In the Supreme Court of the State of California

JULIE VANDERMOST, **Petitioner,** **v.** **DEBRA BOWEN, Secretary of State of California,** **Respondent.**	Case No. S198387

CALIFORNIA SECRETARY OF STATE DEBRA BOWEN'S PRELIMINARY OPPOSITION TO VERIFIED PETITION

LOWELL FINLEY KAMALA D. HARRIS
Chief Counsel
Office of the Secretary of State
State Bar No. 104414
1500 11th Street, 6th Floor
Sacramento, CA 95814
Telephone: (916) 653-7244
Fax: (916) 651-8295
Email: Lowell.Finley@sos.ca.gov
Attorney General of California
DOUGLAS J. WOODS
Senior Assistant Attorney General
PETER A. KRAUSE
Supervising Deputy Attorney General
GEORGE WATERS
Deputy Attorney General
State Bar No. 88295
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 323-8050
Fax: (916) 324-8835
Email: George.Waters@doj.ca.gov
Attorneys for Respondent Debra Bowen as California Secretary of State

TABLE OF CONTENTS

Page

Introduction 1

Statement 2

I. Calendar for the 2012 Primary Election – The first formal use of the Commission's new maps will occur on December 30, 2011 2

II. Schedule for processing the proposed referendum of the Senate map. 2

Argument 4

I. Petitioner has not carried her burden of showing that the referendum is likely to qualify for the ballot. 4

II. Article XXI does not authorize the appointment of a special master or masters to draw new maps simply on a showing that a referendum is "likely" to qualify. 8

III. It is not practical to draw new Senate lines this late in the election season. 11

IV. What will happen if the referendum actually does qualify in either January or March of 2012. 15

Conclusion 15

TABLE OF AUTHORITIES

Page

CASES

Abrams v. Johnson
(1997) 521 U.S. 74 13

Assembly v. Deukmejian
(1982) 30 Cal.3d 638 ..... 9, 15

Brown v. Thomson
(1983) 462 U.S. 835 12

California Correctional Peace Officers Assn. v. State Personnel Bd.
(1995) 10 Cal.4th 1133 5

Chapman v. Meier
(1975) 420 U.S. 1 12

Knoll v. Davidson
(1974) 12 Cal.3d 335 ..... 2, 14

People v. Leal
(2004) 33 Cal.4th 999 10

Reynolds v. Sims
(1964) 377 U.S. 533 12

Silver v. Brown
(1965) 63 Cal.2d 270 11

Vandermost v. Bowen #1
[No. S196493] 5

Wilson v. Eu
(1991) 54 Cal.3d 546 14

Wilson v. Eu
(1992) 1 Cal.4th 707 11

STATUTES

42 U.S.C. § 1973b(b) 13

Federal Voting Rights Act. 13

CONSTITUTIONAL PROVISIONS

California Constitution

Article XXI, § 2(i) 9

Article XXI, § 3(b)(2) 1, 8

Fourteenth Amendment 2

United States Constitution 10

OTHER AUTHORITIES

Democracy by Initiative: Shaping California's Fourth Branch of Government (Center for Governmental Studies, 2nd ed. 2008) at 149 .... 5, 6

State's "Random Sample Update – 12/1/11" 3

INTRODUCTION

Respondent Debra Bowen, California Secretary of State, submits this preliminary opposition to petitioner Julie Vandermost's Verified Petition for Extraordinary Relief in the Form of Mandamus or Prohibition filed December 2, 2011.

Petitioner seeks relief under article XXI, section 3(b)(2) of the California Constitution, which allows a voter to seek relief in this Court 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 only issue presently before the Court is petitioner's prayer for immediate preliminary relief in the form of (a) an order that the Secretary of State "suspend" the requirement for filing in-lieu petitions for odd-numbered State Senate districts to be contested in the June 2012 primary, and (b) the appointment of a special master to prepare interim State Senate districts for use in the June 2012 primary, should petitioner's referendum actually qualify for the ballot. (Petition at p. 15 [Prayer ¶ 1].)

