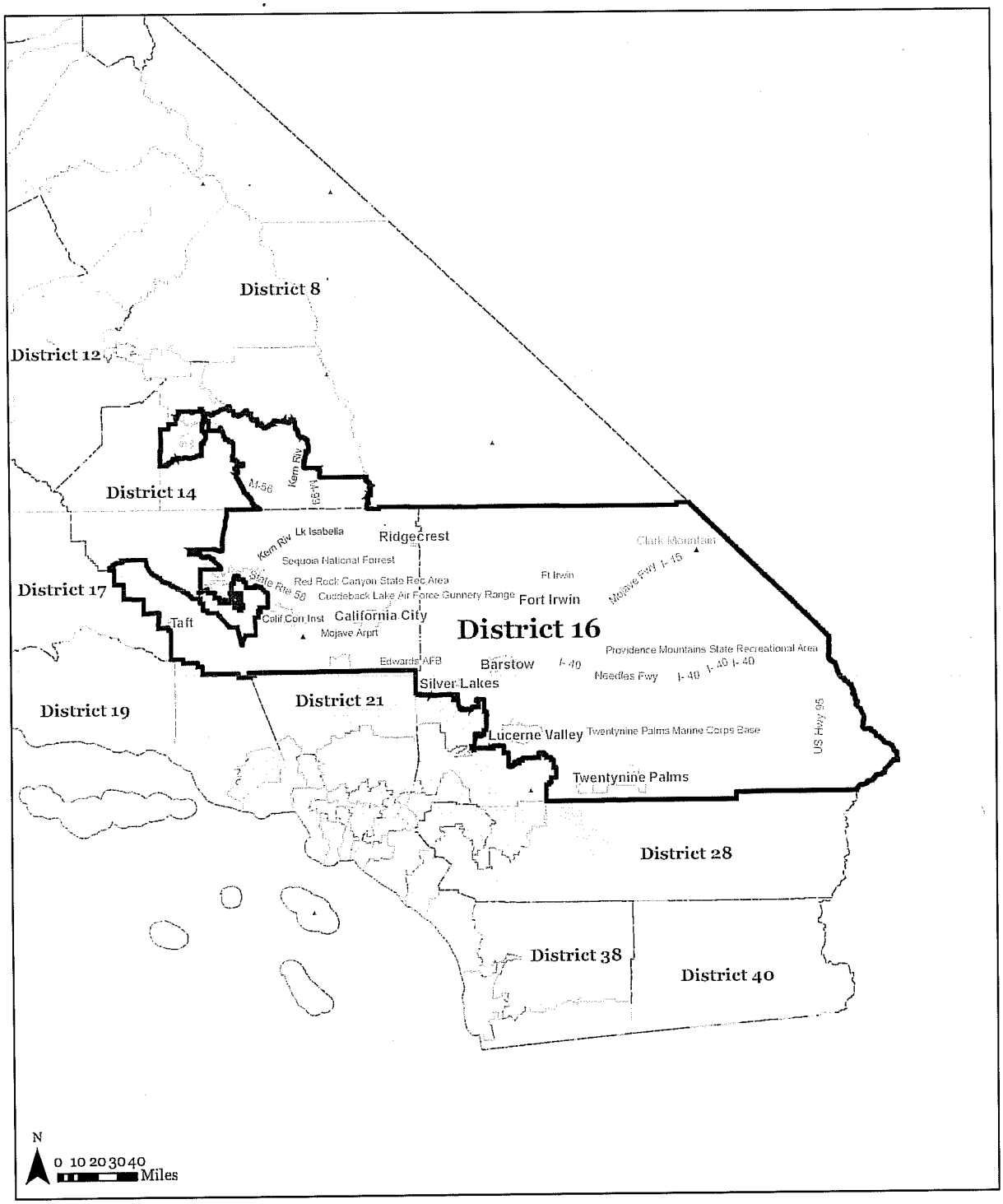
91. Commissioner Gabino T. Aguirre actively advocated for Senate district lines in the Ventura, Santa Barbara and San Luis Obispo County region for CAUSE, of which Commissioner Aguirre was an advisory board member, without disclosure of this conflict of interest and inconsistent with his duty of integrity, fairness and impartiality under Art. XXI, §§ 2(b)(3) and 2(c)(6). (See John Hrabe, "Gabino Aguirre's Secret Political Past," CalWatchdog, July 15, 2011, <http://www.calwatchdog.com/2011 /07/15/ redistricting-Commissioner-aguirres-secret-political-past/>; John Hrabe, "Did Gabino Aguirre Flout Code of Conduct?," CalWatchdog, July 21, 2011,

<http://www.calwatchdog.com/2011/07/21/did-aguirre-flout-redistricting-code-of-conduct/>.)

92. Commissioner Aguirre was also part of a two- Commission member group tasked with making recommendations to the full Commission concerning district maps for the region of Ventura, Santa Barbara and San Luis Obispo Counties, which the Commission had designated as Area 5, and in that capacity recommended district maps be drawn in a manner consistent with the positions of CAUSE, during a time when he was publicly identified as an advisory board member of that organization. (Declaration of Brian T. Hildreth, Exhibit "A", CAUSE Website list of Advisory Board Members, July 14, 2011.) Public requests were made for Commissioner Aguirre to resign or disqualify himself from voting for district maps for which he had advocated. (Letter of Thomas G. Del Beccaro to Citizens Redistricting Commission, dated July 21, 2011, RJN, Exhibit "J", pp. 373-377.) Commissioner Aguirre failed to resign or disqualify himself from voting on the Commission's final Senate map. (RJN, Exhibits "D," Commission Record of Vote on Resolution Certifying Senate Map, August 15, 2011, and Resolution Certifying Senate Map, August 15, 2011.)

Senate District 16 (TULKE)

California State Senate District 16



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93. This jaw-like district begins in Visalia and Tulare in Tulare County, moves south to pick up the northern part of the city of Bakersfield, and then moves east and south to absorb the San Bernardino desert from Yucca Valley to Needles. It is one of six districts partially within San Bernardino County and unites the desert area with Central Valley farming communities with which it has nothing in common. (Quinn Dec., ¶ 65.)

94. The Constitution specifies that: "The geographic integrity of any city, county, city and county, local neighborhood or local community of interest shall be respected in a manner that minimizes their division to the extent possible." San Bernardino County has a population of 2,035,210 people, slightly more than the population of two Senate districts. Yet the Commission has drawn six districts in the county, and no district is fully within the county. Three of these districts clearly violate the Constitution. (Quinn Dec., ¶ 66.)

95. Senate Districts, San Bernardino County: (Percentage of San Bernardino's population within each district.)

SD 16 (7.3%)
SD 20 (38.6%)
SD 21 (16.3%)
SD 23 (30.2%)
SD 25 (3.8%)
SD 29 (3.7%)

96. The Commission's justification (Report, pp. 45-46, RJN, Exhibit "D," pp. 119-120) notes that, "Although this district covers a large geographic area, the vast majority of cities share a communality of having small populations in more remote areas." According to Dr. T. Quinn, this justification is absurd on its face. Alturas in Modoc County and Calexico in Imperial County could be so described, but that would not justify putting them in the same district. The cities of Visalia and Tulare are hardly small remote cities, being in the heart of the Central Valley. The Commission

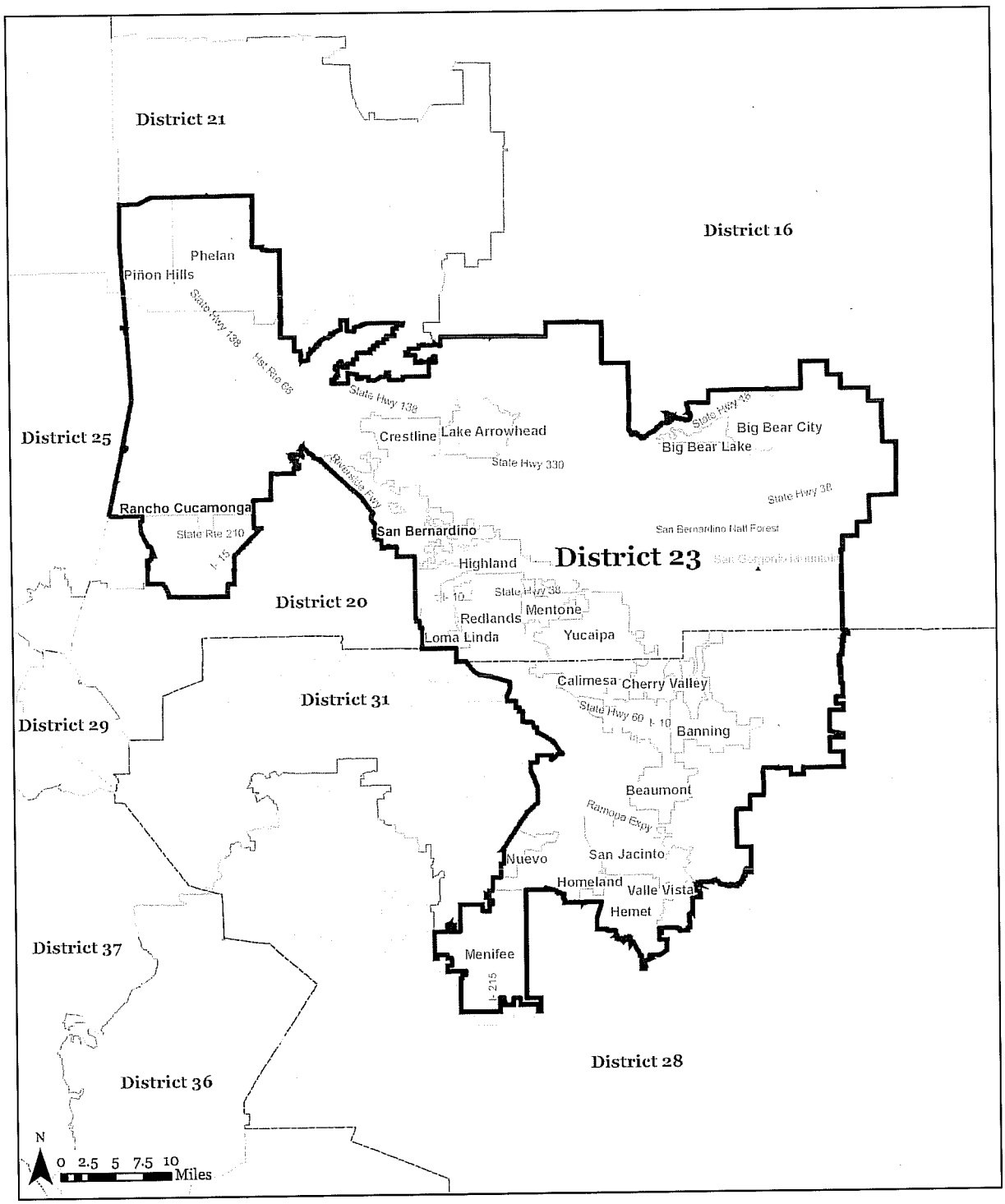
justifies uniting "small populations" with nothing in common simply on the basis that they are small. (Quinn Dec., ¶ 69.)

97. The 1991 Masters predecessor district treated the High Desert as a single geographic unit. The Masters created a single High Desert district, then Senate District 17. (*Wilson*, *supra*, 1 Cal.4th at p. 785.)

98. According to Dr. Quinn, had the Commission property acknowledged the state's natural geographic regions, it would have placed the Kern and San Bernardino deserts within a single district, and not included distant Central Valley farming communities. It should have created at least one district fully within San Bernardino County. (Quinn Dec., ¶ 71.)

Senate District 23 (SBBAN)

California State Senate District 23



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99. Senate District 23 is one of the six districts partially in San Bernardino County. It includes the city of Rancho Cucamonga along the Los Angeles County line, and then wraps around two other districts dipping deep into Riverside County to pick up the city of Menifee in Riverside County. Like other San Bernardino County districts, this district absorbs distant communities with nothing in common. (Quinn Dec., ¶ 72.)

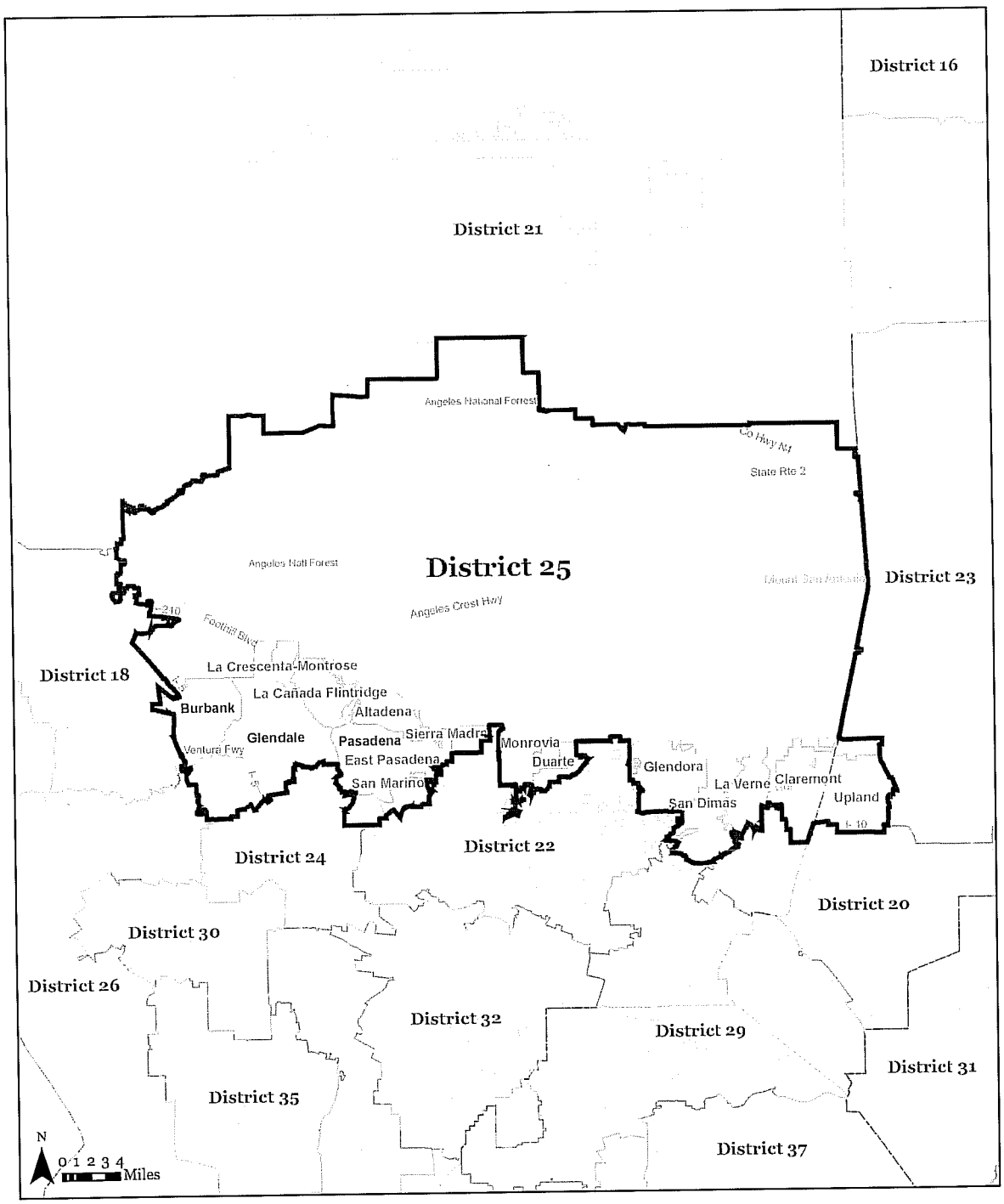
100. The Commission Report (p. 47, RJN, Exhibit "D," p. 121) notes the irregular shape. "The shape of this district was largely determined by the adjacent district drawn in consideration of Section 2 of the Voting Rights Act." That district is Senate District 20. We do not challenge that district; the Voting Rights Act indeed does require a district drawn as Senate District 20 is drawn. According to Dr. Quinn, this is weak excuse for decimating the representation of non-Section 2 districts. Rancho Cucamonga should have been united with neighboring Upland and those communities kept within a San Bernardino district. (Quinn Dec., ¶ 73.)

101. The Masters kept the San Bernardino suburban communities together and took a portion of neighboring Riverside County. The Masters also created the Section 2 district, 1991 Senate District 31, demonstrating that creation of a Latino district in urban San Bernardino County did not require elongated and irregular suburban districts. (See RJN, Exhibit "I," pp. 370-371.) (*Wilson*, *supra*, 1 Cal.4th at p. 786.)

102. According to the Petitioner's expert, Dr. Quinn, the Commission should have followed the lead of the Masters in constructing a High Desert San Bernardino County district and a second district that while surrounding the Section 2 district, nevertheless would have included Upland, Rancho Cucamonga with cities like Twenty Nine Palms and Yucca Valley. (Quinn Dec., ¶ 74.)

