

NO. _____

IN THE SUPREME COURT OF CALIFORNIA

GEORGE RADANOVICH

Petitioner,

CHARLES PATRICK

Petitioner,

GWEN PATRICK

Petitioner,

OMAR NAVARRO

Petitioner

TRUNG PHAN

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 AUTHORITIES IN SUPPORT THEREOF**

Steven D. Baric, SBN 200066
Baric, Tran & Minesinger
2603 Main Street #1050
Irvine, California 92651
(949) 468-1047
sbaric@bamlawyers.com
Counsel of Record

Paul E. Sullivan, SBN 088138
Sullivan & Associates, PLLC
601 Pennsylvania Ave. N.W.
Suite 900
Washington, D.C. 20004

Attorneys for Petitioner

TABLE OF CONTENTS

INTRODUCTION.....6

PARTIES.....7

JURISDICTION AND VENUE.....9

GENERAL ALLEGATIONS.....9

 Proposition 119

 Proposition 2013

 Commission Certification of Congressional District Maps.....16

FIRST CAUSE OF ACTION *Violation of the 14th Amendment of the United States Constitution*17

SECOND CAUSE OF ACTION *Violation of California Constitution, Art. XXI, §2(d)(1 (Voting Rights Act)*19

 Section 2.....19

THIRD CAUSE OF ACTION *Violation of California Constitution, Art. XXI, §2(d)(3):Violation of Geographic Compactness and Contiguity Requirements*22

FOURTH CAUSE OF ACTION *Violation of California Constitution, Art. XXI, §2(d)(4 (Avoiding Unnecessary Division of Cities)*25

ISSUANCE OF A WRIT OF MANDATE IS APPROPRIATE.....28

PRAYER FOR RELIEF29

VERIFICATION.....31

VERIFICATION.....32

VERIFICATION.....33

VERIFICATION.....34

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF MANDATE OR PROHIBITION35

INTRODUCTION.....35

I. The Petitioner’s Constitutional Challenge36

II. Requested Relief	36
ARGUMENT	37
I. THE COURT HAS “ORIGINAL AND EXCLUSIVE” JURISDICTION AND HAS AN EXTRAORDINARY, UNIQUE MANDATE TO RULE ON THE CONSTITUTIONAL CLAIMS PRESENTED BY THE PETITIONER	37
A. Article XXI, §3(b)(1) Authorizes This Court to Exercise Such Jurisdiction with Respect to Substantive Challenges to the Commission’s Congressional Map	37
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	38
C. Article XXI, §3(b)(3) Provides as the Express Form of Relief Convening Special Masters to Draw New Boundaries for the Congressional Maps	39
II. ARTICLE XXI, §3(b)(1) AND (b)(2) AFFORD THE COMMISSION’S MAP-DRAWING EFFORTS NO SPECIAL DEFERENCE	39
A. The Commission Is Not Accorded the Deference To Which the Legislature Was Entitled in Former Redistricting Cases Under Separation of Powers Principles	39
B. The Commission’s Maps, Even if Entitled to the Presumption of Constitutionality, are Clearly, Positively and Unmistakably Unconstitutional	44
III. VIOLATION OF ARTICLE XXI, §2(D)(1) – VOTING RIGHTS ACT	45
IV. VIOLATION OF 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION	51
V. THE COMMISSION’S CONGRESSIONAL MAPS VIOLATE SPECIFIC STATE CONSTITUTIONAL CRITERIA SET FORTH IN ARTICLE XXI, §2(d)(3), (4) and (5)	56
A. The Article XXI Constitutional Criteria Were Adopted Nearly Verbatim by Propositions 11 and 20 From this Court’s Criteria Set Forth in <i>Legislature v. Reinecke</i> (1973) and <i>Wilson v. Eu</i> (1992)	56
B. The Commission Ignored or Misapplied These Criteria In Fashioning Congressional Districts	60
VI. REMEDIES AVAILABLE TO THE COURT	62
VII. TIMING ISSUES	63

VIII. CONCLUSION63

TABLE OF AUTHORITIES

STATE CASES

Assembly v. Deukmejian (1982) 30 Cal.3d 538 -----	15, 37, 40, 41, 42
Bowens v. Superior Court (1991) 1 Cal.4th 36, 48 -----	38
Brown v. Superior Court (1971) 5 Cal.3d 509 -----	28
County of Riverside v. Superior Court (2003) 30 Cal.4th 278-----	36
Davis v. City of Berkeley (1990) 51 Cal.3d 227 -----	38
Legislature v. Reinecke, 10 Cal 3rd 396 (1973) -	10, 11, 14, 15, 24, 25, 37, 40, 41, 42, 57, 58, 59, 60
Lungren v. Deukmejian (1988) 45 Cal.3d 727-----	38
State Pers. Bd. v. Dep't of Pers. Admin. (2005) 37 Cal. 4th 512 -----	36
Wilson v. Eu 1 Cal.4th 70710, 12, 14, 15, 23, 24, 25, 27, 40, 42, 46, 59, 60, 62, 63	
Yorty v. Anderson (1963) 60 Cal.2d 312 -----	41

FEDERAL CASES

Bartlett v. Strickland, 556 U.S. , 129 S.Ct. 1231-----	47
Beer v. United States (1976) 425 U.S. 130, 141 -----	50
Bush v Vera 517 U.S. 952 , 958-59 (1996)-----	17, 52, 53
Lulac v. Perry, supra, 548 U.S. at pp 423-443 -----	21
Marbury v. Madison (1803) 5 U.S. (1 Cranch) 137 -----	38
Miller v. Johnson, (1995) 515 U.S. 900-----	52, 53
Shaw v. Reno (1993) 509 U.S. 630 -----	52
Thornburg v. Gingles, 489 U.S. 30 (1986)-----	20, 23, 45, 47, 62
Voting Rights Act, 42 U.S.C. §1973-----	6, 17, 45, 46, 50, 57

REGULATIONS

28 C.F.R. §§51.57-51.61 (2008)-----	50
-------------------------------------	----

OTHER AUTHORITIES

2 Witkin, Cal. Proc. 5th (2008) Courts, §330, p. 420 -----	40
Oxford American Dictionary 1980, page 388 -----	14

STATE CONSTITUTIONAL PROVISIONS

Article IV, §6-----	41
Article XXI § 3(b)(3) -----	7
Article XXI §2 -----	36, 38, 39, 43
Article XXI §3(b)(3) -----	15
Article XXI 2(d)(1)-----	24
Article XXI, § 2(c)(1)-----	9