The prayer for immediate relief should be denied for two reasons. First, petitioner has not met her burden of showing that the referendum is likely to qualify. There is in fact considerable doubt as to whether the referendum will qualify. Second, section 3(b)(2) does not authorize the appointment of special masters on a showing that a referendum is "likely" to qualify.

Petitioner also seeks an order directing the Secretary to refrain from implementing the new Senate map "upon qualification of Petitioner's referendum petition[.]" (Petition at p. 15 [Prayer ¶ 2].) This request is premature because the referendum has not qualified and it will not be known until either mid-January or early March whether it does qualify. By that time, it will be too late to implement new boundaries for the 2012 Senate election.

STATEMENT

I. CALENDAR FOR THE 2012 PRIMARY ELECTION – THE FIRST FORMAL USE OF THE COMMISSION'S NEW MAPS WILL OCCUR ON DECEMBER 30, 2011.

The 2012 statewide primary election will be held on June 5. The first formal use of the new maps occurs on December 30, 2011, when candidates may begin to circulate petitions to secure signatures in lieu of paying a filing fee. At the very beginning of the election process, candidates must pay a filing fee to the Secretary of State in the amount of either one or two percent of first-year salary for the office they seek. (§ 8103.)[1] In lieu of paying that fee, candidates can submit petitions containing, depending on the office, 1,500 to 10,000 signatures. (§ 8106.) The in-lieu signature process is constitutionally required. (*See Knoll v. Davidson* (1974) 12 Cal.3d 335, 349 [former § 6555 violates the equal protection clause of the Fourteenth Amendment in that it requires a filing fee as a condition to becoming a candidate].)

The process of conducting an election for the 153 congressional, Senate, and Assembly seats that will be contested in 2012 is very complex. Rather than summarize the process here, the Secretary of State will simply note that the calendar for the 2012 primary election is attached as Exhibit A to the accompanying Declaration of Jana Lean, Chief of the Elections Division, California Secretary of State.

II. SCHEDULE FOR PROCESSING THE PROPOSED REFERENDUM OF THE SENATE MAP.

Petitioner submitted petitions in support of her proposed referendum on November 13, 2011. On November 23, 2011, the Secretary announced

---

[1] Unless otherwise noted, all statutory references are to the Elections Code.

that petitioner had submitted a sufficient number of raw signatures to trigger a random sample of the validity of those signatures. (Lean Decl., Exh. B.) Depending on the results of the random sample, a full count may be necessary. The chart below illustrates this point and contains the schedule for conducting the random sample and, if necessary, the full count. The chart is based on the Secretary of State's August 26, 2011 memorandum to county elections officials, as updated by the Secretary of State's "Random Sample Update – 12/6/11". (Lean Decl., Exhs. C and D.) The chart assumes that each step takes the maximum time permissible.

REFERENDUM PROCESSING SCHEDULE	
1/10/12	Last day for counties, by random sampling, to determine number of qualified signers and to certify result to Secretary. (§ 9030(d), (e).)
1/18/12	Secretary determines, based on county certificates, result of random sampling. If result is less than 95% of required number, petition fails. If result is over 110%, petition qualifies. If result is between 95% and 110%, Secretary notifies counties that a hand count of signatures is required. (§§9030(f), (g); 9031(a).)
3/6/12	Last day for counties to determine, by hand count, number of qualified signers and certify result to Secretary. (§§ 9031(b), (c).)
3/12/12	Secretary determines, based on county certificates, whether petition qualifies. (§§ 9031(d); 9033.)

As the chart demonstrates, it likely will not be known whether the referendum qualifies through the random-sampling process until mid-January. If a full hand count is necessary, the results likely will not be known until March.

Respondent's web site presents the current qualification status of circulating initiatives and referenda. The figures for petitioner's

referendum are attached to the Lean Declaration as Exhibit D. As of December 6, 2012, those figures show:

Qualification Status of Proposed Referendum of New Senate Districts as of 12/6/12 (# 1499)	
Raw Count	708,973
Number needed to qualify by random sample (110%)	555,236
Validity rate needed to qualify by random sample	78.3%[2]
Number needed to qualify by hand count (100%)	504,760
Validity rate needed to qualify by hand count	71.1%[3]
Current validity rate based on returns from 20 counties	69.5%

ARGUMENT

I. PETITIONER HAS NOT CARRIED HER BURDEN OF SHOWING THAT THE REFERENDUM IS LIKELY TO QUALIFY FOR THE BALLOT.

Petitioner alleges that her referendum petition is likely to qualify and stay the effectiveness of the new senate redistricting plan.[4] (Petition at p.

