

NO. S 196493

IN THE SUPREME COURT OF CALIFORNIA

JULIE VANDERMOST
Petitioner,

vs.

DEBRA BOWEN, SECRETARY OF STATE
OF CALIFORNIA
Respondent,

CITIZENS REDISTRICTING COMMISSION
Real Party in Interest.

**REPLY TO CONSOLIDATED OPPOSITIONS OF
CALIFORNIA CITIZENS' REDISTRICTING COMMISSION
AND SECRETARY OF STATE DEBRA BOWEN TO
PETITION FOR WRIT OF MANDATE OR PROHIBITION**

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The California Citizens' Redistricting Commission's Consolidated Opposition to Petitioner's Petition for Writ of Mandate or Prohibition¹ misrepresents the Petitioner Vandermost's positions on a host of the issues in this case, ignores the constitutional commands of Propositions 11 and 20 that govern the Court's role in review of the Commission's certified maps when challenged, and attempts to re-write the Commission's Final Report, purporting to justify the grounds for the Commission drawing the Senate maps as it did.

The decision for this Court is manifest: Propositions 11 and 20 not only established the Citizens' Commission to draw district maps, but imposed on that Commission specific constitutional criteria, and then tasked this Court, not only with "original and exclusive jurisdiction" to hear challenges, but with the duty to review the Commission's challenged maps and determine whether they are unconstitutional, and if so, fashion an appropriate remedy.

The Petitioner has noted three main conflicts between the Commission's certified Senate maps and these constitutional criteria, and has identified specifically the manner in which the Commission's maps violated those constitutional criteria. The evidence of such violations is clear and unmistakable. The determination as to violation of such criteria is a question of law for the Court to decide, and the Petitioner urges the Court to make a preliminary finding of the constitutional issues involved. We have suggested that it may be useful for the Court, in performing its constitutional duties, to appoint a Special Master or Masters to assist the Court in applying the law to the facts to enable it fully to consider and

¹ For convenience, the Petitioner refers to the Commission's Consolidated Opposition herein as "Comm. Opp." and to the Secretary of State's Consolidated Opposition as "Bowen Opp.".

determine whether the Petitioner's constitutional claims are meritorious, and if so, to correct the Commission's certified Senate maps.

I. IMPORTANCE OF THE COURT'S EXERCISE OF ITS ORIGINAL AND EXCLUSIVE JURISDICTION

Article XXI, § 3(a)'s conferral of "original and exclusive jurisdiction" on this Court means that the Petitioner Vandermost, the Radanovich parties in the companion case, and the public, have one and only one judicial body that can afford review and relief for California redistricting as performed by the Citizens' Commission. Indeed, the equitable remedy of mandamus or prohibition is only available to California's citizens, if at all, in this forum. For the reasons outlined in the Petitioner's original Memorandum of Points and Authorities, the Petitioner believes this Court has a duty of review, indeed plenary review and supervision.

The Commission seeks summary dismissal of the Petitioner's Petition for Writ of Mandate. The Commission argues that if it meets the constitutional equality requirements (the Petitioner does not contest that it has), and satisfies federal Voting Rights Act requirements (as we argue it has not), then all lower order constitutional criteria in Article XXI, § 2(b) are contingent, and it must only meet a "reasonableness" standard – even where it is manifest that in drawing Senate District boundaries, the Commission divided county boundaries substantially (and we assert unnecessarily), and failed to draw compact districts, bypassing nearby populations to include more distant ones.

While summary dismissal is not warranted for the reasons discussed in the Petitioner's original Memorandum of Points and Authorities and this Reply, the Petitioner points out that unlike ordinary mandamus, where concurrent jurisdiction lies in the superior and lower appellate courts, here summary dismissal would deny the Petitioner her day in court. Thus,

considerations of jurisprudential equity suggest that summary dismissal would be inappropriate and not in the public interest.

Moreover, if the Commission's broad defense claim is sustained at this stage of the proceeding, then all judicial review is imperiled, not just in this decade but likely in the future, as California's voters are unlikely to give the redistricting power back to the Legislature, and they are not empowered to do it themselves. (*Legislature v. Deukmejian* (1983) 34 Cal.3d 658.) Much as this Court may feel uneasy about undertaking close review of the redistricting plans devised by this Citizens' Commission, abandonment of its judicial function would leave this and future Commissions completely untethered in one of the most sensitive political functions affecting the citizens' right to vote and fair and effective representation.

II. THE COMMISSION'S OPPOSITION DISTORTS THE PETITIONER'S CLAIMS OR MAKES FALSE CLAIMS

A. The Petitioner Did Not Ignore Article XXI, §2(d)(1) and (d)(2) Criteria

The Commission contends falsely (Comm. Opp., pp. 2, 32) that the Petitioner "ignored" Article XXI, § 2(d)(1) and 2(d)(2)'s primary criteria that required equality of population of districts and adherence to the requirements of the Federal Voting Rights Act. The Petitioner does not challenge the Commission's adherence to the equal population requirements: the Commission satisfied applicable state and federal constitutional standards. The Petitioner challenges whether the Commission complied with geographic compactness "to the extent practicable" or respected the geographic integrity of counties "to the extent possible."

It is also demonstrably false for the Commission to contend that the Petitioner ignored Federal Voting Rights Act compliance (see the Third Cause of Action of Petitioner’s First Amended Complaint).

Moreover, the Petitioner’s expert declarant, Dr. T. Anthony Quinn, PhD, demonstrated in the Model Constitutional Plan for the Senate submitted in his Supplemental Declaration that the Commission could have complied fully with equal population and Federal Voting Rights Act criteria *without violating* other constitutional criteria, just as the Court’s Special Masters did twenty years ago. The Commission demonstrably failed that standard.

B. The Commission Misrepresents Proposition 11 Ballot Arguments In Claiming They Address the Court’s Role in Adjudicating Challenges

The Commission states (Comm. Opp., p. 26) that the ballot arguments both for and against Proposition 11 state that it...“gives the ‘final say’ to the Commission, not a court.” This misrepresents these arguments, which nowhere comment on the Court’s role. The language of Proposition 11, however, commands that the Court review the plan for constitutional violations and, upon finding them, provide relief. The ballot materials concerning Proposition 11 say nothing about deference by the Court to the Commission.

C. The Petitioner Does Not Argue that Sacramento and San Bernardino Counties Cannot Be Split, Rather That They Were Unnecessarily Split

Contrary to the Commission’s charge (Comm. Opp., p. 34), the Petitioner specifically acknowledges that Sacramento and San Bernardino Counties must be split due to their size. The Petitioner challenges “unnecessarily splitting” the two counties six times, and Petitioner’s expert,

Dr. Quinn's Model Constitutional Plan contained in his Supplemental Declaration include such splits, but avoids *six* splits.

D. The Commission Misrepresents Its Process and the Opportunity For Comment on Its Only and Final "Maps"

The Commission paints a rosy picture of the process by which it undertook its redistricting process that is completely at odds with the facts. First, it claims it took public comment after the July 29 maps were posted (the first integrated set of maps the public could see), but it did not change those maps before the August 15, 2011 adoption. (Comm. Opp., p. 11.) In fact, the Commission was advised by its counsel there could be no substantial changes to the July 29 maps due to Bagley-Keene Open Meeting Act requirements.

The Commission's map disclosure process frustrated substantive public comment, because the Commission's draft maps were moving targets. They were actually called "visualizations."² The Commission's June 10, 2011 first draft maps for the State Senate, State Assembly and Board of Equalization were unconstitutional because they did not comply with equal population mandates (with "maximum population deviations" of up to five percent). On July 9, 2011, the Commission cancelled the release of second draft maps that had been due to be made public on July 14, 2011. Instead, the Commission released on a periodic basis between July 14 and July 29, 2011, largely without notice to the public, "visualizations" it had drawn, which it represented not to be actual "maps." These "visualizations" confused the public. The only real, and ultimately final, maps for districts of each type were released by the Commission on July

² The term visualization is from the verb "visualize" which means to form mental images or impressions. These visualizations were aptly characterized, because they were "images" or "impressions" lacking precision that were wiped away by periodic, random amendments.

29, 2011. The Commission as noted above was advised by counsel that due to the 14 day notice requirement, no changes could be made to these July 29, 2011 maps – and none were.