Article XXI, §1-----	9
Article XXI, §2-----	6, 39
Article XXI, §2(a)-----	8
Article XXI, §2(b)-----	9, 16
Article XXI, §2(b)(1)-----	20
Article XXI, §2(b)(2)-----	6
Article XXI, §2(d)-----	13, 16, 23, 35, 61, 63
Article XXI, §2(d)(1)-----	9, 23, 35, 45, 61
Article XXI, §2(d)(3)-----	12, 60
Article XXI, §2(d)(4)-----	12, 60
Article XXI, §2(d)(5)-----	12, 22, 60
Article XXI, §2(d)(6)-----	13
Article XXI, §2(g)-----	14
Article XXI, §2(j)-----	7
Article XXI, §3(a)-----	8
Article XXI, §3(b)(1)-----	9, 13
Article XXI, §3(b)(2)-----	13, 37, 38, 39, 40, 63
Article XXI, §3(b)(3)-----	13, 36, 38
Article. XXI, §2(c)-----	9
Article. XXI, §3(b)(3)-----	6
Proposition 11-----	9, 12, 13, 16, 23, 37, 39, 40, 42, 43, 44, 56, 57
Proposition 20-----	9, 13, 14, 37, 39, 40, 42, 43, 44

FEDERAL CONSTITUTIONAL PROVISIONS

14th Amendment of the U.S. Constitution-----	6, 15, 17, 35, 51
Article VI, clause 2-----	46
U.S. Constitution, amend. XIV, §1-----	52
Voting Rights Act of 1965-----	10, 20, 22

INTRODUCTION

1. This petition challenges certified maps for the California Congressional maps that were adopted on August 15, 2011 by the Citizens' Redistricting Commission ("Commission"), pursuant to the Commission's mandate under Article XXI, §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 certain Congressional maps unconstitutional or otherwise unlawful and unenforceable, and prohibiting the implementation of these Congressional maps for the June 5, 2012 primary election or any election thereafter in the decade commencing 2011 and ending in 2021. Petitioners each seek a writ of mandamus directing the California Secretary of State not to make use of those certain Congressional maps, certified by the Citizens Redistricting Commission ("Commission") on August 15, 2011. Four of the Congressional Districts (37th, 43rd, 44th and 47th) are drawn in violation of the Equal Protection Clause of the 14th Amendment of the U.S. Constitution, there are six Districts drawn in violation of the provisions of the California Constitution, relative to redistricting criteria of compactness, contiguity and divisions of cities and counties. There is also three Districts (37th, 43rd and 44th) in violation of the Voting Rights Act, 42 U.S.C. §1973 (a). These numerous violations have resulted in depriving African-American, Latino and Asian voters the opportunity to elect candidates of choice.

2. The Petitioner seeks the priority ruling on their petition from this Court as provided in Article. 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 [Article XXI, §2(b)(2)."] The Petitioner respectfully requests that the Court forthwith appoint special

masters to assist the Court in evaluating their substantive claims (set forth more fully below) to authorize Special Masters to draw new boundaries for those Congressional Districts at issue in this Petition and certify those new boundaries for each type of district to the Secretary of State for implementation. Article XXI § 3(b)(3).

3. Article XXI, §2(j) further provides that “[U]pon its approval of the special masters’ interim Congressional map, the court shall certify the resulting map to the Secretary of State, which map shall constitute the certified final map for the subject type of district.”

4. 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 Congressional map as set forth more particularly herein.

PARTIES

5. Parties:

A. Petitioner, George Radanovich, is of majority age and is a 56 year resident of California, a qualified register voter and a person who has voted in the general elections for the last 38 years in the State of California. He is a former member of Congress for sixteen years (retiring in 2010) and as such is familiar with the Congressional Districts and the make-up of those districts.

B. Charles N. Patrick, is an African-American of majority age and a resident of Gardena, California, and has been so since 1999. Mr. Patrick has been a resident of California for over 50 years. He is a qualified registered voter in the State of California and has voted in the general election for more than the past 20 years.

C. Gwen S Patrick is an African-American of majority age and a resident of Gardena, California, and has been so since 1999. Mrs.

Patrick has been a resident of California for over 50 year. She is a qualified registered voter in the State of California and has voted in the general election for more than the past 20 years

D. Omar Navarro is a Latino of majority age and a resident of Torrance, California has been so for the last five years. He has been a resident of the State of California for his entire life. He is a qualified registered voter who has voted in all the general elections since his 18th birthday

E. Petitioner, Trung Phan is an Asian qualified registered voter of majority age; he is a resident of the State of California. He has voted in the last several elections.

6. 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 pertain to California Congressional voting Districts and mandated mailing of the state voting ballot pamphlet for each Congressional statewide election, all of which are paid for by taxpayer funds.

7. 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 Congressional District. (Article XXI, §3(a).) While the voters 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

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

GENERAL ALLEGATIONS

Proposition 11

9. On November 4, 2008, California voters adopted Proposition 11. 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 (Article 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." (Article XXI, §2(b).)

10. Proposition 20, adopted by the voters of California on November 2, 2010, established a formula for composing the Citizens Redistricting Commission (Article XXI, §2(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." (Article XXI, § 2(c)(1).)

11. In addition, Proposition 11 amended the Article XXI "criteria" for redistricting. Article XXI, §2(d)(1) 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 (“VRA”). After these priority requirements, Proposition 11 supplemented and adopted almost verbatim the criteria formulated by the California Supreme Court in *Legislature v. Reinecke*, 10 Cal 3rd 396 (1973) (“*Reinecke*”) and *Wilson v. Eu* 1 Cal.4th 707 (“*Wilson*”) decisions.

12. 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.) (“Quinn Dec.”), See Quinn Dec. ¶ 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., ¶34.)

13. 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., ¶35.) 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., ¶ 36.)

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.*) (Quinn Dec., ¶ 37.)

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.

- Article XXI, §2(d)(3): “Districts shall be geographically contiguous.”
- Article 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.... ”
- Article 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.”

- Article XXI, §2(d)(6): “To the extent practicable, and where this does not conflict with the criteria above, each Congressional district shall be composed of two whole, complete and adjacent Assembly districts....”

(Quinn Dec., ¶ 38.)

16. Proposition 11 also provides specially for original and exclusive jurisdiction of the Supreme Court to hear claims against the Commission’s certified maps. (Article XXI, §3(b)(1).) Any voter is 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. (Article XXI, §3(b)(2).) 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. (Article XXI, §3(b)(3).)