---

[2] Calculated by dividing the number needed to qualify by random sample (555,236) by the raw count (708,973).

[3] Calculated by dividing the number needed to qualify by hand count (504,760) by the raw count (708,973).

[4] Petitioner apparently recognizes that the constitutional requirement for actual evidence that the referendum is likely to qualify for the ballot is not superseded by section 9022. Section 9022(b) creates a presumption that submission of petition sections, properly verified by their circulators, establishes "that the petition presented contains the signatures of the requisite number of qualified voters," unless and until an official

(continued...)

12, ¶ 30.) As petitioner, she bears the burden of proof. (*California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1154.) Based on what we now know, petitioner is unlikely to be able to demonstrate until mid-January at the earliest, and early March at the latest, that her referendum is likely to qualify – if she is ever able to support that claim.

In her previous petition in this Court, petitioner alleged that she was "likely to obtain more than 780,000 'raw' (unverified) signatures on [the] referendum petition in order to realize at least 504,760 with a full count . . . or 555,236 . . . required to qualify by random sampling." (Verified Petition, *Vandermost v. Bowen #1* [No. S196493], at ¶ 177.) As it turns out, she submitted about 710,000 raw signatures. (Lean Decl., Exh.D.) This leaves the petition in a no-man's land where it is impossible to predict what the result will be. A 2008 study by the Center for Governmental Studies (CGS) reported that initiative proponents "lose up to 40% of gross signatures they have collected in the verification check," thus "signature gatherers must collect well over 750,000 gross signatures for initiative statutes . . . to be reasonably assured of qualification."[5] (*Democracy by*

(...continued)
investigation proves otherwise. In fact, an official investigation is conducted in every case. The names and addresses listed by those who sign a referendum petition are checked, by the random sample and/or full count methods, against the voter rolls to determine if a valid registration is on file and whether the signature on the petition matches the signature on the voter's affidavit of registration. (§§ 9030(d), (e), (f), (g); 9031(a), (b).) The signature is counted only if a match is found. No referendum is placed on the ballot until the minimum number of valid signatures has been verified in this manner.

[5] The number of signatures required to qualify a referendum is the same number required to qualify a statutory initiative. (Cal. Const., art. II, § 9(b) [referendum must be signed by electors equal to 5% of all votes in previous gubernatorial election]; *Id.*, § 8(b) [statutory initiative must be
(continued...)

Initiative: Shaping California's Fourth Branch of Government (Center for Governmental Studies, 2nd ed. 2008) at 149.) At the time the CGS study was written, 433,971 valid signatures were required to qualify a referendum. (*Id.* at p. 149.) At present, the number is 504,760. (Lean Decl., Exh. D) Based on the CGS study, petitioner would have had to gather more than 800,000 raw signatures to be "reasonably assured of qualification," a number close to the 780,000 she originally anticipated.

Petitioner has submitted a declaration from her counsel in which he declares that her referendum petition likely will qualify. (Declaration of Charles H. Bell, Jr., Regarding the Likelihood of Qualification of Referendum #1499 at ¶ 9.) Petitioner makes no showing that her counsel is qualified to offer an expert opinion on that issue. Further, the declaration contains significant errors.[6] The declaration also makes questionable assumptions, particularly the assumption that the qualification rate of referenda (which have a maximum circulation period of 80 days[7]) will be

---

(...continued)
signed by electors equal to 5% of all votes in previous gubernatorial election].)

[6] To give two examples, the declaration states that Measure #1182 achieved a higher validity rate on full count (76.0%) than it did on the random sample (70.6%). (Bell Decl., ¶ 8.) Declarant got this backwards. Measure #1182 had a 70.6% validity rate on full count (Bell Decl. at p. 23) and 76.0% validity rate on the random sample (Bell Decl. at p. 24).