The Commission hired its Voting Rights Act attorneys in late March 2011; failed to brief Commissioners on Voting Rights Act issues until well after a substantial amount of public testimony had been received in May 2011; issued a general legal memorandum on Voting Rights issues in late May 2011; hired its “racially-polarized voting” consultant only after the June 10, 2011 release of its first draft maps; and failed to articulate to the public even as of July 29, 2011 the standards it applied to determine whether Voting Rights Act section 2 districts would be required and where, and standards for applying Voting Rights Act section 5, where possible conflicts with drawing section 2 districts might arise. Even groups that championed the Commission proceedings such as Common Cause criticized the Commission’s tardy, non-comprehensive Voting Rights Act analysis.

E. The Petitioner’s Submission of a Model Constitutional Plan Is Merely Demonstrative That State Senate Maps Can Be Drawn That Meet All Constitutional Criteria

The Commission complains falsely that Petitioner Vandermost is asking that her expert, Dr. Quinn’s, “preferences” be substituted for “the Commission’s process, measured deliberations, and careful exercise of its constitutional mandate.” (Comm. Opp., p. 2)

The Petitioner is not asking the Court to accept the proffered maps of the Petitioner’s expert, Dr. Quinn. Dr. Quinn’s declarations were submitted and are meant only to illustrate that Senate maps can be drawn that respect equal population requirements and the Voting Rights Act as the superior criteria but do not result in splitting Sacramento County and San Bernardino County among six districts, do not unnecessarily bypass

“nearby areas of population” for “more distant population” and do not diminish the opportunity of Latinos to elect candidates of their choice.

Dr. Quinn’s declarations succeed in that illustration, just as the Special Masters succeeded in two previous redistricting efforts also governed by constitutional standards of population equality and the Voting Rights Act. Mere assertions of violations of the constitutional criteria, without an illustration such as provided by Dr. Quinn, would be attacked as empty rhetoric. But by presenting the Quinn map, Petitioner Vandermost does not ask for its adoption but for the Court to consult its own expert and, if there is a finding that the criteria were unnecessarily violated, to “fashion the relief it deems appropriate.”

F. The Commission’s Complaint that Expert Quinn Discusses Incumbents is Without Justification

In the Commission’s Consolidated Motion to Strike the Declaration(s) of T. Anthony Quinn, the Commission asserts that “Quinn’s opinions (also) improperly consider the effect of redistricting on incumbent politicians – a criterion that the California Constitution expressly prohibited the Commission from considering.” (Comm. Mtn., p. 3.)

Actually, that is not what the California Constitution says. It says that, “Communities of interest shall not include relationships with political parties, incumbents or political candidates.” (Art. XXI, § 2(d)(4).) Dr. Quinn does not discuss incumbent politicians in terms of “communities of interest.” He discusses incumbent politicians and their electoral history solely in terms of the ability of Latino candidates to win election, noting that a successor to Latino Senator Alex Padilla is endangered by the dilution of Latino voters in Senate District 18. He also discusses at length the electoral history of Latino incumbent politicians in both Salinas and San Jose, and lack of success electing Latino incumbents in Senate District 12.

How is this Court supposed to judge whether retrogression of Latino electoral opportunities is occurring in the Section 5 counties without a discussion of the successes and failures to elect Latino candidates in these counties? The Commission, composed by law of amateurs in the redistricting process, took the position that the lengthy history of Latino successes and failures within California Senate Districts was irrelevant to its work. It is through this lack of curiosity and indifference to Latino electoral history, a history that was made available to the Commission by long time laborers in the vineyards of Latino electoral politics such as Dr. Joaquin Avila, that the Commission made the decision to enshrine in its plan as two mandated Section 5 districts, gerrymandered creations that were the product ten years ago of cheap political deals.

The only discussion of incumbents are the Petitioner Vandermost allegations that the Commission's maps violate the Voting Rights Act, where "opportunity to elect" is an express element of determining a Section 5 violation. They are:

Senate District 12, in which the Commission maintained the 2001 gerrymander on Voting Rights Act grounds. In that district, the only Latino candidate, a well-regarded Latina Assembly member, was recently defeated. The Petitioner's expert Dr. Quinn discusses an alternative district, uniting the Salinas Valley and portions of Santa Clara County, in which Latino candidates have been elected to Assembly districts. This discussion was not to take into account incumbency but to illustrate that the Commission's plan unnecessarily disadvantages the Latino minority in electing candidates of their choice.

Senate District 18, in which the Commission reduced the Latino CVAP from 47 percent to 38 percent. Dr. Quinn mentions the incumbent Senator elected in Senate District 18 simply to note that the district as

currently drawn has satisfied Latino aspirations and the district as proposed by the Commission harms those aspirations, and does so unnecessarily.

III. THE PETITIONER'S POSITIONS AS TO STANDARD OF REVIEW AND CLAIMS WITH RESPECT TO THE COMMISSION'S FAILURE TO COMPLY WITH CONSTITUTIONAL STANDARDS

A. Standard of Review and Deference

The Petitioner's challenge raises questions of application of constitutional law to facts. Independent review of an agency's or a Commission's interpretation of law is unremarkable. (*Redevelopment Agency v. County of Los Angeles* (1999) 75 Cal.App.4th 68, 74 [courts exercise independent judgment in matters involving constitutional interpretation].) Courts use independent, de novo review for mixed questions of fact and law that implicate constitutional rights. (See *People v. Cromer* (2001) 24 Cal.4th 889, 894; *Silicon Valley Taxpayers Ass'n, Inc. v. Santa Clara County Open Space Auth.* (2008) 44 Cal. 4th 431, 448-49.)

On the issue of deference, Propositions 11 and 20 differ from anything in the California experience because (a) they enshrine a series of criteria as constitutional mandates and therefore require the application of the Court's legal analysis to the Commission's districts, and (b) they instruct the Court to examine the maps and determine if the legally mandated criteria were followed, and if they were not, to afford relief. The Petitioner does not raise a question of alternative maps for the Court to consider, but her Petition focuses closely on what the Commission did, what reasons or justification it offered for its determinations and whether what it did complied with the Constitution.

Had Propositions 11 and 20 merely amended Article XXI to provide for a redistricting Commission and additional constitutional criteria for the Commission and Courts to consider, the Petitioner Vandermost might agree

with the Commission's position concerning the deference to which the Commission's acts were entitled from the Court and this Supreme Court's prior decisions in *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.)

However, as noted in the Petitioner's opening Memorandum of Points and Authorities, Propositions 11 and 20 enacted an entirely separate provision for judicial determination of state redistricting maps enacted by the new Commission.

Arizona's Constitution that provides for an independent Arizona Redistricting Commission (Ariz. Const., art. IV, part 2, section 1 (1)-(20)) does not provide for any special appellate jurisdiction or review by the Arizona Supreme Court as does Article XXI, § 3 of the California Constitution.

The sole reference in the Arizona Constitution, article IV, Part 2, section 1(20) to judicial action or litigation states:

The independent redistricting commission shall have standing in legal actions regarding the redistricting plan and the adequacy of resources provided for the operation of the independent redistricting commission. The independent redistricting commission shall have the sole authority to determine whether the Arizona attorney general or counsel hired or selected by the independent redistricting commission shall represent the people of Arizona in the legal defense of a redistricting plan.

Moreover, nothing in Article VI of the Arizona Constitution provides for any "original and exclusive jurisdiction" in the Arizona Supreme Court, or any other court for that matter, nor any requirement for judicial determination of constitutional claims upon the filing of a legal challenge.

Thus, *Ariz. Minority Coal. For Fair Redistricting v. Ariz. Indep. Redistricting Comm'n* (Ariz. 2009) 208 P.3d 676, 689, is not authority for the appropriate judicial review of the California Citizens' Redistricting Commission's maps, as the Arizona Constitutional provisions differ completely from Article XXI, § 3 of the California Constitution. In that case, the Arizona court affirmed that the Arizona Independent Redistricting Commission was to be considered like the Legislature, rather than a constitutional administrative agency under Arizona law, with the presumption of the constitutionality of its acts. The Arizona court noted, however, that with respect to the challenge to the Arizona Commission's compliance with the constitutional "goals" which the Commission was charged to apply:

These goals, which require compliance with the Federal Constitution and federal statutes, are only as flexible as the federal requirements permit, and compliance with these goals can be decided by a court as a matter of law. *See, e.g., League of Latin Am. Citizens*, 548 U.S. 399, 425 (2006) ; *Reynolds v. Sims*, 377 U.S. 533, 561 (1964).

(*Ariz. Minority Coalition, supra*, 208 P.3d at p. 698.)