17. Proposition 11 left redistricting of Congressional districts to the Legislature. However, on November 2, 2010, after the proceedings to establish the Commission was underway, the voters of California adopted Proposition 20, which authorized the Commission also to adopt Congressional district maps following the decennial census.

Proposition 20

18. Proposition 20 also defined the term “communities of interest” as used in Article XXI, §2(d). 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. (Article XXI, §2(g).)

19. 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., ¶ 43.)

20. 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. (Quinn Dec. ¶44) 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.)

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 precedents by making clear that in the truncated redistricting process, the Court may use Special Masters to correct the district lines. Article XXI §3(b)(3).

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. (*Id.*)

Commission Certification of Congressional District Maps

21. 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, Gibson Dunn and a special “racially polarized voting” consultant, Dr. Barreto; 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; issued, “State of California Citizens Redistricting Commission Final Report On 2011 Redistricting, August 15, 2011 (Final Report a true and complete copy of which is attached hereto at Exhibit “N” and fully incorporated herein)

22. The Final Report, at pp. 52-62 sets forth its findings and reasons for adopting the certified Congressional maps, on a district-by-district basis.

23. The Commission received substantial testimony from members of the public concerning the Congressional districts, in particular with respect to the Commission’s adherence to the criteria set forth in Article XXI, §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 Article 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, (Final Report pp. 3-5).

FIRST CAUSE OF ACTION
Violation of the 14th Amendment of the United States Constitution

24. The Commission drew the 37th, 43rd and 44th Congressional District based upon the predominate factor of race and for that reason the Commission's actions violate the Equal Protection Clause of the 14th Amendment to the U.S. Constitution.

25. The Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution states in part that, "no state shall ...deny to any person within its jurisdiction the equal protection of the laws." In the Final Report, the Commission correctly articulates this applicable standard (Final Report, pp 11-13). The Commission merely failed to follow that standard as it applies to the three Los Angeles Congressional District's at issue.

26. As applied to redistricting matters, the 14th Amendment prohibits the state from using race as the sole or predominant factor in drawing district lines. The Court has held that it will apply a strict scrutiny standard when the state makes use of race as the sole or pre-dominate factor in developing district lines. The state will only be permitted to use race as a sole or predominate factor when the state can evidence a compelling state interest that is narrowly tailored. (*Bush v Vera* 517 U.S. 952, 958-59 (1996). The Commission's records are replete with evidence that race was the predominant, if not the sole reason, for the lines drawn for three Los

Angeles County's Congressional District. Yet, the Commission concluded these three districts were not to be considered VRA §2 districts, therefore the Commission do not have available to it at this stage of the proceedings, the defense that its race based actions were compelled by compliance with VRA. The Commissions actions are therefore taken without a justified compelling state interest.

27. The Commission received extensive race based testimony from the public to retain the 37th Congressional District as a non-majority African American district. Testimony was received advocating spreading out the African-American population among the three Los Angeles County Congressional Districts (See June 1, 2011 A. Huffman Letter to Commissioner referenced at Quinn, ¶. 7. Also a true and correct copy is attached to the RJN as Exhibit "O"). There was in fact no other argument submitted for the record, other than the desire to preserve a consistent minority African-American representation in each of the three (37th, 43rd and 44th) Los Angeles Congressional Districts.

28. In response to a rather unique factual situation pursued b the Commission, the Petitioners allege that the Commission intentionally diluted the African-American CVAP in each of the aforementioned Los Angeles Congressional Districts, so as to maintain only a 28%-35% African-American CVAP in each District (Quinn Dec. ¶29) but refused to draw one or even two African-American majority-minority districts. The purpose for agreeing to this African-American CVAP dilution was to construct three politically gerrymandered districts to protect the current incumbents in those Los Angeles County Congressional Districts. (Quinn Dec. ¶¶ 25, 31 and 19) The impact of this race based gerrymandering is the African-American CVAP will in the near future be denied their ability to elect candidates of their choice. Given the diluted level of the African-American CVAP, after the current incumbents vacate their respective

Congressional offices, it is highly unlikely due to the historical polarized voting in Los Angeles County that a African-American candidate will be able to be elected in those Congressional Districts. (Quinn Dec. ¶¶ 29 and 31) Such a scenario may in-fact present itself sooner than later. (See Quinn Dec. ¶ 31)

29. This invidious discrimination of the African-American vote by the Commission also is the direct cause for the loss of one or even two additional Latino majority-minority districts. (Quinn Dec. ¶¶ 21-24).

30. The Commission has used race, namely the intentional dilution of the African-American CVAP and their intentional failure to construct one or two African-American majority-minority districts, as it's predominate reason for the drawing of the three Congressional Districts. It has failed to proffer any compelling state interest for this intentional discriminatory dilution of the African-American CVAP and the direct impact that action had upon denying the Latino community of Los Angeles County one or two additional Latino majority-minority districts. As such, the Congressional maps for Congressional Districts 37, 43 and 44, must be found to be unconstitutionally constructed by the Commission in violation of the Equal Protection Clause.

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

31. Petitioner re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 30.

32. The Commission-certified Congressional maps, in particular Congressional Districts 37, 43, and 44, were drawn in a manner that denied or abridged the right to vote of affected African American minority groups

in violation of Section 2 of the Voting Rights Act of 1965, 42 USCA, §1973 (a) and (b), as incorporated in Article XXI, §2(b)(1).

33. Petitioner contends that the Commission failed to comply with the mandates of the VRA. Due to the dramatic drop off of African-American VAP in Los Angeles County, (Quinn Dec. ¶¶2 and 23) the Commission had an affirmative duty to create one or possibly two VRA Section 2 African-American majority-minority districts and its failure to do so diluted the African-American vote and constituted a violation of the VRA and the California Constitution.

34. The Commission had a corresponding obligation under VRA Section 2, to draw one or two additional Latino majority-minority districts. It failed to fulfill this obligation also due to its failure to consolidate one or two of the L.A. County Congressional Districts into a VRA Section 2 district. Had they done so, it would have made available the opportunity to also create the required additional Latino VRA Section 2 majority-minority district. (Quinn Dec. ¶¶ 18, 19, 20 and 21).

