S196493, S196852

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

JULIE VANDERMOST,

GEORGE RADANOVICH, ET AL.,

Petitioners,

v.

DEBRA BOWEN, SECRETARY OF STATE OF CALIFORNIA,

Respondent,

CITIZENS REDISTRICTING COMMISSION.

Real Party in Interest.

Filed Pursuant to Cal. Const., Art. XXI, § 3(b)(1)
and the Court's Order dated September 16, 2011

CONSOLIDATED PRELIMINARY OPPOSITION TO PETITIONS FOR WRIT OF MANDAMUS OR PROHIBITION

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CERTIFICATE OF INTERESTED ENTITIES AND PERSONS

The undersigned certifies that the Citizens Redistricting Commission knows of no person or entity that should be listed pursuant to rule 8.208(e) of the Rules of Court.

Respectfully submitted,

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"Appen. Sec." ..... Concurrently Filed Appendix of Secondary Sources

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"Supp. Quinn Dec. (R'vich)" ..... Supplemental Quinn Declaration for Radanovich

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"V'most Pet." ..... Vandermost's *Amended* Petition for Writ of Mandate

"V'most RJN" ..... Vandermost's Request for Judicial Notice

INTRODUCTION

The State Senate and U.S. Congressional districts certified by the Citizens Redistricting Commission (the "Commission") are the result of an extraordinary, multi-month process mandated by the Voters First Act, which amended the California Constitution to vest redistricting authority in the Commission and required the Commission to "conduct an open and transparent process enabling full public consideration of and comment on the drawing of district lines." (Cal. Const., art. XXI, § 2, subd. (b).)

The public's participation in this redistricting process—and the Commission's careful consideration of input by citizens and groups throughout the state—is unprecedented. Pursuant to its constitutional mandate, the Commission held more than 100 public hearings in locations across California; heard from more than 2,700 speakers; reviewed thousands of written submissions; and considered proposed maps from dozens of citizens and groups as diverse as the State's citizenship. No person was excluded. All of the Commission's deliberations—and all public submissions to the Commission—are available for public review on the Commission's website.

The Commission is an independent, non-partisan constitutional body whose 14 members were selected by a rigorous process designed to create a fair and capable Commission. The Commission was aided by mapping consultants and legal counsel and had unfettered access to all data previously used in the Legislature's redistricting efforts. The Commission's resulting maps comply in every respect with the Constitution and its current redistricting criteria, and provide for fair and effective representation.

The Petitioners, by contrast, rely exclusively on the unsupported factual speculation and legal conclusions of a single, shared "expert"—a partisan

blogger whose preferences they would substitute for the Commission's public process, measured deliberations, and careful exercise of its constitutional mandate. In doing so, Petitioners urge application of the wrong standard of review—arguing that the Commission's application of the constitutional redistricting criteria and its line-drawing decisions are subject to de novo review, rather than the high level of deference this Court and the U.S. Supreme Court have always afforded redistricting plans by the Legislature *or other body* vested with redistricting authority and the complex balancing of multiple factors that it entails.

In identical language (apparently copied from the first-filed petition) the Petitions also suffer the common fatal flaw of misstating (and conflating) Article XXI's current redistricting criteria. (Cal. Const., art. XXI, § 2, subd. (d)(1)-(6).) Petitioners fail to recognize that Article XXI, as amended by Propositions 11 and 20, does not endorse entirely the "recommended criteria" used by special masters in this Court's prior decisions and instead establishes different criteria, in different order of priority, which the Commission applied correctly. Petitioners also ignore that, pursuant to current Article XXI, lower-level redistricting criteria—such as the relative "compactness" of districts—must be balanced with and sometimes subordinated to higher-level criteria, such as compliance with the strict equal population requirement and with the federal Voting Rights Act ("VRA").

Each of the claims in the Vandermost Petition, which challenges State Senate districts drawn by the Commission, is legally flawed and should be summarily rejected:

- Its First Cause of Action alleges violation of "geographic compactness" without acknowledging the demands of four higher-

level constitutional criteria and without supporting precedent of any kind. It also alleges that the Commission failed to properly divide the state into geographic regions, an approach followed by the 1991 court-appointed special masters, but in no way required by current Article XXI or any applicable law (nor necessary given advances in map-drawing technology during the last two decades).

- Its Second Cause of Action for "unnecessary division of counties" similarly ignores the demands of higher-level criteria, including the top-level priority of strict adherence to equal population, and ignores that the fourth-level criterion on which Vandermost relies requires that equal consideration be given to the integrity of other political divisions, including cities and local communities of interest. As with regard to her First Cause of Action, Vandermost presents no precedent supporting this claim.

- Its Third Cause of Action for violation of the VRA fails on its face to state a claim since it alleges (1) no retrogression from established benchmarks as required by VRA Section 5, and (2) no potential "majority-minority" district, which is a first pre-condition to a VRA Section 2 claim.

- And its Fourth Case of Action, based on "likely qualification" of a referendum fails on its face because (1) it alleges no facts showing that the referendum is likely to qualify, and (2) likely qualification is not a basis under Article XXI for staying the certified maps.

The Radanovich Petition makes two inconsistent claims with regard to Los Angeles County Congressional Districts: that the Commission

simultaneously failed to take race into account to the detriment of African Americans in violation of the VRA, and *did* take race into account to the benefit of African Americans in violation of the Fourteenth Amendment. Like Vandermost's claims, all claims in the Radanovich Petition are legally flawed and should be summarily denied:

- Its First Cause of Action for "racial gerrymandering" in violation of the Fourteenth Amendment fails to allege let alone demonstrate any facts showing that race was the predominant factor in drawing the challenged Los Angeles County districts under controlling Supreme Court precedent that requires a showing that the redistricting decision is unexplainable on grounds other than race. Indeed, the districts are the result of an extensive process that considered and correctly applied the race-neutral redistricting criteria in Article XXI.

- Its Second Cause of Action—for alleged failure to create a majority African American district under VRA Section 2—fails on its face for failure to show, as a necessary precondition, that majority voters in the Los Angeles County region at issue regularly vote as a bloc to defeat African American-preferred candidates. In fact, the Commission heard overwhelming evidence, including from leaders of the African American community, that African Americans in this region of Los Angeles have a long history of success in electing candidates of their choice.

- Its Third and Fourth Causes of Action for violation of "geographic compactness" and "unnecessary division of cities" are based on the identical flawed legal analysis used by Vandermost. Like the Vandermost claims, they fail to take into account the demands of

higher level criteria—including the need to create majority Latino Districts to comply with VRA Section 2—and allege no supporting facts or supporting legal precedent, relying only on the opinions and preference of their proffered expert.

As explained in detail herein, with regard to every challenged district, the Commission considered and applied faithfully the protections of the U.S. Constitution and the Voting Rights Act, and all other Article XXI redistricting criteria, in the order of priority mandated by the California Constitution. None of the Petitioners' challenges to the certified maps have merit, and each can and should be summarily rejected.

FACTUAL BACKGROUND

A. Proposition 11 (the Voters First Act)

In adopting Proposition 11 in 2008, the people of California amended the California Constitution and created a new constitutional body—the independent, 14-member Commission—tasked with responsibility for drawing Senate (and other) district lines following each U.S. Census.[1]

Proposition 11 responded to criticism of a legislative redistricting process that lacked transparency and favored incumbents. Its passage amended the Constitution to provide that the Commission shall, among other things,

> (1) conduct an open and transparent process enabling full public consideration of and comment on the

[1] The Voters First Act, enacted by passage of Proposition 11, is contained in Article XXI of the California Constitution and Government Code sections 8251 through 8253.6.

> drawing of district lines; (2) draw district lines according to the redistricting criteria specified in this article; and (3) conduct themselves with integrity and fairness.

(Cal. Const., art. XXI, § 2, subd. (b).)

Article XXI, as amended, establishes six criteria that the Commission must consider in drawing new district lines, and the order of priority in which these criteria are to be applied. (Cal. Const., art. XXI, § 2, subd. (d).) These criteria are identified and discussed in the Legal Argument, Section I, *post*.

B. Proposition 20

In November 2010, the voters approved Proposition 20, further amending Article XXI of the California Constitution to direct the Commission to also handle redistricting for U.S. Congressional districts.

Proposition 20 also defined the term "community of interest" in Article XXI, section 2, subdivision (d)(4); and it changed the date by which the Commission must submit certified maps to the Secretary of State from September 15 to August 15, 2011—and on August 15 in each year ending in the number one thereafter. (Cal. Const., art. XXI, § 2, subd. (g).)

C. The Selection of a Fair and Impartial Commission

The Voters First Act established a selection process for Commissioners that is rigorous, fair, and "designed to produce a commission that is independent from legislative influence and reasonably representative of this State's diversity." (Cal. Const., art. XXI, § 2, subd. (c)(1).)

The Voters First Act requires the State Auditor—a state officer independent of the executive and legislative branches—to select

Commissioners from a broad, diverse and qualified pool of applicants. (Gov. Code, §§ 8251 et seq.) The State Auditor undertook an extensive statewide outreach program to attract a large pool of qualified applicants, including through mainstream and foreign-language media, the Internet, and staff responsible for telephone and email communications. More than 36,000 applications were submitted. (Appen. 640.)

An independent Applicant Review Panel comprised of licensed independent auditors then screened applicants for the Commission. (Gov. Code, § 8252, subd. (b).) This panel reviewed thoroughly all applicants who satisfied statutory pre-screening criteria, including rigorous conflict-of-interest rules. (Gov. Code, § 8252, subd. (a)(2) & (d).) The Review Panel's meetings, interviews and deliberations were all open to the public—and broadcast live on the Internet and archived for later review.[2]

The Applicant Review Panel selected 60 qualified applicants as potential Commissioners: 20 registered Democrats; 20 registered Republicans; and 20 minority party, independent, or "decline to state" voters. (Gov. Code, § 8252, subd. (d).) Leaders of the Democratic and Republican parties in the Legislature then were permitted to review the qualified applicants and to strike a subset, to further minimize perceived or actual partisan leanings. (*Id.*, § 8252, subd. (e).) The remaining pool of qualified applicants consisted of 12 registered Democrats, 12 Republicans, and 12 voters unaffiliated with a major party. (*Ibid.*) From this remaining pool, the State Auditor randomly selected three Democrats, three Republicans, and two voters unaffiliated with a major party to serve as the first eight Commissioners. (Gov. Code, § 8252, subd. (f).)

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[2] <http://wedrawthelines.ca.gov/selection.html> (Oct. 10, 2011).

The extraordinary process for selecting a qualified and impartial Commission continued: The first eight Commissioners reviewed the remaining pool of qualified applicants and appointed an additional six. The applicants were "chosen based on relevant analytical skills and ability to be impartial" as well as "to ensure the commission reflects this state's diversity, including, but not limited to, racial, ethnic, geographic, and gender diversity." (Gov. Code, § 8252, subd. (g).)

The full Commission is comprised of five registered Republicans, five registered Democrats, and four registered voters unaffiliated with either major political party. (Cal. Const., art. XXI, § 2, subd. (c)(2).)[3] Approval of final redistricting maps requires a supermajority of at least nine affirmative votes, which must include at least three votes of the Republican members, three votes of the Democratic members, and three votes of the unaffiliated members of the Commission. (Cal. Const., art. XXI, § 2, subd. (b)(5).)

The Commissioners are sworn to serve in a manner that is "impartial and that reinforces public confidence in the integrity of the redistricting process." (Cal. Const., art. XXI, § 2, subd. (c)(6).) They are prohibited from holding elected office for ten years following their appointment on the Commission, and cannot hold appointed office or work as a lobbyist or political consultant for five years following appointment. (*Ibid.*)

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[3] The Commissioners' biographical information is contained in the concurrently filed Appendix of Exhibits at pages 631-636.

D. The Commission's Open and Extensive Public Hearing and Map-Drawing Process

In reaction to the backroom redistricting process previously conducted by the Legislature, the Constitution now requires "an open and transparent process enabling full public consideration of and comment on the drawing of district lines." (Cal. Const., art. XXI, § 2, subd. (b).)