The Commission's reference to Court deference in *Reinecke II* and *Wilson IV* (Comm. Opp., pp. 17-18) is to the Court's deference to the line drawing by its appointed masters, not the Legislature or a Commission. Its reference to United States Supreme Court decisions such as *Chapman v. Meier* (1975) 420 U.S. 1 and *Burns v. Richardson* (1966) 384 U.S. 73, 85, is also inapposite because the Court was referring to consideration of redistricting mapping performed by other courts.

The regime of Propositions 11 and 20, Article XXI, §3 differs from what the courts have previously dealt with – with deference to the Legislature virtually unbound by any criteria other than equal population and the Voting Rights Act – or by reviewing the work of its own special

masters, which in both events clearly met their declared (but not constitutionally mandated) criteria and were acting as agents of the court.

In this case, the people clearly intended the Court, upon petition, to take its own look at whether the constitutionally- mandated criteria were followed. There is nothing in Proposition 20 suggesting that the Commission be paid any special deference. “If the court determines that a final certified map violates this Constitution...the court shall fashion the relief it deems appropriate.”

In this case, the Court is presented with applying the law to the facts – the maps placed before it by the Commission that implicate the Petitioner’s constitutional rights under Article XXI, §§ 2(d)(1), (d)(3), (d)(4) and (d)(5).

Article XXI, §§ 3(b)(1), (2) and (3), while conferring original and exclusive jurisdiction of this Court to review the Commission’s certified maps, are silent with respect to the standard of review, unlike other instances in which the Constitution or the Legislature has provided where this Court has original and exclusive jurisdiction.³ For example, this Court has original and exclusive jurisdiction to review certain decisions of the Public Utilities Commission, decisions of the California Energy Commission with respect to applications for certification of a site and related facility, and decisions of the Commission on Judicial Performance.

³ The Supreme Court has original jurisdiction to review a final decision of the Public Utilities Commission by means of a statutory writ of review. (Pub.Util.Code §§ 1756, 1759; see C.R.C., Rule 8.496; 8 *Witkin Summary* (10th), *Constitutional Law*, §1108.) Generally, final decisions are subject to review by either the Supreme Court or the Court of Appeal. (Pub.Util.Code. § 1756(a).) However, decisions pertaining solely to water companies are subject to review only by the Supreme Court, except that review of complaint or enforcement proceedings are subject to review by either the Supreme Court or the Court of Appeal. (Pub.Util.Code § 1756(f); 2 *Witkin, Cal. Proc. 5th* (2008) Courts, § 330, p. 420.)

However, the Legislature broadly defined the standard of review of Public Utilities Commission decisions in Public Util. Code, § 1756(a), and specifically defined the standard of review as limited to confirming that due process requirements were met, without review of findings of fact in Public Res. Code, § 25531. This Court has said about its role in reviewing determinations of the Commission on Judicial Performance under Article VI, § 18(g):

““As is our duty, we independently review the findings of the Commission to insure that there is clear and convincing evidence to sustain the charge to a reasonable certainty. ... We do, however, give special weight to the factual determinations by the masters, who are best able to evaluate the truthfulness of witnesses appearing before them.” (*Furey v. Commission on Judicial Performance*, 43 Cal.3d 1297, 1304 (1987).) (See *Fitch v. Commission on Judicial Performance*, 9 Cal.4th 552, 555, 556 (1995) [court first makes “an independent evaluation of the evidence before the Commission to determine whether the charges against petitioner are supported by clear and convincing evidence,” and then “must determine whether the conduct that is the subject of the proceeding constitutes a basis for censure or removal, and, if so, the appropriate action”].)

The form of review provided by the Article XXI provisions cited above is more akin to the broad review provided for Public Utilities Commission matters, where this Court reviews “the lawfulness of the original order or decision ... inquired into and determined,” or the Court’s review of judicial disciplinary matters from the Commission on Judicial Performance.

B. Compactness Standard

Proposition 11 and 20 enacted a different, and stricter, standard than anything previously applicable because it adds a specific definition to the standard: “geographical compactness such that nearby areas of population are not bypassed for more distant population.” The Petitioner’s expert, Dr.

Quinn, recommended this “compactness” language to the drafters of Proposition 11, as he related in his letter to the Commission dated February 28, 2011. (See Second Supplemental Declaration of T. Anthony Quinn, Exhibit “A”.) As Dr. Quinn stated in his original Declaration, this standard was one of the key “anti-gerrymander” provisions of Proposition 11. (Pet., ¶¶ 39-41; Quinn Dec., ¶¶ 9, 10.)

The Commission’s citation to cases such as *Bush v. Vera* (1997) 517 U.S. 952 about the definition of “compactness” simply fails to reflect that Article XXI, § 2(d)(5) says something different. The Petitioner respectfully submits that the Commission’s citation of cases defining compactness is inapposite.

The Commission (Comm. Opp., pp. 44-46) consistently refers to the wrong standard of compactness, saying the shapes of challenged districts are not “bizarre” and referring to federal cases involving the Voting Rights Act, which spotted racial gerrymandering in part from bizarre district shapes. Indeed, the Commission takes the extreme position that only “extreme,” “bizarre” and “absurdly shaped” districts fail to meet the compactness requirements. (*Id.*)

However, the Commission ignored both the genesis and purpose of Proposition 11’s compactness requirement (see Second Supplemental Declaration of T. Anthony Quinn, Exhibit “A” thereto), which notes that Proposition 11 contained a new, anti-gerrymander provision, *recommended by him to the drafters of Proposition 11*, that districts be drawn not to bypass “nearby areas of population...for more distant population.”

This is the fifth criterion, preceded by population equality, complying with the Voting Rights Act, contiguity and geographic integrity.

As demonstrated in the Petitioner’s Model Constitutional Plan, the four preceding criteria can easily be complied without totally ignoring the mandate of this criterion, as the Commission did in district after district.

The Petitioner's plan achieves the same population equality as the Commission's plan. The Petitioner's plan demonstrates that better compliance with the Voting Right Act could be obtained by increasing the Latino population in Senate District 18 and creating a new Latino Senate District in Salinas-San Jose, as the Commission was encouraged to do. The Model Constitutional Plan achieves a higher degree of compactness by not combining areas of far distant population, as the Commission does along the California coast and in the Sierra foothills. The Petitioner's plan also respects transportation corridors, which the Commission acknowledges, and communication media, part of the standard of geographic integrity which the Commission ignores.

The Commission tries to justify its compactness definition by citing several mathematical studies (Comm. Opp., p. 47), but then it notes on page 44 that this Court in *Wilson IV* explicitly rejected a pure geometric conception of compactness. "Compactness does not refer to geometric shape but the ability of citizens to relate to each other and their representatives, and to the ability of representatives to relate effectively to their representatives." The Commission goes on to assert: "these authorities inform us that a district encompassing distant communities *is nonetheless compact as long as the citizens can relate to each other and to their representatives.*" (*Id.*, Italics added by Commission).

It is obvious that in creating districts of 931,000 people some "distant communities" will be in the same district. But it is also obvious from the clear reading of *Wilson IV* above that combining distant communities into the same district should be avoided as much as possible as it is elemental logic that the ability of citizens to relate to each other and their representatives is impaired when the far distant communities have nothing in common with each other. The Commission is justifying its

unconstitutional districts by trying to make the exception the rule. There is nothing “reasonable” about this approach.

Nowhere in its 200 page reply brief does the Commission discuss or attempt to justify its numerous violations of the language “nearby areas of population are not bypassed for more distant population.” It does not do so because it cannot do so. Each of the eleven districts the Petitioner cites as unconstitutional suffers from the fatal defect in that each one unnecessarily combines far distant populations. In the Model Constitutional Plan the Petitioner demonstrates that this is not necessary to comply with population equality or the Voting Rights Act, or any of the other criteria listed in the Constitution.

C. Geographical Integrity of Regions Is Subsumed Under the Article XXI, §2(d)(4) Criterion of Avoiding Unnecessary Division of Counties

The Commission falsely claims that the Petitioner used a criterion not contained in Propositions 11 and 20, Article XXI, § 2(d), namely, protecting the geographical integrity of regions. The Commission contends that when the Petitioner discusses the “geographic integrity” of regions, that this criterion was repealed by Proposition 11. However, Proposition 11 imported the geographic integrity concept directly into Article XXI, § 2(d)(4), which states in relevant part: “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 without violating the requirements of the preceding subdivisions.”

As the Petitioner notes in her Petition (Pet., ¶ 49):

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

a particular county; people pay county taxes, and tend to look to counties for specific services.

(Quinn Dec., ¶14.)

