

September 1, 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:

As you know, we represent the California Citizens Redistricting Commission (the “Commission”). We write regarding the request delivered to your office on August 30, 2011, by Julie Vandermost, asking the Attorney General to prepare a circulating title and summary for the proposed referendum on the Commission’s statewide congressional maps (11-0036).

In the past few days, we have exchanged correspondence with you concerning the summary of the State Senate Districts Referendum, Summary No. 1499 (11-0028), prepared by your office and issued on August 26, 2011. As we have discussed, the Commission believes that the Attorney General’s summary of the proposed referendum on the Senate districts is misleading and likely to create prejudice in favor of the measure.

Among other problems, the Attorney General’s summary creates the erroneous impression that a referendum could lead to a “do-over” in which the California Supreme Court would appoint special masters to redraw the Senate maps from a blank slate. To the contrary, as we have also discussed, even if the referendum qualified and the voters ultimately rejected the Commission’s Senate maps, the only remedy available under the California Constitution would be for an “adjustment” of those maps, and only to the extent any of them do not meet the constitutional criteria (which they do). Nonetheless, your office has, thus far, declined the Commission’s requests to fix the language of the summary.

Now, with the proposed referendum on the Commission’s congressional maps, the Attorney General has a second chance to get it right. Specifically, the Attorney General’s summary of the proposed referendum on the congressional maps should not simply “cut and paste” from

September 1, 2011

Page 2

the inaccurate summary of the proposed referendum on the Senate maps. Instead, in order to avoid misleading and confusing the voters during the referendum process, and to avert the inevitable inefficiencies and needless costs that would result if the referendum summary regarding congressional maps is later found to be invalid, the Attorney General should prepare language that takes into account the following two issues.

First, the Attorney General's summary should not state that a properly qualified referendum would "prevent [the Commission's congressional maps] from taking effect unless approved by the voters at the next statewide election." As noted above, Article XXI of the Constitution limits any remedy, even following a successful referendum, to adjusting the Commission's maps to conform to the redistricting criteria in the Constitution: "[T]he California Supreme Court [shall issue an] order directing the appointment of special masters to *adjust* the boundary lines of that map *in accordance with the redistricting criteria requirements* set forth in subdivisions (d), (e) and (f)." (Cal. Const., art. XXI, § 2, subd. (j), italics added.) Thus, even if the Commission's maps were rejected by the voters, many if not all of the congressional districts could remain in effect to the extent they are in compliance with the constitutional redistricting criteria (which the Commission strongly believes to be the case for all of the congressional districts).

Second, the Attorney General's summary should not state that a properly qualified referendum on the congressional maps would "[r]equire court-appointed officials to set interim boundaries for use in the next statewide election." As we have previously explained, this language would be plainly erroneous. There is nothing in Article XXI or anywhere else in the Constitution suggesting that the Court's potential remedies would include "appoint[ing] officials to set interim boundaries for use in the next statewide election." Indeed, as discussed above, even if the referendum qualified and the majority of voters ultimately rejected the Commission's maps, the remedy would be appointing special masters to "adjust" those maps, but only to the extent necessary to comply with the constitutional criteria. (Cal. Const., art. XXI, § 2, subd. (j).) And as to an *interim* remedy—after a referendum qualifies but before the next statewide election—there is clear historical precedent for the Court allowing the election to go forward using the newly drawn maps. (See *Assembly v. Deukmejian* (1982) 30 Cal.3d 638, 657-679.)

In sum, we appreciate that, under the circumstances, the Attorney General's office has thus far been unwilling to correct its summary of the proposed referendum on *Senate* districts, given that the summary has already been provided to the proponents and the Secretary of State. But now, with the recently proposed referendum on *congressional* maps, the Attorney General has an opportunity to prepare a summary that addresses the issues raised above, gives voters a fair and accurate description of the proposed measure, and fully complies with California law.

September 1, 2011
Page 3

We look forward to discussing this matter with you at the earliest opportunity.

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

101142836