35. An objective analysis of Los Angeles County could lead to only one rational conclusion. In light of the dramatic reduction in the African-American population, (Quinn Dec. ¶¶ 2 and 3) the fact that the *Gingles* preconditions were met (Quinn Dec. ¶¶ 8 and 17) and the polarized voting patterns, (Quinn Dec. ¶¶ 12-17) the Commission has an affirmative obligation to create a African-American Section 2 VRA district and to create one or two additional Latino districts. (See Quinn ¶¶21-24).

36. The African-American CVAP in LA County has seen a steady decline during the last 30 years to the point where it currently stands at 8.2 % and cannot currently justify three Los Angeles County Congressional Districts especially when compared to Latino population in the same geographic vicinity. (Quinn Dec. ¶¶23 and 24). The 1980 Census revealed African-American residents in LA County constituted 12.6 percent

of the County and Hispanics were at 27.6%. 1990 10.6% and 37.8% respectively; 2000 9.8% and 44.6% respectively and 2010 8.3 and 47.7; absolute numbers for African-Americans has dropped from 944,009 in 1980 to 856,874 in 2010; while Hispanic absolute numbers have increased from 2,065,727 in 1980 to 4,687,899 in 2010 (Quinn Dec. ¶2). There is no reason to believe that these 30 year trend lines will change and therefore, the failure of the Commission to draw a Section 2 African-American majority-minority district will in all likelihood see a non- African-American representing each of the Los Angeles County Congressional Districts during the next decade (Quinn ¶¶29 and 31).

37. The Commission in its Final Report aptly summarizes the current standards of review to determine if there has been a violation of VRA Section 2. “Accordingly, a Section 2 violation occurs where ‘a contested electoral practice or structure results in members of a protected group having less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice’ (Id. at p. 63) Importantly, the U.S. Supreme Court has invoked Section 2 to strike down legislative redistricting plans that result in minority vote dilution as defined by Section 2. (See *Lulac v. Perry*, supra, 548 U.S. at pp 423-443). (Final Report pp 13-14 attached to RJN as Exhibit “N”)

38. There is overwhelming evidence in the record that the Los Angeles County area has a history of polarized voting. (Quinn Dec. ¶¶ 11 and 16) The Commission retained the services of Dr. Matt A Barreto of the University of Washington for purposes of conducting a racially polarized voting study which he issued to the Commission on July 13, 2010. (Barreto Study a true and correct copy is to the RJN as Exhibit “R”). After a review by Dr. Barreto of the 2006, 2008 and 2010 primary elections in Los Angeles, he concluded, “The findings have demonstrated that polarized

voting exist county wide throughout Los Angeles, as well as in specific regions such as the city of Los Angeles, the eastern San Gabriel Valley area, northern Los Angeles County and central/southwest region of Los Angeles County”. (Quinn ¶13)

39. With this overwhelming level of evidence in its record, the Commission had the obligation to comply with the mandates of the VRA and draw one or perhaps two Section 2 African-American districts (See Quinn ¶19). In its attempt to maintain the three incumbent Congressional Districts and disregard the evidence before it, the Commission looked predominantly at the race/ethnic make-up of the district in drawing the lines for those 3 Congressional Districts (Quinn ¶18). In doing so, its actions violated the provisions of Section 2 of the VRA to the detriment of BOTH African-American and Latino CVAP. The Commission-certified Congressional maps, in particular Congressional Districts 37, 43, and 44, 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 §1973 and on that basis the maps must be voided.

THIRD CAUSE OF ACTION

Violation of California Constitution, Art. XXI, §2(d)(3): Violation of Geographic Compactness and Contiguity Requirements

40. Petitioner re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 40 above.

41. The people in enacting Propositions 11 and 20 added a further criterion by defining geographic compactness. Article 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 is not bypassed for more distant population.

(Quinn Dec., ¶40.)

42. 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., ¶41.)

43. 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., ¶42.)

44. The sole exceptions in Article XXI, §2(d) from this anti-gerrymandering rule are set forth in Article XXI, §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.*) In addition, the Commission’s decision not to utilize VRA Section 2 for the L.A. County Congressional Districts, precludes them from

now proffering that statutory provision as a defense to the Article XXI 2(d)(1) mandates.

45. 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., ¶44.) The thrust of this legal action is to challenge the constitutionality of those Congressional districts where this rule was violated.

46. The Petitioner alleges more specifically herein that certain Congressional districts where adjacent populations were clearly bypassed for more distant population rendered not only unfair and ineffective the districts that were so created but also rendered them unconstitutional.

47. “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.)

48. 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.)

49. 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.

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 Congressional 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.

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

52. Petitioner re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 115 above.

53. The Commission admits that it was required to split many cities in Los Angeles County and adjoining counties in order to create its required Section 2 districts (all Latino Section 2 districts). (Quinn Dec. ¶45)

54. Congressional District 27: The cities of Glendora, Monrovia, Pasadena, and Upland are split in this district to achieve population equality and in light of the adjacent district that was drawn in consideration of Section 2 of the Voting Rights Act. (Final Report, page 57 attached to the RJN as Exhibit “N” and a true and correct copy of the map is attached to the RJN as Exhibit “A”)

55. Congressional District 28: The city of Burbank is split in this district. . (Final Report, page 57 attached to the RJN as Exhibit “N” and a true and correct copy of the map is attached to the RJN as Exhibit “B”)

56. Congressional District 32: The cities of Glendora, Industry, and Monrovia are split in this district to achieve population equality and in consideration of Section 2 of the Voting Rights Act. . (Final Report, page

57 attached to the RJN as Exhibit “N” and a true and correct copy of the map is attached to the RJN as Exhibit “C”)

57. Congressional District 33: The cities of Torrance and Los Angeles were split to achieve population equality. . (Final Report, page 57 attached to the RJN as Exhibit “N” and a true and correct copy of the map is attached to the RJN as Exhibit “D”)

58. Congressional District 37: The cities of Inglewood and Los Angeles were split to achieve population equality. . (Final Report, page 57 attached to the RJN as Exhibit “N” and a true and correct copy of the map is attached to the RJN as Exhibit “E”)

59. Congressional District 38: Divides the cities of Bellflower and Lakewood to comply with Section 2 of the Voting Rights Act and to achieve population equality. . (Final Report, page 57 attached to the RJN as Exhibit “N” and a true and correct copy of the map is attached to the RJN as Exhibit “F”)

60. Congressional District 40: Portions of Bellflower and Los Angeles are split to achieve population equality and in consideration of Section 2 of the Voting Rights Act. . (Final Report, page 57 attached to the RJN as Exhibit “N” and a true and correct copy of the map is attached to the RJN as Exhibit “G”)