The Commission took very seriously its mandate to "establish and implement an open hearing process for public input and deliberation" and to conduct an "outreach program to solicit broad public participation" in the redistricting process. (Gov. Code, § 8253, subd. (a)(7).) For example:

i. The Commission solicited testimony through extensive public outreach involving mainstream and foreign-language media, the Commission's website, social media, and through a long list of organizations, including, e.g., the Chamber of Commerce, Common Cause, the League of Women Voters, MALDEF, the NAACP, and the Asian Pacific American Legal Center (Appen. 643-644);[4]

ii. From the start of the redistricting process in January 2011 until August 2011, the Commission held 34 public input meetings in 32 locations across the state. Meetings were scheduled to be convenient for average citizens—typically during early evening hours at a government building or school—and many extended hours longer than scheduled to accommodate speakers. More than 2,700 people gave testimony or spoke at the public input hearings (Appen. 643);

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[4] Additional organizations that provided public outreach support are listed at <http://wedrawthelines.ca.gov/partners.html> (Oct. 10, 2011).

iii. In addition, the Commission held more than 70 business meetings, during which the Commission regularly solicited public comment. All public meetings were broadcast live on the Commission's website and archived for later public review (*ibid.*);

iv. The Commission received and considered more than 2,000 written submissions containing testimony or maps from groups and individuals, reflecting proposed statewide, regional or other districts. Alternative map submissions were posted on the Commission's website (*ibid.*);[5]

v. The Commission or its staff also reviewed more than 20,000 written comments addressing the shared interests, backgrounds and histories of California's communities, suggestions for district lines, and comments on the redistricting process generally (Appen. 644);

vi. The Commission received training and technical assistance from Q2 Data and Research, consultants with extensive experience with the computer programs used for line-drawing, to parse the U.S. Census data and use computer models and other programs needed for the complex, highly technical district line-drawing process. (*Ibid.*) The Commission also engaged Voting Rights Act legal counsel selected through an open bidding process;

vii. The Commission had full access to all demographic and other data that would have been available to the Legislature for use in redistricting, except they did not consider information about how the Commission's maps would affect incumbent politicians, an issue that cannot be considered following passage of Proposition 11 (see Cal. Const., art. XXI, § 2, subd. (e));

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[5] <http://wedrawthelines.ca.gov/map-submissions.html> (Oct. 10, 2011).

viii. On June 10, 2011, following 23 public input hearings and dozens of public business meetings in which comments also were received, the Commission issued its first set of draft maps. The maps were posted on the Commission's website and covered widely in the media.[6] The Commission received public comments on the draft maps during 11 more input hearings and in hundreds of additional written submissions, and revised and honed the maps over the next several weeks (Appen. 644);

ix. All of the Commission's public meetings and line-drawing sessions were broadcast live on the Commission's website, and video of those sessions is archived and available for public review. Transcripts of the Commission's meetings, its draft and final maps, and all documents presented to the Commission and suitable for posting also are available on the Commission's website for public review.[7]

E. Certification of the Final Maps and Issuance of the Commission's Final Report

On July 29, 2011, the Commission released its preliminary final maps, together with a narrative explaining for the public's benefit the California Constitution's criteria for drawing district lines and the Commission's public input process.[8] The maps were posted for further public comment. (*Ibid.*; see also V'most RJN 69.)

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[6] See, e.g., <http://wedrawthelines.ca.gov/maps-first-drafts.html> (Oct. 10, 2011).

[7] See, e.g., <http://wedrawthelines.ca.gov/transcripts.html> and <http://wedrawthelines.ca.gov/viewer.html> (Oct. 10, 2011).

[8] <http://wedrawthelines.ca.gov/maps-preliminary-final-drafts.html>. (Oct. 10, 2011).

On August 15, 2011, the Commission certified the final maps to the Secretary of State. (V'most RJN 69; see Cal. Const., art. XXI, § 2, subd. (g).) The maps were accompanied by the Commission's 67-page Final Report summarizing the Commission's work, the redistricting process, and the districts. (Appen. 637-803.)

The Secretary of State filed the maps the same day. (V'most RJN 69.)

F. The Vandermost Petition

On September 15, 2011, Vandermost filed her 124-page petition challenging Senate districts, with supporting declarations of T. Anthony Quinn and Brian T. Hildreth and a two-volume Request for Judicial Notice. The petition does not include a Certificate of Word Count and was not accompanied by an application to file an oversized petition. (Cal. Rules of Court, rules 8.204(c) & 8.486(a)(6).)

On September 16, the Court requested a preliminary opposition within ten days or, alternatively, by October 10.

Vandermost filed a 126-page "Amended Petition" on September 30.[9]

G. The Radanovich Petition

On September 29, 2011, Radanovich filed his petition, challenging U.S. Congressional districts. Significant portions of the petition appear to have been copied verbatim from Vandermost's petition, including the legal argument sections addressing deference owed to the maps and the scope of this Court's

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[9] For convenience, all citations to the Vandermost and Radanovich Petitions are to the "Amended," later-filed Petitions.

review. Like the Vandermost petition, the Radanovich petition is supported by a declaration from Quinn and a voluminous Request for Judicial Notice.

On October 6, one week after the constitutionally imposed deadline for filing petitions (see Cal. Const., art. XXI, § 3, subd. (b)(2)), Radanovich filed an "Amended Petition" with several additional pages of argument, and a supplemental Quinn declaration.

LEGAL ARGUMENT

I. THE COMMISSION FOLLOWED ITS CONSTITUTIONAL MANDATE TO CONSIDER AND APPLY—IN ORDER OF PRIORITY—THE SIX CRITERIA IN ARTICLE XXI.

Article XXI of the California Constitution provides that "[t]he commission shall establish single-member districts for the Senate, Assembly, [and] Congress . . . in the following order of priority:"

> 1. "Districts shall comply with the United States Constitution. Congressional districts shall achieve population equality as nearly as is practicable, and Senatorial . . . districts shall have reasonably equal population with other districts for the same office, except where deviation is required to comply with the federal Voting Rights Act or allowable by law."
>
> 2. "Districts shall comply with the federal Voting Rights Act."
>
> 3. "Districts shall be geographically contiguous."
>
> 4. "The geographic integrity of any city, county, city and county, local neighborhood, or local community of interest shall be respected in a manner that *minimizes their*

division to the extent possible without violating the requirements of any of the preceding subdivisions."[10]

5. "*To the extent practicable, and where this does not conflict with the criteria above*, districts shall be drawn to *encourage geographical compactness* such that nearby areas of population are not bypassed for more distant population."

6. "*To the extent practicable, and where this does not conflict with the criteria above*, each Senate district shall be comprised of two whole, complete, and adjacent Assembly districts, and each Board of Equalization district shall be comprised of 10 whole, complete, and adjacent Senate districts."

(Cal. Const., art. XXI, § 2, subd. (d)(1)-(6); italics added.)

Article XXI required the Commission to consider all six criteria, weighted according to their prescribed priorities—an "extremely complex" and fact-intensive undertaking, "for innumerable plans could be adopted that would satisfy the one man, one vote requirement." (*Legislature of Cal. v. Reinecke* ("*Reinecke I*") (1972) 6 Cal.3d 595, 602.)

The six criteria served as the guideposts for all of the Commission's work in drawing district lines. The Final Report explains the Commission's

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[10] A "community of interest" is defined as "a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. 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 share similar living standards, use the same transportation facilities, have similar work opportunities, or have access to the same media of communication relevant to the election process. Communities of interest shall not include relationships with political parties, incumbents, or political candidates." (Cal. Const., art. XXI, § 2, subd. (d)(4).)

reliance on the criteria during the drafting process, as it analyzed Census data, heard testimony, and considered a vast amount of input from voters and citizens' groups. (Appen. 637-701) The public record memorializing the Commission's meetings and line-drawing sessions underscores that the six criteria were carefully considered and followed throughout the Commission's deliberations; specific examples follow in Sections III and IV, *post*.[11]

II. STANDARD OF REVIEW: THE COMMISSION'S MAPS ARE ENTITLED TO A HIGH LEVEL OF DEFERENCE.

A. The Applicable, Highly Deferential Standard: Any Reasonable Application of the Redistricting Criteria Should Be Upheld.

The Commission's exercise of its constitutional authority to apply Article XXI's six criteria is entitled to the same, significant judicial deference that this Court has always afforded redistricting plans. The maps should not be disturbed where "they appear to reflect reasonable applications of the [applicable] criteria, even though alternatives urged upon [the Court] may appear equally reasonable." (*Legislature of Cal. v. Reinecke* ("*Reinecke II*") (1973) 10 Cal.3d 396, 403; see also *Wilson v. Eu* ("*Wilson IV*") (1992) 1 Cal.4th 707, 720 [holding that "[t]he recommended districts appear to reflect reasonable applications of the various applicable criteria."]; *Nadler v. Schwarzenegger* (2006) 137 Cal.App.4th 1327, 1340 [under *Reinecke II* and *Wilson IV*, "courts must approve a reapportionment plan if it appears to reflect a reasonable application of the standards, 'even though alternatives . . . may appear equally reasonable'"].)

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[11] As Sections III and IV explain, the petitions present no evidence that the Commission failed to consider the six criteria or that it did not deliberate as to how the criteria could most effectively be satisfied. Indeed, the record of the Commission's careful deliberations shows the opposite.

In a recent case reviewing the work of an independent redistricting commission, the Arizona Supreme Court stated the standard similarly, holding that the commission's plan should not be overturned unless "the party challenging the redistricting plan demonstrated that no reasonable redistricting commission could have adopted the redistricting plan at issue." (*Ariz. Minority Coalition for Fair Redistricting v. Ariz. Independent Redistricting Commission* (Ariz. 2009) 208 P.3d 676, 689.)

B. Reasons for Applying the Highly Deferential Standard of Review.

The Commission's certified maps are entitled to significant deference, first of all, because of the constitutional authority vested in the Commission. *Assembly v. Deukmejian* (1982) 30 Cal.3d 638 noted that the source of the Legislature's authority to draw district lines under former Article XXI—it had been "delegated responsibility for reapportionment both by federal precedent and by California's Constitution"—supported deference. (*Id.* at p. 669.) Similarly, *Nadler*, *supra*, 137 Cal.App.4th 1327, in applying *Reinecke II* and *Wilson II* (which had reviewed maps drawn by court-appointed special masters) and affording significant deference to maps drawn by the Legislature and approved by the Governor, explained that the policy of deference was "even stronger" because the plans were enacted pursuant to the Legislature's and Governor's constitutional authority for redistricting:

> The California Supreme Court has twice indicated a reasonable, comprehensive reapportionment plan should not be rejected simply because equally reasonable alternative plans may be suggested. (*Wilson v. Eu*, *supra*, 1 Cal.4th at p. 720; *Legislature v. Reinecke*, *supra*, 10 Cal.3d at p. 403.) On those occasions, the court was considering the adoption of plans prepared by special masters. The policy of deference to a comprehensive, overall plan—and

> against judicial tinkering with individual districts at the behest of particular persons or groups—is even stronger where, as here, the Legislature enacted and the Governor approved the plans under consideration.

(*Nadler*, *supra*, 137 Cal.App.4th at pp. 1341-1342.)

Under Article XXI as amended by Propositions 11 and 20, constitutional authority for redistricting is now vested in the Commission, which stands in the shoes previously filled by the Legislature. (Compare former Cal. Const., art. XXI, §§ 1-2 and Cal. Const., art. XXI, § 2.)

United States Supreme Court authority is in accord: Deference is owed to the "legislature *or other body*" that is authorized in the first instance to draw district lines. (*Chapman v. Meier* (1975) 420 U.S. 1, 27 [italics added; "We say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court."]; accord *Burns v. Richardson* (1966) 384 U.S. 73, 85 [recognizing that a redistricting body enjoys the "freedom of choice" within a range of permissible choices, with which courts should not interfere].)