Senate District 25 (LASGF)

California State Senate District 25



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103. The major population centers for this district are Pasadena, Glendale and part of Burbank. In 1991, the Masters configured the predecessor to this district around those cities, and the legislature retained that scheme in 2001. However, the Commission has extended this district far to the east to absorb East San Gabriel Valley communities of Glendora, San Dimas, La Verne and Claremont into this district. The district then extends across the Los Angeles-San Bernardino County line to absorb Upland; becoming one of the six districts invading San Bernardino County. (Quinn Dec., ¶ 76.)

104. According to Dr. Quinn, the East San Gabriel Valley communities have never been combined with Pasadena, Glendale or Burbank, and in fact the Commission heard testimony at its public hearing that such an elongated district would undo fair representation for these smaller cities. This is one of the classic examples of denying representation to a small population by combining it with a much larger far distant population. (Quinn Dec., ¶ 77.) This is prohibited by the state constitutional criteria that adjacent population must be used in forming districts, not far distant population.

105. The Commission's rationale for this district (Report, p. 48, RJN, Exhibit "D," p. 122) is that it retains the I-210 corridor and "connects these cities for commerce and entertainment." According to the Petitioner's expert, Dr. Quinn, in fact, very few people in Upland look to Burbank for "commerce and entertainment." The I-210 corridor is divided in three by this district, so it certainly does not respect that transportation corridor. (Quinn Dec., ¶ 78.)

106. The 1991Masters formed one compact district in the Burbank-Pasadena-Glendale area, 1991 Senate District 21. The East San Gabriel Valley communities were combined with like communities in

eastern Los Angeles County, 1991 Senate District 29. (*Wilson, supra*, 1 Cal.4th at p. 786.) (Quinn Dec., ¶ 79.)

107. According to Dr. Quinn, the Commission was unable to draw the same sensible districts the Masters did because it divided Burbank and it failed to keep adjacent Los Angeles population within this district. All of Burbank should have been placed in this district, and if the Commission had kept Burbank whole and added adjacent Los Angeles territory, it would not have been necessary to reach as far as Upland for population for this district. (Quinn Dec., ¶ 80.)

Senate District 27 (EVENT)

California State Senate District 27

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108. Senate District 27 contains portion of Eastern Ventura County, primarily Thousand Oaks and Simi Valley, and then extends far into Los Angeles County to absorb western and central San Fernando Valley communities of Reseda and Encino. In doing so, the 27th Senate District dilutes the Latino percentage in the neighboring 18th Senate District. The current Latino district in the San Fernando Valley has a Latino Citizen Voting Age Population of 47 percent. The Commission's district has a Latino CVAP of only 38.04 percent. (RJN, Exhibit "D," p. 164.) The district also divides eastern Ventura County by removing Camarillo. (Quinn Dec., ¶ 81.)

109. In trying to justify this district, the Commission Report (p. 48, RJN, Exhibit "D," p. 122) tries to place the cities of Agoura Hills and Westlake Village into Ventura County. They are in Los Angeles County. It claims to "reunite the cities in eastern Ventura County above the Conejo Grade." According to Dr. Quinn, they are not divided at present and the Commission actually divides Camarillo off from its neighbors. Finally, the Commission notes that these communities are combined with communities in the "greater Santa Monica Mountain area." (*Id.*) In fact, the Commission received extensive testimony that the communities of the southern Santa Monica Mountains did not want to be with eastern Ventura County or the communities of the northern San Fernando Valley. Yet the Commission did exactly that. (Quinn Dec., ¶ 82.)

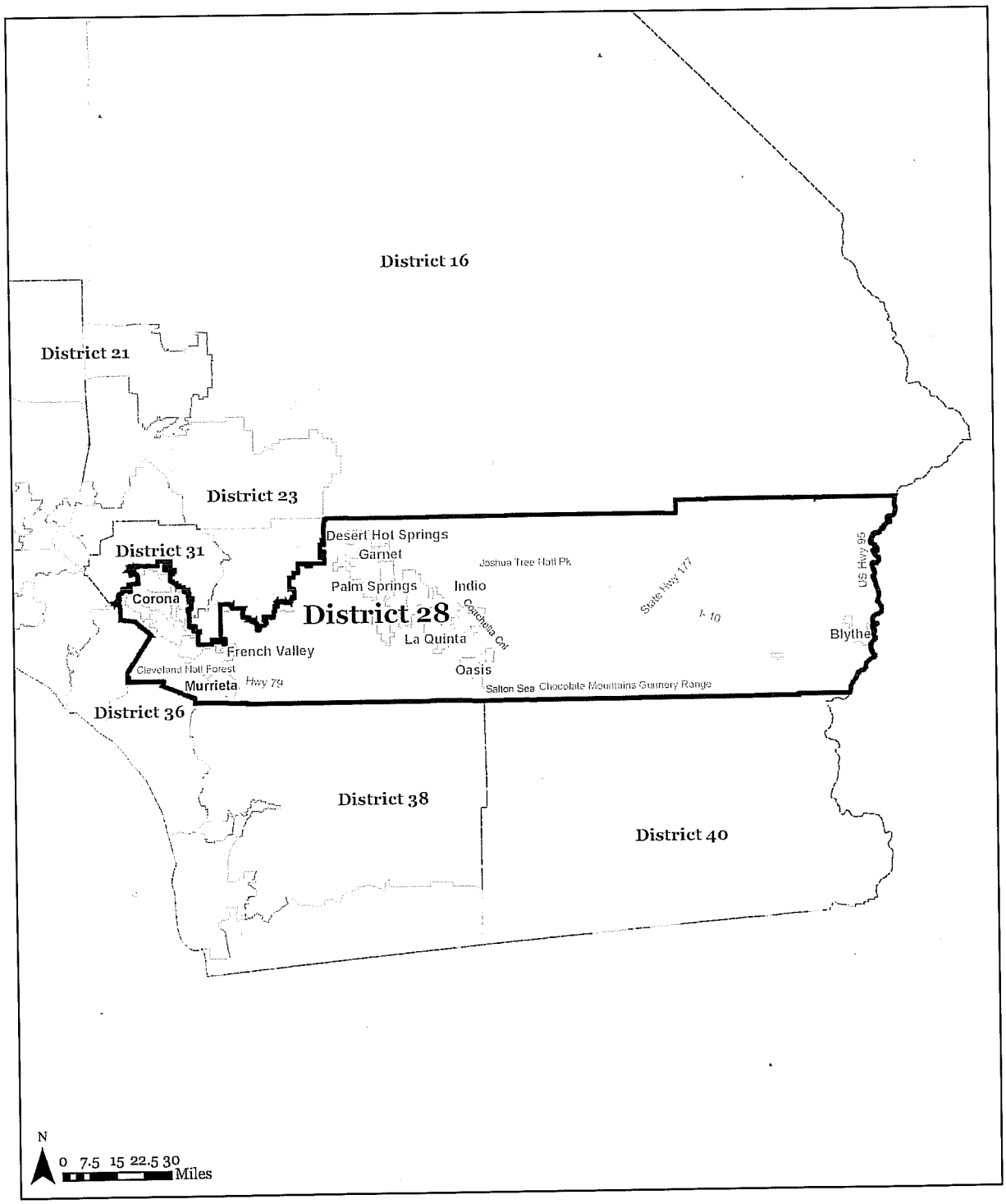
110. The 1991 Masters created one compact district consisting of the southern Santa Monica Mountain, Malibu, Beverly Hills and Hollywood, and the western San Fernando Valley, 1991 Senate District 23. The eastern Ventura County district consisted of the cities of Camarillo, Thousand Oaks, and Simi Valley, and this was joined to communities in the northern San Fernando Valley, 1991 Senate District 19. (*Wilson, supra,* 1

Cal. 4th at p. 785.) That is the configuration was urged on the Commission by numerous citizens and interest groups in this area.

111. According to Dr. Quinn, the Commission should have created the Central Coastal districts from the San Luis Obispo-Monterey County line south. That would have left this district primarily within Ventura County. This would have allowed the creation of a district in the southern Santa Monica Mountains and western Los Angeles County as was encouraged upon the Commission. It would also have prevented the dilution of Latinos from the San Fernando Valley Latino district. (Quinn Dec., ¶ 84 & 85.)

Senate District 28 (CCHTM)

California State Senate District 28



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112. The Commission has drawn elongated and illogical districts throughout the Inland Empire, and Senate District 28 is the example in Riverside County. The district begins at the Arizona border and extends all the way to the Orange County line, while also absorbing suburban neighborhoods of the city of Riverside. It's shape is caused by the creation of Senate District 23 that wanders far into central Riverside County, requiring this district to curve around it. (Quinn Dec., ¶ 86.)

113. The Commission Report (p. 48, RJN, Exhibit "D," p. 122) notes that the district "includes the entire eastern portion of Riverside County and portions of west Riverside County along the southern border." According to Dr. Quinn, it gives no justification for this awkward configuration. (Quinn Dec., ¶ 87.)

114. The 1991 Masters included Imperial County along with eastern Riverside County, thus uniting the Coachella Valley. The Commission did this for the Assembly, but not for the Senate. The Masters also included portions of eastern San Diego County, thereby creating a compact district in California's southeastern border, 1991 Senate District 37. (*Wilson, supra*, 1 Cal.4th at p. 787.) (Quinn Dec., ¶ 88.)

115. According to Dr. Quinn, eastern Riverside County is a clear community of interest. This district should have included Beaumont and Banning, as well as Hemet and San Jacinto, which were always combined with eastern Riverside County districts in the past. (Quinn Dec., ¶ 89.)

SECOND CAUSE OF ACTION
Violation of California Constitution, Art. XXI, § 2(d)(4)
(Avoiding Unnecessary Division of Counties)

116. Petitioner realleges and incorporates by reference the allegations set forth in paragraphs 1 through 115 above.

117. The Commission-certified Senate map divided two counties, Sacramento and San Bernardino into six, separate Senate districts. This

division, in addition to violating the geographic compactness and contiguity requirements of Art. XXI, § 2(d)(3) and (5), unnecessarily divided two counties in violation of Art. XXI, § 2(d)(4). Sacramento County has sufficient population for the Commission to have formed one complete Senate district wholly within Sacramento County and San Bernardino County has sufficient population for the Commission to have formed two complete Senate districts wholly within San Bernardino County. (Quinn Dec., ¶¶ 46, 72.)

A. Sacramento County's six partial districts run from the Oregon border on the north to near Death Valley on the southeast. Sacramento is the population center of one district, while the Sacramento populations of the other five districts will be subordinate to the interests of five other population centers: District 1 (of Placer and Shasta counties); District 3 (of Solano, Napa and Sonoma counties); District 4 (of Tehama and Placer counties); District 5 (of Stockton in San Joaquin County and Modesto in Stanislaus County); and District 8 of (of Fresno in Fresno County). (RJN, Exhibit "D," Appendix 4, pp. 191-193.)

B. San Bernardino County's six partial districts run from Tulare County on the north west, the border between San Luis Obispo and Kern Counties through portions of Bakersfield in Kern County, to Santa Clarita and Pomona in Los Angeles County, Menifee and San Jacinto in southwestern Riverside County, and the cities of Burbank in the San Fernando Valley of Los Angeles County and the San Gabriel mountain communities of Pasadena, Glendora, Claremont and Upland, and to the Orange County communities of Cypress on the west and Anaheim and Fullerton on the south. San Bernardino is the population center of two districts (SD 20 and 23), while the San Bernardino populations of the other four districts will be subordinate to the interests of four other population centers: District 16 (Visalia and Bakersfield); District 21 (Santa Clarita and

Lancaster/Palmdale in Los Angeles County); District 25 (Burbank, Glendale and Pasadena in Los Angeles County); and District 29 (Anaheim and Fullerton in Orange County). (RJN, Exhibit "D," Appendix 4, pp. 191-193.)

118. While the splitting of these two counties also resulted in the violation of Art. XXI, §§ 2(d)(3) and 2(d)(5) criteria, as set forth more fully in the First Cause of Action, the splitting of these two, major counties between six districts each of which results in substantial portions of the populations of each county being subordinated to the greater populations, and different communities of interest of widely-different counties.

119. Such divisions dilute the political interests of the populations of these two counties, are "unnecessary" and not rationally related to the governmental interest in districting of Senate districts under Art. XXI, § 2(d)(4).

Senate District 1 (MTCAP)

120. As alleged particularly in paragraphs 52 through 56 above, Senate District 1 runs from the Oregon border through lightly population mountain areas to take in Placer County, except Roseville, and the northeastern suburbs of Sacramento County. The district bypasses hundreds of thousands of people to unite these far distant areas. (Quinn Dec., ¶ 18.)

121. The region from Sacramento to the Oregon border is an agricultural community of interest. It is separated from the north coast by the coastal mountain range. Its transportation corridors are two north-south highways, Interstate 5 and Highway 99. The Commission separates the northern most counties, Shasta and Siskiyou, from the rest of the region. It unites Redding with Sacramento suburban communities of Folsom, Fair Oaks and Orangevale, communities with nothing in common with agricultural Redding. (Quinn Dec., ¶ 19.)

122. This is also one of six districts that divides Sacramento County. Sacramento County has a population of 1,418,788, about the population for a Senate district and a half. The 1991 Masters placed two districts in the county; the Legislature divided the country among three districts in 2001. The Commission has divided the county among six districts. (Quinn Dec., ¶ 46.)

123. The Constitution at section 2 (d) (4) states clearly: "The geographic integrity of any city, county, city and county, local neighborhood or local community of interest shall be respected in a manner that minimizes their division to the extent possible." This provision is clearly violated by the division of Sacramento County into six Senate districts, four of which combine Sacramento's population with far distant populations.

124. Senate Districts, Sacramento County: (Percentage of Sacramento's population within each district.)

SD 1: (10.2%)
SD 3 (.6%)
SD 4: (21.8%)
SD 5: (1.9%)
SD 6: (62.8%)
SD 8: (3%)

125. The Commission Report (pp. 42-43, RJN, Exhibit "D," pp. 116-117) on this district says it is connected by "Highway 395 north and south and Highway 50 and Interstate 80 east and west". According to the Petitioner's expert, Dr. Quinn, however, the major transportation arteries for this region are Interstate 5 and Highway 99 that connect the northern interior counties. The district does not respect these corridors. (Quinn Dec., ¶ 24.) The Commission contends that "its shared economic interests include timber and recreation." In fact, most of the population is found in the Sacramento suburbs which have no timber or recreation. Shasta County

is timber and Lake Tahoe is recreation and the Sacramento suburbs are neither. Finally, as evidence of the cavalier attitude of the Commission toward this part of California, the Commission describes the district as consisting of "a portion of Sacramento County, including Roseville." Roseville is in Placer County. (Quinn Dec., ¶ 25.)

126. Article XXI provides that one measure of a community of interest is that voters have access to "the same media of communication relevant to the election process." (Art XXI, § 2 (d)(4).) Nielsen Media Research has divided California into 14 television media markets. (See Quinn Dec., Exhibit "A".) This district overlaps four different Nielsen market areas: Medford-Klamath Falls, Chico-Redding, Sacramento-Stockton-Modesto, and Reno. (Quinn Dec. ¶ 23.)

127. The predecessor 1991 Masters district contained the rural northeastern portion of the state with the heavily populated counties of Nevada, Placer and El Dorado. (*Wilson*, *supra*, 1 Cal.4th at p. 785.)

128. According to the Petitioner's expert, Dr. Quinn., the Commission could have formed this district as the Masters did, with its population centered in Placer, Sacramento and El Dorado Counties. There is no justification for placing Redding into this suburban Sacramento and foothills district. (Quinn Dec., ¶ 27.)

Senate District 3 (WINE)

129. As alleged particularly at paragraphs 57 through 62, the 1991 Masters' admonition that compactness "does not refer to geometric shapes but to the ability of citizens to relate to each other and their representatives, and to the ability of representatives to relate effectively to their constituency" was completely ignored with Senate District 3. This district contains Rohnert Park, Cotati and Petaluma in Sonoma County, Martinez and Pleasant Hill in Contra Costa County and the Sacramento River Delta.

These are small appendages that don't belong in the same district. (Quinn Dec., ¶ 34.)

130. This district is forced to absorb these far distant areas by the rippling caused by the Commission's refusal to cross the Golden Gate Bridge. The population north of the bridge is greater than a single Senate district. So instead of the logical cross of the Golden Gate Bridge that would have united parts of Marin County and San Francisco, the Commission is forced to detach part of Sonoma County, Rohnert Park, and to combine it with far distant populations. Instead of crossing the Golden Gate Bridge, the Commission forces this district across both the Carquinez and the Benicia bridges. In so doing, it brings the working class communities in northern Contra Costa County into a district that extends all the way to Calistoga in Napa County and the Sonoma County wine country. (Quinn Dec., ¶ 35.)

131. The Commission Report (p. 43, RJN, Exhibit "D," 117) notes that the district "includes a portion of Contra Costa County, including the cities of Martinez and Pleasant Hill to achieve population equality and are(sic) connected through the Benicia Martinez Bridge. The district is united by the I-5 and I-80 transportation corridors."