61. Congressional District 43: The cities of Inglewood, Los Angeles, and Torrance were split to achieve population equality. . (Final Report, page 57 attached to the RJN as Exhibit “N” and a true and correct copy of the map is attached to the RJN as Exhibit “H”)

62. Congressional District 44: The cities of Long Beach and Los Angeles were split to achieve population equality. . (Final Report, page 57 attached to the RJN as Exhibit “N” and a true and correct copy of the map is attached to the RJN as Exhibit “I”)

63. Congressional District 47: The cities of Buena Park, Garden Grove, Lakewood, Long Beach, and Westminster were split to achieve population equality. . (Final Report, page 57 attached to the RJN as Exhibit “N” and a true and correct copy of the map is attached to the RJN as Exhibit “J”)

64. Many of these city splits were unnecessary and were caused by population ripples from the racial gerrymander that retains the three African American districts. The Commission was required to create the Latino Section 2 districts in eastern Los Angeles County, but was forced to awkwardly situate them due to the pressures of the racial gerrymander in south and southwest Los Angeles. (Quinn Dec. ¶56)

65. Violation of Compactness: As the Court in *Wilson* noted, compactness is not just a geographical concept but refers 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.” This is violated in a number of ways throughout Los Angeles County, but the two most dramatic violations involve CDS 27, 33, and 47.

66. Congressional District 33 begin in the Palos Verdes Peninsula, wanders north passing through Dockweiler Beach on a tiny narrow finger, and then moves west to Malibu and east to Beverly Hills and Hancock Park. This district bypasses numerous areas of adjacent population to unite far distant populations, all of which is caused by the creation of the neighboring racially gerrymandered districts, Congressional Districts 37 and 43. The creation of these two districts caused this elongated Congressional Districts 33 that violation the State Constitution criteria. (A true and correct copy is attached to the RJN as Exhibit “D”)

67. Congressional District 47 begins at the port of Long Beach and then wanders far into central Orange County to absorb portions of Garden Grove and Westminster. As pointed out above this divides the

Orange County Asian Community. This district's shape is caused by the racially gerrymandered Congressional Districts 44 to its west. (A true and correct copy is attached to the RJN as Exhibit "I")

68. Congressional District 27 consists of San Gabriel Valley communities including Alhambra and Monterey Park, but then wanders through the San Gabriel Mountains dropping down to pick up parts of Glendora and Claremont, and then extends into San Bernardino County absorb a portion of the city of Upland. This district has the highest Asian Citizen Voting Age Population (36 percent) of any district in Los Angeles County, but its Asian influence is diluted by the inclusion of Glendora and Upland. Much adjacent population is bypassed to pick up these isolated portions. All this is caused by the required creation of neighboring Section 2 Latino districts. This district violates state constitution criteria in the name of creating adjacent Section 2 districts but in fact that would not be necessary if population ripples did not cause unnecessarily awkward Section 2 districts throughout the county. (A true and correct copy is attached to the RJN as Exhibit "A")

ISSUANCE OF A WRIT OF MANDATE IS APPROPRIATE

69. 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".).)

70. 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 Congressional 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 Congressional map for Southern California; (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 Congressional maps, on the grounds that the Congressional 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 Congressional map is unconstitutional in any respect, directing the Special Masters to draw new boundaries for the Congressional Districts at issue in this Petition.

2. On the All Causes of Action, that this Court immediately appoint Special Masters to draw new boundaries for the California State Congressional Districts at issue in this Petition, 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 those 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 grants such other, different or further relief as the Court may deem just and proper.

Dated: September ^{28th}, 2011

Respectfully Submitted,

Steven D. Baric, SBN 200066
Baric, Tran & Minesinger
2603 Main Street #1050
Irvine, California 92651
(949) 468-1047
sbaric@bamlawyers.com
Counsel of Record

Paul Sullivan, SBN 088138
Sullivan & Associates, PLLC
601 Pennsylvania Ave. N.W.
Suite 900
Washington, D.C. 20004

By: 

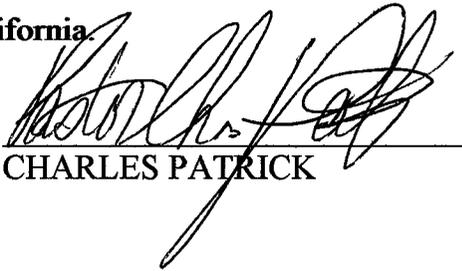
Steven D. Baric
Attorneys for Petitioners

VERIFICATION

I, CHARLES PATRICK, 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 28, 2011, at Los Angeles, California.

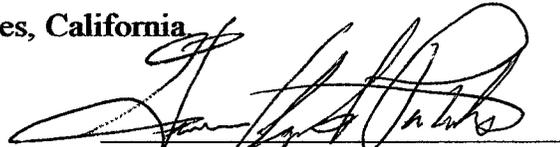

CHARLES PATRICK

VERIFICATION

I, GWEN PATRICK, 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 28, 2011, at Los Angeles, California.



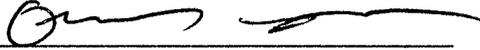
GWEN PATRICK

VERIFICATION

I, OMAR NAVARRO, 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 29, 2011, at Sacramento, California.



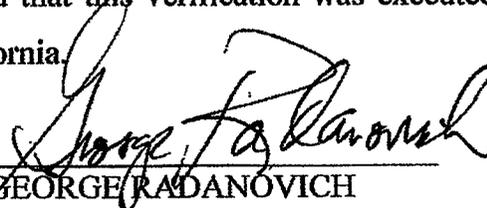
OMAR NAVARRO

VERIFICATION

I, GEORGE RADANOVICH, 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 29, 2011, at Sacramento, California.



GEORGE RADANOVICH

VERIFICATION

I, Trung Phan, 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 28 2011, at Sacramento, California.



Trung Phan

**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 Congressional District meet the requirements of the Federal California Constitution. The Petition and supporting declarations establish that the Commission's maps clearly and unmistakably violate (1) Article XXI,¹ §§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 disparate populations in violation of section 2(d)(4); (2) and by (c) violating Article XXI, §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; and (3) violating the 14th Amendment of the U.S. Constitution.