Furthermore, county boundaries themselves largely follow geographic boundaries. The Commission objects to use of regions because they are not specifically provided for in Article XXI of the Constitution. (Comm. Opp., pp. 30 & fn. 24; 31.) But in fact they are. The Constitution requires the Commission to respect “counties,” “local neighborhoods” and “local communities of interest”. “A community of interest is a contiguous population which shares common social and economic interests. Examples of such shared interests are those common to an urban area, a rural area, an industrial area or an agricultural area, and those common to areas in which the people ... use the same transportation facilities ... or have access to the same media of communications.” (Cal. Const., art. XXI, §2(b)(4).)

The first duty of the Commission was to determine which areas have “the same transportation facilities,” which it only occasionally made the effort to do, and to examine whether districts “have access to the same media of communications,” which it did not do. These are defined by California’s natural regions. When the weather reporter says, “Rain tomorrow in the Bay Area,” people know where it is going to rain. Californians aggregate into the natural communities of interest in this state regionally. When they pick up their daily newspaper or turn on their television, they are thinking regionally. The San Francisco Chronicle covers the Bay Area region; the Los Angeles Time covers the Los Angeles region. Television media markets were established regionally, since prior to cable, the mountain ranges that divide California limited the reach of television stations. This is why the Supreme Court Masters in 1973 and 1991 specifically divided California by the various mountains and valleys.

Further, our transportation system developed on a regional basis. People living adjacent to the San Francisco Bay commute to work on the “Bay Area Rapid Transit.” Interstate 5 and Highway 99 tie together the various communities of the Central Valley from Oregon to Bakersfield along a north-south transportation artery. The Inland Empire of San Bernardino and Riverside Counties is tied together along an east-west transportation artery, Interstate 10. As the Petitioner alleged and supported in her petition, the Commission ignored the natural corridors of transportation and the existing media markets in case after case, thus creating districts that are ineffective for representation and violate the community of interest requirements.

It is impossible to respect communities of interest within Senate Districts of just under one million people without beginning with the largest and most logical communities of interest, the natural regions of California.

With respect to specific responses by the Commission, the Petitioner notes that the Commission’s Final Report contained insufficient information to justify the reasonableness of its application of the Article XXI, § 2(d) criteria in drawing Senate Districts. The Commission’s Preliminary Opposition contains notable errors, further unraveling the “reasonableness” defense the Commission mounts in that pleading. The following summarizes those compounded problems.

Senate Districts 1 and 4

The Commission tries to justify its hacking up of the northern interior Central Valley and Sacramento County by asserting that Yuba County, a Section 5 county, “is in the middle of this north central coast region.” Actually Yuba County is north central, nowhere near the coast, and that its inclusion with part of Sacramento County in Senate District 4 is necessary to include “some Latino areas from Sacramento County.” This is not true. The current Senate District 4 could have been kept as it is, a north

central district, and the Yuba County Latino VAP would have been satisfactory. And the Sacramento County areas included in Senate District 4 are not particularly Latino; this is primarily part of the city of Rancho Cordova.

Upon viewing the maps for his city in Sacramento County Rancho Cordova Councilmember Ken Cooley told the Commission: “My appearance today is prompted by deep concern that unlike earlier designs, the new NorCal Senate visuals split the key regional jobs center of Rancho Cordova and its immediately adjacent neighborhoods among 4 Senate Districts that encompass 38% of California’s land area and stretch almost 600 miles from the Oregon border by Medford to south of Death Valley. Under these maps, an 8 mile drive from east to west across Rancho Cordova will put a motorist in 4 different districts at various times.” (July 21, 2011 Statement and Letter of Ken Cooley, Councilmember and past Mayor, City of Rancho Cordova.) The Commission paid no attention to this city and adopted its map that divided the city as Councilmember Cooley noted.

To justify Senate District 1 that combines Redding in Shasta County with the suburbs of Sacramento County, while bypassing about 400,000 people in north central California, as the Petitioner pointed out, the Commission says, “There was scant public comment to suggest that including Sacramento in the same district with Redding might be problematic.” Of course there was not. The Commission never publicly released a second set of draft maps as it had promised to do, and this district was in the second and ultimately approved set of maps. So no one was ever able to testify against this district. The Commission held an early public hearing in Redding on May 6, 2011. There was much discussion about how to treat northern interior California. No one discussed putting Redding into the Sacramento suburbs at that hearing because no one in Redding

imagined the Commission would be so illogical and irresponsible as to do exactly what it did. By the time citizens of Redding found out what the Commission had done, it was too late.

Senate District 3

This is the “appendage” district: a small appendage of Sacramento County, a piece of Sonoma County, a hunk of Contra Costa County, huge swaths of adjacent population bypassed right and left. The Commission justifies the district by stating: “Senate District 3 is a wine-making region including Napa and much of Yolo County.” (Comm. Opp., p.67.) The Sonoma County portions, Rohnert Park and Petaluma, are not the wine making parts of that county. The district does not include Alexander Valley, Knights Valley, Dry Creek, the wine regions of Sonoma County. The largest county in the district is Solano County. Vallejo and Fairfield are not wine producing regions. Nor are Martinez and Pleasant Hill in Contra Costa County.

The Commission makes much of its decision to place the small Delta tail of Sacramento County in this district (8,858 people), (Comm. Opp., p. 68), noting that, “There was significant public testimony in favor of keeping the entire Delta region in one Senate District.” This is true, but that is not what the Commission did. It did not include the Contra Costa Delta within this district nor the San Joaquin County Delta portions. This is just one of the many instances in which the Commission’s reply brief cherry picks from its many hours of public testimony, and in this case the testimony was correct; it was just the district that was not.

The Commission also criticizes the Petitioner’s assertion that the Senate Districts should have crossed the Golden Gate bridge, on the grounds that 800,000 residents in San Francisco would “overwhelm and overshadow” 100,000 residents in Marin County. (Comm. Opp., p. 69.) The Petitioner’s Model Constitutional Plan solves their dilemma. The

counties along the north coast through Sonoma and including Lake and Napa Counties form one perfect Senate District. This leaves Marin County whole to be combined with part of San Francisco County. This makes far more sense than combining Marin County with Del Norte County on the Oregon border which the Commission did.

Senate District 8

This is the best example in the state of a district that bypasses adjacent population for far distant population. As the Petitioner points out, this district begins in the Sacramento suburbs and wanders south gathering a bit of population here a bit there until it ends in Shoshone in Inyo County, not far from Las Vegas. The Commission asserts there was “substantial public testimony advocating for separating valley portions of Central California from the foothills region.” (Comm. Opp., p. 74.) But there was also substantial testimony that told Commissioners that the foothills areas share communities of interest with their valley neighbors. (See Part III.E., at pp. 27-28 herein.) Highway 88, for instance, unites Jackson in Amador County with Stockton in San Joaquin County. People in Jackson shop and work in Stockton, not in the Sacramento suburbs or in Fresno.

As noted above, city officials in Rancho Cordova objected to the numerous divisions of their city and its inclusion with unrelated communities far to the south. No one in Rancho Cordova shops in Shoshone. The Commission objects to the Petitioner’s assertion that this district should not include any part of the city of Fresno, since Fresno has to be split for Voting Rights Act reasons. Again, this is an example of the Commission distorting what the Petitioner said. The Petitioner said Fresno should be in a district with its nearby counties, not with the Sacramento suburbs. No one questions that Fresno must be divided for Voting Rights Act purposes; the Model Constitutional Plan does just that.

Senate District 16

The Commission asserts of its Inland Empire districts that “there is no allegation that these districts approach the bizarre shapes that warrant greater scrutiny.” (Comm. Opp., p. 77.) That is exactly what the allegation is. At page 78 of its Opposition, the Commission shows a map of Senate District 16 with its crab like claw at Visalia and Tulare in Tulare County to its north and Taft in Kern County in its south, seeming to swallow downtown Bakersfield in the process. The body of this district then expands through the High Desert to Needles on the Arizona border. The Commission contends that “Senate District 16 is compact and does not unnecessarily split San Bernardino County.” (*Id.*) But the shape speaks for itself. Nothing in the current gerrymandered plan so oddly divides the Central valley and the High Desert as this district does.

Senate District 28

The Commission’s justification for this district, that covers the entire length of Riverside County while bypassing huge areas of population in the center of the county, is that “it maintains the integrity of the Coachella Valley (Comm. Opp., p. 88).” But in fact it does not do that. The Commission heard extensive testimony that the Coachella Valley includes the portion of northern Imperial County along the Salton Sea. In the Assembly, Imperial County is combined with eastern Riverside County for that very reason. But here Imperial County’s Coachella portion is divided off. The Commission cannot justify the uniting of Coachella Imperial and Riverside Counties in one map and then say it is “maintaining the integrity of the Coachella Valley” when it splits them in another map.