132. According to Dr. Quinn, there are several problems with this justification. First, Martinez and Pleasant Hill are not connected by the Benicia Bridge; they are both in Contra Costa County. Secondly, it is not united by the I-5 corridor; the district contains two separate pieces of Interstate 5 that pass through largely unpopulated area. (Quinn Dec., ¶ 38.) The district overlaps two Nielsen Designated Market Areas, Sacramento-Stockton-Modesto and San Francisco-Oakland-San Jose. (Quinn Dec., Exhibit "A".) (Quinn Dec. ¶ 36.)

133. There is no Masters district that approximates this district. The Masters properly crossed the Golden Gate Bridge with then Senate District 3. (*Wilson, supra*, 1 Cal.4th at p. 783.)

134. According to Dr. Quinn, a logical district would have combined all of Solano, Yolo and Napa Counties. Additional population could have been obtained from the Contra Costa County towns along the I-80 corridor. The Sacramento River delta, Rohnert Park and Martinez-Pleasant Hill do not belong in this district. (Quinn Dec., ¶ 40.)

Senate District 4 (YUBA)

135. Senate District 4 begins at Red Bluff in Tehama County, includes Roseville in Placer County, and then extends to numerous suburban areas within Sacramento County. Red Bluff belongs with Redding to its north; not since the advent of the "one person-one vote" Senate districts in 1966 have Redding and Red Bluff been in separate districts. The Sacramento suburbs in this district should be with other communities in Sacramento County. (Quinn Dec., ¶ 28.)

136. The Commission Report (p. 43, RJN, Exhibit "D," p. 117) describes this district as containing parts of "northeast Sacramento County, including Roseville." As noted above, Roseville is not in Sacramento County. The Commission also asserts that, "This district shares the I-5 transportation corridor and reflects the interests in a Central Valley district that is primarily agricultural and rural." This is not true. The "agricultural and rural" counties account for about 500,000 people while suburban Roseville and the Sacramento suburbs like Rancho Cordova account for 430,000 people. This district covers two separate Nielsen Designated Market areas, Chico-Redding and Sacramento-Stockton-Modesto. (Quinn Dec., Exhibit "A".) These two areas have nothing in common. (Quinn Dec., ¶ 29.)

137. The 1991 Masters maintained the unity of the northern interior counties and brought this district south into portions of Yolo and Solano Counties. (*Wilson*, *supra*, 1 Cal.4th at p. 784.)

138. According to the Petitioner's expert, Dr. Quinn, this region has grown since 1990 so bringing this district into Yolo and Solano Counties is unnecessary. A perfectly formed agricultural district could have been drawn from the Oregon border as far south as Sutter County. (Quinn Dec., ¶ 32.)

139. This district and Senate District 1 specifically violate the constitutional mandate not to bypass adjacent populations in forming districts. District 1 should be a Sacramento suburban district; District 4 should be a northern interior rural district. These two districts specifically violate the constitutional community of interest criterion.

Senate District 8 (FTHLL)

140. As alleged particularly at paragraphs 64 through 68, this is certainly one of the oddest districts ever drawn in California, and in every aspect violates the state constitutional criteria. The district begins in the Sacramento suburbs, moves south through the mountains to pick up parts of Stanislaus County, then much of Fresno County including large parts of the city of Fresno, and then wanders further south through Death Valley until it ends just a few miles from Las Vegas. It is based on a theory that the foothills are a community of interest, but in fact the Sacramento suburbs and urban Fresno County – well away from any foothills – have nothing in common with Death Valley. (Quinn Dec., ¶ 41.)

141. The Commission Report (p. 44, RJN, Exhibit "D," p. 118) tries to justify this district by noting the need to build two Voting Rights Act Section 5 districts just to the west, but in fact the drawing of Section 5 districts including Merced and Kings County do not require the rest of the Central Valley to be stretched across the map. The Commission claims that

"the district maintains the integrity of a southern foothills and mountain district to link the common issues interests of open space, water, the distinctions between the 'hills' and the 'flatlands' and the less densely populated areas that share a more rural and remote way of life." (Quinn Dec., ¶ 42.)

142. In fact, the district does none of these things. Its population center is 440,000 people in the cities of Fresno and Clovis,, hardly areas sharing a "remote way of life." The Commission received testimony that the people living in the Sierra counties shop and relate to nearby "flatland " counties, Tuolumne to Fresno, Calaveras to Modesto. Death Valley and Inyo County do not relate to Amador County. In terms of the 14 Nielsen Designated Market Areas, this district crosses four of them: Sacramento-Stockton-Modesto, Reno, Fresno-Visalia, and Los Angeles. (Quinn Dec., Exhibit "A".) (Quinn Dec., ¶ 42.)

143. The 1991 Masters did not create any district remotely resembling this district. They combined "hill" populations with their nearby "flatland" populations. (*Wilson, supra*, 1 Cal. 4th at p. 784.) (Quinn Dec., ¶ 45.)

144. According to Dr. Quinn, the Sacramento County portion should have remained with Sacramento County, and this would have reduced the unjustified division of Sacramento County into six Senate districts. Oakdale and Turlock should have remained within a Stanislaus County district. Urban Fresno should have been combined with nearby communities and not run through the mountains to Death Valley. (Quinn Dec., ¶ 46.)

Senate District 16 (TULKE)

145. This jaw-like district begins in Visalia and Tulare in Tulare County, moves south to pick up the northern part of the city of Bakersfield, and then moves east and south to absorb the San Bernardino desert from

Yucca Valley to Needles. It is one of six districts partially within San Bernardino County and unites the desert area with Central Valley farming communities with which it has nothing in common. (Quinn Dec., ¶ 65.)

146. The Constitution specifies that: "The geographic integrity of any city, county, city and county, local neighborhood or local community of interest shall be respected in a manner that minimizes their division to the extent possible." San Bernardino County has a population of 2,035,210 people, slightly more than the population of two Senate districts. Yet the Commission has drawn six districts in the county, and no district is fully within the county. Three of these districts clearly violate the Constitution. (Quinn Dec., ¶ 66.)

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SD 16 (7.3%)
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149. The 1991 Masters predecessor district treated the High Desert as a single geographic unit. The Masters created a single High Desert district, then Senate District 17. (*Wilson*, *supra*, 1 Cal.4th at p. 785.)

150. According to Dr. Quinn, had the Commission property acknowledged the state's natural geographic regions, it would have placed the Kern and San Bernardino deserts within a single district, and not included distant Central Valley farming communities. It should have created at least one district fully within San Bernardino County. (Quinn Dec., ¶ 71.)

Senate District 23 (SBBAN)

151. Senate District 23 is one of the six districts partially in San Bernardino County. It includes the city of Rancho Cucamonga along the Los Angeles County line, and then wraps around two other districts dipping deep into Riverside County to pick up the city of Menifee in Riverside County. Like other San Bernardino County districts, this district absorbs distant communities with nothing in common. (Quinn Dec., ¶ 72.)

152. The Commission Report (p. 47, RJN, Exhibit "D," p. 121) notes the irregular shape. "The shape of this district was largely determined by the adjacent district drawn in consideration of Section 2 of the Voting Rights Act." That district is Senate District 20. We do not challenge that district; the Voting Rights Act indeed does require a district drawn as Senate District 20 is drawn. According to Dr. Quinn, this is weak excuse for decimating the representation of non-Section 2 districts. Rancho Cucamonga should have been united with neighboring Upland and those communities kept within a San Bernardino district. (Quinn Dec., ¶ 73.)

153. The Masters kept the San Bernardino suburban communities together and took a portion of neighboring Riverside County. The Masters also created the Section 2 district, demonstrating that creation of a Latino district in urban San Bernardino County did not require elongated and

irregular suburban districts. (See RJN, Exhibit "I," p. 370-371.) (*Wilson*, *supra*, 1 Cal.4th at p. 786.)

154. According to the Petitioner's expert, Dr. Quinn, the Commission should have followed the lead of the Masters in constructing a High Desert San Bernardino County district and a second district that while surrounding the Section 2 district, nevertheless would have included Upland, Rancho Cucamonga with cities like Twenty Nine Palms and Yucca Valley. (Quinn Dec., ¶ 75.)

Senate District 25 (LASGF)

155. The major population centers for this district are Pasadena, Glendale and part of Burbank. In 1991, the Masters configured the predecessor to this district around those cities, and the Legislature retained that scheme in 2001. However, the Commission has extended this district far to the east to absorb East San Gabriel Valley communities of Glendora, San Dimas, La Verne and Claremont into this district. The district then extends across the Los Angeles-San Bernardino County line to absorb Upland; becoming one of the six districts invading San Bernardino County. (Quinn Dec., ¶ 76.)

156. According to Dr. Quinn, the East San Gabriel Valley communities have never been combined with Pasadena, Glendale or Burbank, and in fact the Commission heard testimony at its public hearing that such an elongated district would undo fair representation for these smaller cities. This is one of the classic examples of denying representation to a small population by combining it with a much larger far distant population. (Quinn Dec., ¶ 77.) This is prohibited by the state constitutional criteria that adjacent population must be used in forming districts, not far distant population.

157. The Commission's rationale for this district (Report, p. 48, RJN, Exhibit "D," p. 122) is that it retains the I-210 corridor and "connects

these cities for commerce and entertainment." According to the Petitioner's expert, Dr. Quinn, in fact, very few people in Upland look to Burbank for "commerce and entertainment." The I-210 corridor is divided in three by this district, so it certainly does not respect that transportation corridor.

158. The 1991Masters formed one compact district in the Burbank-Pasadena-Glendale area. The East San Gabriel Valley communities were combined with like communities in eastern Los Angeles County. (*Wilson, supra*, 1 Cal.4th at p. 786.)

159. According to Dr. Quinn, the Commission was unable to draw the same sensible districts the Masters did because it divided Burbank and it failed to keep adjacent Los Angeles population within this district. All of Burbank should have been placed in this district, and if the Commission had kept Burbank whole and added adjacent Los Angeles territory, it would not have been necessary to reach as far as Upland for population for this district. (Quinn Dec., ¶ 80.)

THIRD CAUSE OF ACTION
Violation of California Constitution, Art. XXI, § 2(d)(1)
(Voting Rights Act)

Section 2

160. Petitioner realleges and incorporates by reference the allegations set forth in paragraphs 1 through 159 above.

161. The Commission-certified Senate map, in particular Senate Districts 12, 17, and 27, were drawn in a manner that denied or abridged the right to vote of affected Latino/Hispanic minority groups in violation of Section 2 of the Voting Rights Act of 1965, 42 USCA, § 1973(a) and (b), as incorporated in Art. XXI, § 2(b)(1).

162. On August 10, 2011, Dr. Arturo Vargas of the National Association of Latino Elected Officials ("NALEO") submitted a letter to

the Commission, opposing enactment of the "preliminary final" Senate map. This letter referenced NALEO's July 21, 2011 submission to the Commission, (RJN, Exhibit "F", pp. 275-328, incorporated by this reference herein) which detailed NALEO's objections, inter alia, that the Commission had failed to draw Voting Rights Act section 2 districts in Los Angeles County, had divided Latino/Hispanic voting interests in the western part of the San Fernando Valley, separating Latino voters from a San Fernando Valley Senate District (SD 18 (LASFE)). (Exhibit "F", pp. 21, 24-25.) This resulted in placing them into a district largely composed of the eastern Ventura County communities of Thousand Oaks and Simi Valley and the Los Angeles County coastal community of Malibu (SD 27 (EVENT)). NALEO's analysis of the Senate plan, titled, "Commission Final Draft Maps Would Diminish Latino Opportunities in California's State Senate": notes that the Commission reduced the Latino Citizen Voting Age population of the San Fernando Valley district, Senate District 18. The Commission's Report (RJN, Exhibit "D," p. 164, quantifies that regression from 47 percent to only 38.04 percent.

163. This district contains portion of Eastern Ventura County, primarily Thousand Oaks and Simi Valley, and then extends far into Los Angeles County to absorb western and central San Fernando Valley communities of Reseda and Encino. According to Dr. Quinn, in doing so, the 27th Senate District dilutes the Latino percentage in the neighboring 18th Senate District. The current Latino district in the San Fernando Valley has a Latino Citizen Voting Age Population of 47 percent. The Commission's district has a Latino CVAP of only 38 percent. The district also divides eastern Ventura County by removing Camarillo. (Quinn Dec., ¶ 81.)

164. According to Dr. Quinn, the Commission should have created the Central Coastal districts from the San Luis Obispo-Monterey County

line south. That would have left this district primarily within Ventura County. This would have allowed the creation of a district in the southern Santa Monica Mountains and western Los Angeles County as was encouraged upon the Commission. It would also have prevented the dilution of Latinos from the San Fernando Valley Latino district. (Quinn Dec., ¶ 84.)

165. The California Target Book notes that current Senate District 20, predecessor to new Senate District 18, first elected a Latino, former Sen. Richard Alarcon, in 1998. He was succeeded in 2006 by current Sen. Alex Padilla. Senate District 20 has a Latino voter registration of 46 percent, and Latino CVAP of 47 percent. By lowering the Latino CVAP to only 38.04 percent, the Commission also lowered to Latino voter registration to 37 percent. This makes it far less likely that a Latino will succeed Senator Padilla when he is termed out in 2014. (Quinn Dec., ¶ 84.)

According to Dr. Quinn, Senate District 18 should have been kept at 47 percent Latino CVAP, or should have been drawn to bring the Latino CVAP up over 50 percent. Instead the Commission dramatically reduced the Latino CVAP in violation of section 2 of the Voting Rights Act. (Quinn Dec., ¶ 84.)

Section 5

166. Petitioner realleges and incorporates by reference the allegations set forth in paragraphs 1 through 165 above.

167. The Commission-certified Senate maps, in particular SD 12, and 17, were drawn in a manner has the purpose or the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2), in violation of Section 5 of the Voting Rights Act of 1965, as amended, 42 USCA §1973c.

168. Professor Joaquin Avila submitted written testimony in support of creation of a section 2 district, or avoidance of a section 5

"intentional discrimination" finding, involving the pairing of AD 23 and 28, at the Commission's public hearing in San Jose, California on June 28, 2011, in opposition to the first draft Senate maps released on June 10, 2011. (RJN, Exhibit "E", p. 241, incorporated herein by this reference.) Professor Avila argued to the Commission that Voting Rights Act section 2 required the Commission to draw a Senate district that covered the East San Jose area in Santa Clara County and the Salinas area in Monterey County, a Section 5 county. This district would be composed in part of current Assembly Districts 23 and 28 that he estimated would have a 38.6% Latino Citizen Voting Age Population percentage rather than simply keeping a Monterey County centered Senate District (12, or 17) at a Latino CVAP percentage of 16%. Professor Avila's analysis included historical information about racially-polarized voting in California and in the San Jose area in particular. His testimony was supported by a number of individuals who testified to the community of interest related to the Senate district proposal.

169. The Commission declined to include Latinos in a Monterey County/Santa Clara County Senate District. Instead the Commission retained the old Senate District 12 that combines the Monterey County Latinos with Central Valley communities. (Quinn Dec., ¶ 63.)

170. The California Target Book notes that AD 23, Santa Clara County, has a history of electing Latinos to the Legislature, former Assembly members Manny Diaz and Joe Coto, and current Assembly member Nora Campos. The Target Book also notes that AD 28 in Monterey County also has a long history of electing Latino legislators, starting with the election of Simon Salinas in the year 2000. These two districts should have been combined to form a Senate district, and had the Commission done so, the likelihood is very great a Latino would win that

Senate district. (RJN, Exhibit "N," incorporated herein by this reference.) (Quinn Dec., ¶ 52.)

171. The Voting Rights Act lays out the standard that a Section 5 districts must not regress minority voting opportunities. It does not mean simply applying a mathematical formula; as the Commission did in its treatment of Monterey and Merced Counties rather the voting history of the area must be considered. By leaving this district as it was drawn in 2001, the Commission did in fact regress Latino opportunities to elect a State Senator because the voting history of this area shows a Latino cannot win this district but could in fact be elected were the Section 5 counties in this district organized differently. (Quinn Dec., ¶ 52.)

172. Merced County could have been placed in the Central Valley Section 5 district (Senate District 14) and it could have been drawn to be more than 60 percent Latino (Merced County itself is 55 percent Latino). Additionally, had heavily Latino Salinas been united with Latino areas in neighboring Santa Clara County, a Latino Senate seat could have been drawn. Neither Monterey nor Merced Counties have ever elected Latinos to the Senate, and in fact a Latina candidate was defeated in the current Senate District 12 in 2010. (Quinn Dec., ¶ 53.)

173. The Commission drew Senate District 8 (FTHLL) trying to justify this district by noting the need to build two Voting Rights Act Section 5 districts just to the west, but in fact the drawing of section 5 districts including Merced and Kings County do not require the rest of the Central Valley to be stretched across the map. (Quinn Dec., ¶ 43.)

174. The Commission had an opportunity to meet section 5 by drawing Latino Senate seat in Monterey County and failed to do so. (Quinn Dec., ¶ 55.)