The declaration states that "On information and belief, all of the 49 initiative and referendum measures for which the proponents submitted signatures for official verification qualified for the ballot." (Bell Decl., ¶ 3.) This is mistaken. Two additional measures were disqualified at the raw count stage. (Lean Decl., Exh. F)

[7] Redistricting maps certified by the Citizens Redistricting Commission are subject to referendum under the same rules that apply to statutes enacted by the Legislature. (Cal. Const., art. XXI, § 2(i).) A referendum petition must be filed within 90 days after the enactment date of a statute. (Cal. Const., art. II, § 9(b).) The Attorney General has 10 days to
(continued...)

similar to the qualification rate of initiatives (which have a maximum circulation period of 150 days[8]). For the 45 initiative petitions that went to random or full count in the past 5 years, the average validity rate was 74.82%. (Lean Decl., ¶8.) For the four referendum petitions that went to random or full count in the same period, the average validity rate was 72.1. (Lean Decl., ¶ 9)

Although petitioner has not met her burden of showing the referendum is likely to qualify, her showing does suggest that a full hand count likely will be necessary to determine qualification.[9] As set forth above, the referendum petitions will have to reach a validity rate of 78.3%

(...continued)
issue a circulating title and summary for a referendum measure. (§ 9006(b).) Petition circulation cannot begin until the Attorney General issues the title and summary and the Secretary of State provides a copy of the title and summary to each county elections official. (§ 9006(c).) Thus, if the proponent of a referendum against a redistricting map submits it to the Attorney General the same day the Citizens Redistricting Commission certifies the map, the maximum circulation period will be 80 days.

[8] § 9014.

[9] Petitioner's campaign manager anticipates a hand count:

> Campaign manager Dave Gilliard said in an email that he expects elections officials will have to use what's known as the "full count" to verify that the redistricting referendum qualified.
>
> * * * *
>
> But Gilliard said in an email this afternoon that he believes the final valid signature tally won't be above 520,000 (103% of the required number) and could be as low as 518,000 (103% of the required number). That would mean a full count... and much longer for the final verdict to be rendered.

(*See* John Myers, "710,924 Signatures for Overturning Senate Map. And Yet . . .", KQED News *Capitol Notes* (11/14/11), http://blogs.kqed.org/capitalnotes/2011/11/14/710924-signatures-for-overturning-senate-map-and-yet/.)

to qualify through the random sampling process. That is a high validity rate by any measure. The four statewide referendum petitions filed with the Secretary of State in the past five years had signature validity rates of only 71.58%, 72.10%, 72.90% and 71.69%. (Lean Decl., Exhs. G, H, I and J) If a hand count is necessary, the results will not be known until early March.

To summarize, petitioner has not met her burden of showing that the referendum is likely to qualify. Based on what we know now, the result could go either way. It is more likely than not that a hand count will be necessary to resolve the issue, and the result of a hand count likely will not be known until early March.

II. ARTICLE XXI DOES NOT AUTHORIZE THE APPOINTMENT OF A SPECIAL MASTER OR MASTERS TO DRAW NEW MAPS SIMPLY ON A SHOWING THAT A REFERENDUM IS "LIKELY" TO QUALIFY.

Petitioner contends that the new Senate map "is stayed upon likely qualification of the referendum and *that stay is automatic*." (Petition at p. 25, emphasis in original.) This argument misreads article XXI, section 3(b)(2), which states:

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

Petitioner's reading of the second sentence of section 3(b)(2) disregards the differences between the first and second sentences. The first sentence permits barring the Secretary of State from implementing the plan upon a showing that the plan is unconstitutional or violates the Voting

Rights Act. Read *consistently* with the first, the second sentence authorizes a registered voter to "seek relief" by extraordinary writ where a referendum "is likely to qualify and stay the timely implementation of the map." It is the *qualification* of the referendum that stays timely implementation of the map, as is the case with statutes (*see* Cal. Const., art. XXI, § 2(i) [each certified map subject to referendum in the same manner that a statute is subject to referendum]; *Assembly v. Deukmejian* (1982) 30 Cal.3d 638, 656-657 [a statute challenged by "a duly qualified referendum" is stayed from taking effect]); it is the *likely* qualification of such a referendum that supplies a registered voter with the sufficient beneficial interest to seek judicial relief in mandamus or prohibition.