Senate District 27

The Commission still cannot get its geography straight. Its defense of Senate District 27 begins with the sentence: “Senate District 27 incorporates and maintains the eastern portion of Ventura County which

includes the cities of Simi Valley, Moorpark, Thousand Oaks, Agoura Hills and Westlake Village.” (Comm. Opp., p. 91.) This defense is incorrect on its face, as Agoura Hills and Westlake Village are not in Ventura County; they are in Los Angeles County, as the Petitioner has pointed out.

Further, the Commission insists that the Petitioner “quibbles with how the lines were drawn in Senate District 17 to the north, arguing that if Senate District 17 had not included San Luis Obispo County, then Senate District 27 could have been drawn primarily in Ventura County.” (Comm. Opp., p. 91). This happens to be correct; the drawing of San Luis Obispo County to a northern district (Senate District 17) necessarily dilutes the representation of Ventura County in Senate District 27. It purports to be a Ventura County district but actually has the majority of its population in Los Angeles County.

This occurs because Senate District 19 is placed between San Luis Obispo County and Ventura County, and of this district, the Ventura County Star wrote: “Democrats on California’s Central Coast were handed a rare prize last week when the Citizens Redistricting Commission created a Senate District with no incumbent and a 12-percentage point Democratic voter registration edge.” (*Ventura County Star*, August 2, 2011. <<http://www.vcstar.com/news/2011/aug/02/herdt-for-central-coast-democrats-a-prize-and-a/?print=1>>). As the Petitioner has noted, this configuration reflects the partisan agenda to create a new Democratic district that was the brain child of a Commissioner from Ventura County with a long history of financially supporting Democratic candidates for office. (Pet., ¶¶ 90, 91.)

D. The Commission Cannot Reasonably Justify the Necessity of Splitting Sacramento and San Bernardino Counties Six Times Each

The Commission strains to explain why Sacramento and San Bernardino Counties, both of which Petitioner readily conceded must be split more than once because of their size, have been split among six Senate Districts, in some cases connecting them to very far distant populations when nearby populations were readily available. The Petitioner believes that a fair look at these two counties should lead the Court to consult a special master on the issue of violation of the standard requiring geographical integrity for counties.

For very good reasons, counties have been the building blocks of districts. This is because all Californians live within a single county, not all Californians live in an incorporated city, and many cities have irregular boundaries of isolated islands of unincorporated territory. Further, people obtain their information on a county basis. The Sacramento Bee is the countywide newspaper for Sacramento County; the San Bernardino Sun is the countywide newspaper for San Bernardino County. To divide each of these counties into six Senate Districts dilutes the integrity of the county and makes it more difficult for people within these counties to know who their representatives are.

The Commission points out (Comm. Opp, p. 61) that 62.6 percent of Sacramento County's population is within one of the six Senate Districts, but blithely ignores the fact that the other 37.4 percent of county residents are in five Senate Districts where the majority of the population is outside Sacramento County. And not one of the six districts is wholly within Sacramento County, despite its population that should give it a full Senate District and a half.

The same is true in San Bernardino County. In the Model Constitutional Plan submitted with our petition the Petitioner maintains the Section 2- required 20th Senate District as the Commission drew it. But she demonstrates it is unnecessary to divide off small portions of this county like parts of Upland and Rancho Cucamonga and send them off to other counties, or to run the High Desert district far north into the Central Valley as the Commission did. And she demonstrates that the Voting Rights Act can be respected while still drawing at least one district wholly within San Bernardino County.

Senate District 23

This district is cited by the Petitioner as one of the six districts that unnecessarily splits San Bernardino County, beginning in Rancho Cucamonga and ending in portions of Riverside County well south of the city of Riverside. The Commission does not attempt to defend this shape, but states that Rancho Cucamonga had to be placed in this district while Upland just next door had to be placed in a Los Angeles County district because of “population equality needs, a higher criteria (sic) than compactness.” (Comm. Opp., p. 80.) But indeed the Model Constitutional Plan shows how it is possible to keep Upland and Rancho Cucamonga in a San Bernardino District, and have the district fully within that county.

Senate District 25

The Commission contends that Senate District 25 is “compact and does not unnecessarily split San Bernardino County” (Comm. Opp., p. 84). But bits and pieces of this district drop down from the San Gabriel Mountains to absorb unrelated communities, as petitioner explains, and there is no need to remove Upland from the rest of San Bernardino County, as this district does.

Further, the Commission defends this district by stating: “Because the communities in Senate District 18 were groups according to public

input, the Commission was also constrained from acquiring population for Senate District 25 from the west.” (Comm. Opp., p. 85.) Senate District 18 is one of the Senate Districts petitioner cites for its specific dilution of Latino VAP, quoting from the NALEO critique of this district. There was no public testimony that called for diluting the Latino population in Senate District 18, but that is what was done. NALEO called on the Commission to reject its Senate map in part because of this district, and at the time of certification on August 15, several commissioners expressed their unhappiness with the Latino dilution in Senate District 18.

Senate District 18 should have moved westward into heavily Latino Reseda to retain its current Latino VAP percentages, and had that district been properly drawn, Senate District 25 would not have been forced off to Upland nor would it have acquired its odd shape.

E. The Commission’s Consolidated Opposition Attempts to Re-Write Its Final Report Issued to Justify the Challenged Senate Maps

The Commission’s includes explanations for its decisions in its brief that it did not include in its Final Report accompanying the Senate District maps. The Opposition explanations, however, “cherry pick” and rely on the selective use of testimony to justify particular district configurations, notwithstanding the Commission’s Report provides no basis for or justification for the use of such selective testimony, for ignoring other, differing testimony, or the actual reasons why it gave credence to some but not other testimony in drawing districts. Post-hoc rationalizations of this sort are impermissible. (*Citizens to Preserve Overton Park v. Volpe* (1971) 401 U.S. 402 and *Environmental Defense Fund, Inc. v. Coastside County Water Dist.* (1972) 27 Cal.App.3d 695, 706, cited in *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 8, *supplemented*, 13 Cal.3d 486 (1975).)

However, both quantitative and qualitative testimony and map submissions supported⁴:

- (1) Combining the Salinas portions of Monterey County with the southeastern portions of San Jose running through contiguous and compact territory in southern Santa Clara County, as advocated by Dr. Joaquin Avila, the Latino Coalition of San Jose, and others.
- (2) Not including Merced County with Monterey County in the SENATE DISTRICT 12 (MERCED) district.
- (3) Not including Monterey County with San Luis Obispo and Santa Barbara Counties in the SENATE DISTRICT 17 (WMONT) district.
- (4) Keeping Ventura County whole and/or including eastern Ventura County and Simi Valley united with the Santa Clarita area.
- (5) Not including Malibu with the eastern part of Ventura County, as the Commission was told by representatives of the Santa Monica Mountains Coalitions and southern San Fernando Valley.

F. The Commission Has Used A Technocratic Approach to Undermine Latino Opportunities to Elect Candidates of Choice.

The Commission takes a numerical rather than a holistic approach to Voting Rights Act sections 2 and 5. The Commission has used its section 5 approach as an excuse to avoid the creation of districts that afford Latinos the effective opportunity to elect candidates of choice, as more recent

⁴ See Exhibit "A," which is a true and correct list of commenters' testimony on this subject that is archived at the Commission's Internet website with specific links to the testimony. (http://wedrawthelines.ca.gov/public_comments_meetings_2011.html.)

section 5 jurisprudence and the Voting Rights Act section 5 extension legislation of 2007 provides.

The Commission's position is to maintain marginally greater percentages of Latino VAP and CVAP in Merced, Monterey and Kings Counties, at the expense of improving Latino opportunities to elect candidates of choice in a combined Merced-Kings district, a Monterey-Santa Clara County district and an enhanced Latino district, SENATE DISTRICT 18 in Los Angeles County.

Ironically, the Commission asserts that the Petitioner's proposed Monterey-Santa Clara County district (which was advocated before the Commission by well-known Latino Voting Rights Act expert, Dr. Joaquin Avila) and its proposed West San Fernando Valley district (which was advocated before the Commission by the National Association of Latino Elected Officials) are merely influence districts that do not meet Section 2 "majority-minority" Latino CVAP numbers, while it created three African-American influence Congressional districts in Los Angeles County that also fail to meet Section 2 standards.