FOURTH CAUSE OF ACTION

Likely Qualification of Referendum, Stay of Challenged Senate District Maps, And Petition for Relief: Convening Special Masters to Draw Interim District Lines (Art. XXI, §§ 3(b)(2), 3(b)(3), 2(g), 2(j))

175. Petitioner realleges and incorporates by reference the allegations set forth in paragraphs 1throuigh 176, inclusive above.

176. Petitioner VANDERMOST's referendum petition against the Commission-certified Senate maps is "likely to qualify and stay the effectiveness" of the Senate maps, pending a public vote at the next statewide special election, which is set for June 5, 2012.

177. Petitioner VANDERMOST must obtain 504,760 valid signatures on the referendum petition (No. 11-0028) to qualify the referendum for the ballot. Petitioner VANDERMOST is likely to obtain more than 780,000 "raw" (unverified) signatures on her referendum petition in order to realize at least 504,760 with a full count (Elections Code § 9031) or 555,236 (110% of the 504,760 number) required to qualify by random sampling. (Elections Code § 9030(g).)

178. Upon the filing of the referendum petitions with a sufficient number of raw signatures with election officials on or before November 15, 2011, the Petitioner would be entitled to obtain from the Court "relief" in the form of an order establishing Special Masters to draw interim boundaries for the Senate districts for use in the June 5, 2012 primary and the November 2, 2012 general elections. (Art. XXI, §§ 3(b)(2), 3(b)(3) and 2(j).)

179. On information and belief, the Special Masters can expeditiously draw new boundaries for the Senate maps to correct the unconstitutional violations set forth in the First, Second, Third, Fourth and Fifth Causes of Action, in a variety of ways, including but not limited to:

A. Drawing new boundaries for the entire State in the manner established by the 1991 Masters, as alleged at paragraph 48 above, portions of which that are suggested in the Quinn Declaration, at paragraphs 87-91, inclusive.

B. Drawing new boundaries for the affected Senate districts that are identified as unconstitutional in paragraphs through above, as suggested in the Quinn Declaration, at paragraphs 87-91 inclusive.

C. Using the unchallenged State Assembly maps certified by the Commission as a basis for nesting two Assembly Districts to create new boundaries for the affected Senate districts alleged as unconstitutional in paragraphs 1 through 173 above, pursuant to the permissive requirement of Art. XXI, § 2(b)(6).

180. In 1991, this Court requested the Secretary of State to provide the Court with information and recommendations on the compression and/or waiver of certain election requirements and filing schedules for the 1992 primary election. (*Wilson v. Eu ("Wilson II")* (1991) 54 Cal.3rd 546, 550.) This procedure is available to allow the Court to ensure that it has sufficient time to establish a schedule for the Special Masters to draw new boundaries for the June 5 and November 3, 2012 elections, to receive comments on the proposed boundaries and for this Court to review and adopt, either as proposed or as amended, such new boundaries.

181. In the event this Court determines there is insufficient time for the drawing of interim boundaries for the Senate, the Court should evaluate whether it should follow the guidance of *Reinecke* and the dissenting Justices in Assembly, and leave in place for the 2012 elections, pending the outcome of the popular vote on Petitioner VANDERMOST's referendum, the existing boundaries of the Senate that have been used for the 2002, 2004, 2006, 2008, and 2010 elections.

ISSUANCE OF A WRIT OF MANDATE IS APPROPRIATE

182. A writ of mandate is also appropriate here because this action concerns constitutional rights and involves a matter of great public importance that necessitates prompt resolution. (*See, e.g., Brown v. Superior Court* (1971) 5 Cal.3d 509, 515 (granting writ to restrain election law violations because "[t]he public welfare thus requires an early resolution which can be achieved only by mandamus in the interest of orderly compliance with and administration of the particular laws".).)

183. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law on the First through the Fourth Causes of Action, in that no damages or other legal remedy could compensate Petitioner and the voters and taxpayers of California for the harm that they will suffer if Respondent is not ordered to refrain from certifying or implementing the challenged Senate district maps.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for judgment as follows:

1. On the First, Second, Third and Fourth Causes of Action, that this Court issue its alternative and peremptory writ of mandate commanding Respondent Debra Bowen, in her capacity as Secretary of State of the State of California, to (a) refrain from Implementing the Citizens Redistricting Commission's certified Senate map; (2) refrain from taking any other action to hold, or to order county election officials to hold, an election using the Citizens Redistricting Commission's certified Senate maps, on the grounds that the Senate maps are unconstitutional or otherwise unlawful; and (3) appointing Special Masters to advise the Court on the instant petition and if the Court finds the Commission's certified Senate map is unconstitutional in any respect, directing the Special Masters to draw new boundaries for the Senate.

2. On the Fifth Cause of Action, that this Court immediately appoint Special Masters to draw new boundaries for the California State Senate, and to report and recommend to this Court such new boundaries as they shall deem constitutional under the federal and California Constitutions and the federal Voting Rights Act; and upon approval of the boundaries proposed by the Special Masters, or as modified by the Court, this Court shall direct the California Secretary of State to implement the new boundaries for the June 5, 2012 primary election and the November 6, 2012 general election.

3. On each and every cause of action, that this Court grant Petitioner's costs, including out-of-pocket expenses and reasonable attorneys' fees; and

4. On each and every cause of action, that this Court grant such other, different or further relief as the Court may deem just and proper.

Dated: September 15, 2011 Respectfully Submitted,

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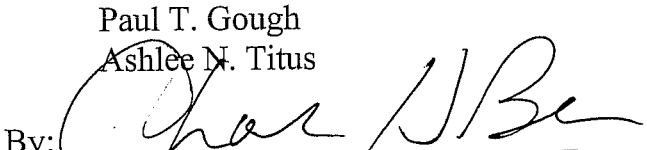
By: 
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JULIE VANDERMOST

VERIFICATION

I, Julie Vandermost, declare:

I am the Petitioner herein. I have read the foregoing Petition for Writ of Mandate and know its content. The facts alleged in the Petition are within my knowledge and I know these facts to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on September 12, 2011, at San Juan Capistrano, California.

Julie Vandermost

Julie Vandermost

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF MANDATE OR PROHIBITION

INTRODUCTION

This Petition for Writ of Mandate or Prohibition seeks Court review of whether the Citizens' Redistricting Commission's ("Commission") certified maps for the State Senate meet the requirements of the California Constitution. The Petition and supporting declarations establish that the Commission's maps clearly and unmistakably violate Article XXI,[1] sections 2(d)(3), (4) and (5) of the California Constitution, by (a) failing to respect the compactness and contiguity requirements of sections 2(d)(3) and (5) and failing to respect the geographic integrity and local communities of interest of counties and local regions; by (b) unnecessarily dividing two counties, Sacramento and San Bernardino Counties, among six separate Senate districts, which also share the infirmity of uniting dissimilar counties and regions and dividing similar counties and regions, bypassing nearby populations to reach distant and disparate populations in violation of section 2(d)(4); and by (c) violating Article XXI, section 2 (d)(1) by failing to draw districts in compliance with Sections 2 and 5 of the Federal Voting Rights Act, as alleged more particularly herein, denying Latino minorities effective representation and the opportunity to elect candidates of choice.

These constitutional violations are significant. For example, San Bernardino County, with a population of over 2.4 million, lacks a single whole Senate district, and Sacramento County with a population of more than 1.7 million, also lacks a single, whole Senate district. The effect of this division alone deprives San Bernardino and Sacramento Counties of a single representative to represent their interests, a situation worse than

[1] All references herein to Article XXI, Article VI and Article II are to the California Constitution.

obtained prior to 1961 when the federal courts invalidated California's old, county-based Senate districting system in which each county had a single Senator. (*Silver v. Jord*an (C.D. Cal. 1965) 241 F.Supp. 576, aff'd. sub nom. *Jordan v. Silve*r (1965) 381 U.S. 415; see also *Silver v. Brown* (1965) 63 Cal. 2d 270, 275.)

The Petition invokes the "original and exclusive jurisdiction" of the Supreme Court, which is tasked with "giving priority" to ruling on the Petition, and if the Court "determines that a final certified map violates this Constitution… this Court *shall fashion* the relief that it deems appropriate, including but not limited to the relief set forth in subdivision (j) of [Article XXI,] Section 2."

1. The Petitioner's Constitutional Challenge

The extraordinary, unique language of Article XXI, § 3(b)(3) makes clear that the Court is to review the constitutional claims of the Petition, make findings with respect to these claims, and "shall fashion the relief" authorized. The Commission's map challenged here is not entitled to any deference due to this startling command: if the Court finds these constitutional claims have merit, it "shall fashion relief." As Justice Kennard noted for the Court, "we also must enforce the provisions of our Constitution and 'may not lightly disregard or blink at ... a clear constitutional mandate. ' (*County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, 284–285.)" (*State Pers. Bd. v. Dep't of Pers. Admin.* (2005) 37 Cal. 4th 512, 523.)

The Court is authorized to convene Special Masters to draw new boundaries for the Senate maps for the 2012 elections. This requirement applies whether the Court makes the substantive unconstitutionality findings or if a referendum petition is submitted to election officials that is "likely to qualify and stay" the effectiveness of the Senate maps.

2. The Petitioner's Referendum

The Petitioner is petitioning as a registered voter and seeking relief from the unconstitutional violations, and she requests that Special Masters be convened now to advise the Court on its review of her substantive constitutional claims. The Petitioner also is the proponent of a currently-circulating referendum against the challenged Senate maps, and she requests that special masters be convened in the event the referendum is likely to qualify for the ballot, and to be available either to draw new Senate boundaries for 2012 elections pending the popular vote on the referendum, if it qualifies or for the balance of the decade, if the Court determines the Commission's maps are unconstitutional.

The Petitioner believes this Court may, in the situation involving a submitted and "likely to qualify" referendum which "stays" the effect of the Commission's Senate maps, draw new Senate boundaries either for the 2012 elections or (if the Court determines the Commission's maps are substantively unconstitutional or a referendum results in the defeat of the Commission's Senate map at the ballot) for the remainder of the decade.

3. Requested Relief

Whether the Court makes a finding that the Commission's certified Senate maps are unconstitutional or the implementation is stayed upon the qualification of the Petitioner's referendum, the Court should implement new boundaries for the Senate maps that:

(1) Follow the guidance of the 1991 Special Masters' template set forth in *Wilson v. Eu*, 1 Cal. 4th 707 (1992) with respect to regions of California, in accordance with the criteria set forth in Article XXI, section 2(d); or,

(2) "Nest" two Assembly districts from the unchallenged Commission maps drawn for the State Assembly, in accordance with Article XXI, section 2(d)(6).

Because the existing 2001 Senate boundaries are unconstitutional under the Equal Protection Clause of the 14th Amendment, only as a final alternative, in the event time prevents the drawing of new boundaries, should the Court leave in place the current boundaries of the Senate for the 2012 elections only, as the Court did in *Legislature v. Reinecke* (1973) 10 Cal. 3d 396 and as the distinguished three justice dissent urged as the appropriate way to avoid Court entanglement in the "political thicket" in *Assembly v. Deukmejian* (1982) 30 Cal.3d 538.

ARGUMENT

I. THE COURT HAS "ORIGINAL AND EXCLUSIVE" JURISDICTION AND HAS AN EXTRAORDINARY, UNIQUE MANDATE TO RULE ON THE CONSTITUTIONAL CLAIMS PRESENTED BY THE PETITIONER

A. Article XXI, §3(b)(1) Authorizes This Court to Exercise Such Jurisdiction with Respect to Substantive Challenges to the Commission's Senate Map and When a Referendum Is Likely to Qualify and Stay Implementation of the Senate Map

Propositions 11 and 20 amended Article XXI of the California Constitution to authorize "any voter" to challenge the validity of the Commission's Senate map in this Court. Moreover, Article XXI, section 3(b)(2), provides that "the California Supreme Court shall have original and exclusive jurisdiction in all proceedings in which a certified final map [of the Commission] is challenged or is claimed not to have taken timely effect."

The Court "shall give priority to ruling on a petition for a writ of mandate or a writ of prohibition filed pursuant to paragraph [3(b)]2."

The Constitution further provides that "if the Court determines that a final certified map violates this Constitution... this Court *shall fashion* the relief that it deems appropriate, including but not limited to the relief set

forth in subdivision (j) of [Article XXI,] Section 2." (Article XXI, § 3(b)(3).)

This remarkable, unique expression of the judicial power of this Court to supervise decennial redistricting authorizes any voter to file a petition challenging the validity of the Commission's maps, provides that this Court shall make a determination of the merits with no mention of deference to the Commission itself, and fashion relief it deems appropriate.

B. The Court is Commanded by Article XXI, § 3(b)(2) to Determine Whether the Petitioner's Claims of Unconstitutionality are Meritorious and If So, To Fashion an Appropriate Remedy

The command of Article XXI, § 3(b)(2) is plain and unambiguous: the court shall determine whether the certified map violates the Constitution or statutes as alleged in a petition for writ of mandate or writ of prohibition. "In construing constitutional provisions, the intent of the enacting body is the paramount consideration. (*Davis v. City of Berkeley* (1990) 51 Cal.3d 227, 234.) To determine that intent, courts look first to the language of the constitutional text, giving the words their ordinary meaning. (*Ibid.;* see also, *Bowens v. Superior Court* (1991) 1 Cal.4th 36, 48; *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.)" (*Powers v. City of Richmond* (1995) 10 Cal. 4th 85, 91.)

This extraordinary constitutional language makes clear that it is not just a restatement of the principles of judicial review canonized in *Marbury v. Madison* (1803) 5 U.S. (1 Cranch) 137. The language says "if the Court determines that a final certified map violates this Constitution, the United States Constitution or any federal or state statute, it shall fashion the relief it deems appropriate…." The plain meaning of this language is that the Court must determine whether the challenged Senate maps violate the California or federal Constitution or applicable federal or state laws *independently,*

without deference to the Commission's conclusions of law or factual findings in support of the maps drawn by the Commission.

C. Article XXI, §3(b)(3) Provides as the Express Form of Relief Convening Special Masters to Draw New Boundaries for the Senate Maps

Proposition 11 as amended by Proposition 20, also provides an express form of relief that the Court may employ. The Court is authorized, on petition under Article XXI, section 3(b)(2), first sentence (a substantive challenge) or upon petition under section 3(b)(2), second sentence (a petition upon filing of a referendum against a map), "to authorize such relief as it deems appropriate, including but not limited to the relief provided in subdivision (j) of [Article XXI,] §2. Subdivision (j) of section 2 specifies that such relief includes " an order directing the appointment of special masters to adjust the boundary lines of that map in accordance with the redistricting criteria and requirements set forth in [Article XXI, § 2] subdivisions (d), (e) and (f)."

II. ARTICLE XXI, § 3(b)(1) AND (b)(2) AFFORD THE COMMISSION'S MAP-DRAWING EFFORTS NO SPECIAL DEFERENCE

A. The Commission Is Not Accorded the Deference To Which the Legislature Was Entitled in Former Redistricting Cases Under Separation of Powers Principles

Propositions 11 and 20, by removing redistricting from the Legislature, also fundamentally change the nature of judicial review of the Commission's certified Senate maps and the level of deference the Court must accord redistricting decisions, since those decisions are no longer made by a co-equal branch. Clearly, under its original and exclusive jurisdiction, this Court is empowered to supervise the redistricting process and to determine whether a constitutional or statutory invalidity claim,

properly raised, is correct. This is fundamentally different from the level of supervision that existed over redistricting by the Legislature, more akin to "direct review" or appeal than the process traditionally denominated as discretionary writ review. (2 *Witkin, Cal. Proc. 5th* (2008) Courts, § 330, p. 420.) Here the People vested in an independent Commission of non-experts, who by the very language of the authorizing initiatives could not have had expertise in the redistricting process, the task of redistricting that was formerly the exclusive province of the Legislature.

At the same time, the people adopted close supervision by this Court to assure that the Commission would not be a "runaway" body, because its work could be taken to the Court for review and the Court could do what has worked very well in 1973 and 1991, appointing Special Masters to draw the lines. By taking the redistricting function away from a coordinate branch, the Legislature, the People fundamentally entrusted this Court with the broadest exercise of its judicial role.

Finally, Propositions 11 and 20 eliminated the particularized injury requirement of standing, authorizing a petition for writ of mandate or prohibition to be filed by "any registered voter." (Article XXI, § 3(b)(2).)

This Court in *Reinecke*, *Assembly v. Deukmejian* and *Wilson v. Eu* deferred to the Legislature's coordinate power to enact redistricting plans, under separation of powers principles. (*Legislature v Reinecke* ("*Reinecke I*") (1972) 6 Cal.3d 595, 600; *Assembly vs. Deukmejian* ("*Assembly*") (1982) 30 Cal. 3d 638, 669; *Wilson v. Eu* ("*Wilson I*") (1991) 54 Cal.3d 471.)