These constitutional violations are significant. The failure to create Section 2 African-American Congressional Districts in the heart of Los Angeles makes it very conceivable that this area will have not African-American representation in the next ten years. Also, because the commission racially gerrymandered 3 African-American Congressional Districts this drastically impacted the Voting Rights of California's fastest growing voting block Latino's since 1980. The Latino population has grown by 50%. Based on voting population and Voting Rights Act

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

considerations, there should have Congressional District in Los Angeles City.

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 §2.”

I. 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 Congressional 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 Congressional maps.

II. Requested Relief

Whether the Court makes a finding that the Commission's certified Congressional maps are unconstitutional the Court should implement new boundaries for the Congressional maps.

Because the existing 2001 Congressional 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 Congressional Districts 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 Congressional Map

Propositions 11 and 20 amended Article XXI of the California Constitution to authorize "any voter" to challenge the validity of the Commission's Congressional map in this Court. Moreover, Article XXI, §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 §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 Congressional 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 Congressional 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, §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 Congressional 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, §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 in severable 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 California Constitution, Article 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

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 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

terminated by operation of the Constitution on August 15, 2011, except for its responsibility to defend any litigation against its certified maps (Article 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 Congressional maps are not accorded deference by any provision of Article XXI.

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 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." Its only continuing function was to employ lawyers to defend its certified maps if they are challenged in this Court. (Art. XXI, § 3 (b)(3).)

As set forth below, the Commission's Congressional map clearly, positively and unmistakably violate four separate provisions of the Federal and 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:

- (1) The 37th, 43rd, and 44th Congressional Districts were drawn with race being the predominate factor and therefore they violate the 14th Amendment of the U.S. Constitution.
- (2) Due to the dramatic decline in African American Voting Age population in Los Angeles County and their factors. The Commission had obligation to create two Voting Rights Act districts in Los Angeles County. It failure to do so violated.
- (3) Failure of the Commission to compose a Section 2 Voting Rights Act African American district had the collateral impact of denying an additional Latino Congressional District in violation of the 14th Amendment.

III. VIOLATION OF ARTICLE XXI, §2(D)(1) -- VOTING RIGHTS ACT

An objective analysis of LA County could lead to only one rational conclusion. In light of the dramatic reduction in the African-American population, the fact that the *Gingles* preconditions were met and the polarized voting patterns, the Commission has an affirmative obligation to create a African-American sec 2 VRA district and to create one or two additional Latino districts. Article XXI, §2(d)(1) specifically requires the Commission to draw lines that comply with the Federal Voting Rights Act. (42 USCA §§1973 and 1973c.) Section 2 of the Voting Rights Act

(§1973(a)) prohibits a State 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. Constitution, Article VI, clause 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.

The African-American CVAP in LA County has seen a steady decline during the last 30 years to the point where it currently stands at 8.2 % and can not currently justify 3 Congressional Districts. 1980 Census African-American residents in Los Angeles County constituted 12.6 percent of the County and Hispanics were at 27.6%. 1990 10.6% and 37.8% respectively; 2000 9.8% and 44.6% respectively and 2010 8.3 and 47.7; absolute numbers for African-Americans has dropped from 944,009 in 1980 to 856,874 in 2010; while Hispanic absolute numbers have increased from 2,065,727 in 1980 to 4,687,899 in 2010.

There is no reason to believe that these 30 year trend lines will change and therefore, the failure of the Commission to draw a Section 2 African-American majority-minority district will in all likelihood see a

non- African-American representing each of the Los Angeles County Congressional Districts during the next decade (Quinn p. 12) The Commission in its Final Report aptly summarizes the current standards of review to determine if there has been a violation of Section 2 of the VRA. Accordingly, a Section 2 violation occurs where ‘a contested electoral practice or structure results in members of a protected group having less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice’ (Id. at p. 63) Importantly, the U.S. Supreme Court has invoked Section 2 to strike down legislative redistricting plans that result in minority vote dilution as defined by Section 2. (See *Lulac v. Perry*, 548 U.S. at pp 423-443). (Final Report pp 13-14)

The first prong of Gingles is met for all of LA County. The ethnic/racial populations are very compact (Quinn p. 7 and maps attached thereto). The population concentration is in excess of the 50 percent Citizens Voting Age population threshold; third, the voters have a long history of voting for and electing minority group candidates of choice.

There is overwhelming evidence in the record that the LA County area has a history of polarized voting. The Commission retained the services of Dr. Matt A Barreto of the University of Washington for purposes of conducting a racially polarized voting study which he issued to the Commission on July 13, 2010. (Barreto Study). After a review by Dr. Barreto of the 2006, 2008 and 2010 primary elections in Los Angeles, he concluded, “The findings have demonstrated that polarized voting exist county wide throughout Los Angeles, as well as in specific regions such as the city of Los Angeles, the eastern San Gabriel Valley area, northern L.A. County and central/southwest region of L.A. County”. (Barreto Study, p. 3; See also Quinn ¶¶ 9-12)

A similar conclusion was reach by the Commission's own legal counsel. "We have concluded that racially polarized voting likely exist in Los Angeles County. The evidence we have reviewed indicates that a significant number of Latinos vote together for the same candidates, while non-Latinos vote in significant numbers for different candidates." (See also Quinn ¶¶ 13-15).

Opposition to the advice in the Gibson Dunn Memo for the drawing of a VRA Section 2 African-American district was minimal and lacked the objective interest of the Barreto Study and its thoroughness. See June 1, 2011 letter to the Commission from Alice A. Huffman, President of California State Conference of the NAACP, in which she acknowledges that if there is evidence of polarized voting a VRA Section 2 African-American district is required to be created; her argument in the letter was there is no such evidence of polarized voting. Also, note that this letter was issued prior to issuance of the Barreto Study. (Huffman Letter attached to RJN as Exhibit "O")

With this overwhelming level of evidence in its record, the Commission had the obligation to comply with the mandates of the VRA and draw one or perhaps two Section 2 African-American districts (See Quinn ¶¶15 and 17). In its attempt to maintain the three incumbent Congressional Districts and disregard the evidence before it, the Commission looked predominantly at the race/ethnic make-up of the district in drawing the lines for those 3 Congressional Districts. In doing so, its actions violated the provisions of Section 2 of the VRA and on that basis the maps must be voided.

Section 5

The Commission-certified Congressional maps, in particular Congressional District 37, 43and 44, 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).)

The failure of the Commission to comply with the VRA and permit the 3 Congressional Districts with a diluted African-American VAP, had the collateral impact of denying one or two additional Latino Congressional Districts in Los Angeles County and therefore, caused an under representation of the Latino population in violation of the Equal Protection Clause of the 14th Amendment and a violation of the VRA.