The Commission's maps are also entitled to significant deference for the "intensely practical" reason that redistricting is a fact-intensive, "extremely complex matter" that requires that map drawers "afford all interested parties an opportunity to be heard." (*Reinecke I*, *supra*, 6 Cal.3d at pp. 601-602.) For example, *Reinecke II*, *supra*, considered objections to district lines drawn by special masters after the Legislature failed to pass reapportionment plans in 1972. (10 Cal.3d at pp. 399, 403.) The Court recognized that the map drawers (there, the masters, their staff and consultants) had "spent four months in the intensive study and consideration of the arguments and evidence presented to them and in drawing and redrawing district lines in an endeavor to prepare

reapportionment plans that adhered to the greatest extent possible to all of the recommended criteria." (*Id.* at p. 403.) *Reinecke II* noted that attempts "to redraw specific district lines to achieve possibly more reasonable results would run the serious risk of creating undesirable side effects which [the Court] could not foresee and which adversely affected parties could not call to [the Court's] attention in time for corrections to be made." (*Ibid.*) Applying a highly deferential standard, the Court reviewed all objections to the maps and concluded that "in every case the lines drawn represent[ed] reasonable applications of the recommended criteria." (*Id.* at p. 404.)

In *Wilson IV*, *supra*, 1 Cal.4th at p. 729, the Court cited *Reinecke II* with approval and afforded significant deference to district lines that were drawn after the Legislature and Governor had failed to agree upon maps in time for the 1992 elections. (*Id.* at pp. 711, 728-729.) The Court concluded that all "reasonable applications of the recommended criteria" by the map drawers must be accepted by the Court. (*Id.* at p. 729.)

The reasons for affording deference to the maps in *Reinecke II*, *Wilson IV*, *Deukmejian*, and *Nadler* apply with equal—or greater—force here. Pursuant to its Article XXI constitutional authority, the Commission completed an exhaustive, eight-month analysis and line-drawing process, during which the Commission heard from and weighed the input of an extraordinary number of community members and groups. And, unlike the Legislature, the Commission was selected and operated in accordance with the principles of independence and impartiality mandated by Article XXI as amended by Propositions 11 and 20.

The extensive public input process that Article XXI now requires—and that the Commission implemented pursuant to its constitutional mandate—

could not be approximated by the Court or special masters in the time available before the June 2012 elections. In addition, any redrawing of district lines to address lower-order criteria (e.g., "compactness," matching district lines to county lines, or "nesting" two assembly districts within each senate district) would "run the serious risk of creating undesirable, [unforeseen] effects" that the parties "could not call [to the Court's] attention in time for corrections to be made"—a risk that would "necessarily be magnified" because the Court is "not in as advantageous a position [as the Commission] to assess the impact of possible alternatives." (*Reinecke II, supra*, 10 Cal.3d at p. 403.)

Affording the Commission's work the deference afforded the Legislature (and also given to the work of masters when they have been asked to fill a void left by the Legislature) is also consistent with the people's will in adopting Proposition 11. In adopting Proposition 11, the people amended the Constitution to vest power over redistricting with the Commission rather than the Legislature. (Cal. Const., art. IV, § 1; see *Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 247 [explaining that Article IV, section 1, "divides the entire legislative power of the state between the Legislature and the people's reserved right of initiative and referendum"].) Where, as here, the people have exercised their lawmaking power, the Court's role "is to simply ascertain and give effect to the electorate's intent guided by the same well-settled principles [the Court] employs to give effect to the Legislature's intent when [it] reviews enactments by that body." (*Professional Engineers in Cal. Government v. Kempton* (2007) 40 Cal.4th 1016, 1042-1043.)

Other states whose constitutions vest authority for redistricting in independent commissions afford substantial deference to the line-drawing judgments by those commissions. In Arizona, for example, voters passed an

initiative in 2000 that amended their constitution by reassigning congressional and state legislative district line-drawing authority from the legislature to a newly created, independent commission. (*Ariz. Minority Coalition for Fair Redistricting*, *supra*, 208 P.3d at p. 680.) The Arizona Supreme Court concluded that, because the commission performs a legislative function, its redistricting plans are entitled to the same deference afforded other legislation. (*Id.* at pp. 683-685.) The court stated that it could not base its review on whether "the courts or another entity could offer a 'better' redistricting plan; doing so would impermissibly enlarge [the court's] role." (*Id.* at p. 685; citing authorities.) Decisions from the highest courts of Colorado and Idaho are in accord.[12]

In analogous situations involving the review of decisions by an agency delegated authority through legislation, this Court has applied a highly deferential standard of review. For example, in *Fullerton Joint Union High School District v. State Board of Education* ("*Fullerton*") (1982) 32 Cal.3d 779, the plaintiff challenged the State Board of Education's approval of a plan to create a new school district. (*Id.* at p. 784.) Before approving the plan, the board was required to find substantial compliance with the statutory criteria set

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[12] (*In re Colo. Gen. Assem.* (Colo. 1992) 828 P.2d 185, 189 ["Our role in this proceeding is a narrow one: to measure the present reapportionment plan [submitted by the Colorado Reapportionment Commission] against the constitutional standards. The choice among alternative plans, each consistent with constitutional requirements, is for the Commission and not the Court."]; *Idaho Legis. Reapportionment Plan of 2002 v. Ysursa* (Idaho 2005) 129 P.3d 1213, 1221 ["We simply cannot micromanage all the difficult steps the Commission must take in performing the high-wire act that is legislative district drawing. Rather, we must constrain our focus to determining whether the split was done to effectuate an improper purpose or whether it dilutes the right to vote."].)

forth in Education Code section 4200.[13] (*Id.* at p. 785.) In finding that the plan substantially complied with section 4200's criteria, the Court applied the following standard: "In reviewing such quasi-legislative decisions, the trial court does not inquire whether, if it had power to act in the first instance, it would have taken the action taken by the administrative agency. The authority of the court is limited to determining whether the decision of the agency was arbitrary, capricious, entirely lacking in evidentiary support, or unlawfully or procedurally unfair." (*Fullerton, supra*, 32 Cal.3d at p. 786, citing *Pitts v. Perluss* (1962) 58 Cal.2d 824, 833; *Brock v. Superior Court* (1952) 109 Cal.App.2d 594, 605-607.)[14]

In a variety of other contexts, this Court has recognized the importance of deferring to the fact-finder when reviewing a fact-bound issue. (See, e.g., *In re Price* (2011) 51 Cal.4th 547, 559 ["Because the referee observes the demeanor of testifying witnesses, and thus has an advantage in assessing their credibility, this court ordinarily gives great weight to the referee's findings on factual questions."].) Given the intensely factual and complex judgment calls

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[13] Education Code section 4200 sets forth criteria that school organization plans must satisfy to deliver adequate educational services. (*Fullerton, supra*, 32 Cal.3d at p. 785.)

[14] As *Pitts* explained, where a decision involves "'highly technical matters requiring . . . experts and economists and the gathering and study of large amounts of statistical data, . . . 'courts should let administrative boards and officers work out their problems with as little judicial interference as possible.' . . . The substitution of the judgment of a court for that of the administrator in quasi-legislative matters would effectuate neither the legislative mandate nor sound social policy." (*Pitts, supra*, 58 Cal.2d at p. 835; citation omitted.)

involved in redistricting, the Court should apply a similarly deferential standard of review here.[15]

C. The Burden of Proof Is on Petitioners.

A corollary of the established deference standard is that Petitioners have the burden of proving that the Commission's maps are an unreasonable application of the Constitutional criteria—i.e., that no reasonable commission could have adopted those maps. As *Nadler* explained in applying this Court's decisions in *Reinecke II* and *Wilson IV* to a redistricting plan: "In the final analysis, plaintiffs bore the burden of demonstrating that the reapportionment plan adopted by the Legislature and approved by the Governor inevitably poses a total and fatal conflict with applicable constitutional provisions." (*Nadler*, *supra*, 137 Cal.App.4th at p. 1344.)

Just as the Commission's exercise of its constitutional authority is entitled to the same deference as the prior exercise of that authority by the Legislature (and the masters), the same burden is on Petitioners in challenging the Commission's plan. As the Arizona Supreme Court stated the burden in directly parallel circumstances: "[W]e ask if the party challenging the redistricting plan demonstrated that no reasonable redistricting commission

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[15] In reviewing an agency's quasi-legislative decisions, this Court has noted: "The precise formulation of the standard may be less important than what courts actually do in exercising deferential but not perfunctory review: 'What matters is that . . . judges generally understand that they may not properly substitute their judgment for administrative judgment except on questions of law on which they are the experts, but that something like reasonableness, rational basis, substantial evidence, or clearly erroneous guides what they do on other questions, and that in most cases other factors have a much stronger influence than the words of the formula that is supposed to apply." (*Cal. Hotel & Motel Assn. v. Indus. Welfare Com.* (1979) 25 Cal.3d 200, 213, fn. 28.)

could have adopted the redistricting plan at issue." (*Ariz. Minority Coalition for Fair Redistricting*, *supra*, 208 P.3d at p. 689.)

D. Petitioners' Arguments for Applying De Novo Review Are All Wrong.

Vandermost's and Radanovich's (identical) arguments for applying de novo review do not hold water.[16] First, the decisions Petitioners cite (*Reinecke I*, *Wilson v. Eu* ("*Wilson I*") (1991) 54 Cal.3d 471, and *Deukmejian*) do not support their argument that deference is owed the Legislature's maps but not the Commission's maps because the Legislature unlike the Commission is a "co-equal" branch of government. (V'most Pet. 83; R'vich Pet. 43.) *Reinecke I* and *Wilson I* did not even involve maps drawn by the Legislature; those cases arose because the Legislature and Governor failed to agree upon new district lines. (*Reinecke I*, *supra*, 6 Cal.3d at p. 598; *Wilson I*, *supra*, 54 Cal.3d at p. 472.) Masters then were appointed to fill the void left by the Legislature, and the Court in subsequent opinions afforded significant deference to the masters' maps *based on practical considerations*—including the fact-intensive nature of the line-drawing process—even though this was not work by the Legislature. (*Reinecke II*, *supra*, 10 Cal.3d at p. 403; *Wilson IV*, *supra*, 1 Cal.4th at p. 720.)[17]

In *Deukmejian*, new district lines had been enacted pursuant to former Article XXI, but the maps were stayed by the qualification of a referendum. (30 Cal.3d at pp. 643, 656-657.) The Court was left with "no choice but to resolve the pressing problem of what districts should be used in the upcoming primary

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[16] Radanovich's arguments for de novo review appear to be copied verbatim from Vandermost's first-filed brief.

[17] *Reinecke I* rejected the argument raised by Petitioners here—that "the doctrine of separation of powers" formed the basis for the discretion afforded the Legislature's maps. (*Reinecke I*, *supra*, 6 Cal.3d at p. 601.)

and general elections." (*Id.* at p. 661.) As in *Reinecke II* and *Wilson IV*, this Court found that "practical considerations . . . render[ed] infeasible any attempt by this court to draft reapportionment plans of its own . . . and obviate[d] any possibility of giving consideration to alternative plans . . . ." (*Id.* at p. 658 n.15, citing *Reinecke I*, *supra*, 6 Cal.3d at pp. 601-602.) Moreover, the deference afforded the maps drawn by the Legislature was premised on the Legislature's constitutional authority for redistricting. (*Id.* at p. 669 [Legislature had been "delegated responsibility for reapportionment both by federal precedent and by California's Constitution"].)[18] The same reasoning supports deference to the Commission, which is now the constitutional body vested with authority to draw district lines.

Ignoring the Commission's comprehensive efforts, Petitioners argue no deference should be given because the Commission has "no expertise or technical knowledge of the redistricting process." (V'most Pet. 86; R'vich Pet. 46.) Petitioners ignore that the Commission's members were "chosen based on relevant analytical skills and ability to be impartial" and were supported by consultants and lawyers with specific expertise in this area. (Gov. Code, § 8252, subd. (g).) Moreover, like the special masters in *Wilson IV*, *supra*, 54 Cal.3d at p. 729, the Commission "developed an expertise in the art of apportionment" through its intensive, eight-month redistricting process.