This deference principle was observed by this Court in *Legislature v. Reinecke*,, when it struck down the operation of the then-Redistricting Commission that was a default mechanism established by Article IV, section 6, of the California Constitution:

> "We noted our prior holding in *Yorty v. Anderson* (1963) 60 Cal.2d 312, 316—317, that the failure of the Legislature to enact a valid reapportionment at its first regular session following a federal decennial census did not deprive it of power thereafter to enact a valid reapportionment within the ensuing decade. (63 Cal.2d at p. 274[].) We pointed out that such power was part of the legislative power vested in the Legislature by section 1 of article IV of the California Constitution, subject to the powers reserved to the people of initiative and referendum. (63 Cal.2d at p. 280 [].)
>
> In *Assembly v. Deukmejian*, (1982) 30 Cal.3d 638, this Court said:
>
> Adoption of the Legislature's reapportionment plans for temporary use in 1982 also furthers the related goals of judicial restraint and deference to the Legislature. This court passes no judgment on the wisdom of the Legislature's 1981 plans or on the likelihood that the people will affirm or reject those statutes at the primary election. However, in choosing whether to use an out-of-date plan that no longer conforms to equal protection requirements or a new statute passed by the Legislature, the court cannot be blind to the fact that the Legislature and the Governor have given their assent to the latter. Although stayed by the referenda, these statutes were the product of the political give and take of the legislative branch of government, the branch delegated responsibility for reapportionment both by federal precedent and by California's Constitution.

(*Id.* at p. 669.) While presented in the context of "further[ing] the related goals of judicial restraint and deference to the Legislature," the Court devoted more space and analysis describing "the balancing of competing constitutional considerations," defending its "good faith effort [] to meet the constitutional imperative of one-person, one-vote, while minimizing any disruption of the electoral or political processes and without intruding into the proper spheres of the coordinate branches of government." (*Id.* at pp. 670, 674.) In *Assembly*, deference to the Legislature wasn't the guiding principle, but a byproduct of the Court's true charge to balance competing

constitutional (and practical) considerations presented by the redistricting dilemma.

In *Wilson v. Eu ("Wilson IV")* (1992) 1 Cal. 4th 70, this Court said:

> On September 25, 1991, because we lacked assurance that reapportionment plans would be validly enacted in time for the 1992 elections, this court exercised its original jurisdiction by ordering issuance of an alternative writ of mandate contemplating the drafting and adoption by this court of suitable reapportionment plans. (*Wilson I,* 54 Cal.3d 471[].
> In *Wilson I,* we indicated it was "appropriate that we appoint three Special Masters to hold public hearings to permit the presentation of evidence and argument with respect to proposed plans of reapportionment. [Citation.]" (54 Cal.3d at p. 473.) We made clear, however, that the Legislature and Governor were not foreclosed from enacting valid reapportionment statutes if they could succeed in doing so. As we stated, "we urge the Legislature and the Governor, in the exercise of their 'shared legislative power' [citation] to enact reapportionment plans in time for the 1992 elections, and thus to render unnecessary the use of any plans this court may adopt.

There is no pending challenge to the Commission's authority to redistrict, nor would any such challenge face the same problems as faced the Redistricting Commission in *Reinecke I* (which held that its redistricting powers were inseverable from redistricting criteria that offended the federal or State Constitutions). Both Propositions 11 and 20 contained severability clauses. Further, this Petition does not challenge the Commission's or this Court's authorities and powers.

The reason this Commission's acts are not entitled to deference is its status as an independent Commission that is not a coordinate branch (the Legislature) entitled to deference based upon separation of powers principles. Propositions 11 and 20 clear the way for this Court to exercise

de novo review, without any necessity to defer to the Commission's exercise of its line drawing authority.

Clearly the People entrusted this Court with close supervision akin to direct review of the Commission's maps. The Commission was established as a citizen panel, not as an expert agency. (See Cal. Const., art. XXI § 2.) By its very nature it has no expertise or technical knowledge of the redistricting process and, in fact, persons with recent expertise in the Legislature or the political process were explicitly excluded from membership on the Commission. This is why the authors of Proposition 11 and 20 provided for detailed Supreme Court supervision via "original and exclusive jurisdiction" as discussed at pages 79-80 above. Propositions 11 and 20 provided for no expert representation on the Commission, and provided for an unrestricted, open public application process for prospective Commissioners without any requirement of special experience. The pool of potential applicants was culled down by a tripartite panel of three accountant/bureaucrats from the State Auditor's Office. Only a handful of Commissioners had any practical or professional experience in redistricting.

Nor was the Commission vested with any powers of interpretation, investigation or prosecution.[2] Since the Commissioners' active functions

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[2] Compare the Fair Political Practices Commission ("the FPPC") that was created by Proposition 9 (1974), which enacted the California Political Reform Act, Government Code §§ 81000 et seq. The FPPC was established as an agency to interpret and enforce the Political Reform Act (Gov. Code, § 83100-83112.) It has continuing existence, a permanent staff and mission, and doesn't disband at the end of every decennial year ending in the number "1." The Courts accord the FPPC's opinions and actions deference (*Californians for Political Reform Foundation v. Fair Political Practices Commission* (1998) 61 Cal.App.4th 472; but cf. *Citizens to Save California v. Fair Political Practices Commission* (2006) 145 Cal.App.4th 736, 747 ["we do not defer to an agency's view when deciding whether a regulation lies within the scope of the authority delegated by the

terminated by operation of the Constitution on August 15, 2011, except for its responsibility to defend any litigation against its certified maps (Art. XXI, §§ 2(g) and 3(a)), the Commission does not have any legacy for the Court to review to demonstrate consistency of its interpretations.

Based upon the express language of the Commission's authority under the State Constitutional provisions and precedent concerning the deference accorded to non-expert state agencies, the Commission's maps should be entitled to minimal deference other than the presumption of constitutionality.

B. The Commission's Maps, Even if Entitled to the Presumption of Constitutionality, are Clearly, Positively and Unmistakably Unconstitutional

Propositions 11 and 20's unique, extraordinary language also calls into question previous court decisions concerning the deference accorded to the Commission's maps.

Apart from the presumption of constitutionality, the Commission's Senate maps are not accorded deference by any provision of Article XXI.

As set forth below, the Commission's Senate map clearly, positively and unmistakably violate four separate provisions of the California Constitution, one of which implicates failure to adhere to the provisions of Sections 2 and 5 of the Federal Voting Rights Act. The most egregious, clear and unmistakable violations of law are demonstrated by several key points:

Legislature. 'The court, not the agency, has 'final responsibility for the interpretation of the law' under which the regulation was issued.'"].) In contrast, the Citizens Redistricting Commission was scheduled to end its active functioning by August 15 of each year ending in "1." It's only continuing function was to employ lawyers to defend its certified maps if they are challenged in this Court. (Art. XXI, § 3(b)(3).)

(1) Senate Districts (1, 3, 4, 8, 12, 16, 17, 23, 25, 27 and 28) clearly and unmistakably fail to meet the constitutional criteria of Article XXI, § 2(d)(3) and (5), which is exemplified by their failure to follow the template set forth by this Court and the 1991 Special Masters' Senate Districts.

(2) Seven Senate Districts (1, 3, 4, 8, 16, 23, 25 and 28) reflect the unnecessary division of Sacramento and San Bernardino Counties among six Senate Districts each. As noted above, the population of San Bernardino County does not constitute a majority of the populations of any of the six Senate Districts of which it is a part, even though the county's population is large enough for more than two whole Senate districts. The six Senate Districts of which Sacramento County is a part range from the Oregon border on the north to near Death Valley in the southeastern part of the State.

(3) In drawing Senate districts, the Commission purported to comply with Voting Rights Act Section 5's non-retrogression standard for Latino/Hispanic voters in Senate Districts 12 and 17, while ignoring the fact that no Latino has ever been elected in either District. In doing so, the Commission passed up the opportunity to draw a Monterey-Santa Clara Senate District where Latino and Latina Assembly members have been elected. The Commission hewed to a formalistic population percentage approach to avoiding Section 5-prohibited "retrogression," while ignoring the fundamental requirement of Section 5 to protect Latino minorities' "opportunity to elect candidates of choice." Similarly, in taking substantial Latino populations out of existing 2001 Senate District 18 to populate challenged Senate District 27 (EVENT), the Commission "retrogressed" the Latino/Hispanic Citizen Voting Age Population of the depopulated district (Senate District 18) by twelve percentage points.

III. THE COMMISSION'S SENATE MAPS VIOLATE SPECIFIC STATE CONSTITUTIONAL CRITERIA SET FORTH IN ARTICLE XXI, § 2(d)(3), (4) and (5)

A. The Article XXI Constitutional Criteria Were Adopted Nearly Verbatim by Propositions 11 and 20 From this Court's Criteria Set Forth in *Legislature v. Reinecke* (1973) and *Wilson v. Eu* (1992)

As set forth in the Petitioner's petition, Proposition 11 adopted amended Article XXI "criteria" for redistricting. Article XXI had provided that redistricting must first comply with the federal Constitution's equal population requirements and the California Constitution's reasonably equal population requirements, and pursuant to the federal Supremacy Clause, the federal Voting Rights Act of 1965, as amended. After these requirements, Proposition 11 adopted almost verbatim the criteria formulated by the California Supreme Court in the Court's *Legislature v. Reinecke* ("*Reinecke*") (1973) *10* Cal 3rd 396 and *Wilson v. Eu* ("*Wilson*") (1992) 1 Cal.4th 707 decisions.) (Pet., ¶ 13.)

The establishment of criteria for redistricting purposes dates from the 1973 ruling of the Supreme Court in *Reinecke*, in which the court laid out seven criteria to be followed by the Court Masters appointed that year because of the failure of the legislature and governor to agree on a redistricting plan. (Pet., ¶ 11.) The relevant "state constitutional criteria" that have come down over the years include the following:

- The territory included within a district should be contiguous and compact.
- Insofar as practical counties and cities should be maintained intact.
- Insofar as possible the integrity of the state's basic geographical regions should be preserved.

- The community of interests of the population of an area should be considered in determining whether the area should be included within or excluded from a proposed district so that all of the citizens of the district may be represented reasonably, fairly and effectively.

(*Reinecke, supra*, 10 Cal.3d at p. 402.)

These criteria were used by the Special Masters in forming the 1973 districts. They were the basis for Article XXI of the constitution, adopted by the people in 1980. It read in part:

- The geographical integrity of any city, county, or city and county, or of any geographical region shall be respected to the extent possible, without violating the requirements of any other subdivision of this section.

In 1991, this Court was again tasked with drawing legislative and congressional district lines. The 1991 Court Masters interpreted Article XXI in light of the 1973 *Reinecke* ruling, and it further refined the *Reinecke* criteria. The Masters discussed in detail four interrelated state constitutional criteria that evolved from *Reinecke* and Article XXI: contiguity, compactness, geographic integrity and community of interest.

- The territory within a district should be contiguous and compact, taking into account the availability and facility of transportation and communication between the people in a proposed district, between the people and candidates in a proposed district, and between the people and their elected representatives.
- Counties and cities within a proposed district should be maintained intact, insofar as possible.
- The integrity of California's basic geographical regions (coastal, mountain, desert, central valley and intermediate valley regions) should be preserved insofar as possible.

- The social and economic interests common to the population of an area which are probable subjects of legislative action, generally termed a "community of interest," should be considered in determining whether an area should be included within or excluded from a proposed district in order that all of the citizens of the district might be represented reasonable, fairly and effectively. Examples of such interests, among others, are those common to an urban area, a rural area, an industrial area or an agricultural area, and those common to areas in which people share similar living standards, use the same transportation facilities, have similar work opportunities or have access to the same media of communication relevant to the election process.
- These four criteria are all addressed to the same goal, the creation of legislative districts that are effective, both for the represented and the representative.

(*Wilson*, *supra*, 1 Cal. 4th 707, 714 & 719, Report and Recommendations of Special Masters on Reapportionment.) (Pet., ¶14.)

The Masters also "nested" two full Assembly Districts within one full Senate District, following the Special Masters' template in *Reinecke, supra*, 10 Cal.3d. at pp. 402 & 434. *Wilson, supra*, 1 Cal.4th at p. 714:

> "As we indicated in *Wilson I, supra,* 54 Cal.3d at page 473, the Masters were directed to be "guided by" various standards and criteria, including … the criteria developed by an earlier panel of special masters for the reapportionment plans adopted by the court in 1973.
>
> "These 1973 criteria include … (6) formation of state senatorial districts from adjacent assembly districts ("nesting")…." (Pet., ¶14.)

In its opinion in *Wilson*, this Court specifically endorsed the Masters' interpretation of the state constitutional standards. "The Masters

carefully factored into their plans the additional criteria of contiguity and compactness of districts and respect for geographic integrity and community interests.... We endorse the Masters' thesis that in designing districts 'compactness does not refer to geometric shape but to the ability of citizens to relate to each other and their representatives, and to the ability of representatives to relate effectively to their constituency.'" (*Id.*) (Pet., ¶ 15.)

The authors of Propositions 11 were well aware of the 1991 Masters criteria; as noted in paragraph 12 above, they adopted the 1991 language almost verbatim.

- Art. XXI, § 2(d)(3): "Districts shall be geographically contiguous."
- Art. XXI, § 2(d)(4): " The geographic integrity of any city, county, city and county, local neighborhood or local community of interest shall be respected in a manner that minimizes their division to the extent possible.... "
- Art. XXI, § 2(d)(5): "To the extent practicable, and where this does not conflict with the criteria above, districts shall be drawn to encourage geographic compactness such that nearby areas of population are not bypassed for more distant population."

(Pet., ¶16.)

B. The Commission Ignored or Misapplied These Criteria In Fashioning State Senate Districts

The Commission failed in its task of drawing compact and constitutional districts because it chose to ignore the natural geographic divisions of California. Most of these regions are defined by counties because Californians tend to relate to county governments. Every inch of California is assigned to a particular county; people pay county taxes, and

tend to look to counties for specific services. (Quinn Dec., ¶ 16.) (Pet., ¶ 49.)

The 1973 Masters report in *Reinecke*, 10 Cal. 3d at p. 411-412, and the 1991 Masters report in *Wilson*, *supra*, 1Cal. 4th at p. 760-761, both recognized, "In many situations, city and county boundaries define political, economic and social boundaries of population groups.... Relationships ... are facilitated by shared interests and by membership in a political community, including a county or city." (Pet., ¶50.) In numerous instances, the Commission's Senate districts violate California's cities, counties and regions without justification. These districts combine widely-separated areas of population in ways that clearly violate the state constitutional criteria. The Commission drew far too many Senate districts that are hardly different than those created by the Legislature in 2001 which were widely criticized for achieving bi- partisan incumbent protections. (Quinn Dec., ¶ 18.) (Pet., ¶51.)

The constitutional language, " districts shall be drawn to encourage geographic compactness such that nearby areas of population are not bypassed for more distant population." is intended to prevent gerrymandering. For much of the last two centuries, gerrymandering has taken many forms. The most common is the reach for political advantage by combining far distant areas of population that share similar political characteristics. Racial gerrymandering involves either "cracking" (splitting apart) ethnic neighborhoods or "packing" (crowding them together to concentrate their populations and to dilute their influence on adjacent districts) both of which have the impact of diluting the influence of the targeted groups. Gerrymandering also can consist of uniting a small distant area of population with a much larger area in order to reduce the political influence of the smaller area. (Quinn Dec., ¶ 9.) (Pet., ¶ 39.)

Proposition 11 requires that districts must be built by combining nearby areas of population, and nearby areas must not be bypassed to pick up distant populations. (Pet., ¶40.)

The sole exceptions in Art. XXI, section 2(d) from this anti-gerrymandering rule are set forth in Article XXI, section 2(d)(1), which permit deviation only if it is necessary to achieve reasonably equal population districts or to conform with the federal Voting Rights Act. However, the Voting Rights Act envisions creation of majority minority districts from "compact populations." (*Thornburg v. Gingles*, 489 U.S. 30 (1986); *Wilson*, *supra*, 1 Cal. 4th at pp. 722 & 749.) As the 1991 Masters noted, "We find no conflict between the Voting Rights Act and the above state criteria." (Pet., ¶41.) The constitutional requirement that "nearby areas of population are not bypassed for more distant population" is mandated upon the Commission, and the thrust of this legal action is to challenge the constitutionality of those Senate districts where this rule was violated. (Pet., ¶42.)

1. Violation of Article XXI, § 2(d)(3) & (d)(5) – Geographic Compactness and Contiguity Requirements and Article XXI, §2(d)(4)Unnecessary Division of Sacramento and San Bernardino Counties Which Are Each Divided Among Six Senate Districts

The Petition alleges that eleven districts were drawn in violation of these Article XXI geographic compactness and contiguity requirements and the requirement to preserve the geographic integrity of counties by not unnecessarily dividing them.