As noted above, from 1980 to 2010 there has been more than a doubling of the Latino population (2,065,727 in 1980 to 4,687,899 in 2010) resulting in the Latino community making up 47% of the population of L.A. County. The Commission has the affirmative obligation to ensure that under the VRA that Latino VAP was not diluted but rather to develop

Congressional Districts commensurate with their Los Angeles County population, especially in light of the evident polarized voting.

Had the Commission complied with the VRA act and generated one or two Section 2 African-American Districts, then it correspondingly would have caused one or two additional Latino Districts. As a result of this misfeasance, the Los Angeles County Latino population has been denied what otherwise would have been one or two additional Latino Districts. To more readily emphasize the point, the current Latino population of Los Angeles County is 47.4% and the African-American population 8.3%; almost a 6-1 ratio. However, the Commissions actions created 3 non-Section 2 African American districts and only 5 Section 2 Latino districts.(Quinn ¶ 17). This action by the Commission thereby causes a violation of Equal Protection Clause and the VRA.

IV.VIOLATION OF 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION

The 37th, 43rd and 44th Congressional District were drawn with the predominate factor being race and for that reason they violate the 14th Amendment to the U.S. Constitution. In its Final Report, the Commission correctly articulates the applicable standard (Final Report, pp 11-13). The Commission merely failed to follow that standard as it applies to the three Congressional District's at issue. The Commission's records are replete with evidence that race was the predominant if not the sole reason for the 3 Congressional District's composition. The Commission did not consider these three districts to be section 2 districts, therefore compliance with VRA is not a rational available for the Commission in this instance.

The Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution states in part that, "no state shall...deny to any person

within its jurisdiction the equal protection of the laws." (U.S. Constitution, amend. XIV, §1.) "Laws that explicitly distinguish between individuals on racial grounds fall within the core of that prohibition." (*Shaw v. Reno* (1993) 509 U.S. 630, 643.) Regardless of whether a law employs express race based classifications, or on its face is race neutral but cannot be explained on grounds other than race, the Fourteenth Amendment requires that it be narrowly tailored to further a compelling governmental interest. (*Shaw v. Reno*, supra, at p. 643.) The strict scrutiny requirement is necessary in order to determine if the classification is benign, remedial or simply an obvious pretext for racial discrimination. (*Shaw v. Reno*, supra, at p. 643-44.) Therefore, drawing district lines primarily based on race can result in a violation of the Fourteenth Amendment. (*Shaw v. Reno*, supra, at p. 643.) Where race is the sole or predominant factor in drawing district lines, strict scrutiny applies, and the race based redistricting must be narrowly tailored in order to further a compelling state interest. (*Id.* at p. 643.) Oddly or bizarrely shaped districts, although not a necessary, can be circumstantial evidence of race-based district lines and may give rise to strict scrutiny. (*Id.* at p.644.) The party alleging race based district lines is not required however, to make any kind of showing to establish an oddly shaped district does in fact exist. (*Miller v. Johnson*, (1995) 515 U.S. 900.)

However, the consciousness of race in line-drawing is not in and of itself enough to invoke a strict scrutiny standard of review. (*Bush v. Vera*, (1996) 517 U.S. 952, 958-959.) In the absence of an obvious pattern of race based decision making several factors shall be considered in determining whether or not strict scrutiny is required, although none alone is sufficient to require strict scrutiny. (*Bush v. Vera*, supra, at p. 962.) Such factors include traditional districting criteria, commitment to creating a majority minority district, and the manipulation of district lines to exploit unprecedentedly detailed racial data. (*Id.* at p. 962.) Traditional districting

criteria include "compactness, contiguity, and respect for political subdivisions. (*Shaw v. Reno*, supra, at p. 646.) Most importantly in order "for strict scrutiny to apply traditional districting criteria must be subordinated to race." (*Miller v. Johnson*, supra, at p. 916.) If a district drawn primarily based on race does not pass strict scrutiny it fails under the Fourteenth Amendment.

In the case of Congressional Districts 37, 43 and 44 race was the predominate factor in drawing district lines. The Commission's records are replete with evidence that race was the predominate if not the sole reason for the three Congressional District's composition. The court must first determine whether or not strict scrutiny is applicable to the case at hand. As is made clear in *Reno*, oddly shaped districts are circumstantial evidence of race based district lines. In this case we have three districts that are in fact uniquely shaped. The court must consider the multisided, irregularly shaped districts that cut across cohesive groups of people and communities as circumstantial evidence of race-based district lines. Of particular importance however, is the manner in which the African American community of district 37 and district 43 are divided in half by the line dividing the two districts. Since the shape of a district is usually not in and of itself enough to invoke the strict scrutiny standard of review this court should next consider a variety of factors. Of particular importance are the traditional districting criteria, which include but are not limited to compactness, contiguity and a respect for political subdivisions. It is clear by simply looking at the 37th, 43rd and 44th Congressional district lines that compactness was of no regard. In addition, there nothing contiguous about the way the African American Community in the 37th and 43rd districts is cut in half by the commission. In fact, when discussing the creation of a VRA protected African American district that would keep the African American community together Commissioner Parvenu stated that,

an African American VRA protected district "doesn't really do the African American community any justice...it actually benefits the African American community to not have those higher percentages." Clearly the compactness and contiguity of that community has been ignored. In that same vein, any respect for the African American community in these districts as a political subdivision has also been ignored. Clearly dividing the African American community in this manner does nothing to forward or respect the historically traditional criteria of districting.

In addition to these basic and traditional districting criteria the court should also consider the manner in which these district lines exploit the detailed racial data of these districts. It is clear that creating three African American districts was not simply a consideration for the Commission, it was their foremost concern. In discussing the creation of three African American districts that purposefully separates the African American community Commissioner Parvenu stated the following: "The net result of this is exactly what I talked about earlier, that the core focus is not on the urban core of Los Angeles. What this does is regionalize it into north, central and south. My issue too is that I've been all over this state and I have patiently listened and advocated for other ethnic groups and their ability to have districts where they could be elected and keep their communities whole...what this does is reduces the areas where African American candidates can be elected from three to one packed into that one district. I see the logic of the geographic logic and placement, but it effectively disenfranchises, disengages, or makes opportunity district less available for African Americans to run and be candidates at a congress level in this part of the city. Been all over this state and it seems interesting to me that when it comes to this part of the city the VRA is now an instrument to be used against the African American population."