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[18] The federal precedent cited in *Deukmejian* recognizes that courts "should follow the policies and preferences of the State, *as expressed in statutory and constitutional provisions*." (*White v. Weiser* (1973) 412 U.S. 783, 795 [italics added]; see also *Reynolds v. Sims* (1964) 377 U.S. 533, 588-589 [agreeing the Court should "afford the State of Alabama full opportunity, consistent with the requirements of the Federal Constitution, to devise its own system of legislative apportionment" (conc. opn. of Stewart, J.)].) Our state's Constitution and Voters First Act mandates that the Commission has authority in the first instance for line-drawing.

(Appen. 637-803.) Applying no deference, as Petitioners urge, would be to disregard entirely the Commission's efforts and the will of the people in creating the Commission.

Vandermost also argues that Article XXI, section 3's grant of "original and exclusive jurisdiction" in this Court (Cal. Const., art. XXI, § 3 (b)(1)), and its provision that the Court shall fashion appropriate relief *if* it finds a violation (*id.*, § 3 (b)(3)), somehow supports the conclusion that the Court may conduct its review "independently, without deference to the Commission's conclusions of law or factual findings in support of the maps drawn by the Commission." (V'most Pet. 82; see also R'vich Pet. 42 [same].) That argument is contrary to the plain language of Article XXI. *First*, it confuses a jurisdictional rule (a right to direct review in this Court) with a substantive one (the standard that is to be applied during review). *Second*, it ignores that Article XXI, read as a whole, commits the task of redistricting to the Commission, not the Court.

"In construing constitutional provisions, the intent of the enacting body is the paramount consideration. . . . To determine that intent, courts look first to the language of the constitutional text, giving the words their ordinary meaning." (*Powers v. City of Richmond* (1995) 10 Cal.4th 85, 91; citations omitted.)

Article XXI, section 3 provides: "*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." (Cal. Const., art. XXI, § 3, subd. (b)(3); italics added.)[19]

Nothing in the text of this article suggests that the Court should review the Commission's certified maps "independently" or "without deference," as Petitioners contend. To read these words into Article XXI would "violate the cardinal rule that [t]he Constitution is to be interpreted by the language in which it is written, and courts are no more at liberty to add provisions to what is therein declared in definite language than they are to disregard any of its express provisions." (*Powers*, *supra*, 10 Cal.4th at p. 93 [citations and quotations omitted].)

Nor do the ballot pamphlets for Propositions 11 and 20 support Petitioners' interpretation of Article XXI. (*Powers*, *supra*, 10 Cal.4th at pp. 94-95 [considering arguments in ballot pamphlet in determining voters' intent].) The ballot materials contain no mention of independent review by this Court or a lack of deference to the Commission's findings. Instead, the arguments both for and against Proposition 11 state that it "puts voters back in charge" and gives the "final say" *to the Commission*, not a court.[20] (V'most RJN 56.) Indeed, opponents of Proposition 20 argued it would give the Commission

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[19] Subdivision (j) of section 2 provides: "*If* the commission does not approve a final map by at least the requisite votes or *if voters disapprove a certified final map in a referendum*, the Secretary of State shall immediately petition the California Supreme Court for an order directing the appointment of special masters to adjust the boundary lines of that map in accordance with the redistricting criteria and requirements set forth in subdivisions (d), (e), and (f)." (Cal. Const., art. XXI, § 2, subd. (j); italics added.)

[20] Proposition 11, unlike prior failed initiatives, explicitly created a *Citizens* Redistricting Commission, not a process similar to the Court's past use of masters when the Legislature failed to produce a redistricting plan.

"even more power over the people" and "absolute power over our legislative districts." (V'most RJN 63.) Nothing in the ballot pamphlets or Article XXI supports Petitioners' contention that voters "adopted close supervision by this Court" in amending Article XXI. (V'most Pet. 83; R'vich Pet. 43.)

Article XXI's instruction that the Court should give "priority to ruling" on petitions filed by "[a]ny registered voter" (Cal. Const., art. XXI, § 3, subd. (b)(3)) also does not support Vandermost's argument. (V'most Pet. 80-81.) Proposition 11's grant of "priority" in this Court was intended to permit challenges to be resolved expeditiously; it could not have been meant to render the Commission's work merely advisory, as Vandermost suggests. The grant of automatic priority to *all* challenges filed by registered voters—no matter how frivolous—underscores that the drafters' goal was to resolve challenges before the next election, not that the Court should afford the Commission no deference.

In sum, Article XXI, section 3, contemplates the same role for the Court that it has always served when confronted with objections to redistricting maps, not to "supervise decennial redistricting," as Petitioners contend. (See, e.g., V'most Pet. 81.) Under established precedent, undisturbed by Propositions 11 and 20, this Court should not substitute its judgment for that of the Commission. The certified maps should be approved where, as here, "they appear to reflect reasonable applications of the [constitutional] criteria, even though alternatives urged upon [the Court] may appear equally reasonable." (*Reinecke II*, *supra*, 10 Cal.3d at p. 403.)

III. THE VANDERMOST PETITION DOES NOT MEET ITS BURDEN OF DEMONSTRATING A VIOLATION OF THE CALIFORNIA CONSTITUTION.

A. Overview: Vandermost Misconstrues and Misapplies the California Constitution.

Vandermost's Petition urges this Court to disregard months of work by a careful Commission composed of individuals with diverse backgrounds and experiences, carefully selected according to a constitutionally mandated process, in favor of her proffered expert's personal preferences and opinions. The Petition fails to cite any valid legal or factual basis to disregard the Commission's efforts. Vandermost's sole proffered "evidence" consists of the bald, error-prone speculation and assertions of a known, partisan Internet blogger. Quinn suggests that the Commission should have ignored the effect of two constitutional amendments approved by the people of California in favor of reverting to nostalgic views of how the state should be divided. Failing to account for demographic changes in the state's voting-age population and advances in computer mapping technology, as well as amendments to Article XXI of the California Constitution, Vandermost raises no legitimate challenge to the Commission's reasonable application of the constitutional criteria.

Drawing California's political districts is no simple assignment. Redistricting a state of 37,253,956 citizens and more than 155,000 square miles might be a straightforward task if the population were homogeneous and evenly spaced across the state's geography. But the complications of ethnic, socioeconomic, and geographic density and diversity make it an enormously complex undertaking.

To address this task, the Commission undertook extensive efforts to ensure it was well-informed about the competing preferences that would make

line-drawing according to the constitutional criteria complex and difficult. It held many weeks of public comment hearings,[21] accepted thousands of written submissions,[22] consulted retained advisors, and deliberated at length just to put out a first draft. After those initial draft maps came more public hearings, comments, and advice, and more deliberation. (Factual Background section, *supra.*) The Commissioners who drew California's new political boundaries are reasonable people, who engaged in an extensive deliberative process, as envisioned by the Voters First Act adopted by California voters, and made thoughtful, sensible determinations regarding how lines should be drawn. (Appen. 640-644.) The combination of a robust selection process to promote a politically balanced and diverse Commission and an extensive public process for collecting public input and deliberating the merits of various proposals can lead only to one conclusion: The resulting Senate maps reflect the Commission's reasonable application of the constitutional criteria and should be upheld. Vandermost utterly fails to meet her burden to demonstrate that no reasonable commission could have adopted those maps.

Contrary to Vandermost's argument, the Constitutional amendments enacted by Propositions 11 and 20 do not wholesale adopt prior case precedent,

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[21] The Commission held more than 70 business meetings, including 22 line drawing meetings, and 34 public input hearings. (See Appen. 642-644; see also <http://wedrawthelines.ca.gov/hearings.html>.)

[22] Indeed, at least 46 different groups submitted proposed maps. (See <http://wedrawthelines.ca.gov/map-submissions.html>.) Quinn, by contrast, waited until well after the conclusion of the process (the last day to file suit) to submit proposed maps to the Commission. His failure to subject his assertions to the rigorous debate and scrutiny of the public process results in erroneous assumptions regarding: (i) the relevant legal criteria for drawing maps; (ii) the appropriate standard by which the Commission's efforts must be judged; (iii) the interests, concerns and identity of the various communities; and (iv) the complexity of balancing all constitutional criteria in the required order.

let alone Vandermost's interpretation of that precedent. (Cal. Const., art. XXI, § 2, subd. (d)(1)-(6).) Rather, the Commission was constrained by the hierarchy in the Constitution as passed by the voters. A brief comparison of the Constitution to the framework Vandermost proposes illustrates the differences in the two approaches:

The California Constitution	**Quinn's Criteria**[23]
The U.S. Constitution (including population equality)	Agrees
The Federal Voting Rights Act	Agrees
Contiguity	Integrity of California's Basic Geographical Regions
Respect the Geographic Integrity of Cities, Counties, Cities and Counties, Local Neighborhoods and Local Communities of Interest	Contiguity and Compactness
Encourage Compactness	Keep Counties Whole
Nesting	Nesting

In addition to the obviously different ordering, Vandermost, supported by nothing more than Quinn's own *ipse dixit*, and contrary to the case law she cites, insists that "[t]he first step in meeting the state constitutional criteria is to divide the state into its geographic regions." (V'most Pet. ¶ 44.) This concept appears nowhere in the California Constitution. (Cal. Const., art. XXI, § 2, subd. (d)(1)-(6).)[24] Indeed, introducing a requirement not recognized by and

[23] (See Quinn Dec. (V'most) ¶¶ 1, 4; see also V'most Pet. ¶ 14.)

[24] Prior to the passage of Proposition 11, Article XXI contained language referencing the state's geographic regions, and requiring that the redistricting process respect their integrity. Proposition 11 struck that language out, with the

(Footnote continues on next page.)

inconsistent with the Article XXI criteria would violate the Constitution. Decades ago, Quinn's proffered first step may have been a practical necessity due to technological limitations. But today's computers and mapping software (used by the Commission) are well-suited to handle the mapping challenges without resort to such artificial divisions. Consequently, an arbitrary division of the State using Quinn's criteria would not have benefitted the mapping process—and certainly was not required—and would have prevented the Commission from fulfilling its constitutional mandate to balance the interests of cities, counties, neighborhoods, and communities of interest, based on the constitutional criteria established by passage of Propositions 11 and 20.

Pursuant to Article XXI, section 2, population equality is the highest criterion that the Commission must consider, and each district must conform to the U.S. and California constitutional limitations on deviation from the ideal population size. Next, the Commission must ensure compliance with the federal Voting Rights Act. Complying with each of these criteria takes precedence over the further criteria stated by Article XXI.

The Constitution recognizes that satisfying these higher-priority criteria may render it impractical to satisfy the lower criteria of geographic integrity, compactness and nesting. (Cal. Const., art. XXI, § 2, subd. (d)(4)-(6).) The Constitution specifically states that "geographic integrity" "shall be respected in

(Footnote continued from previous page.)

excision clearly noted in strikethrough language in the text of the proposition listed in the ballot pamphlet. The Appendix of Secondary Sources p. 74 contains this ballot language, with the stricken constitutional clause: "~~(e) The geographical integrity of any city, county, or city and county, or of any geographical region shall be respected to the extent possible without violating the requirements of any other subdivision of this section.~~" No reference to geographic regions was inserted elsewhere into the Constitution by Proposition 11 or by Proposition 20.

a manner that *minimizes*" division of geographical units "to the extent possible without violating the requirements of any preceding subdivision." (*Id.*, art. XXI, § 2, subd. (4).) The Constitution mandates compliance with the subsequent criteria of compactness and nesting to the extent "*practicable* and where this does not conflict with the criteria above."[25] (*Ibid.*)

Rather than recognizing that higher criteria control, Vandermost misinterprets the law and botches the order, attempting to elevate compactness and minimization of county splits over higher-order criteria. But it is the Constitution's mandated criteria, not Quinn's or Vandermost's preferences or fond remembrance of how districts used to be, that control this Court's determination of whether the Commission's maps are reasonable.

Vandermost's primary argument is that certain districts are not compact.[26] First, she is just wrong. None of the districts violate the compactness criterion. Vandermost claims that the Commission is required to create districts that contain "local" and "nearby" population, but never explains how that concept is to be applied in districts containing nearly one million people over sparsely populated regions. No basis exists in the Constitution or case law for Vandermost's overbroad, subjective proposed standard for compactness. Second, if the Commission made a district less compact to satisfy

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[25] Vandermost and Quinn fail to recognize the reasonableness and flexibility built into Article XXI section 2. By approving terms like "minimize" and "practicable" the people of California appreciated that maps could only be achieved by balancing these criteria in their proper order and not by isolating—and then dogmatically interpreting them—as the Petition urges.