Senate District 1 (MTCAP): Senate District 1 (MTCAP) runs from the Oregon border through lightly population mountain areas to take in Placer County except Roseville and the northeastern suburbs of Sacramento County. The district bypasses hundreds of thousands of people to unite

these far distant areas. (Pet., ¶52.) The region from Sacramento to the Oregon border is an agricultural community of interest. It is separated from the north coast by the coastal mountain range. Its transportation corridors are two north-south highways, Interstate 5 and Highway 99. The Commission separates the northern most counties, Shasta and Siskiyou, from the rest of the region. It unites Redding with Sacramento suburban communities of Folsom, Fair Oaks and Orangevale, communities with nothing in common with agricultural Redding. (Quinn Dec., ¶ 19.) Nielsen Media Research has divided California into 14 television media markets. (Quinn Dec., Exhibit "A", Designated Market Areas, DMAs, Groups of Counties Assigned by Nielsen Media Research 2000, Polidata (R) www.polidata.us Map: CARDMABA.). This district overlaps four different Nielsen market areas: Medford-Klamath Falls, Chico-Redding, Sacramento-Stockton-Modesto, and Reno.) (Pet., ¶53.) The Commission's Final Report (pp. 42-43) says it is connected by "Highway 395 north and south and Highway 50 and Interstate 80 east and west". But the major transportation arteries for this region are Interstate 5 and Highway 99 that connect the northern interior counties. The district does not respect these corridors. (Quinn Dec., ¶ 19.) The Commission contends that "its shared economic interests include timber and recreation." In fact, most of the population is found in the Sacramento suburbs which have no timber or recreation. Shasta County is "timber," Lake Tahoe is "recreation" and the Sacramento suburbs that are joined together in SD 1 share no timber and no recreational interests. (Quinn Dec., ¶ 24.) (Pet., ¶54.) Finally, as evidence of the cavalier attitude of the Commission toward this part of California, the Commission describes the district as consisting of "a portion of Sacramento County, including Roseville." Roseville is in Placer County. (Quinn Dec., ¶ 25.) (Pet., ¶55.)

The Commission declined to follow the predecessor 1991 Masters district contained the rural northeastern portion of the state with the heaviest population in Nevada, Placer and El Dorado Counties. (*Wilson*, *supra*, 1Cal.4th at p. 784.) (Pet., ¶56.)

The Commission could and should have formed this district as the Masters did, with its population centered in Placer and El Dorado Counties. There is no justification for placing Redding into this suburban Sacramento and foothills district. (Quinn Dec., ¶ 27.) (Pet., ¶57.)

The Commission's decision to draw Senate District 1 is not justified by the facts with respect to preserving the geographic integrity of regions and counties, its justification of the shared communities of interest is belied by historical districting determinations of the 1973 and 1991 Masters, and its division of Sacramento County is unnecessary. The Commission's determination is entitled to minimum deference under *Article XXI, §3(b)(3)*, and this Court properly may find this district unconstitutional under Article XXI, §§ 2(d)(3), (4) and (5).

Senate District 3 (WINE): The 1991 Masters admonition that compactness "does not refer to geometric shapes but to the ability of citizens to relate to each other and their representatives, and to the ability of representatives to relate effectively to their constituency" (*Wilson*, 1 Cal4th at p. 719) was completely ignored with Senate District 3. This district contains Rohnert Park, Cotati and Petaluma in Sonoma County, Martinez and Pleasant Hill in Contra Costa County and the Sacramento River Delta, small appendages that don't belong in the same district. (Quinn Dec., ¶ 34.) The district overlaps two Nielsen Designated Market Areas, Sacramento-Stockton-Modesto and San Francisco-Oakland-San Jose. (Quinn Dec., Exhibit "A".) (Pet., ¶63.) This district is forced to absorb these far distant areas by the rippling caused by the Commission's refusal to cross the Golden Gate Bridge. The population north of the bridge is

greater than a single Senate district. So instead of the logical cross of the Golden Gate Bridge that would have united parts of Marin County and San Francisco, the Commission is forced to detach part of Sonoma County, Rohnert Park, and to combine it with far distant populations. Instead of crossing the Golden Gate Bridge, the Commission forces this district across both the Carquinez and the Benicia bridges. In so doing, it brings the working class communities in northern Contra Costa County into a district that extends all the way to Calistoga in Napa County and the Sonoma County wine country. (Quinn Dec., ¶ 35.) (Pet., ¶64.)

The Commission's Final Report (p. 43) notes that the district "includes a portion of Contra Costa County including the cities of Martinez and Pleasant Hill, to achieve population equality and are connected through the Benicia Martinez Bridge. The district is united by the I-5 and I-80 transportation corridors." (Pet., ¶65.) However, there are several problems with this justification. First, Martinez and Pleasant Hill are not connected by the Benicia Bridge; they are both in Contra Costa County. Secondly, it is not united by the I-5 corridor; the district contains two separate pieces of Interstate 5 that pass through largely unpopulated area. (Quinn Dec., ¶ 37.) (Pet., ¶66.) There is no 1991 Masters district that approximates this district. The master did properly cross the Golden Gate Bridge with then Senate District 3. (Quinn Dec., ¶ 38.) (Pet., ¶67.) According to Dr. Quinn., a logical district would have combined all of Solano, Yolo and Napa Counties. Additional population could have been obtained from the Contra Costa County towns along the I-80 corridor. The Sacramento River delta, Rohnert Park and Martinez-Pleasant Hill do not belong in this district. (Quinn Dec., ¶ 40.) (Pet., ¶68.) Senate District 3 specifically violates the constitutional mandate of Article XXI, section 2(d)(5) not to bypass adjacent populations in forming districts. District 3 should be Solano, Yolo

and Napa Counties. This district specifically violates the constitutional community of interest criterion of Art. XXI, section 2(d)(3). (Pet., ¶69.)

The Commission's decision to draw Senate District 3 is not justified by the facts with respect to preserving the geographic integrity of regions and counties, its justification of the shared communities of interest is belied by historical districting determinations of the 1973 and 1991 Masters. The Commission's determination is entitled to minimum deference under *Article XXI, §3(b)(3)*, and this Court properly may find this district unconstitutional under Article XXI, §§ 2(d)(3) and (5).

Senate District 4 (YUBA): Senate District 4 (YUBA) begins at Red Bluff in Tehama County, includes Roseville in Placer County and then extends to numerous suburban areas within Sacramento County. Red Bluff belongs with Redding to its north; not since the advent of the "one person-one vote" Senate districts in 1966 have Redding and Red Bluff been in separate districts. The Sacramento suburbs in this district should be with other communities in Sacramento County. (Quinn Dec., ¶ 28.) This district covers two separate Nielsen Designated Market areas, Chico-Redding and Sacramento-Stockton-Modesto. (Quinn Dec., Exhibit "A".) (Pet., ¶58.) The Commission's Final Report (p. 43) describes this district as containing parts of "northeast Sacramento County, including Roseville." As noted above, Roseville is not in Sacramento County. (Quinn Dec., ¶ 30.) The Commission also asserts that, "This district shares the I-5 transportation corridor and reflects the interests in a Central Valley district that is primarily agricultural and rural." This is not true. The "agricultural and rural" counties account for about 500,000 people while suburban Roseville and the Sacramento suburbs like Rancho Cordova account for 430,000 people. These two areas have nothing in common. (Quinn Dec., ¶ 31.) (Pet., ¶59.) The 1991 Masters maintained the unity of the northern interior counties and brought this district south into portions of Yolo and Solano

Counties. (*Wilson, supra*, 1 Cal. 4th at p. 784.) (Pet., ¶60.) This region has grown since 1990 so bringing this district into Yolo and Solano Counties is unnecessary.

A perfectly formed agricultural district could have been drawn from the Oregon border as far south as Sutter County. (Quinn Dec., ¶ 32) (Pet., ¶61.) Senate District 4 specifically violates the constitutional mandate of Article XXI, section 2(d)(5) not to bypass adjacent populations in forming districts. District 4 should be a northern interior rural district. These two districts specifically violate the constitutional community of interest criterion of Art. XXI, section 2(d)(5). (Pet., ¶62.)

The Commission's decision to draw Senate District 4 is not justified by the facts with respect to preserving the geographic integrity of regions and counties, its justification of the shared communities of interest is belied by historical districting determinations of the 1973 and 1991 Masters, and its division of Sacramento County is unnecessary. The Commission's determination is entitled to minimum deference under *Article XXI, §3(b)(3)*, and this Court properly may find this district unconstitutional under Article XXI, §§ 2(d)(3), (4) and (5).

Senate District 8 (FTHL): Senate District 8 (FTHL) begins in the Sacramento suburbs, moves south through the mountains to pick up parts of Stanislaus County, then much of Fresno County including large parts of the city of Fresno, and then wanders further south through Death Valley until it ends just a few miles from Las Vegas. "Senate District 8 is based on a theory that the foothills are a community of interest, but in fact the Sacramento suburbs and urban Fresno County – well away from any foothills – have nothing in common with Death Valley. This is certainly one of the oddest districts ever drawn in California." (Quinn Dec., ¶ 41.) (Pet., ¶70.) The Commission's Final Report (p. 44) attempts to justify this district by noting the need to build two Voting Rights Act Section 5

districts just to the west, but in fact the drawing of Section 5 districts including Merced and Kings County do not require the rest of the Central Valley to be stretched across the map. (Quinn Dec., ¶ 42.) The Commission claims that "the district maintains the integrity of a southern foothills and mountain district to link the common issues interests of open space, water, the distinctions between the 'hills' and the 'flatlands' and the less densely populated areas that share a more rural and remote way of life." (Pet., ¶71.) According to Dr. Quinn, Senate District 8 does none of these things. Its population center is the city of Fresno and its northern suburbs, hardly areas sharing a "remote way of life." (Quinn Dec., ¶ 43.) The Commission received testimony that the people living in the Sierra counties shop and relate to nearby "flatland "counties, Tuolumne to Fresno, Calaveras to Modesto. Death Valley and Inyo County do not relate to Amador County. Also, in terms of the 14 Nielsen Designated Market Areas, this district crosses four of them: Sacramento-Stockton-Modesto, Reno, Fresno-Visalia, and Los Angeles. (Quinn Dec., ¶ 43.) (Pet., ¶72.)

The 1991 Masters did not create any district remotely resembling this district. They combined "hill" populations with their nearby "flatland" populations. (Quinn Dec., ¶ 45.) (Pet., ¶73.) According to Dr. Quinn., the Sacramento County portion should have remained with Sacramento County, and this would have reduced the unjustified division of Sacramento County into six Senate districts. Oakdale and Turlock should have remained within a Stanislaus County district. Urban Fresno should have been combined with nearby communities and not run through the mountains to Death Valley. (Quinn Dec., ¶ 46.) (Pet., ¶74.) Senate District 8 specifically violates the constitutional mandate of Article XXI, section 2(d)(5) not to bypass adjacent populations in forming districts, and should be within Sacramento County, with Oakdale and Turlock in Stanislaus County in a Stanislaus County district. Urban Fresno should be combined

with nearby communities and not run through the mountains to Death Valley. Senate District 8 specifically violates the constitutional community of interest criterion of Art. XXI, section 2(d)(3). (Pet., ¶75.)

The Commission's decision to draw Senate District 8 is not justified by the facts with respect to preserving the geographic integrity of regions and counties, its justification of the shared communities of interest is belied by historical districting determinations of the 1973 and 1991 Masters, and its division of Sacramento County is unnecessary. The Commission's determination is entitled to minimum deference under *Article XXI, §3(b)(3)*, and this Court properly may find this district unconstitutional under Article XXI, §§ 2(d)(3), (4) and (5).

Senate District 12 (MERCED): Senate District 12 (MERCED) maintains the 2001 gerrymander that united Salinas in Monterey County with parts of Stanislaus County and all of Merced County. (RJN, Exhibit "I", Map of 2001 Senate District 12; Quinn Dec., ¶ 47.) The Commission contends it was forced to retain this district because of Section 5 of the Voting Rights Act, Merced and Monterey being Section 5 counties. (Pet., ¶ 76.) But this was not necessary. The Voting Rights Act lays out the standard that a Section 5 districts must not regress minority voting opportunities. By leaving this district as it was drawn in 2001, the Commission did reduce the opportunities of Latino/Hispanic voters to elect their candidates of choice. (Quinn Dec., ¶ 47.) (Pet., ¶77.) The Commission received extensive testimony that the Central Valley should be combined with the Central Valley and the coast with the coast. (Quinn Dec., ¶ 48.) According to the Petitioner's expert, Dr. T. Anthony Quinn, "It is impossible to provide effective representation in a district partially on the coast and partially inland because the concerns and issues are so different. This is why the 1991 Masters did not combine any Valley districts with coastal counties. (Quinn Dec., ¶ 48.) (Pet., ¶78.) The Commission's Final

Report (p. 45), admits that "although this is the one district that crosses the coastal mountain range between the San Joaquin Valley and the west, this district is able to maintain a predominately agricultural base on both sides of the mountains, thus linking two areas together in a common interest." According to the Petitioner's experts, "this is fiction, because the farming, ranching and water concerns are totally different, and often in conflict." (Quinn Dec., ¶ 50.) "Salinas is an area of cool weather crops and adequate local water; the Central Valley consists of cattle ranches, cotton and tree crops, and must import its water. They could not be more different, as the Commission was told at its public hearings." (Quinn Dec., ¶ 50.) This district covers three Nielsen Designated Market Areas: Monterey-Salinas, Fresno-Visalia, and Sacramento-Stockton-Modesto. (Quinn Dec., Exhibit "A".) (Pet., ¶79.)

The Commission also justifies violation of state constitutional standards to meet Section 5. (*Id.*) However, the Petitioner's expert disputes this contention. "In fact, Merced County could have been placed in the Central Valley Section 5 district and it could have been drawn to be more than 60 percent Latino (Merced County itself is 55 percent Latino)." (Quinn Dec., ¶ 51.) "Additionally, had heavily Latino Salinas been united with Latino areas in neighboring Santa Clara County, a Latino Senate seat could have been drawn, as Dr. Joaquin Avila noted in his testimony to the Commission. Neither Monterey nor Merced Counties has ever elected Latinos to the Senate, and in fact a Latina candidate was defeated in the current Senate District 12 in 2010. The Commission had an opportunity to meet Section 5 by drawing Latino Senate seat in San Jose and Salinas, and failed to do so." (Quinn Dec., ¶ 51.) (Pet., ¶80.)

The 1991 Masters created a district entirely within the Central Valley, consisting of Tuolumne, Stanislaus, Mariposa and Merced Counties, and portions of Fresno, Madera and San Joaquin Counties.

(*Wilson, supra*, 1 Cal.4th at p. 784.) The 1991 approach met all the state constitutional criteria. (Quinn Dec., ¶ 53.) (Pet., ¶81.) According to Dr. Quinn., "The Commission should have created this seat entirely in the Central Valley. It should have attached Merced County to Kings County and Latino portions of Fresno and Kern Counties to meet Section 5 concerns (this district currently has a Latino Senator and there would be no Section 5 regression). The Commission could then have taken the Latino portions of Monterey County, also Section 5, and created a Latino Senate district in combination with Santa Clara County Latinos. The two overlapping Assembly Districts that would form this Senate district have Latino incumbents. (Quinn Dec., ¶ 55.) (Pet., ¶82.) Senate District 12 specifically violates the constitutional mandate of Article XXI, section 2(d)(5) not to bypass adjacent populations in forming districts, by combining far distant and totally dissimilar communities. Senate District 12 specifically violates the constitutional community of interest criterion of Art. XXI, § 2(d)(3) by combining Merced and Monterey Counties which are different communities of interest. (Pet., ¶83.)

The Commission's decision to draw Senate District 12 is not justified by the facts with respect to preserving the geographic integrity of regions and counties, its justification of the shared communities of interest is belied by historical districting determinations of the 1973 and 1991 Masters. The Commission's determination is entitled to minimum deference under *Article XXI, §3(b)(3)*, and this Court properly may find this district unconstitutional under Article XXI, §§ 2(d)(3) and (5).

Senate District 16 (TULKE): This district begins in Visalia and Tulare in Tulare County, moves south to pick up the northern part of the city of Bakersfield, and then moves east and south to absorb the San Bernardino desert from Yucca Valley to Needles. It is one of six districts partially within San Bernardino County and unites the desert area with

Central Valley farming communities with which it has nothing in common. (Quinn Dec., ¶ 65.) (Pet., ¶93.) The Constitution specifies that: "The geographic integrity of any city, county, city and county, local neighborhood or local community of interest shall be respected in a manner that minimizes their division to the extent possible." San Bernardino County has a population of 2,035,210 people, slightly more than the population of two Senate districts. Yet the Commission has drawn six districts in the county, and no district is fully within the county. Three of these districts clearly violate the Constitution. (Quinn Dec., ¶ 66.) (Pet., ¶94.)

Senate Districts, San Bernardino County: (Percentage of San Bernardino's population within each district.) SD 16 (7.3%); SD 20 (38.6%); SD 21 (16.3%); SD 23 (30.2%); SD 25 (3.8%); and SD 29 (3.7%). The Commission's justification (Report, pp. 45-46) notes that, "Although this district covers a large geographic area, the vast majority of cities share a communality of having small populations in more remote areas." According to Dr. T. Quinn, this justification is absurd on its face. Alturas in Modoc County and Calexico in Imperial County could be so described, but that would not justify putting them in the same district. The cities of Visalia and Tulare are hardly small remote cities, being in the heart of the Central Valley. The Commission justifies uniting "small populations" with nothing in common simply on the basis that they are small. (Quinn Dec., ¶ 69.) (Pet., ¶96.)