A petitioner showing that a referendum against a plan is likely to qualify must still prove entitlement to relief consistent with allowing ordinary electoral procedures to move forward subject to interdiction by the qualification of a referendum petition.[10] Not only is petitioner's reading of section 3(b)(2) unreasonable, but there has been no showing that the proposed referendum is likely to qualify.

Petitioner also is mistaken when she asserts that article XXI, section 3(b)(3) authorizes this Court, upon a finding that the final certified State Senate map is the subject of a referendum that is *likely* to qualify for the ballot, to employ one of the forms of relief set forth in section 2(j): the appointment of a special master or masters, with instructions to draw a new

---

[10] For example, a petitioner could seek an order, requiring state and local elections officials to maintain all district maps and computer data used to conduct elections from 2001 through 2011, based on 2000 Census data. Such an order would make possible more rapid implementation of those districts, should this court later decide to order their use for the 2012 elections. (As discussed below, however, Respondent does not believe use of the old maps for the 2012 elections would be constitutional.)

State Senate map for review and certification by this Court.[11] Section 3(b)(3) states:

> The California Supreme Court shall give priority to ruling on a petition for a writ of mandate or a writ of prohibition filed pursuant to paragraph (2). *If the court determines that a final certified map violates this Constitution, the United States Constitution, or any federal or state statute,* the court shall fashion the relief that it deems appropriate, including, but not limited to, the relief set forth in subdivision (j) of Section 2.

(Emphasis added). Petitioner simply ignores the first clause of the second sentence of section 3(b)(3), which allows the appointment of special masters and the drawing of new lines only "[i]f the court determines that a final certified map violates this Constitution, the United States Constitution, or any federal or state statute[.]"[12] When read in context, it is clear that special masters may be appointed to draw new maps only where the Court has first found a constitutional or statutory violation. (*See People v. Leal* (2004) 33 Cal.4th 999, 1008 ["It is our task to construe, not to amend, the statute. In the construction of a statute ... the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or omit what has been inserted...."

---

[11] The petition seeks immediate preliminary interim relief consisting of an order appointing a special master to assist the Court in drawing interim boundary lines for the existing odd-numbered 2001 Senate Districts. (Petition at p. 15 (Prayer ¶ 1(B).)

[12] Article XXI, section 2(j) also makes this remedy available if the Commission fails to certify a final map or if the voters disapprove a certified final map in a referendum election. In this case, it is undisputed that the Commission timely certified a final State Senate map, and the voters have not disapproved that map in a referendum election. Indeed, the referendum against the State Senate map has not qualified for the ballot and petitioner has yet to submit sufficient evidence that it is likely to qualify for the ballot.

(internal citation and quotation marks omitted)].) Here there has been no such finding.

III. IT IS NOT PRACTICAL TO DRAW NEW SENATE LINES THIS LATE IN THE ELECTION SEASON.

Petitioner also seeks an order directing the Secretary of State to refrain from implementing the new Senate map "upon qualification of Petitioner's referendum petition[.]" (Petition at p. 15 [Prayer ¶ 2].) This request is premature because it will not be known whether the referendum qualifies until mid-January (completion of the random sample) or early March (completion of the hand count). Either date is too late to allow the preparation and implementation of a new Senate map in time for the June 5, 2012, primary. It is already too late to do so.

In the 1991 redistricting, after the legislative redistricting process resulted in stalemate, this Court appointed special masters on September 26, 1991, and instructed them to commence public hearings within 30 days and to file their recommendations by November 29. This Court also ordered a 30-day period of briefing and public comment following the filing of the masters' recommendations. The special masters held six days of public hearings in Sacramento, San Francisco, San Diego and Los Angeles. This Court, after a public hearing, adopted new plans on January 27, 1992, for the June 2, 1992 primary. (*Wilson v. Eu* (1992) 1 Cal.4th 707, 712-713.)