[26] Vandermost also bases her First Cause of Action on "contiguity." Whether this is a typographical error or just another misstatement of the law is not clear, but there can be no real disagreement that each district is contiguous. (See Appen. 702-715; see also Section III(A)(3), *post.*)

a higher priority criterion, such as population equality or the Voting Rights Act, that decision comports with the constitutional criteria. Third, the record demonstrates that the Commission's application of the constitutional criteria was reasonable in each of the Senate districts.

Vandermost's Second Cause of Action for "unnecessary division of counties" is also deeply flawed. First, the Constitution does not *require* that the Commission not split counties. The Constitution requires that the Commission "*to the extent possible*" minimize the division "of any city, county, city and county, local neighborhood, or local community of interest." (Cal. Const., art. XXI, § 2, subd. (d)(4); emphasis supplied.) Second, population equality and the Voting Rights Act control. Where a county is reasonably divided to satisfy those higher priorities, the Commission has fulfilled its constitutional mandate. Third, there is no constitutional basis for elevating counties over cities, local neighborhoods or local communities of interest.[27] The Commission was charged with equally respecting each type of community, and Vandermost's argument once again demonstrates the fundamental difference between maps drawn by a single partisan and those created after months of public input and deliberation by a 14-member Constitutional body. Fourth, it is Vandermost's burden to provide evidence that the Commission's line-drawing decisions were unreasonable, and her Petition falls far short by (i) failing to present any

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[27] In addition, Quinn's speculation that "Californians tend to relate to county governments" (V'most Pet. ¶ 91), provides no basis for giving higher priority to counties than to cities, neighborhoods, or communities of interest, the other geographic divisions given equal weight in Article XXI, section 2, subdivision (d)(4). While counties certainly provide vital services, so do cities, and, depending on a resident's preferences and where she lives, she might feel a greater allegiance to a neighborhood, city, or community of interest. The Commission pursued a reasonable strategy in seeking broad public input rather than speculating or asserting that counties are king.

evidence that the Commission failed reasonably to apply the relevant constitutional criteria in the required order, and (ii) challenging the maps with inapposite standards and unsupported assertions about the underlying communities that comprise the districts. For example, Vandermost fails to acknowledge that both Sacramento and San Bernardino Counties must be divided to comply with population-equality requirements, because each of these counties is substantially larger than a single Senate district.[28]

Vandermost's claims lack substance or support, and her Petition should therefore be denied.[29]

1. Vandermost Ignores the Fundamental Requirement of Population Equality.

Vandermost does not contest the standard the Commission employed in achieving population equality or dispute that each Senate district has reasonably equal population with other districts. And yet, she urges that this Court reject the Commission's maps in favor of Quinn's, which were achieved by ignoring the impact of the highest criterion factor in drawing each Senate district.

Compliance with the U.S. Constitution is, of course, paramount. (Cal. Const., art. XXI, § 2, subd. (d)(1); see also U.S. Const., art. VI, § 2 [Supremacy

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[28] Sacramento County has a total population of 1,417,788. San Bernardino has a total population of 2,035,210. An ideal Senate District has a population of 931,349. (Appen. 650.)

[29] Vandermost also claims or implies that the districts were drawn to support incumbents, but she offers no data or evidence to support that contention. (V'most Pet. ¶ 51.) The public record of the Commission's proceedings demonstrates that the Commission scrupulously adhered to its constitutional charge and gave no consideration to any impact that its redistricting decisions would have on incumbents or political parties. (Cal. Const. art. XXI, § 2, subd. (e).)

Clause].) This criterion specifically obliges the Commission to comply with population-equality requirements. Following the constitutional mandate required districts of equal population within a small range of deviation from the ideal district size. (Cal. Const., art. XXI, § 2, subd. (d)(1); see also *Reinecke II*, *supra*, 10 Cal.3d 396; *Wilson IV*, *supra*, 1 Cal.4th at p. 753 ["the population of all districts of a particular type shall be *reasonably equal*"].)

As noted in *Reinecke II*, 10 Cal.3d at p. 411, some uncertainty exists with respect to California's standard for population equality, and the Commission conservatively decided that its Senate maps should strive for a total population deviation of 0%, but could deviate up to 2% from the ideal when necessary to maintain consistency with the Commission's instructions, including minimizing the fragmentation of counties, cities, local neighborhoods, and local communities of interest. (Appen. 58-59, 649-650.) The certified maps successfully maintain the population size of each Senate district within 1% of the ideal. (Appen. 650.)

The California Constitution requires forty State Senate districts, and allocating population for each district was at times difficult. California has 37,253,956 citizens. (See <http://quickfacts.census.gov/qfd/states/06000.html>.) Thus, the ideal size of each State Senate districts is 931,349 people. (Appen. 650.) Reducing deviation to less than one percent is challenging, particularly in rural areas where density can dip to two people per square mile. (Appen. 666.) In sparsely populated areas, districts can be enormous, potentially hundreds of miles long, and counties, cities and other community units may need to be split to meet this criterion. (See, e.g., Appen. 683.)

Compliance with the population-equality requirement takes priority over lower priority criteria, such as dividing a county or including a dissimilar or remote population. The Vandermost Petition fails to grasp what the

Commission did to achieve population equality or even to acknowledge that it is a particularly difficult exercise in sparsely populated regions. Vandermost rails against the division of two counties without regard for the population equality standard that the Commission was required to meet in drawing its boundaries. Instead of addressing the Commission's analysis or the record of its proceedings, Vandermost simply invokes the 1991 masters' maps.[30] Petitioner has utterly failed to demonstrate that the *Commission's* determinations were unreasonable.

2. Compliance with the Voting Rights Act Preempted Lower-Ranked Criteria.

Vandermost's Petition also ignores the many ways in which the Commission's compliance with the VRA influenced the line-drawing process and affected lower-ranked criteria. Four counties in California (Kings, Monterey, Merced, and Yuba) are covered by VRA Section 5. For those counties, Section 5 requires California to obtain preclearance from the U.S.

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[30] Contrary to Quinn's historical account, a review of public reactions at the time, observations of the mainstream press, and research published in a peer-reviewed journal, demonstrate that the 1991 masters process is not universally viewed as a "gold standard." For instance, MALDEF filed suit to block the congressional plan, alleging that it violated the Voting Right Act and one-person, one-vote guidelines. (Appen. Sec. 49-50.) Further, in a criticism that is echoed in the Petition's frequent claim that the Commission in 2011 combined areas that "don't belong in the same district" (V'most Pet. ¶ 63), a 1992 Los Angeles Times article entitled "Redistricting Redefines Campaigns," began, "Artsy, urban Santa Monica and bucolic Hidden Hills, communities seldom spoken of in the same breath, will share a legislator in the state Assembly for the next decade." (Appen. Sec. 51-52.) A statistical analysis comparing the state's congressional district lines drawn by the 1991 special masters with the plans proposed by Republicans and those proposed by Democrats shows that, in their predicted partisan consequences, the masters' plan "was nearly as biased in favor of the Republicans as the proposal of the Republican party." (Appen. Sec. 53.)

Attorney General or the U.S. District Court for the District of Columbia before making certain changes that affect the right to vote. (42 U.S.C. § 1973c.) Accordingly, the boundaries of various districts required adjustment to meet certain levels of minority voting age population ("VAP").

A redistricting plan violates Section 5 if it has the "effect" of diminishing the ability of racial or language minority groups to elect their preferred candidate. (42 U.S.C. § 1973c, subd. (b).) A redistricting plan "has the 'effect' of denying or abridging the right to vote if it leads to a retrogression in the position of racial or language minorities with respect to their effective exercise of the electoral franchise." (*Riley v. Kennedy* (2008) 553 U.S. 406, 412 [internal quotations and alterations omitted].) Under U.S. Supreme Court precedent, a redistricting plan that results in the maintenance or improvement of the minority voting strength is not retrogressive and fully complies with Section 5 of the VRA. (*Beer v. United States* (1976) 425 U.S. 130, 141; *Georgia v. Ashcroft* (2003) 539 U.S. 461, 477.) Accordingly, the Commission was required to—and did—ensure that minority voting age populations in each covered county did not retrogress the benchmark. (Appen. 661-662.)

In addition, the Commission complied with VRA Section 2, which prohibits minority vote dilution and provides that no "standard, practice, or procedure shall be imposed or applied … in a manner which results in a denial or abridgement of the right . . . to vote on account of race or color" or membership in a language minority group. (42 U.S.C. §§ 1973, subd. (a), 1973b, subd. (f)(2).)

Vandermost inaccurately portrays the VRA's requirements and its impact on the available options for drawing district boundaries. For example, she avoids mentioning the ripple effect that drawing district boundaries in

compliance with the VRA has on surrounding districts. The districts Vandermost complains about in Central California, Senate Districts 12 and 17, were drawn to meet the Section 5 benchmark requirements for Kings, Merced, and Monterey Counties. (See Section III(B), *post*.) Ignoring the record of that decision, Vandermost proposes that for "compactness" and "county split" reasons, lesser constitutional criteria, the maps should have been drawn in a way that would require Kings County to run afoul of its Section 5 benchmark.[31] The Commissioners' reasonable efforts to comply with the VRA trump Vandermost's flawed compactness argument.[32]

3. Each Senate District Is Contiguous.

Vandermost styles her First Cause of Action as for "Violation of California Constitution, Art. XXI, section 2(d)(3): Violation of Geographic Compactness and Contiguity Requirements." Article XXI, section 2(d)(3), however, says nothing about "geographic compactness." It says only that "[d]istricts shall be geographically contiguous."

A district is contiguous if its boundaries would "permit[] any candidate, map in hand, to visit every residence in her district without leaving it." (*Bush v. Vera* (1996) 517 U.S. 952, 1017 fn.16 [Stevens, J. dissenting].) Indeed, "common sense . . . mandates that some intervening features should not be considered as destroying contiguity, such as roadways or rural rights of way, utilities easements, natural divisions (rivers, narrow gullies, mountain peaks),

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[31] Vandermost also ignores the impact of the Commission's compliance with VRA Section 2. (See, e.g., Section III(C)(2), *post*.)

[32] These districts do not violate compactness standards, as discussed more fully in Section III(B), *post*.

and any land which will never be improved." (*Honey Springs Homeowners Assn. v. Board of Supervisors* (1984) 157 Cal.App.3d 1122, 1145, fn. 20.)

Each Senate District certified by the Commission is "geographically contiguous," because each part of each district is connected through an unbroken sequence. (Appen. 702-715.) In other words, a candidate could, map in hand, visit every residence in her district without leaving it. (*Vera, supra*, 517 U.S. at p. 1017 n.16.) Vandermost cites no authority for the proposition that contiguity requires anything more.

Vandermost conflates the requirement that the "[d]istricts shall be geographically contiguous" (Cal. Const., art. XXI, § 2, subd. (d)(3)), with the lower criterion that "[t]o the extent practicable, and where this does not conflict with the criteria above, districts shall be drawn to encourage geographical compactness..." (Cal. Const., art. XXI, § 2, subd. (d)(5).) (See, e.g., V'most Pet. ¶ 89.) The concepts are distinct and must be considered separately.

This is one of many instances in which the Vandermost Petition's reliance on the 1991 special masters is erroneous.[33] While the 1991 masters may have reasonably applied then-applicable law that called for contiguity and compactness to be considered together (see, e.g., *Wilson IV*, *supra*, 1 Cal.4th at

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[33] Quinn also criticizes the Commission for making decisions about the state's overall geographic divisions or specific district lines that differed from those made by the special masters in 1991. But old geographic divisions and district lines no longer fit the state, and the Commission engaged in a thorough process of analyzing data, traveling the state, and interacting with thousands of residents to make reasonable decisions about district lines. Indeed, ever since the one-person, one-vote decisions of the Warren Court, the charge of state redistricting authorities has been to alter lines to respond to population growth and demographic shifts. Rather than locking in old approaches that no longer fit, the Commission's *job was to draw lines that fit the State's new realities.*

pp. 714, 761-62 [the recommended criteria at that time included "contiguity and compactness of districts"]), the Constitution has since been amended, and application of compactness at the same level of priority as contiguity would violate Article XXI's plain language.[34] (Cal. Const., art. XXI, § 2, subd. (d)(5).)