In discussing the Commission's decision to create three districts rather than one or two VRA protected districts Commissioner GM stated that "it's not just about §2 and §5...fair and effective representation for minorities is not an option it is part of our job, it is what we were put here to do." The use of this detailed racial data was purposefully exploited in the creation of these district lines. Most importantly, when looking at all these considerations in the aggregate it is clear that not only were the traditional districting criteria ignored, that criteria clearly became subordinate to race in the form of the deliberate and conscious separation of the African-American community. Because race was a predominate factor in drawing these lines the court must review these lines under a strict scrutiny standard of review. Because strict scrutiny is the standard of review, the court must find that it was necessary for the lines to be drawn in this way in order to further a compelling state interest. Since the Commission did not consider these three districts to be §2 districts, compliance with VRA is not a rational available for the Commission in this instance. Therefore the court must determine what exactly what is the compelling state interest.

In order to determine what the compelling state interest this court should consider the entire record including the public input that clearly played into the Commissions determinations. The Commission received extensive testimony from the public to retain the 37th Congressional District as an African American district. Testimony was received advocating spreading out the African-American population between the three districts (Quinn, p. 7) Retaining these three African-American districts would prove to be problematic due to the decline of the African American population of Los Angeles County. In order to retain these three districts an awkward gerrymander of South and Southwestern Los Angeles County would be required. (Quinn, p.5) It is clear from review of the testimony and of the Commissions own statements that the

sole (and or predominate) motive behind the Commissions lines was to keep three African-American districts. Therefore race, not some other compelling governmental interest was the reason behind the district lines. Because race was the predominate factor used in creating the District lines of the 37th, 43rd and the 44th Congressional districts and no compelling state interest needs to be furthered it is clear that the these lines violate the Fourteenth Amendment and in doing so, other communities are in fact being affected by these unconstitutional district lines.

The effect being to fracture the representation of many cities and communities outside the African American population core. (Quinn, p. 5) It also denied the creation of additional effective Latino Congressional districts. (Quinn, p.5). The purpose of this was to preclude the establishment of a single section two district which would have collapsed one or possibly more incumbent member's districts. (Quinn, p. 6) Based upon that record it is abundantly clear that the three districts with 30% African-American CVAP in each district was the primary reason for the lines being drawn. The impact of this gerrymandering caused the loss of an additional Latino majority district, in violation of the Fourteenth Amendment.

V. THE COMMISSION'S CONGRESSIONAL 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 Congressional 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.

- Article XXI, §2(d)(3): “Districts shall be geographically contiguous.”
- Article 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.... ”
- Article 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 Congressional 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 Congressional 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 Congressional 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 is 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 Article XXI, §2(d) from this anti-gerrymandering rule are set forth in Article XXI, §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 Congressional districts where this rule was violated. (Pet., ¶42.)

VI. 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 Congressional maps to correct the unconstitutional violations set forth in the First, Second, Third, and Fourth Causes of Action, in a variety of ways, including but not limited to:

A. Drawing new boundaries for all of Southern California in the manner established by the 1991 Masters, portions of which that are suggested in the Quinn Declaration, at paragraph 66, inclusive.

B. Drawing new boundaries for the affected Congressional districts that are outlined above, as suggested in the Quinn Declaration, at paragraph 66 inclusive.

C. A Supreme Court Master should be appointed to properly draw the required Section 2 districts in South and Southwest Los Angeles County, to draw a sufficient number of Latino Section 2 districts elsewhere in the county and to redraw the suburban districts surrounding the urban Section 2 districts in a constitutional manner, and to adjust for the rippling effects on districts in Ventura, San Bernardino, Orange, Riverside and San Diego Counties.

VII. 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 Congress, the Court should follow the guidance of *Reinecke* and the dissenting Justices in Assembly, and leave in place for the 2012 elections, the existing boundaries of the Congress that have been used for the 2002, 2004, 2006, 2008 and 2010 elections.

VIII. CONCLUSION

The Petitioner respectfully asks this Court to determine that the challenged Congressional maps certified by the Commission are unconstitutional under Article XXI, §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, §3(b)(2) prohibiting the Secretary of State from implementing portions of the Congressional plan, and order Special Masters to draw new district boundaries for the Congressional for the 2012 elections and afterward.

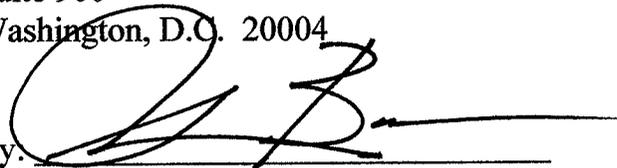
Dated: September 28th 2011

Respectfully Submitted,

Steven D. Baric, SBN 200066
Baric, Tran & Minesinger
2603 Main Street #1050
Irvine, California 92651
(949) 468-1047
sbaric@bamlawyers.com
Counsel of Record

Paul Sullivan, SBN 088138
Sullivan & Associates, PLLC
601 Pennsylvania Ave. N.W.
Suite 900
Washington, D.C. 20004

By.



Steven D. Baric
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I, Elizabeth R. Toller, 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 2603 Main Street, Suite 1050, Irvine, California 92614. On September  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 AUTHORITERS IN SUPPORT THEREOF

on the following party(ies) in said action:

George H. Brown, Esq.
Gibson, Dunn & Crutcher, LLP
1881 Page Mill Rd
Palo Alto, CA 94304
Tel: (650) 849-5339
Fax: (650) 849-5039
EM: gbrown@gibsondunn.com

Attorney for Real Party In Interest
CITIZENS' REDISTRICTING
COMMISSION

James Brosnahan, Esq.
Morrison & Foerster, LLP
425 Market St
San Francisco, CA 94105-2482
EM: jbrosnahan@mofocom
Tel: (415) 268-7189
Fax: (415) 268-7522

Attorney for Real Party In Interest
CITIZENS' REDISTRICTING
COMMISSION

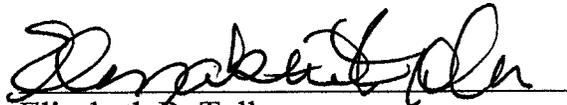
George Waters
Deputy Attorney General
Department of Justice
1300 "I" Street, 17th Floor
Sacramento, CA 95814
EM: George.Waters@doj.ca.gov
Tel: 916-323-8050

Attorney for Respondent
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 27 2011 at Irvine, California.


Elizabeth R. Toller