In the 1960s, a mid-decade redistricting plan for the Senate was necessary after the United States Supreme Court held that both houses of a bicameral state legislature must be apportioned by population. (*See Silver v. Brown* (1965) 63 Cal.2d 270, 275.) This Court set a December 9, 1965, deadline for legislative *adoption* of state Senate and Assembly maps to avoid disruption of the June 1966 primary election. (*Id.* at pp. 277-278.)

There are major practical restraints on the appointment of a special master or masters and the drawing of new plans this close to the 2012 election. First, special masters, should they be appointed, presumably would have to schedule public hearings throughout the state and submit tentative plans to the Court. The Court would then have to schedule a period of public comment and then adopt, reject, or modify the plan in a written opinion, after oral argument. In 1991 this process began with the appointment of special masters on September 26 and the completion of the line-drawing process required compression of the election calendar that pushed the process to the very limits of what is possible. We are now more than two months later into the election cycle. This is too late to start the line-drawing process without compressing the election calendar in a way that infringes the rights of candidates and voters.

Petitioner makes two suggestions that would, in her mind, allow for immediate adoption of alternative plans without further analysis, decision-making, or public comment. Neither suggestion appears workable.

First, petitioner suggests that the existing odd-numbered Senate seats could be used for the 2012 elections cycle. However, such use would appear to violate the Equal Protection Clause. "The Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable." (*Reynolds v. Sims* (1964) 377 U.S. 533, 577.) The United States Supreme Court has held that deviations of greater than 10% are sufficient to establish a prima facie case of invidious discrimination and must be justified by the State. (*Brown v. Thomson* (1983) 462 U.S. 835, 842.) The population variance in the old districts, with deviations in some circumstances of over 30%, appears to be too large to be constitutional without substantial justification that is absent here. (See, e.g., *Chapman v. Meier* (1975) 420 U.S. 1, 24 [20% variation in

court-ordered plan "is constitutionally impermissible in the absence of significant state policies or other acceptable considerations that require adoption of a plan with so great a variance"].) Moreover, the variation here would be particularly unacceptable because "[c]ourt-ordered districts are held to higher standards of population equality than legislative ones." (*Abrams v. Johnson* (1997) 521 U.S. 74, 98.) Accordingly, petitioner's suggestion to use the 2001 map as an interim map appears to be unworkable.

Second, petitioner suggests that interim districts could be immediately created by nesting Assembly districts. Petitioner neglects to inform the Court that the Redistricting Commission considered this approach but concluded that nesting would not be consistent with Section 5 of the federal Voting Rights Act.[13] While respondent takes no position on this issue, it seems imprudent to use nested districts without first analyzing whether the districts would in fact be inconsistent with Section 5. Section 5 requires that any voting change involving four California counties be precleared by the United States Department of Justice before being implemented. (*See* 42 U.S.C. § 1973b(b).) The Commission's plans were submitted to the Department of Justice on November 15, 2011.[14]

The first day that candidates can circulate petitions to collect signatures in-lieu of paying filing fees required to qualify as candidates in

---

[13] See, e.g. *State Of California Citizens Redistricting Commission Final Report On 2011 Redistricting* at p. 43: SD 5 is "a result of the partial-district nesting between the Section 5" counties to the south; p. 45: SD 14 not fully nested "[b]ecause of the need to comply with the requirements of Section 5 of the Voting Rights Act[;]" p. 46: SD 17 "not able to be fully nested due to the need to meet the Voting Rights Act requirements." This report is available on the Commission's website, http://wedrawthelines.ca.gov/.

[14] The preclearance submission is available on the Commission's website, http://wedrawthelines.ca.gov/.

the new districts is December 30, 2011. In the 1991 cycle, this Court entered an order extending the date for filing in-lieu petitions until February 10 of the election year. This resulted in a significant compression of the period to circulate in-lieu petitions. As noted earlier, the circulation of in-lieu petitions is constitutionally required. (*See Knoll, supra*, 12 Cal.3d at p. 349.) Respondent urges the Court to refrain from compressing the in-lieu circulation period unless strictly necessary. Petitioner Vandermost proposes that the Court simply override the longstanding requirement, duly enacted by the Legislature, for candidate filing fees. While respondent concedes that the Court has the power to enter such an order, respondent urges the Court to exercise restraint while considering last-minute changes to the rules for the 2012 election. As the Secretary of State stated in similar circumstances in 1991:

> preparing for elections is a complex and "sequential" process, requiring various tasks be performed before others may begin, including identifying the various district boundaries, developing county election precincts, assigning such districts to all registered voters, designing ballot styles, printing ballots, providing polling places, and training precinct workers. Early delays in one function can impact all other functions. As the Secretary points out, the need to know precise district boundaries "is at the front end of the process . . . ."