Vandermost has presented no evidence that any district lacks contiguity.

4. Vandermost's Challenge to County Splits Misstates the Law and Provides No Basis to Find an Unreasonable Application of the Fourth Constitutional Criterion.

Vandermost's Second Cause of Action for "unnecessary division of counties" misstates the constitutional requirements regarding maintenance of geographic integrity and should be rejected outright.

After the higher order criteria are satisfied, the Commission must "*to the extent possible*" reduce subdivisions "of any city, county, city and county, local neighborhood, or local community of interest." (Cal. Const., art. XXI, § 2, subd. (d)(4); italics added.) The challenge in applying this criterion is not simply avoiding splitting counties, as Vandermost asserts, but rather in balancing how to assemble a district that keeps intact as many *cities, counties, cities and counties, local neighborhoods, or local communities of interest as possible*, while fulfilling higher constitutional criteria.[35] Speaking in a vacuum and without regard to the other four community units in Article XXI, § 2,

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[34] To determine the intent of a constitutional provision, "courts first look to the language of the constitutional text, giving their words their ordinary meaning." (*Powers v. City of Richmond* (1995) 10 Cal.4th 85, 91.)

[35] A summary of splits in the final maps is available at Final Report, Appendix 4. (Appen. 738-796.)

Vandermost suggests that the Commission should have avoided splitting counties. This misconstrues the law.

The Commission undertook to satisfy this requirement by soliciting extensive input at meetings held around the state to ensure it understood all of the factors to be taken into consideration, including communities of interest whose boundaries are not easily identified on a map. (Appen. 662-663.) The Commission fulfilled its constitutional mandate by minimizing the division of all community boundaries through careful deliberation and an iterative process that allowed the public to give input on draft maps. (*Ibid.*) To achieve population equality and satisfy the Voting Rights Act, the Commission was sometimes required to divide counties and cities. As discussed more fully below, the Commission's determinations were reasonable applications of Article XXI, section 2; that is all that the Constitution requires.

Vandermost claims that Sacramento and San Bernardino Counties should not have been split. (V'most Pet. ¶¶ 117-118.) For population-equality purposes, Sacramento County must be split at least two ways, and San Bernardino must be split at least three ways, because their populations exceed that of a single Senate district. In both areas, the Commission determined it needed to split counties to achieve population equality in the adjacent districts. (Appen. 612-615, 617.) Understanding that the counties would be split, the Commission applied sound judgment, as informed by its review of the record, to determine how best to satisfy constitutional criterion four and balance the interests of affected cities, counties, cities and counties, neighborhoods and

communities of interest.[36] The Commission's decisions were eminently reasonable, and nothing in Vandermost's Petition demonstrates otherwise.[37]

5. Vandermost Alleges No Facts Supporting a Conclusion that the Commission Did Not Reasonably Apply the Fifth Level Criterion of "Encourag[ing] Geographical Compactness."

Although Vandermost relies heavily on "compactness," the Constitution's fifth criterion, as her primary basis for challenging the maps, she does not purport to measure the Senate Districts against any discernible standard. The Senate Districts at issue all reflect reasonable Commission decisions and are well within the bounds of compactness standards applied by this Court.

The California Constitution currently requires districts to be drawn to "encourage" compactness. For the fifth criterion, the Commission was required to draw districts "*to the extent practicable, and where this does not conflict with the criteria above* ... to *encourage* geographical compactness such that nearby areas of population are not bypassed for more distant population." (Cal. Const.,

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[36] In the Senate map, only 19% of counties and 4.2% of cities were split. (Appen. 739.)

[37] Vandermost also notes that Sacramento and San Bernardino counties do not have a single Senate district contained entirely within their boundaries. The Petition deems this "a situation worse than obtained prior to 1961 when the federal courts invalidated California's old, county-based Senate districting system." (V'most Pet. ¶ 77.) Each county has at least one Senate district in which it is dominant. Senate District 6 contains 887,557 residents of Sacramento County and 48,744 residents of Yolo County. Senate District 20 contains 786,333 residents of San Bernardino County and 149,602 from Los Angeles County; San Bernardino County residents also make up a majority of Senate District 23. (Appen. 761.) Accordingly, neither county will lack a senator who is responsive to county interests.

art. XXI, § 2, subd. (d)(5); emphasis supplied).[38] The Constitution offers no further requirements for compactness.[39]

Vandermost offers no objective standard to measure whether a nearby population was "bypassed." She argues, in effect, that any district whose boundaries are different than those advocated by Quinn violates compactness because it "bypasses" population in an adjacent district that could have been included. But *any* district drawn in *any* manner will necessarily bypass the adjacent district's populations. This Court has never reduced compactness to the subjective and conclusory analysis Quinn offers.

Vandermost seeks to buttress her assertions by mischaracterizing *Wilson IV*, *supra*, 1 Cal.4th 707, and *Reinecke II*, *supra*, 10 Cal.3d 396, as supporting the proposition that "districts must contain 'local' and 'nearby' populations" and that "this rule is . . . mandatory." (V'most Pet. ¶ 21.) *Reinecke II* did not define compactness such that districts must contain "local" and "nearby" populations. Rather, the special masters' report appended to the opinion stated that "territory included within a district should be contiguous and compact, taking into account the availability and facility of transportation and communication between the people in the proposed district, between the people

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[38] The relaxed language of Article XXI regarding compactness—"encourage geographical compactness"—indicates that the districts are not required to satisfy any precise mathematical calculation or per se rule.

[39] No court has yet interpreted the goal that "nearby areas of population [not be] bypassed for more distant population." (Cal. Const., art. XXI, § 2, subd. (d)(5).) And Vandermost herself supplies evidence indicating that no standard has been established. (See, e.g., MALDEF California State Redistricting Plans for State Assembly, State Senate, and U.S. House of Representatives [submitted as V'most RJN Ex. G] at 11 ["MALDEF also acknowledges that there is no standard measure of compactness."].)

and candidates in the district, and between the people and their elected representatives." (10 Cal. 3d at p. 411). Nor did *Wilson IV* hold that districts must be composed entirely of "local" populations that are "nearby" each other. (V'most Pet. ¶ 21.) Indeed, *Wilson IV* explicitly rejected a purely geometric conception of compactness. (1 Cal.4th at p. 719 ["Compactness does not refer to geometric shapes but to the ability of citizens to relate to each other and their representatives and to the ability of representatives to relate effectively to their constituency."].) These authorities inform us that a district encompassing distant communities *is nonetheless compact so long as the citizens can relate to each other and to their representatives*. As evidenced by the record, the Commission went to great lengths to understand the shared interests of the various communities within each district. (See, e.g., Appen. 662-663; <http://wedrawthelines.ca.gov/viewer.html>.)

The U.S. Supreme Court has held similarly that districts with shared interests and communities are compact. (See, e.g., *Abrams v. Johnson* (1997) 521 U.S. 74, 92 ["[T]he § 2 compactness inquiry should take into account traditional districting principles such as maintaining communities of interest and traditional boundaries." (quotations and citations omitted)].) To the extent that distant populations have shared interests or a reasonable basis for being linked, a district containing these populations is "compact." In evaluating a Section 2 challenge to a Congressional District in Texas, the Court concluded that a district was not compact, because two Latino communities combined in the district were not only separated by nearly 300 miles but also had dramatically "different characteristics, needs, and interests…." (*LULAC, supra*, 548 U.S. at p. 434.) Rather than holding that large districts are *per se* not compact, the Court explained that "it is the enormous geographical distance separating the Austin and Mexican-border communities, *coupled with the disparate needs and interests of these populations—not either factor alone*—that renders District 25

noncompact." (*LULAC*, *supra*, 548 U.S. at p. 435; emphasis added.) The Court "accept[ed] that in some cases members of a racial group in different areas—for example, rural and urban communities—could share similar interests and therefore form a compact district if the areas are in reasonably close proximity."[40] (*Ibid.*) Given the Court's conclusion that the prior version of the district at issue was compact, despite stretching over 500 miles, the Court takes a broad view on what constitutes a "reasonably close proximity." (*Ibid.*)

Moreover, courts have found the compactness concept easily satisfied except in extreme situations. (See, e.g., *Shaw v. Reno* (1993) 509 U.S. 630, 644, [quoting *Arlington Heights v. Metro. Housing Dev. Corp.* (1977) 429 U.S. 252, 266] [holding that strict scrutiny applies only when a district "is so bizarre on its face that it is 'unexplainable on grounds other than race.'"]; see also *Vera*, *supra*, 517 U.S. at pp. 965-966, 971, 973-974 & Appen. A-C; *LULAC*, *supra*, 548 U.S. at p. 433 [noting that "no precise rule has emerged governing § 2 compactness"]; *Dillard v. Baldwin County Bd. of Educ.* (M.D.Ala. 1988) 686 F.Supp. 1459, 1465 [*Gingles* "does not mean that a proposed district must meet, or attempt to achieve, some aesthetic absolute, such as symmetry or attractiveness."]; *DeWitt v. Wilson* (E.D.Cal. 1994) 856 F.Supp. 1409, 1414 [rejecting 14th Amendment challenge to California's 1991 redistricting plan because the "Masters refused to create districts that wound in snake-like fashion

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[40] Indeed while *LULAC* was a 5-4 decision, two of the dissenting justices found the district in question compact, and the majority held that it would be compact if groups shared similar interests or were relatively close geographically. (*Id.* at p. 435.) The two remaining justices (Scalia and Thomas) do not believe vote dilution claims are cognizable under section 2. (*Id.* at p. 512.) As noted above, the district at issue was irregularly shaped, stretched hundreds of miles, and combined communities that were not immediately adjacent to each other. (*Id.* at p. 435.) The U.S. Supreme Court clearly does not share Vandermost's rigid view of compactness.

or resembled a Rorschach inkblot test found objectionable in Shaw"; internal quotation omitted].

Districts can be hundreds of miles in length and unusual shapes and still comply with compactness, so long as the mappers had a valid reason to draw them that way. In *Dillard, supra*, the court found that a proposed minority district was sufficiently compact for Section 2 purposes even though it was "elongated and curvaceous," because it "allow[ed] for effective representation." (686 F.Supp. at pp. 1465-1466.)

Only when geographical distances and diversion of interests reach absurd levels have courts been willing to label a proposed district non-compact. In *Wilson IV, supra*, Asian voters alleged that the 1991 districting plan denied them the "opportunity to elect a legislative representative." (1 Cal.4th at pp. 722-723.) This Court, however, approved of the line-drawers' decision not to "extend a long arm a block or so wide for the several miles between the Richmond district and 'Chinatown' . . . in order to bring these two areas into the same district." (*Id.* at pp. 722-723.) The Court explained that "such a misshapen district seemingly would violate the 'compactness' criterion, and is not required by the Voting Rights Act." (*Ibid.*) It is the type of district discussed in *Wilson IV*, where two communities are linked by a minimum-width connection and share nothing in common with that connecting area, where a court could objectively determine that a district was not compact because "nearby populations [were] bypassed for more distant population." (Cal. Const., art. XXI, § 2, subd. (d)(4).) None of the certified Senate districts resembles such a district.

The foregoing authorities reveal that Vandermost's framework, which would make inclusion of *any nearby population center* a prerequisite for

compactness, is neither constitutionally required nor workable in the face of higher criteria such as population equality. The Commission's districts meet the compactness criterion, particularly when viewed in the context of California's geography, population density, and the size of a Senate district. (Cal. Const., art. XXI, § 2, subd. (d)(5).)

