

August 31, 2011

VIA E-MAIL AND HAND DELIVERY

George Waters, Esq.
Deputy Attorney General
California Department of Justice
1300 I Street
Sacramento, California 95814

Dear Mr. Waters:

The California Citizens Redistricting Commission (the “Commission”) very much appreciates your prompt review of our August 29, 2011 letter concerning the Attorney General’s summary of the State Senate Districts Referendum, Summary No. 1499 (11-0028), issued on August 26, 2011 (the “Summary”). Nonetheless, the Commission is disappointed by your response and refusal to correct the Summary’s inaccurate and misleading language, which brings needless uncertainty to the referendum process. In particular, unless the Summary is revised, there is a risk that all of the signatures collected under the current language may be void. For this reason, the Commission respectfully urges you to reconsider your position.

As you are aware, the Attorney General’s Summary may not be “misleading.” (*Brennan v. Board of Supervisors* (1981) 125 Cal.App.3d 87, 93.) And as your letter acknowledges, the Summary also cannot be “likely to create prejudice for or against the measure.” (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal. 3d 208, 243, citations omitted.) Unfortunately, the Summary fails on both counts.

Among other problems, as noted in our first letter to you, the Summary inaccurately states that a referendum petition filed with the Secretary of State will “[r]equire court-appointed officials to set interim boundaries for use in the next statewide election.” In fact, even if the proposed referendum qualifies for the ballot, the Supreme Court would not be required to “appoint[]” masters or any other officials to do *anything*—the Court would be well within its discretion to allow the next election to go forward using the Commission’s maps. Thus, the Summary is more than “technically imprecise” and it is not something about which “reasonable minds can differ.” The language is objectively wrong.

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Moreover, the Summary risks prejudice *for* the proposed measure because it suggests, erroneously, that signing the petition may result in an entirely new set of maps. But as we explained in our letter to you, if the referendum qualifies and the majority of voters ultimately rejects the Commission's maps, the remedy would be appointing special masters to "adjust" those maps—not start over with a blank slate—and adjustments are permitted only to the extent necessary to comply with the constitutional criteria. As a result, as long as the Commission's maps complied with the constitutional criteria (which they did), then the California Supreme Court would be required to allow all of the maps to become effective.

In short, allowing signatures to be gathered under the current Summary language risks confusing the voters and brings needless uncertainty to the referendum process. The Commission respectfully urges you to reconsider your position and correct the inaccuracies in the Summary, in accordance with California law.

Very truly yours,

/s/ George H. Brown
George H. Brown
Gibson, Dunn & Crutcher LLP

/s/ James Brosnahan
James Brosnahan
Morrison & Foerster LLP

cc: Debra Bowen, California Secretary of State
Charles H. Bell, Jr., Esq.
Kirk Miller