Under the Model Constitutional Plan, as an example, the Latino voters of Merced County are placed in a significantly better district from the standpoint of electing a candidate of their choice, while the voters of Kings County remain in a district that, while marginally weaker from a CVAP standpoint, is still over 60 percent Latino in population.

Likewise, the Latino voters of Salinas Valley are united with the Latino voters of Santa Clara County in a district that, based on voter behavior for Assembly seats in that area, is much more likely to elect a Latino candidate than the Commission's proposed District 12.

The Commission's plan puts the Latino voters of Santa Clara County in Senate District 15, a seat with only 26.28% CVAP rather than allowing them to unite, as recommended by Latino Voting Rights Act experts, with

the Salinas Valley in a district with a significantly higher Latino population and a record, going from the voting behavior in the Assembly, of electing Latino candidates.

The likely result of the Commission plan's slavish adherence to a mathematical formula rather than real political behavior is only one Latino Senator rather than two in Northern California and the real possibly one less Latino Senator in Southern California (the San Fernando Valley).

Senate Districts 12 and 17

The Commission's explanation for its unconstitutional districts along the central coast and in the Central Valley from Stanislaus County to Fresno County is predicated on the need to retain the Latino VAP "benchmark" of 53.48 percent in Senate District 12, so there would be no "retrogression" of Latino elective opportunities within the counties making up Senate District 12. Senate District 12 contains two Section 5 counties, Merced County and parts of Monterey County. The Commission's justifications for Senate Districts 12 and 17 are based on this interpretation of Section 5 of the Voting Rights Act (pages 50ff).

But this is not how the Voting Rights Act has been interpreted by the courts and the Department of Justice, which focus on no retrogression of elective opportunities in Section 5 counties. Indeed, the courts and the Department of Justice have said that retrogression is not to be measured only in terms of a mathematical formula.

Monterey and Merced Counties have never elected a Latino Senator, and the current Senate District 12 has only elected Anglo Senators, former Sen. Jeff Denham and current Sen. Anthony Canella. Further, the two predecessor districts to new Senate District 12 and 17 were drawn in the 2001 gerrymander to elect specific favored politicians. Current Senate District 12 was drawn to elect then-Assembly member Dennis Cardoza, a Democrat, to the Senate. Heavily Democratic Salinas was combined with

Cardoza's political base in Merced and Stanislaus Counties to achieve this, but in 2002 Cardoza ran for Congress instead, and Jeff Denham, a Republican, won the seat.

In its justification for Senate District 12, the Commission says at page 55: "The Commission determined that Salinas is not considered "coastal (Appen. 154); inclusion of that area within the Central valley was a reasonable decision reached by the Commission." This will come as quite a surprise to citizens of Salinas, where the morning fog rolls in from the coast, just 8.4 miles and a 12 minute drive away, along Blanco and Reservation Roads. Had the Commission availed itself of the simple geography of California it would not have made such assertions.

Further, the Commission asserts that "petitioner has presented no evidence that Senate District 17 was not created on a reasonable application of the constitutional criteria." But in fact the Petitioner presented evidence supporting exactly that. From the stoplight at Highway 1 and Carmel Valley Road in Monterey County, Highway 1 proceeds for exactly 100 miles through Big Sur, hugging the coast in one of California's most rustic unpopulated areas, until it reaches Cambria, the first coastal city in San Luis Obispo County. Map Quest® does not even recommend that you drive this 100 mile unpopulated area from Carmel, the southern tip of the northern part of Senate District 17. It recommends that you take Highway 101 from Carmel to Cambria, a distance of 147 miles that will take you two and half hours, and which of course takes you outside of Senate District 17.

As the Petitioner noted, Carmel, Monterey and the communities in the northern part of Senate District 17 look to the north for their media, shopping, and communities of interests while those in Cambria, Paso Robles and San Luis Obispo County look south to that county and Santa Barbara County for their media and communities of interest. The 1991 Supreme Court Masters fully understood this, which is why they created

one district north from Monterey County and one district south from San Luis Obispo County.

Senate District 18

The Commission's dilution of Latino voting opportunities in Senate District 18 is a direct result of the ripple effect from the decision to attach Monterey County to Paso Robles and San Luis Obispo County. The Commission justification: "Drawing Senate District 18 to maximize Latino VAP would have resulted in a long arm extending from Senate District 18 into Senate District 27, which the Commission declined to do." (Comm. Opp., p. 92.) This is not true. Senate District 18 in the Model Constitutional Plan simply combines Latino areas in the San Fernando Valley into a single district. This is very close to what the Supreme Court Masters did in 1991, that resulted in the election of the first Latino Senator from the San Fernando Valley in modern history in 1998. That Latino Senate seat is now endangered as a result of the Commission's diluted district, which the Commission justifies by noting, "The Commission was under no obligation to draw a maximum Latino influence district under the VRA in ... Senate District 18 (Comm. Opp., p. 92)."

This remarkable statement implies that in a state in which 90 percent of the net population growth in the past decade was Latino, it is perfectly justified to dilute a Latino district created by the Supreme Court Masters in 1991 and retained by the Legislature in 2001. It is no wonder that Latino groups such as NALEO asked the Commission to reject the Senate map in August.

IV. PETITIONER'S REFERENDUM PETITION

The Commission fastens its objection to the Petitioner's Fourth Cause of Act to ripeness and standing concerns in asserting that the Petitioner's Fourth Cause of Action concerning her referendum petition is not ripe for adjudication.

However, the Petitioner joined her Fourth Cause of Action to the constitutional challenges in an abundance of caution due to uncertainty as to whether Article XXI, § 3(b) (2)'s 45-day statute of limitations for the filing of challenges to the Commission's certified maps, set forth in the first sentence of section 3(b)(2), also applies to a petition for a writ of mandate or prohibition that is filed under the *second* sentence of that paragraph, which provides that such a petition may be filed "*where* a certified final map is subject to a referendum measure that is likely to qualify and stay the timely implementation of the map." The use of the indefinite term "where" provides no specific guidance as to *when* such a petition must be filed, and the only other reference to "when" a referendum stay claim might be filed is in the preceding sentence of section 3(b)(2).

The Petitioner's referendum qualification effort proceeds apace, with more than 400,000 signatures obtained to date, and a little less than 30 days to complete signature collection as of the 90 day deadline for circulation of referendum petitions.

The Petitioner averred in her verified petition that active petition circulation efforts were underway, and that she believed it likely that she would obtain sufficient raw signatures to meet the 504,906 valid signatures standard to qualify the referendum against the Commission's certified Senate maps for the ballot. Petitioner also averred that she would advise the Court when signatures are submitted to the county election officials on or before November 15, 2011, and she fully expects to do so.

The Commission makes a number of unfounded factual and legal assertions about the timing of a referendum election. (Comm. Opp., p. 152.) The first such unfounded legal conclusion is that Court appointment of Special Masters is not permissible in the event of qualification of a referendum measure. This is simply incorrect as a reading of Article XXI, §§ 3(b)(2) and 3(b)(3) and 2(j) together make clear. The second unfounded

legal conclusion is that special masters are not subject to appointment as a specific form of relief for a petition filed under Article XXI, §§ 3(b)(2), 3(b)(3) and 2 (j). This is patently false.

The Commission’s baldest erroneous legal conclusion is that the Court –appointed masters would be limited to “adjusting” the Commission-certified Senate maps under Article XXI, §2(j). (Comm. Opp., p. 153.) This argument is ridiculous, and ignores the fact that the language of Article XXI has used the term “adjust the boundary lines” since 1980. The use of the term “that map” imposes no limiting standard on the Court’s or its Masters’ authority to adjust lines; that authority is bounded solely by the constitutional criteria of Article XXI, § 2(d) .

The most egregiously false assertion, however, is that with enactment of SB 202 (Ch. 558, Stats. 2011), a qualified referendum against the Senate maps would appear on the November 2012 general election ballot “and [t]he necessary precondition to the appointment of masters – that voters ‘disapprove a certified final map in a referendum’ – could not happen for *more than three years*.” (Comm. Opp., p. 152.) November 2012 is only one year away.

V. SECRETARY OF STATE’S TIMETABLE

The Secretary of State’s Opposition contends first that the Court should leave the Commission’s certified Senate maps in place in accordance with the Court’s precedent in *Assembly v. Deukmejian* (1992) 30 Cal.3d 638, because there is insufficient time for the Court and appointed special masters to complete drawing of new districts without interfering in a substantial way with the conduct of the June 5, 2012 primary election. (Bowen Opp., pp. 9-10.)

The Petitioner has addressed this issue extensively in its Memorandum of Points and Authorities (Mem., pp. 10, 80, 84-85 & 123),

and believes its position on this is fully responsive to the Secretary's opposition.