Two independent quantitative studies of compactness have shown that the Commission's maps represent a significant improvement in compactness over 2001. A study by UCLA's Jeffrey B. Lewis and Iris Hui, which used the Roeck measure of compactness, found that the 2011 Senate lines were consistently and significantly more compact than the 2001 Senate districts.[41] A study by Kogan and McGhee uses another standard measure of compactness, the Polsby-Popper Index, and also finds that the 2011 Senate districts are significantly more compact than the 2001 districts.[42]

It is also possible to use this approach to compare the 2011 districts to the 1991 districts that Vandermost and Quinn hold out as models of compactness, as well as the 2001 districts drawn by the Legislature. In this analysis, the larger the index the more compact the district. Figure 1 shows the distribution of Senate district compactness from each decade, illustrating how

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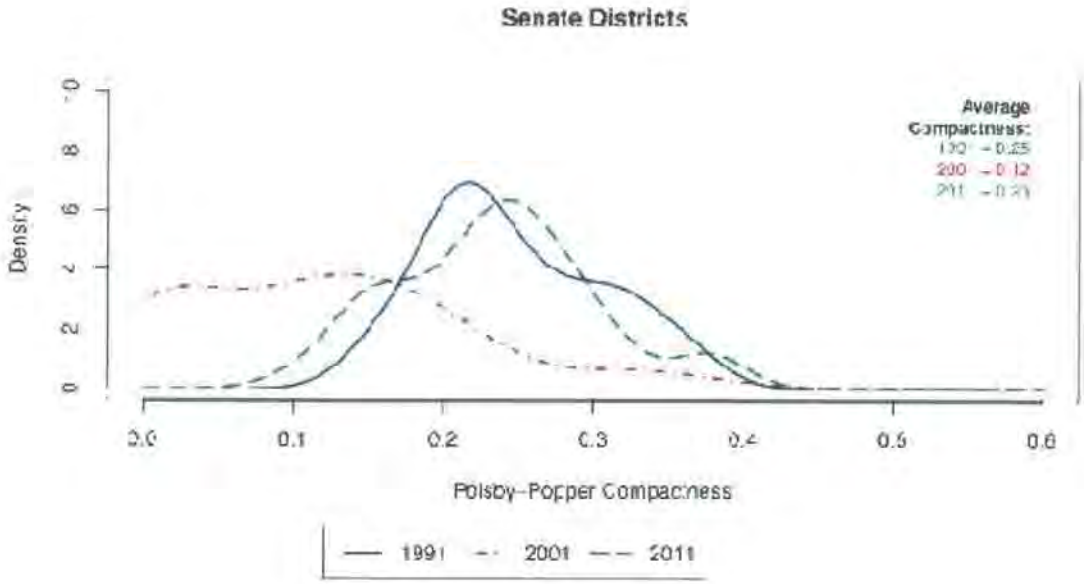
[41] The Roeck measure compares the areas of the smallest circle that can encapsulate a district with the area of the district itself. (Conference, A Brave New World: California's Redistricting Experiment, Panel 2, audio file available at: <http://igs.berkeley.edu/events/redistricting/>.)

[42] See Kogan and McGhee at p. 18 (Appen. Sec. 94) for California results. This measure is explained in Daniel D. Polsby and Robert D. Popper, 1991, "The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering," *Yale Law & Policy Review* 9(2): 301-353 (Appen. Sec. 20-24). The Polsby-Popper score for each political district is equal to the ratio of the area of the district to the area of a circle that has the same perimeter length as the district. It punishes (by recording as non-compact) sprawling districts and those with tentacles that reach out.

closely the Commission's plan (in the emdashed line) resembled the masters' 1991 plan (in the solid line), and how far each diverged from the Legislature's 2001 plan (in the dashed and dotted line). Averaging compactness scores across all districts shows that the 1991 special masters plan was indeed quite compact (with a Polsby-Popper index of 0.25), that the legislature's 2001 plan was much less compact (an index 0.12), and that the Commission's plan in 2011 was nearly as compact as the 1991 special masters plan (an index of 0.23). (See Appen. Sec. 94.)

Figure 1. Comparing the Compactness of the 1991, 2001, and 2011 Senate Plans



As documented in the Final Report and below, all of the Commission's districts are reasonable in size, shape, and the ability of their constituents to relate to each other. (Appen. 681-691.)

B. The Challenged Districts Are a Reasonable Application of the Constitutional Criteria.

Vandermost purports to challenge eleven districts. She does not allege facts showing that no reasonable Commission could have reached the Commission's determinations regarding any of the challenged Senate districts, and her request for relief should therefore be denied.

Vandermost's district-by-district challenge demonstrates a misconception regarding the feasibility of altering a subset of districts. The nature of drawing political boundaries is zero sum—moving a line for one district necessarily affects every bordering district, and the ripple effect often moves across the entire state. The changes suggested by Vandermost and Quinn would result in numerous unforeseen and unwanted consequences. The Commission, by contrast, considered the districts together in drafting its maps and the result complies with Article XXI.

1. The Central California Senate Districts Are Constitutional.

Vandermost challenges Senate Districts 12 and 17 as unconstitutionally non-compact (First Cause of Action) and as violating Section 2 and Section 5 of the VRA (Third Cause of Action). As discussed in section III(B), *post*, the VRA claims are facially deficient. Indeed, the primary driver (after population equality) for these districts (and neighboring Senate District 14) was proper compliance with the VRA, and that compliance dictated the districts' shape. In addition to misapprehending the VRA requirements, Vandermost does not demonstrate that the Commission violated the compactness criterion or that these districts were not drawn with a reasonable application of the redistricting criteria.

As with all the districts, drawing each of the Central California Senate Districts involved a complex and intricate analysis of numerous issues and facts. This region of California is bounded to the west by the Pacific Ocean,

covers much of the Coastal Range, and has the population centers of Los Angeles to the south and the Bay Area to the north.

Adding to the complexity, three of the counties (Merced, Monterey and Kings) must comply with Section 5 of the VRA, which placed a floor on their Latino VAP. (Appen. 661-662.) The Commission's reasonable effort to comply with Section 5 began with understanding the 2001 benchmarks that were required to be matched to meet the Section 5 non-retrogression standards. For Senate District 12 (which contains Merced and a portion of Monterey County), the benchmark for Latino VAP is 53.48%.[43] (Appen. 184-185.) For Senate District 14 (which contains Kings County), the benchmark number for Latino VAP is 66.19%, and for Senate District 17 (which contains Monterey), the benchmark number for Latino VAP is 26.22%. (*Ibid.*)

Ultimately, the Commission drew maps that complied with the Section 5 Latino VAP benchmark for each county because no county retrogressed in its percentage Latino VAP in the new districts as contrasted with the prior districts. (*Beer*, *supra*, 425 U.S. at p. 141.) In King's County, Latino VAP rose from 66.19% to 66.27%. (Appen. 184-185, 734-735.) In Merced, Latino VAP rose from 53.48% to 59.14%. (*Ibid.*) And in Monterey County, the Latino VAP rose from 26.22% to 26.28%. (*Ibid.*)

The Commission instructed its mapmakers to try various iterations of the maps, taking public comment into account. There were, however, very few ways to divide the population to meet the benchmark Latino VAP in each district, particularly in Senate District 14, which contains Kings County with its

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[43] The benchmark is based on the 2010 population within the districts established in 2001. (*Georgia v. Ashcroft* (2003) 539 U.S. 461, 468-471; see also Appen. 173.)

very high 66.19% benchmark.[44] (Appen. 208-209.) Vandermost ignores the reality that meeting the Kings County benchmark was a difficult challenge, and importantly, could not be accomplished by following her expert's suggestion of combining the Latino populations in Merced and Kings. (Quinn Supp. (V'most) Dec. at 5.)

Because Merced County could not reasonably be combined with Kings County and meet Section 5 requirements, the Commission had to address Merced County separately. Very few options remained for how to meet the Merced Latino VAP benchmark of 53.48%. (Appen. 183-185.) The Commission reasonably concluded that including Salinas and portions of the Highway 101 corridor was the most reasonable way to comply with Section 5 in Merced. In turn, this narrowed the remaining choices for the district to be drawn in Monterey County. Vandermost has not pled facts demonstrating that no reasonable commission could have made these choices. Moreover, these reasonable steps taken to comply with the VRA superseded any claim that Senate Districts 12 and 17 somehow violate the compactness requirements.

The Commission also considered geographic features and worked to keep communities together. (Appen. 662-663.) To the north, the Bay Area imposed limitations, including the Commission's decision that a Senate District should not cross the Golden Gate Bridge.[45] To the south, population-dense Los

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[44] Notably, Quinn's proposed maps fail to meet this benchmark for King's County, retrogressing Latino voting power in that region. (Quinn Supp. Dec. (V'most) 5.) This is just one of many illustrations of where Quinn—unencumbered by the record of public input and actual constitutional criteria—offers nothing more than his personal views of how maps should be drawn.

[45] There are approximately 800,000 people in San Francisco. There was substantial public input objecting to the inclusion of only 100,000 Marin residents in that district. (See, e.g., May 20, 2011 Public Hearing, available at

(Footnote continues on next page.)

Angeles imposed similar restraints. Putting in a hard line at the San Luis Obispo/Monterey County line, as Vandermost now urges, would have caused undesirable splits in Ventura County. (See, e.g., June 22, 2011 Public Hearing, speaker no. 84, available at <http://wedrawthelines.ca.gov/video-archive-june-22-2011-oxnard.html>; see also Appen. 103.) And those lines would have had a ripple effect into Los Angeles County. Again, Vandermost has pled no facts to show that no reasonable commission could have reached these decisions.

Vandermost offers no basis to supplant the Commission's well-informed and long-considered determinations that reasonably applied the relevant legal criteria. (See Standard of Review Section II, *supra*.) The following is a more detailed discussion of the relevant districts that illustrates these points.

(Footnote continued from previous page.)

<http://wedrawthelines.ca.gov/video-archive-may-20-2011-santa-rosa.html>; see also, e.g., Appen. 85, 91, 92, 95, 109-110, 195-196, 202, 391.)

Senate District 12

Vandermost alleges that District 12 violates the Constitution on the ground that it is not "compact," because it crosses the Monterey County line and includes the Salinas and Highway 101 Corridor areas of Monterey County. (V'most Pet. ¶¶ 76, 83.) Her claim is based on a misunderstanding of Section 5 and should be rejected.

Senate District 12 is a Central Valley district including the Section 5 county of Merced. To meet its benchmark of 53.48% (Appen. 184-185, 317), Senate District 12 pulled population from Salinas and the Highway 101 corridor of Northeastern Monterey. (Appen. 152-154.) The Commission chose this

population in consideration of its Latino VAP, as well as its agricultural economy. (Appen. 154; see also May 22, 2011 Public Comment Hearing available at <http://wedrawthelines.ca.gov/video-archive-may-22-2011-salinas.html>.) Consistent with the public testimony supporting combining Salinas with the Central Valley, this combination resulted in the district crossing the Coastal range. (Appen. 314-316.) The Commission determined that Salinas is not considered "coastal" (Appen. 154); inclusion of that area with the Central Valley was a reasonable decision reached by the Commission.

Even a cursory review of this district's shape indicates that it does not suffer from compactness issues. This district does not exhibit the barbell shape in *Wilson IV*. (1 Cal.4th at pp. 722-723 [rejecting a district that would "extend a long arm a block or so wide for the several miles between the Richmond district and 'Chinatown'"].) Nor does it resemble the districts in *Vera* that drew strict scrutiny because of their bizarre shapes. (517 U.S. at p. 965 [applying strict scrutiny to bizarrely shaped districts that looked like a "jigsaw puzzle" or "sacred Mayan bird" or that had "many narrow corridors, wings, or fingers"].) Nor can it be said that residents of Salinas are unable "to relate to each other and their representatives." (*DeWitt*, *supra*, 856 F.Supp. at p. 1414.)

Moreover the decision to split Monterey County to meet the VRA benchmark cannot be faulted. Indeed, there was no obvious alternative that would satisfy the constitutional criteria. Vandermost's suggestion that Merced County be joined with Kings County is a non-starter. As Petitioner's proposed map demonstrates, the combined district would not have met the Kings County Latino VAP benchmark in excess of 66%. (Supp. Quinn Dec. (V'most) 5.) The Commission declined to draw districts that would have retrogressed from the

Section 5 benchmark, thus risking rejection by the U.S. Department of Justice.[46] (Appen. 288-301.)