The 1991 Masters predecessor district treated the High Desert as a single geographic unit. The Masters created a single High Desert district, then Senate District 17. (*Wilson*, *supra*, 1 Cal.4th at p. 785.) (Pet., ¶97.) According to Dr. Quinn, had the Commission property acknowledged the state's natural geographic regions, it would have placed the Kern and San Bernardino deserts within a single district, and not included distant Central

Valley farming communities. It should have created at least one district fully within San Bernardino County. (Quinn Dec., ¶ 69.) (Pet., ¶98.)

The Commission's decision to draw Senate District 16 is not justified by the facts with respect to preserving the geographic integrity of regions and counties, its justification of the shared communities of interest is belied by historical districting determinations of the 1973 and 1991 Masters, and its division of San Bernardino County is unnecessary. The Commission's determination is entitled to minimum deference under *Article XXI, §3(b)(3)*, and this Court properly may find this district clearly and unmistakably unconstitutional under Article XXI, §§ 2(d)(3), (4) and (5).

Senate District 17 (WMONT): Senate District 17 (WMONT) replicates the 2001 gerrymander by uniting southern Santa Clara County, including Morgan Hill and Gilroy, with San Luis Obispo County hundreds of miles to the south. (RJN, Exhibit "I," 2001 Senate District Map.) This district bypasses hundreds of thousands of people in the Bay Area for San Luis Obispo County. The district combines Monterey County with San Luis Obispo County even though they are separated by an area of 100 miles of no population (Big Sur). (Quinn Dec., ¶ 71.) Senate District 17 also manages to cover three Nielsen Designated Market Areas: San Francisco-Oakland-San Jose, Monterey-Salinas, and Santa Barbara-Santa Maria-San Luis Obispo. (Quinn Dec., Exhibit "A"; Quinn Dec., ¶ 49.) (Pet., ¶84.) According to Dr. Quinn, Senate District 17 is the result of several Commission errors: not crossing the Golden Gate Bridge which required pulling this Central Coast district north into Santa Cruz County, dividing Monterey County to send Salinas off to the Central Valley, and failure to recognize the Monterey-San Luis Obispo County line as the natural division between Bay Area districts and the Central Coast. (Quinn Dec., ¶ 57.) (Pet., ¶85.) The Commission's Final Report (p. 46) attempts to justify

this district by contending that, "strongly shared interests within the district include regional agricultural economies, coastal and open space preservation and environmental protection." However, as Dr. Quinn states, "These characteristics are shared by all coastal counties from Del Norte to San Diego and are hardly unique to this area. San Luis Obispo's agricultural economy actually has little in common with Monterey County, and much more in common with agriculture to the south in Santa Barbara and Ventura Counties. Monterey County's agricultural base has far more in common with Santa Cruz County (similar cool weather crops) than it has with San Luis Obispo County farmland hundreds of miles to the south. Most telling, San Luis Obispo County 'looks south'; its newspapers and television stations cover Santa Barbara County, and the major population concentrations in San Luis Obispo County are along its common border with Santa Barbara County. The Commission met the community of interest criteria for Assembly and Congress. Its Assembly district unites San Luis Obispo County with northern San Barbara County; its congressional map consists of all of San Luis Obispo and Santa Barbara Counties. It is somewhat of a mystery why the Commission recognized the 'hard border' of Monterey and San Luis Obispo Counties for Assembly and Congress, but not for Senate." (Quinn Dec., ¶ 62.) (Pet., ¶86.)

The 1991 Masters' northern Senate district consisted of all of Monterey and Santa Cruz Counties, and a portion of Santa Clara County (Senate District 15 – 1991). Its southern Senate district encompassed all of San Luis Obispo, Santa Barbara and western Ventura Counties (Senate District 18- 1991). This is the constitutional way to divide the Central Coast. (*Wilson, supra,* 1 Cal.4th at pp. 784-785 .) (Pet., ¶87.) The Commission's Report contends it drew Senate District 17 in part to comply with section 5 of the Voting Rights Act. (*Id.*) However, according to Dr. Quinn, the Commission should have taken the Latino portions of Monterey

County and united them with Latino portions of Santa Clara County. Coastal Monterey County should have been united with Santa Cruz County and perhaps the Silicon Valley communities along Highway17 or the coastal communities in San Mateo County. The second district should have been formed exactly as the Masters formed the district (and the Commission formed the overlapping congressional district): all of San Luis Obispo County, all of Santa Barbara County and western Ventura County. San Luis Obispo County shares five television stations with Santa Barbara County, including the major networks. Monterey County also shares five television stations, but with Santa Cruz County to its north. The Monterey and San Luis Obispo stations do not overlap at all. (Quinn Dec., ¶ 49.) (Pet., ¶88.)

Senate District 17 specifically violates state constitutional criteria of contiguity and compactness in that it bypasses huge areas of population to reach for far distant population. It dilutes the influence of small San Luis Obispo County by placing it in a district whose population centers are 100 miles away, and with which San Luis Obispo County residents have nothing in common. (Quinn Dec., ¶ 61.) Senate District 17 thus unnecessarily combines San Luis Obispo County with different communities of interest, dividing it from its natural central coastal community of interest. (Art. XXI, § 2(d)(3).) (Pet., ¶89.)

The Commission's decision to draw Senate District 17 is not justified by the facts with respect to preserving the geographic integrity of regions and counties, its justification of the shared communities of interest is belied by historical districting determinations of the 1973 and 1991 Masters. The Commission's determination is entitled to minimum deference under *Article XXI, §3(b)(3)*, and this Court properly may find this district clearly and unmistakably unconstitutional under Article XXI, §§ 2(d)(3) and (5).

Senate District 23 (SBBAN): Senate District 23 is one of the six districts partially in San Bernardino County. It includes the city of Rancho Cucamonga along the Los Angeles County line, and then wraps around two other districts dipping deep into Riverside County to pick up the city of Menifee in Riverside County. Like other San Bernardino County districts, this district absorbs distant communities with nothing in common. (Quinn Dec., ¶ 72.) (Pet., ¶99.) The Commission Report (p. 47) notes the irregular shape. "The shape of this district was largely determined by the adjacent district drawn in consideration of Section 2 of the Voting Rights Act." That district is Senate District 20. We do not challenge that district; the Voting Rights Act indeed does require a district drawn as Senate District 20 is drawn. According to Dr. Quinn, this is weak excuse for decimating the representation of non-Section 2 districts. Rancho Cucamonga should have been united with neighboring Upland and those communities kept within a San Bernardino district. (Quinn Dec., ¶ 73.) (Pet., ¶100.) The 1991 Masters kept the San Bernardino suburban communities together and took a portion of neighboring Riverside County. The Masters also created the Section 2 district, demonstrating that creation of a Latino district in urban San Bernardino County did not require elongated and irregular suburban districts. (*Wilson*, *supra*, 1 Cal.4th at p. 786.) (Quinn Dec., ¶ 74.) (Pet., ¶101.) According to Dr. T. Quinn, the Commission should have followed the lead of the Masters in constructing a High Desert San Bernardino County district and a second district that while surrounding the Section 2 district, nevertheless would have included Upland, Rancho Cucamonga with cities like Twenty Nine Palms and Yucca Valley. (Quinn Dec., ¶ 75.) (Pet., ¶102.)

The Commission's decision to draw Senate District 23 is not justified by the facts with respect to preserving the geographic integrity of regions and counties, its justification of the shared communities of interest

is belied by historical districting determinations of the 1973 and 1991 Masters, and its division of San Bernardino County is unnecessary. The Commission's determination is entitled to minimum deference under *Article XXI, §3(b)(3)*, and this Court properly may find this district clearly and unmistakably unconstitutional under Article XXI, §§ 2(d)(3), (4) and (5).

Senate District 25 (LASGF): The major population centers for this district are Pasadena, Glendale and part of Burbank. In 1991, the Masters configured the predecessor to this district around those cities, and the legislature retained that scheme in 2001. However, the Commission has extended this district far to the east to absorb East San Gabriel Valley communities of Glendora, San Dimas, La Verne and Claremont into this district. The district then extends across the Los Angeles-San Bernardino County line to absorb Upland; becoming one of the six districts invading San Bernardino County. (Quinn Dec., ¶ 76) (Pet., ¶103.)

According to Dr. Quinn, the East San Gabriel Valley communities have never been combined with Pasadena, Glendale or Burbank, and in fact the Commission heard testimony at its public hearing that such an elongated district would undo fair representation for these smaller cities. This is one of the classic examples of denying representation to a small population by combining it with a much larger far distant population. (Quinn Dec., ¶ 77.) This is prohibited by the state constitutional criteria that adjacent population must be used in forming districts, not far distant population. (Pet., ¶104.) The Commission's rationale for this district (Report, p. 48) is that it retains the I-210 corridor and "connects these cities for commerce and entertainment." According to the Petitioner's expert, Dr. Quinn, in fact, very few people in Upland look to Burbank for "commerce and entertainment." The I-210 corridor is divided in three by this district, so it certainly does not respect that transportation corridor.

(Quinn Dec., ¶ 78) (Pet., ¶105.) The 1991Masters formed one compact district in the Burbank-Pasadena-Glendale area, (Senate District 21-1991). The East San Gabriel Valley communities were combined with like communities in eastern Los Angeles County, Senate District 29 – 1991). (*Wilson, supra*, 1 Cal.4th at p. 786.) (Pet., ¶106.) According to Dr. Quinn, the Commission was unable to draw the same sensible districts the Masters did because it divided Burbank and it failed to keep adjacent Los Angeles population within this district. All of Burbank should have been placed in this district, and if the Commission had kept Burbank whole and added adjacent Los Angeles territory, it would not have been necessary to reach as far as Upland for population for this district. (Quinn Dec., ¶ 80) (Pet., ¶107.)

The Commission's decision to draw Senate District 25 is not justified by the facts with respect to preserving the geographic integrity of regions and counties, its justification of the shared communities of interest is belied by historical districting determinations of the 1973 and 1991 Masters, and its division of Sacramento County is unnecessary. The Commission's determination is entitled to minimum deference under *Article XXI, §3(b)(3)*, and this Court properly may find this district unconstitutional under Article XXI, §§ 2(d)(3), (4) and (5).

Senate District 27 (EVENT): Senate District 27 contains portion of Eastern Ventura County, primarily Thousand Oaks and Simi Valley, and then extends far into Los Angeles County to absorb western and central San Fernando Valley communities of Reseda and Encino. In doing so, the 27th Senate District dilutes the Latino percentage in the neighboring 18th Senate District. The current Latino district in the San Fernando Valley has a Latino Citizen Voting Age Population of 47 percent. The Commission's district has a Latino CVAP of only 38 percent. (RJN, Exhibit "D," p. 164.) The district also divides eastern Ventura County by removing Camarillo.

(Pet., ¶108.) In trying to justify this district, the Commission Report (p. 48) tries to place the cities of Agoura Hills and Westlake Village into Ventura County. They are in Los Angeles County. It claims to "reunite the cities in eastern Ventura County above the Conejo Grade." According to Dr. Quinn, they are not divided at present and the Commission actually divides Camarillo off from its neighbors. Finally, the Commission notes that these communities are combined with communities in the "greater Santa Monica Mountain area." (*Id.*) In fact, the Commission received extensive testimony that the communities of the southern Santa Monica Mountains did not want to be with eastern Ventura County or the communities of the northern San Fernando Valley. Yet the Commission did exactly that. (Quinn Dec., ¶ 82) (Pet., ¶109.)

The 1991 Masters created one compact district consisting of the southern Santa Monica Mountain, Malibu, Beverly Hills and Hollywood, and the western San Fernando Valley. The eastern Ventura County district consisted of the cities of Camarillo, Thousand Oaks, and Simi Valley, and this was joined to communities in the northern San Fernando Valley. (*Wilson, supra,* 1 Cal. 4th at p. 784.) That is the configuration was urged on the Commission by numerous citizens and interest groups in this area. (Quinn Dec., ¶ 83.) (Pet., ¶110.) According to Dr. Quinn, the Commission should have created the Central Coastal districts from the San Luis Obispo-Monterey County line south. That would have left this district primarily within Ventura County. This would have allowed the creation of a district in the southern Santa Monica Mountains and western Los Angeles County as was encouraged upon the Commission. It would also have prevented the dilution of Latinos from the San Fernando Valley Latino district. (Quinn Dec., ¶¶ 84 & 85.) (Pet., ¶111.)

The Commission's decision to draw Senate District 27 is not justified by the facts with respect to preserving the geographic integrity of

regions and counties, its justification of the shared communities of interest is belied by historical districting determinations of the 1973 and 1991 Masters. The Commission's determination is entitled to minimum deference under *Article XXI, §3(b)(3)*, and this Court properly may find this district clearly and unmistakably unconstitutional under Article XXI, §§ 2(d)(3), (4) and (5).

Senate District 28 (CCHTM): The Commission has drawn elongated and illogical districts throughout the Inland Empire, and Senate District 28 is the example in Riverside County. The district begins at the Arizona border and extends all the way to the Orange County line, while also absorbing suburban neighborhoods of the city of Riverside. It' shape is caused by the creation of Senate District 23 that wanders far into central Riverside County, requiring this district to curve around it. (Pet., ¶112.) The Commission Report (p. 48) notes that the district "includes the entire eastern portion of Riverside County and portions of west Riverside County along the southern border." According to Dr. Quinn, it gives no justification for this awkward configuration. (Quinn Dec., ¶ 87) (Pet., ¶113.) The 1991 Masters included Imperial County along with eastern Riverside County, thus uniting the Coachella Valley. The Commission did this for the Assembly, but not for the Senate. The Masters also included portions of eastern San Diego County, thereby creating a compact district in California's southeastern border. (*Wilson, supra*, 1 Cal.4th at p. 787) (Quinn Dec., ¶ 88) (Pet., ¶114.)

According to Dr. Quinn, eastern Riverside County is a clear community of interest. This district should have included Beaumont and Banning, as well as Hemet and San Jacinto, which were always combined with eastern Riverside County districts in the past. (Quinn Dec., ¶ 89.) (Pet., ¶115.)

The Commission's decision to draw Senate District 28 is not justified by the facts with respect to preserving the geographic integrity of regions and counties, its justification of the shared communities of interest is belied by historical districting determinations of the 1973 and 1991 Masters, and its division of San Bernardino County is unnecessary. The Commission's determination is entitled to minimum deference under *Article XXI, §3(b)(3)*, and this Court properly may find this district clearly and unmistakably unconstitutional under Article XXI, §§ 2(d)(3), (4) and (5).

2. Violation of Article XXI, § 2(d)(1) -- Voting Rights Act

Article XXI, § 2(d)(1) specifically requires the Commission to draw lines that comply with the Federal Voting Rights Act. (42 USCA §§ 1973[3] and 1973c.) Section 2 of the Voting Rights Act (§1973(a)) prohibits a State

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[3] **Sec. 1973 Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation**

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.
>
> (b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

or political subdivision of a State from imposing any voting qualification, standard or practice or procedure that results in the denial or abridgment of the right to vote on account of race, color or status as a member of a language minority group. Section 5 (§1973c) requires a covered State or local subdivision to obtain preclearance of any change in a voting qualification, standard, practice or procedure from the U.S. Department of Justice or the U.S. District Court for the District of Columbia.

Section 2

The Special Masters in *Wilson, supra*, 1 Cal.4th 707, 747-748, summarized Voting Rights Act Section 2 and its requirements as follows:

> "The primary purpose of the Voting Rights Act of 1965 (42 U.S.C. § 1973 et seq.) (the Act) is to protect the right to vote as guaranteed by the Fourteenth and Fifteenth Amendments.[6] As amended in 1970, 1975, and 1982, the Act prohibits states and their political subdivisions from denying or abridging citizens' rights to vote "on account of race or color" (§§ 2(a), 5, 42 U.S.C.A. §§ 1973(a), 1973c) or membership in a "language minority group" (§ 4(f)(2), 42 U.S.C.A. § 1973b(f)(2)). As valid federal legislation [citations omitted] the Act is the "supreme law of the land" (U.S. Const., art. VI, cl. 2) and supersedes any conflicting state laws or constitutional provisions.
>
> Two sections of the Act directly affect our task, but in different ways. Section 2, as amended in 1982, has two subsections. Subsection (a) is a substantive prohibition of any voting procedure that "results in" denial or abridgement of a racial or lingual minority's voting rights "as provided in subsection (b)." Subsection (b) states that a violation of subsection (a) is established by a showing, "based on the totality of circumstances," that members of a protected class have less than an equal opportunity "to participate in the political process and to elect representatives of their choice." The section expressly disavows establishing any right of proportional representation but permits consideration of the extent of minority candidates' success in getting elected.

The Masters discussed the leading case of *Thornburg v. Gingles*, 478 U.S. 30 (1986)("*Gingles*"), which set forth the requirements of proof of a Section 2 "vote dilution" claim:

> "First, the minority group must be able to demonstrate that it is *sufficiently large* and *geographically compact* to constitute a majority in a single-member district.*** Second, the minority group must be able to show that it is *politically cohesive.* *** Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it ... usually to defeat the minority's preferred candidate." (*[Gingles], supra,* 478 U.S. at pp.50- 51. Italics added.)