However, the Petitioner notes that as of October 17, 2011, the date by which the Petitioner has filed a Petition for Writ of Mandate and Supporting Memorandum of Points and Authorities (129 pages in length) and supporting declarations and two volumes of exhibits; the Commission has filed a Consolidated Preliminary Opposition brief 155 pages in length and supporting five volumes of exhibits; the Secretary of State has filed a Consolidated Informal Opposition and exhibits; and the Petitioner will have filed a Reply of 36-37 pages in length and supporting declarations, the briefing on this matter has advanced considerably farther in some respects than was the case in 1991.

The Secretary's Opposition also contains the Secretary's June 5, 2012 Presidential Primary Election Calendar which sets forth applicable dates for legally-required activities under the California Elections Code. (Bowen Opp., Lean Dec., ¶ 2 & Exh. "A".)

In particular, the Election Calendar provides for the opportunity for "voter-nominated candidates" to obtain petitions to secure signatures in-lieu of all or part of the [candidate] filing fee" for the offices sought. This "in-lieu" filing period opens on December 30, 2011 and closes on February 23, 2012. (Bowen Opp., Lean Dec., Exh. "A," p. 1.) The Election Calendar next provides that declaration of candidacy must be completed and nomination papers may be circulated to obtain necessary signatures and returned between February 13, 2012 and March 9, 2012. (Bowen Opp., Lean Dec., Exh. "A," p. 4.)

The Secretary's Opposition contends the "in lieu filing period" is "constitutionally-mandated." (Bowen Opp., p. 11.) However, that misrepresents reality. While the Legislature enacted the opportunity for a candidate to obtain a reduction or elimination of the candidate's filing fee

by obtaining signatures “in lieu” of such fees, in response to this Court’s decisions that held mandatory candidate filing fees would unconstitutionally infringe on the right to candidacy of indigent individuals (*Lubin v. Panish* (1973) 415 U.S. 709 [mandatory candidate filing fee violates equal protection for indigent candidates]; *Knoll v. Davidson* (1974) 12 Cal. 3d 335), filing fees themselves are not constitutionally-mandated.

This Court could waive such filing fees altogether under its authority to adopt new redistricting plans as requested by the Petitioner. In fact, the Court has done substantially more, waiving the Constitution’s one –year residency rule for legislators set forth in Article IV, section 2, “in the exercise of [its] equitable powers to fashion remedial techniques in this area of the law.” (*Legislature v. Reinecke* (1973) 10 Cal.3d 396, 406.)

Moreover, the Supreme Court in 1991 compressed the in-lieu filing period considerably. Upon receipt of information from the Secretary of State, the in-lieu filing period moved to the date of issuance of the 1992 decision (January 27, 1992) and the compressed schedule of candidate nomination filing period from February 6, 1992 to March 16, 1992, was adopted by the California Supreme Court. (See *Wilson v. Eu* (1992) 1 Cal. 4th 707, 713; *Wilson v. Eu* (1991) 54 Cal.3d 546, 550.)

The Secretary’s Opposition also contends that the timetable for implementing changes to district lines for the June 5, 2012 voter-nominated primary election that might occur if the Court were to redraw them pursuant to the qualification of a referendum or a finding of unconstitutionality upon determination of the Petitioner’s substantive challenge must take into account the Secretary’s Cal Voter II processing time. While any Court-implemented interim or final district lines may not unduly interfere with the conduct of the June 5, 2012 elections, the Petitioner notes that (1) such processing is not done on the candidate qualification schedule, which

reflects dates critical to candidacies for offices at that election; and (2) the Secretary's and county election officials' deadlines for completing these tasks is set forth in the Election Calendar. The most obvious final dates for completing this activity occur in early April 2012 (in which several deadlines occur, or commence, with respect to placing voters within districts.)

The Bowen Opposition does not address the Petitioner's preferred options for the Court to consider if time constraints limited its opportunity to fashion new lines. (Pet., ¶¶ 179, pp. 72-73.) Several of the three options, if implemented, would not require as much time for the Secretary of State or local election officials to implement as would be required if the Court's adjustment of the Senate maps affected all Senate Districts, something the Petitioner believes would not be required, based upon the demonstrative Model Constitutional Plan she has submitted to the Court. For example, the Petitioner's suggestion to nest one Senate district with two Assembly Districts of the unchallenged Commission certified Assembly District maps as set forth in the Petition, ¶ 179 C, would require very little time to accomplish. Alternatively, partial adjustment of Senate district boundaries of the challenged Senate maps, as outlined in the Petition, ¶ 179 B, would require less time to accomplish than fully redrawing all of the Senate boundaries.

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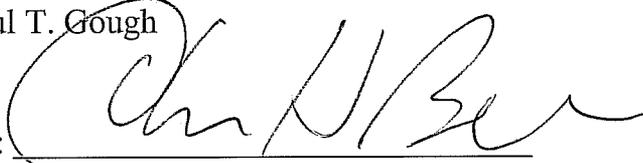
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CONCLUSION

For the reasons set forth in the Petitioner's Memorandum of Points and Authorities and this Reply to Consolidated Preliminary Oppositions of the Commission and Secretary of State, the Court should grant the Petitioner's Petition, or in the alternative issue an order to show cause for further hearing on the matter, and should in the interim appoint special masters to assist it in the application of the constitution and laws to the facts presented.

Dated: October 17, 2011 Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE
PURSUANT TO CAL. R. CT. 8.204(c) AND 8.486(a)(6)

Pursuant to rule 8.204(c) and 8.486(a)(6), I certify that the foregoing brief is one-and-a-half spaced and is printed in 13-point Times New Roman Font. In reliance upon the word count feature of Microsoft Word, I certify that the attached Reply to Consolidated Oppositions of California Citizens' Redistricting Commission and Secretary of State Debra Bowen to Petition for Writ of Mandate or Prohibition contains 10,560 words, exclusive of those materials not required to be counted under Rules 8.204(c) and 8.468(a)(6).

Dated: October 7, 2011 Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Shannon Diaz, Declare:

I am a resident of the State of California and over the age of eighteen years and not a party to the within-entitled action; my business address is 455 Capitol Mall, Suite 600, Sacramento, California 95814. On October 17, 2011, I served the following document(s) described as:

REPLY TO CONSOLIDATED OPPOSITIONS OF CALIFORNIA CITIZENS' REDISTRICTING COMMISSION AND SECRETARY OF STATE DEBRA BOWEN TO PETITION FOR WRIT OF MANDATE OR PROHIBITION

on the following party(ies) in said action:

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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.

X **BY FEDERAL EXPRESS MAIL:** By placing said documents(s) in a sealed envelope and depositing said envelope, with postage thereon fully prepaid, in the United States mail, VIA FEDERAL EXPRESS MAIL SERVICE, in Sacramento, California, addressed to said party(ies).

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 October 17, 2011 at Sacramento, California.


SHANNON DIAZ

Theme	Link	Content of Link
Merced should not be districted with coastal counties (Monterey).	http://wedrawthelines.ca.gov/public-comments-june-2011.html public_comment_6merced_20110628-1.pdf	6/28 Mc Corry – “Despite this history, given a choice between your proposal for the San Joaquin Valley counties and the current boundaries with a good ole boy network that is entrenched, corrupt and bankrupt—we would choose the latter – without hesitation. ...We request – no, demand, that you request an extension if need be and visit the communities you combined (San Benito, Merced, Stanislaus, Santa Clara, etc...)” Merced County Star Editorial “Merced and Stanislaus counties have more in common with Sacramento and Riverside counties than with Santa Clara and Monterey counties.
Merced should not be districted with coastal counties (Monterey).	http://wedrawthelines.ca.gov/public-comments-june-2011.html public_comment_6merced_20110626-1.pdf	6/28 Halsey (6merced-20110628_1.) discontent in the Central Valley with the Fresno to foothills Senate seat, as well as the Merced to San Jose Senate seat.
Merced should not be districted with coastal counties (Monterey).	http://wedrawthelines.ca.gov/public-comments-june-2011.html public_comment_6merced_20110627-1.pdf	June 27 City of Newman -- Should the proposed Merced/Monterey district be established, central valley cities such as Newman would not receive the representation it deserves. How can a single senator effectively address the different issues from the very different regions of the bay area/central coast and the San Joaquin Valley? With many valley unemployment rates in the mid 20% range, over half of all residential properties upside-down on their mortgages and over 22,000 foreclosures in Stanislaus County since 2006 - the Valley’s economy continues to suffer and requires our representative’s undivided attention.
Merced should not be districted with coastal counties (Monterey).	http://wedrawthelines.ca.gov/public-comments-june-2011.html public_comment_6merced_20110626-1.pdf	June 26 Talbott The concerns of the people of Merced County are MUCH MUCH different than those living in the coastal areas. Combining Merced with coastal cities would be a great injustice. We have more in common with areas North, South and East of Merce County than coastal areas.
Merced should not be districted with coastal counties (Monterey).	http://wedrawthelines.ca.gov/public-comments-june-2011.html public_comment_6merced_20110623-2.pdf	June 23 Gabriault-Acosta (Merced city council member) I was opposed to the new redistricting boundaries that you are proposing. I am a 4 generation born and raised in Merced. Our valley has been over looked for many years. Adding in Santa Clara and Santa Cruz counties would only weaken our valley’s voice in Sacramento.
Merced should not be districted with coastal counties (Monterey).	http://wedrawthelines.ca.gov/public-comments-june-2011.html public_comment_6merced_20110621_2-1.pdf	Jun 21 Jones - Having lived, worked, and voted in both Merced and Santa Clara as an adult, I find them to have few local issues in common. Merced is an agricultural economy (7th or 8th largest in the world) with little non ag industry. Santa Clara while it has some ag most are gentlemen farms and the primary industry is semi conductors and non ag industry. Our living standards are different. Merced's average family income is a fraction of Santa Clara.