(*Wilson v. Eu* (1991) 54 Cal.3d 546, 548.) These words are particularly applicable to the 2012 election cycle, where elections officials will implement not only new redistricting plans, but also the new "top two" or "voter-nominated" election scheme adopted by Proposition 14 (June 2010).

Finally, as established by the Declaration of Jana Lean, Chief of the Elections Division, Office of the California Secretary of State, it will require a significant amount of time for state and local elections officials to implement changes to the new maps. The Office of the Secretary of State will require six weeks to implement changes. (Lean Decl., ¶ 20)

IV. WHAT WILL HAPPEN IF THE REFERENDUM ACTUALLY DOES QUALIFY IN EITHER JANUARY OR MARCH OF 2012.

If the referendum does qualify for the ballot in either January (random sample) or March (hand count) of 2012, the effect will be to stay the date upon which the new Senate map becomes law until it is approved by the voters. (*Assembly v. Deukmejian* (1982) 30 Cal.3d 638, 657.) If this occurs, the Secretary of State will immediately file a petition with this Court seeking guidance on how to proceed.

CONCLUSION

Petitioner has not met her burden of showing that the proposed referendum of the new Senate districts is likely to qualify for the ballot. It is more likely than not that a hand count will be necessary, the result of which will not be known until early March. To begin to re-draw lines and conduct public hearings this late into the election cycle would jeopardize the orderly conduct of the 2012 primary election. The Court should not start a new drafting exercise so close to the election.

Dated: December 6, 2011

Respectfully submitted,

LOWELL FINLEY
Chief Counsel
Office of the Secretary of State

KAMALA D. HARRIS
Attorney General of California
DOUGLAS J. WOODS
Senior Assistant Attorney General
PETER A. KRAUSE
Supervising Deputy Attorney General

GEORGE WATERS
Deputy Attorney General
Attorneys for Respondent Debra Bowen as California Secretary of State

SA2011103453
10785813.doc

CERTIFICATE OF COMPLIANCE

I certify that the attached **CALIFORNIA SECRETARY OF STATE DEBRA BOWEN'S PRELIMINARY OPPOSITION TO VERIFIED PETITION** uses a 13 point Times New Roman font and contains 3,861 words.

Dated: December 6, 2011

KAMALA D. HARRIS
Attorney General of California

GEORGE WATERS
Deputy Attorney General
Attorneys for Respondent Debra Bowen as California Secretary of State

DECLARATION OF SERVICE BY FACSIMILE AND MAIL

Case Name: **Vandermost v. Bowen (Version 2)**

No.: **S198387**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. My facsimile machine telephone number is (916) 324-5567.

On December 6, 2011 at 4:51 PM., I served the **CALIFORNIA SECRETARY OF STATE DEBRA BOWEN'S PRELIMINARY OPPOSITION TO VERIFIED PETITION** by transmitting a true copy by facsimile machine, pursuant to California Rules of Court, rule 2.306. The facsimile machine I used complied with Rule 2.306, and no error was reported by the machine. Pursuant to rule 2.306(h)(4), I caused the machine to print a record of the transmission, a copy of which is attached to this declaration. In addition, I placed a true copy thereof enclosed in a sealed envelope in the internal mail system of the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Charles H. Bell, Jr.
Bell, McAndrews & Hiltachk, LLP
455 Capitol Mall, Suite 600
Sacramento, California 95814
Fax #: (916) 442-7759
Attorney for Petitioner

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 6, 2011, at Sacramento, California.

Heidi M. Webb
Declarant

Signature

SA2011103453
10786145.doc