The Supreme Court in *Bartlett v. Strickland,* 556 U.S. __, 129 S.Ct. 1231 (2009), held that minority groups had to constitute a majority (50%) of the citizen voting age population ("CVAP") of a proposed district to meet part 1 of the *Gingles* test above.

Petitioner contends that the Commission failed to draw Voting Rights Act section 2 districts in Los Angeles County, divided Latino/Hispanic voting interests in the western part of the San Fernando Valley, separating Latino voters from a San Fernando Valley Senate District (SD 18 (LASFE)) and placing them into a district largely composed of eastern Ventura County communities of Thousand Oaks and Simi Valley and the Los Angeles County coastal community of Malibu (SD 27 (EVENT)), and in so doing failed to create a potential Voting Rights Act Section 2 district or an "influence district" (Pet., ¶ 162), pointing to the National Association of Latino Elected Officials ("NALEO") analysis of the Senate plan, titled, "Commission Final Draft Maps Would Diminish Latino Opportunities in California's State Senate": (RJN, Exhibit "F," pp. 275-328). The Commission's own data show that Senate District 18's Latino Citizen Voting Age population of the San Fernando Valley district, was reduced from 47 percent to only 38 percent. (RJN, Exhibit "D," p. 164.)

Petitioner also alleges that "[t]he California Target Book notes that current Senate District 20, predecessor to new Senate District 18, first elected a Latino, former Sen. Richard Alarcon, in 1998. He was succeeded in 2006 by current Senator Alex Padilla. Senate District 20 has a Latino voter registration of 46 percent, and Latino CVAP of 47 percent. By lowering the Latino CVAP to only 38 percent, the Commission also lowered to Latino voter registration to 37 percent. This makes it far less likely that a Latino will succeed Senator Padilla when he is termed out in 2014. (Quinn Dec., ¶ 85.)

According to Dr. Quinn, Senate District 18 should have been kept at 47 percent Latino CVAP, or should have been drawn to bring the Latino CVAP up over 50 percent. Instead the Commission dramatically reduced the Latino CVAP in violation of Section 2 of the Voting Rights Act. (Quinn Dec., ¶ 85; RJN, Exhibit "D," p. 164.) (Pet., ¶ 165.)

The Commission offers no justification in its Findings for drawing Senate District 27, and diluting Latino voting interests in Senate District 18, sufficient to rebut these claims. The Commission's determination is entitled to minimum deference under *Article XXI, §3(b)(3)*, and this Court properly may find this district clearly and unmistakably unconstitutional under Article XXI, §§ 2(d)(1).

Section 5

The Commission-certified Senate maps, in particular SD 12, and 17, were drawn in a manner has the purpose or the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2), in violation of Section 5 of the Voting Rights Act of 1965, as amended, 42 USCA §1973c.

Section 5's "effect prong" has been interpreted since 1976 to mean that a redistricting plan's electoral change may not lead to retrogression "in the position of racial minorities with respect to their effective exercise of

the electoral franchise." (*Beer v. United States* (1976) 425 U.S. 130, 141.) "Retrogression" means "a decrease ... in the absolute number of representatives which a minority group has a fair chance to elect." (*Id.*) See also the Department of Justice's regulations concerning the retrogression standard:

> A change effecting voting is considered to have a discriminatory effect under Section 5 if it will lead to a retrogression in the position of members of a racial or language minority group (i.e., will make members of such a group worse off than they had been before the change) with respect to their opportunity to exercise the electoral franchise effectively."

(28 C.F.R. §§ 51.57-51.61 (2008).)

As the Petitioner alleges and demonstrates, Professor Joaquin Avila submitted written testimony in support of creation of a section 2 district, or avoidance of a section 5 "intentional discrimination" finding, involving the pairing of AD 23 and 28, at the Commission's public hearing in San Jose, California on June 28, 2011, in opposition to the first draft Senate maps released on June 10, 2011. (RJN, "Exhibit E," p. 241.) Professor Avila argued to the Commission that Voting Rights Act section 2 required the Commission to draw a Senate district that covered the East San Jose area in Santa Clara County and the Salinas area in Monterey County, a Section 5 county. This district would be composed in part of current Assembly Districts 23 and 28 that he estimated would have a 38.6% Latino Citizen Voting Age Population percentage rather than simply keeping a Monterey County centered Senate District (12 or 17) at a Latino CVAP percentage of 16%. Professor Avila's analysis included historical information about racially-polarized voting in California and in the San Jose area in particular. His testimony was supported by a number of individuals who testified to

the community of interest related to the Senate district proposal. (Pet., ¶ 168.)

The Commission declined to include Latinos in a Monterey County/Santa Clara County Senate District. Instead the Commission retained the old Senate District 12 that combines the Monterey County Latinos with Central Valley communities. (Quinn Dec., ¶ 63.) (Pet., ¶ 169.) The California Target Book notes that AD 23, Santa Clara County, has a history of electing Latinos to the Legislature, former Assembly members Manny Diaz and Joe Coto, and current Assembly member Nora Campos. The Target Book also notes that AD 28 in Monterey County also has a long history of electing Latino legislators, starting with the election of Simon Salinas in the year 2000. These two districts should have been combined to form a Senate district, and had the Commission done so, the likelihood is very great a Latino would win that Senate district. (Quinn Dec., Exhibit "B".) (Quinn Dec., ¶ 52.) (Pet., ¶ 170.)

The Voting Rights Act lays out the standard that a Section 5 districts must not regress minority voting opportunities. It does not mean simply applying a mathematical formula; as the Commission did in its treatment of Monterey and Merced Counties rather the voting history of the area must be considered. By leaving this district as it was drawn in 2001, the Commission did in fact regress Latino opportunities to elect a State Senator because the voting history of this area shows a Latino cannot win this district but could in fact be elected were the Section 5 counties in this district organized differently. (Quinn Dec., ¶ 52.) (Pet., ¶ 171.) Merced County could have been placed in the Central Valley Section 5 district (Senate District 14) and it could have been drawn to be more than 60 percent Latino (Merced County itself is 55 percent Latino). Additionally, had heavily Latino Salinas been united with Latino areas in neighboring Santa Clara County, a Latino Senate seat could have been drawn. Neither

Monterey nor Merced Counties have ever elected Latinos to the Senate, and in fact a Latina candidate was defeated in the current Senate District 12 in 2010. (Quinn Dec., ¶ 53.) (Pet., ¶ 172.)

The Commission drew Senate District 8 (FTHLL) trying to justify this district by noting the need to build two Voting Rights Act Section 5 districts just to the west, but in fact the drawing of section 5 districts including Merced and Kings County do not require the rest of the Central Valley to be stretched across the map. (Quinn Dec., ¶ 43.) (Pet., ¶ 173.) The Commission had an opportunity to meet section 5 by drawing Latino Senate seat in Monterey County and failed to do so. (Quinn Dec., ¶ 53) (Pet., ¶ 174.)

In drawing Senate districts, the Commission purported to comply with Voting Rights Act Section 5's non-retrogression standard for Latino/Hispanic voters in Senate Districts 12 and 17, while ignoring the fact that no Latino has ever been elected in either District. In doing so, the Commission passed up the opportunity to draw a Monterey-Santa Clara Senate District where Latino and Latina Assembly members have been elected. The Commission hewed to a formalistic population percentage approach to avoiding Section 5-prohibited "retrogression," while ignoring the fundamental requirement of Section 5 to protect Latino minorities' "opportunity to elect candidates of choice."

The Commission offers no justification in its Findings for drawing Senate Districts 12 or 17 as it did, effectively reducing the opportunity for Latinos to elect candidates of choice, ignoring actual voting history that does exist and demonstrates that differently drawn, such districts would enhance the opportunities for Latinos. The Commission's determination is entitled to minimum deference under *Article XXI, §3(b)(3)*, and this Court properly may find this district clearly and unmistakably unconstitutional under Article XXI, §§ 2(d)(1).

IV. SHOULD PETITIONER'S REFERENDUM BE "LIKELY TO QUALIFY AND STAY" THE EFFECTIVENESS OF THE COMMISSION'S CERTIFIED SENATE MAP, PETITIONER SEEKS RELIEF ON THE FIFTH CAUSE OF ACTION WHETHER OR NOT THE COURT HAS FOUND THE SENATE MAPS TO BE UNCONSTITUTIONAL

A. Proposition 11, as Amended by Proposition 20, Extends the Right of Referendum of the Commission's Senate Maps in a Unique, Unprecedented Manner, and Authorizes this Court to Order Special Masters to Adjust Boundaries of the Senate Maps

The Proposition 20 amendments to Proposition 11 guaranteed the right of referendum, made clear that upon likely qualification of the referendum the effectiveness of the challenged map is stayed until after the referendum election, and at that point "any voter" can petition the court for "relief" to convene special masters to draw interim lines for the plan that is subject to referendum. The use of the term "relief" in both sections 3(b)(2) and 3(b)(3), with the latter cross-referencing of section 2(j) authorizes the Supreme Court to order Special Masters to draw "interim" boundary lines for the Senate.

Article XXI, § 3(b) was amended by Proposition 20 to add the italicized language:

> (b) (1) The California Supreme Court has original and exclusive jurisdiction in all proceedings in which a certified final map is challenged *or is claimed not to have taken timely effect.*

Under Article II, § 10(a), a referendum statute is superseded upon qualification of sufficient petition signatures and does not take effect until the day after the election on the referendum. Thus, in addition to providing that the Supreme Court has jurisdiction, the language of Article XXI, § 3(b) also makes clear that the Court's authority arises when a referendum

petition is likely to qualify and at that point the map "is claimed not to have taken timely effect."

Article XXI, § 2 (i) provides:

> *Each certified final map shall be subject to referendum in the same manner that a statute is subject to referendum pursuant to Section 9 of Article II.* The date of certification of a final map to the Secretary of State shall be deemed the enactment date for purposes of Section 9 of Article II.

Article XXI, § 3(b)(2) provides:

> Any registered voter in this state may file a petition for a writ of mandate or writ of prohibition, within 45 days after the Commission has certified a final map to the Secretary of State, to bar the Secretary of State from implementing the plan on the grounds that the filed plan violates this Constitution, the United States Constitution, or any federal or state statute. *Any registered voter in this state may also file a petition for a writ of mandate or writ of prohibition to seek relief where a certified final map is subject to a referendum measure that is likely to qualify and stay the timely implementation of the map.*

This language provides that a voter's writ petition is to "seek relief." The last part of the sentence says that relief can be sought when a referendum is likely to qualify. The use of "qualify and stay" makes clear that the map's effectiveness is stayed upon likely qualification of the referendum and *that stay is automatic.*

Section 3(b)(3) provides that this Court "shall give priority to ruling" on a petition for writ of mandate:

> "The California Supreme Court shall give priority to ruling on a petition for a writ of mandate or a writ of prohibition filed pursuant to paragraph (2). If the court determines that a final certified map violates this Constitution, the United States Constitution, or any federal or state statute, the court shall fashion the relief that it deems appropriate, *including,*

but not limited to, the relief set forth in subdivision (j) of Section 2. (Italics added.)

B. This Article XXI Relief Reverses the Court's Action and Relief in *Assembly v. Deukmejian* With Respect to the Circumstance in Which a Referendum is Filed and is "Likely to Qualify and Stay" the Effectiveness of the Senate Maps

The Proposition 20 amendment to Proposition 11 and Article XXI reverses the main holdings with respect to the referendum stay power in *Assembly*, *supra*, 30 Cal.3d 538. In *Assembly*, this Court on a 4-3 vote declined to give effectiveness to the referendum stay provisions of Article II, sections 9 and 10 of the California Constitution in the face of qualified referenda against three Legislative redistricting plans, and imposed for the election of 1982 the Legislatively-drawn state district plans for the Senate and Assembly pending the referendum, on the grounds that the Court had insufficient time to draw alternative maps. The three redistricting plans subject to referendum were rejected by the voters at the June 1982 primary election.

Article XXI, §§ 3(b) and 2 (j), read together, mandate the court to act promptly, to make final substantive legal determinations as to the Petitioner's invalidity claims, and to fashion speedy and appropriate relief using special masters (as the Court had done in 1973 and 1991) when the redistricting process has been "truncated," i.e., left incomplete, by the exercise of the referendum power. Plainly, this Court has broad, swift supervisory authority, which has been invoked by this Petitioner.

V. REMEDIES AVAILABLE TO THE COURT

The Petitioner has prayed for relief as follows on the grounds that Special Masters, upon order of this Court, can expeditiously draw new boundaries for the Senate maps to correct the unconstitutional violations set

forth in the First, Second, Third, Fourth and Fifth Causes of Action, in a variety of ways, including but not limited to:

A. Drawing new boundaries for the entire State in the manner established by the 1991 Masters, as alleged at paragraph 48 of the Petition, portions of which that are suggested in the Quinn Declaration, at paragraphs 87-91, inclusive.

B. Drawing new boundaries for the affected Senate districts that are identified as unconstitutional in paragraphs through above, as suggested in the Quinn Declaration, at paragraphs 87-91 inclusive.

C. Using the unchallenged State Assembly maps certified by the Commission as a basis for fully or substantially nesting two Assembly Districts to create new boundaries for the affected Senate districts alleged as unconstitutional in paragraphs through above, pursuant to the permissive requirement of Art. XXI, § 2(b)(6).

The Masters also "nested" two full Assembly Districts within one full Senate District, following the Special Masters' template in *Reinecke, supra*, 10 Cal.3d. at pp. 402 & 434. *Wilson, supra*, 1 Cal.4th at p. 714:

> As we indicated in *Wilson I, supra,* 54 Cal.3d at page 473, the Masters were directed to be "guided by" various standards and criteria, including ... the criteria developed by an earlier panel of special masters for the reapportionment plans adopted by the court in 1973.
> These 1973 criteria include ... (6) formation of state senatorial districts from adjacent assembly districts ("nesting")...."

Nesting two, whole unchallenged Assembly districts drawn by the Commission within in a single, whole Senate district would allow the Court to give partial effect to districts that do not face the constitutional challenges and problems alleged and proved by the Petitioner herein.

VI. TIMING ISSUES

In 1991, this Court requested the Secretary of State to provide the Court with information and recommendations on the compression and/or waiver of certain election requirements and filing schedules for the 1992 primary election. (*Wilson v. Eu* (*"Wilson II."*) (1991)54 Cal.3d 546, 550.) This procedure is available to allow the Court to ensure that it has sufficient time to establish a schedule for the Special Masters to draw new boundaries for the June 5 and November 3, 2012 elections, to receive comments on the proposed boundaries and for this Court to review and adopt, either as proposed or as amended, such new boundaries.

In the event this Court determines there is insufficient time for the drawing of interim boundaries for the Senate, the Court should follow the guidance of *Reinecke* and the dissenting Justices in Assembly, and leave in place for the 2012 elections, pending the outcome of the popular vote on Petitioner VANDERMOST's referendum, the existing boundaries of the Senate that have been used for the 2002, 2004, 2006, 2008 and 2010 elections.

CONCLUSION

The Petitioner respectfully asks this Court to determine that the challenged Senate maps certified by the Commission are unconstitutional under Article XXI, section 2(d) of the California Constitution, as alleged more particularly in the Petition for Writ of Mandate, and that the Court should issue its writ of mandate or prohibition to the Secretary of State, as specified in Article XXI, section 3(b)(2) prohibiting the Secretary of State from implementing the Senate plan, and order Special Masters to draw new district boundaries for the Senate for the 2012 elections and afterward.

If prior to the Court taking such action, the Petitioner's referendum petition is submitted to election officials and the Petitioner further advises the Court, and the Court concurs, that the referendum is likely to qualify for

the ballot and stay the effectiveness of the certified Senate maps, the Court should immediately order Special Masters to draw new boundaries for the Senate for the 2012 elections.

Dated: September 15, 2011 Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Shannon Diaz, Declare:

I am a resident of the State of California and over the age of eighteen years and not a party to the within-entitled action; my business address is 455 Capitol Mall, Suite 600, Sacramento, California 95814. On September 15, 2011, I served the following document(s) described as:

VERIFIED PETITION FOR EXTRAORDINARY RELIEF IN THE FORM OF MANDAMUS OR PROHIBITION EMERGENCY STAY REQUESTED; MEMORANDUM OF POINTS AND AUTHORITIERS IN SUPPORT THEREOF

on the following party(ies) in said action:

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SECRETARY OF STATE

X **BY U.S. MAIL:** By placing said document(s) in a sealed envelope and depositing said envelope, with postage thereon fully prepaid, in the United States Postal Service mailbox in Sacramento, California, addressed to said party(ies), in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

X **BY ELECTRONIC MAIL:** By causing true copy(ies) of PDF versions of said document(s) to be sent to the e-mail address of each party listed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 15, 2011 at Sacramento, California.

Shannon Diaz

SHANNON DIAZ