<p>Santa Cruz and Monterey belong in the same district, but not San Luis Obispo</p>	<p>http://wedrawthelines.ca.gov/public_comments_meetings_201104.html public_comment_20110430_5ventura_lacayo-star-2.pdf</p>	<p>4/30 Lacayo -** "Monterey County is a VRA county and should be included with surrounding counties with large Latino populations. It should not be linked with SLO County. SLO is the least Hispanic County in the southern third of the state of California. It is the least Hispanic County that adjoins Monterey County." [Lacayo is founder and National Pres. Emeritus of the Labor Council of Latin American Achievement; founder and past chairman of US Hispanic Leadership Institute and addtl. titles.</p>
<p>Santa Cruz and Monterey belong in the same district</p>	<p>http://wedrawthelines.ca.gov/public-comments-june-2011.html public_comment_20110414_7scruz_vittor-star-1.pdf</p>	<p>4/14 Vittor – SLO and Santa Cruz don't have much in common. SLO more of LA; Santa Cruz more connected to Monterey</p>
<p>Santa Cruz and Monterey belong in the same district</p>	<p>http://wedrawthelines.ca.gov/public-comments-june-2011.html public_comment_20110414_7monterey_diggins_star-2.pdf</p>	<p>4/14 Diggins – Monterey peninsula shares commonalities with Santa Cruz, not SLO.</p>
<p>Santa Cruz and Monterey belong in the same district</p>	<p>http://wedrawthelines.ca.gov/public_comments_meetings_201104.html public_comment_20110414_7scruz_spickler-star-1.pdf</p>	<p>4/14 Spickler – Santa Cruz belongs with Monterey, Santa Clara, San Benito and or San Mateo counties; NOT San Luis Obispo</p>
<p>Santa Cruz and Monterey belong in the same district</p>	<p>http://wedrawthelines.ca.gov/public_comments_meetings_201104.html public_comment_20110414_7monterey_keeley-2.pdf</p>	<p>4/14 Keeley **; create Monterey Bay district including all of Monterey and Santa Cruz</p>
<p>Santa Cruz and San Luis Obispo do not belong in the same district.</p>	<p>http://wedrawthelines.ca.gov/public_comments_meetings_201104.html public_comment_20110415_7monterey_critchley-star-2.pdf</p>	<p>4/15 Critchley – SLO and Santa Barbara should not be in the same district as Monterey County</p>
<p>Santa Cruz and San Luis Obispo do not belong in the same district.</p>	<p>http://wedrawthelines.ca.gov/public_comments_meetings_201104.html public_comment_20110414_7scruz_smith-star-1.pdf</p>	<p>4/14 Smith – SLO should not be in the same district as Santa Cruz; Santa Cruz coincides with Monterey, Santa Clara, San Benito and San Mateo</p>
<p>San Luis Obispo should be kept whole</p>	<p>http://wedrawthelines.ca.gov/public_comments_meetings_201104.html public_comment_20110411_5slo-star-2.pdf</p>	<p>4/11 Whitaker – SLO county undivided</p>

Ventura does not belong in same district as Santa Barbara and San Luis Obispo	http://wedrawthelines.ca.gov/public-comments-may-2011.html public_comment_20110426_5ventura_McCormack2.pdf	5/8 McCormack – Santa Barbara and SLO belong together (not Ventura) (Nava, Firestone supported)
East/West Ventura communities of interest	http://wedrawthelines.ca.gov/public_comments_meetings_201104.html public_comment_20110401_cushing_5ventura-2pdf.	4/1 Cushing – Keep east county together – Simi Valley, Moorpark, Th Oaks, Camarillo
East/West Ventura communities of interest	http://wedrawthelines.ca.gov/public_comments_meetings_201104.html public_comment_20110413_vctxprs_5ventura-2.pdf	4/13 Vent. Co Taxpayer Assn – Create County-centric senate district
East/West Ventura communities of interest	http://wedrawthelines.ca.gov/public_comments_meetings_201104.html public_comment_20110420-55ventura_oneal-1.pdf	4/20 – O’Neal - keep East Ventura County united (Moorpark, Thousand Oaks, Simi Valley, and Camarillo) and with the rest of the county
East/West Ventura communities of interest	http://wedrawthelines.ca.gov/public_comments_meetings_201104.html public_comment_20110420_5ventura_goldsteingoldstein-star-1.pdf	4/20 Goldstein - Simi Valley should be w/ Ventura, Not LA County
East/West Ventura communities of interest	http://wedrawthelines.ca.gov/public_comments_meetings_201104.html public_comment_20110425_5ventura_berger-1.pdf	4/25 Berger - Unite Santa Clarita Valley (Agua Dulce – Castaic); NW SF Valley (Chatsworth, Porter Ranch, Northridge & Granada Hills) and NE Ventura County (Fillmore and Santa Paula)
East/West Ventura communities of interest	http://wedrawthelines.ca.gov/public_comments_meetings_201104.html public_comment_20110425_region_5_ventura_burtonburton-1.pdf	4/25 Burton – Unite Simi Valley and Moorpark/Thousand Oaks
East/West Ventura communities of interest	http://wedrawthelines.ca.gov/public_comments_meetings_201104.html public_comment_20110425_5ventura_haggerty-1.pdf	4/25 Haggerty – eastern Ventura County, Simi Valley, Moorpark, Th Oaks, Camarillo together
East/West Ventura communities of interest	http://wedrawthelines.ca.gov/public_comments_meetings_201104.html public_comment_20110424_5ventura_gooch-1.pdf	4/24 Gooch – Ventura Co whole

East/West Ventura communities of interest	http://wedrawthelines.ca.gov/public_comments_meetings_201104.html public_comment_20110422_5ventura_martinez_2.pdf	4/21 Martinez – connect Simi Valley w/ Eastern Ventura County
East/West Ventura communities of interest	http://wedrawthelines.ca.gov/public_comments_meetings_201104.html public_comment_20110422_5ventura-snow-1.pdf	4/22 Snow – keep Simi Valley, Moorpark, Th Oaks together
East/West Ventura communities of interest	http://wedrawthelines.ca.gov/public_comments_meetings_201104.html public_comment_20110425_5ventura_adams-1.pdf	4/25 Adams – Simi Valley, Camarillo, Th. Oaks, Moorpark are one community
Quinn Communique	public_comment_20110310_quinn.pdf	Question re: change in ifb to drop MSA
Quinn Communique	public_comment_20110418_quinn.pdf	TQ on need for better data on population and geography, constraints of Sec. 2 (Three Pages) <i>Frankly, from your first week of hearings you look like you are trying to build an airplane without considering the engine.</i>
Quinn Communique	public_comment_20110422_7monterey_quinn-star-2.pdf	Follow up from 4/18 letter section 2 etc.
Quinn Communique	public_comment_20110425_6merced_quinn-star-1.pdf	TQ on Merced, Section S, Assembly, Senate and Congress (3 pages)
Quinn Communique	public_comment_20110427_4la_quinn.pdf	TQ on the difference between total and voter population statistics, C VAP, impact in LA etc. (2 pages)
Quinn Communique	public_comment_20110502_quinn.pdf	Fox&Hounds Re: pop deviation