Accordingly, Vandermost's challenge to Senate District 12 on compactness grounds fails.

Senate District 17

[46] Moreover, as discussed in Section III(C), *post*, the Latino-influence district proposed by Professor Joaquin Avila that Vandermost's expert now suggests, was not required under Section 2.

Vandermost alleges that District 17 is not "compact," because it extends from southern Santa Cruz and Santa Clara Counties in the north to San Luis Obispo County in the south. (V'most Pet. ¶¶ 76, 83.) Her claims misstate the law and should be rejected.

Senate District 17 is comprised of the Central Coast of California, running from Santa Cruz and Southern Santa Clara Counties in the north to San Luis Obispo County in the south. Based on substantial public comment, the Commission reasonably determined that these coastal areas had significant common interests. (See, e.g., Appen. 11-13, 71-72.) The inclusion of southern, agricultural portions of Santa Clara County allowed the district to meet its VRA Section 5 benchmark, and the grouping of the cities of Morgan Hill, Gilroy and San Martin was supported by substantial public input. (See, e.g., Appen. 67-68, 116.) No assertion by Vandermost demonstrates that a reasonable commission could not have reached these conclusions.[47]

Although Petitioner argues that the length of this district violates the compactness criterion (V'most Pet. ¶ 84), it is not unreasonable for a coastal district to follow the coastline, as similar issues will affect many coastal areas,

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[47] Vandermost's Petition contains gratuitous and irrelevant allegations concerning Commissioner Aguirre's volunteer service on an advisory board for the Central Coast Alliance for a Sustainable Economy ("CAUSE"). (V'most Pet. ¶¶ 90-92.) Commissioner Aguirre's application for the Commission described his ability to serve impartially—and identified his political affiliations and long history of public service—including by disclosing a $250 contribution in 2008 to CAUSE. No basis exists for Vandermost's *ad hominem* attack on the Commissioner's impartiality. Moreover, all redistricting decisions, including those regarding Senate Districts 17 and 27, were made by the 14-member Commission, not by a single Commissioner. And the baseless allegations regarding Commissioner Aguirre were publicly aired before the Commission issued its preliminary final maps on July 29 and final maps on August 15, 2011.

and the Commission's determination to create a coastal district was well-supported in the public record. (See, e.g., Appen. 11-13, 71-72.) Moreover, drawing a district of nearly one million people in a sparsely populated region necessarily requires a district that covers a large geographic region; there is nothing unreasonable about that choice. Senate District 17 covers a long expanse of coastline, but it is not the bizarre shape disapproved by *Vera*. (517 U.S. at p. 965.) Nor does the population have such disparate needs and interests so as to render its residents unable to relate to each other or their representative. (*LULAC*, *supra*, 548 U.S. at p. 435; *Dillard*, *supra*, 686 F.Supp. at pp. 1465–1466.) This is evidenced by the significant public input requesting the combination of San Luis Obispo and Monterey Counties (see, e.g., Appen. 93-94, 96-101, 104, 107, 111-112), as well as the inclusion of the entire Monterey Bay (see, e.g., *id.* at 11-13, 71-72).[48] Petitioner has presented no evidence that Senate District 17 was not created based on a reasonable application of the constitutional criteria.

Vandermost also complains that Monterey County should not have been split, although she does not allege a cause of action related to the county-split, but rather rests on compactness grounds. (V'most Pet. ¶¶ 84-92.) Monterey County was split by an east/west divide to include Salinas and the Highway 101 Corridor in Senate District 12. This split allowed Senate District 12 to meet Merced County's Section 5 benchmark, and testimony supported the conclusion that the Salinas area of Monterey County has more in common with its agricultural neighbors in the Central Valley than with the Coast. (Appen. 314-316.) The split also allowed Merced and Monterey to meet their VRA

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[48] Notably, this district is more compact than the 2001 district. (Appen. 1.) The prior district included areas as far North as Santa Cruz and Santa Clara Counties and extended South to Santa Maria in Santa Barbara County. (*Ibid.*)

benchmarks, a higher criterion than compactness.[49] (See, e.g., Appen. 102, 154, 175.) Vandermost's Petition wholly fails to demonstrate that the Commission's determination to split Monterey County was unreasonable, and Vandermost's compactness challenge therefore fails.

2. The Northeastern Senate Districts Are Constitutional.

[49] The record here further demonstrates that the Commission included areas in Santa Clara County to meet population equality and VRA benchmark requirements, a higher criterion than compactness. Because compliance with the VRA trumps compactness concerns, that alone was a sufficient basis for upholding Senate District 17 as drawn. In addition, the lines, as drawn, allowed other communities both in the Bay Area and in Ventura County to remain intact. (Appen. 762-763.)

Vandermost alleges that Senate Districts 1, 3, 4, and 8 are not compact and unnecessarily split Sacramento County. (V'most Pet. ¶¶ 52-75, 120-144.) Her arguments suffer several fatal flaws, and nothing she has submitted shows the Commission's choices are an unreasonable application of the criteria.

First, the northern and eastern portions of California have scarce, mostly rural population and ample landmass. For example, Alpine County contains just over 1,000 people, Sierra County contains just over 3,000 people, and Modoc County contains around 9,000 people. (Appen. 756.) By contrast, the closest urban population, Sacramento County, has population of 1,417,788—about 500,000 more people than an ideal Senate District. (*Ibid.*) The Commission was therefore required to divide Sacramento County among at least two districts to comply with the first constitutional criterion, the population-equality requirement. (Cal. Const., art. XXI, § 2, subd. (d)(1).) The Commission's decision to include some more populated areas in districts containing more sparsely populated areas is a reasonable method of meeting that requirement.

Second, the VRA played a role in the mapping of northern and eastern California. Yuba County, a Section 5 county, is in the middle of this North Central Coast region. Its benchmark of a 13.41% Latino Voting Age Population in Senate District 4 required that the Commission include sufficient Latino population, which required inclusion of some Latino areas from Sacramento County. (Appen. 183-185, 220.) In addition, Senate District 8 borders on Senate Districts 12 and 14, which contain Section 5 counties with Latino VAP benchmarks of 53.48% and 66.19%, respectively. (Appen. 183-185.) Because, as discussed above, those districts needed to be drawn to meet their respective Latino VAP benchmarks, options for the borders of the surrounding districts were necessarily limited.

Keeping these priority considerations in mind, the Commission worked hard to create districts that minimized splits of "cities, counties, cities and counties, local neighborhoods and local communities of interest." (Cal. Const., art. XXI, § 2, subd. (d)(4).) Vandermost, conversely, elevates the division of Sacramento County above all else without regard for other factors.

The Commission ultimately divided Sacramento County among six Senate districts (districts 1, 3, 4, 5, 6, and 8). (Appen. 756-758.) However the vast majority of Sacramento County (62.6%, or 887,557 people) is located in Senate District 6, which includes the entire City of Sacramento. (*Ibid.*) Another 21% of Sacramento County (or 308,952 people) is located in Senate District 4. (*Ibid.*) In other words, more than 83% of Sacramento County is contained in two Senate districts. (*Ibid.*) And because Senate District 1 includes 10.2% of Sacramento County (or 145,070 people), this means that three Senate districts contain approximately 94.5% of Sacramento County. (*Ibid.*) The remaining 5.5% of Sacramento County is divided among Senate District 3 (0.6%, or 8,585 people), Senate District 5 (1.9%, or 26,370 people), and Senate District 8 (3.0%, or 41,981 people). (*Ibid.*)

Accordingly, Vandermost's alarmist tone about dividing a county six ways is unwarranted. This county, which under the narrowest case would be divided into two districts, has 94.5% of its population in three districts. On its face, this is insufficient for this Court to conclude that there has been an unreasonable application of the criteria. In any event, the need to achieve population equality in the surrounding districts supersedes any claim that Sacramento County was unreasonably divided.

Senate Districts 1 and 8 cover large, rural areas with little population.[50] These districts therefore needed to add population from Sacramento County to meet the population-equality requirements of the U.S. and California Constitutions. (Appen. 402, 613-615.) Because the northern 30% of California (geographically) contains approximately 5% of California's population, the resulting districts will necessarily be very large in terms of area (Appen. 400, 612), particularly given the population requirements for California's Senate Districts (which are twice the size of Assembly Districts and much larger than Congressional Districts). Vandermost's argument that these districts unconstitutionally split Sacramento County therefore fails.

Vandermost's arguments as to compactness also fail, as discussed in more detail below, because she presents no evidence rendering unreasonable the Commission's rationale for drawing the districts as it did, and the districts are not constitutionally non-compact, as discussed below. Instead, she asks the Court to allow her to substitute Quinn's preferred maps, which rely heavily on the 1991 special masters' decisions. But those maps are not relevant to a determination of whether the Commission drew reasonable maps in 2011 under Article XXI, section 2, as amended.

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[50] For example, Senate District 1 includes the entire Counties of El Dorado (population 181,058), Shasta (population 177,223), Nevada (population 98,764), Siskiyou (population 44,900), Lassen (population 34,895), Plumas (population 20,007), Modoc (population 9,686), Sierra (population 3,240), and Alpine (population 1,175). (Appen. 756.) Senate District 8 covers the entire Counties of Tuolumne (population 55,365), Calaveras (population 45,578), Amador (population 38,091), Inyo (18,546), Mariposa (population 18,251), and Mono (population 14,202). (Appen. 756-757, 611-615.)

Senate District 1

Vandermost claims that Senate District 1 is not compact and unnecessarily divides Sacramento County. The district does not violate the compactness criterion, and the Sacramento County split was done to achieve population equality, a higher criterion than compactness. Vandermost's claim therefore fails.

Senate District 1 is a mountainous district along the border with Oregon and Nevada. Counties in that region are very large with very low population. The Commission added population from Sacramento County to meet the population equality criterion. (Appen. 323, 611.) The Commission received a substantial amount of public testimony (during public input meetings in Redding, Auburn, Marysville, and Merced) for keeping the northeastern-most

section of California district separate from the northern Central Valley because of the distinct interests of this region—including timber and recreation—in contrast to the production agriculture such as rice, tomatoes, and tree crops of the northern Central Valley. (See, e.g., Appen. 15, 149-150, 174, 319, 324.)

Vandermost's primary complaint is that the Commission included 10.2% of Sacramento County in Senate District 1 for population-equality reasons. The Commission chose this particular portion of Sacramento County because it allowed them to keep the Folsom Lake area intact in a single Senate District, as well as Orangevale and Fair Oaks—all consistent with public testimony. (See, e.g., Appen. 130-131, 261.) As noted above, population equality considerations trump the goal of keeping counties (and other geographical units). (See Section III(A)(1), *supra*.)

Vandermost also challenges this district on compactness grounds, but simply reviewing the depiction of the district demonstrates that Petitioner is wrong. The district does not have the "bizarre" shape that might subject it to greater scrutiny. (*Vera*, *supra*, 517 U.S. at p. 965.)

The public record demonstrates that the Commission had a reasonable basis for drawing the district as it did. The Commission received substantial public testimony advocating keeping the northern interior region of California separate from the coastal region. (See, e.g., Appen. 53-54, 83-84, 86-89, 318-319, 399.) However, without including the coastal populations from Del Norte County to Marin County, the entire population of the other northern counties—excluding Placer and Sacramento—is around 888,000 people, or almost 50,000 people short of the ideal population for a California Senate District. (Appen. 402.) By including portions of Placer County in Senate District 1, the Commission also was able to keep the Lake Tahoe area whole within Senate District 1. (Appen. 79-82, 341-347.) These are all reasonable choices that the

Commission made as part of its deliberations. Vandermost provides no facts that would allow this Court to conclude that the configuration of Senate District 1 was not a reasonable application of the redistricting criteria.

Vandermost suggests that the Commission should have drawn a district by taking the entire northeast portion of the State, excluding Sacramento Counties. (V'most Pet. ¶ 56.) She also contends that the Commission "bypassed" hundreds of thousands of people when drawing Senate District 1. (*Id.* ¶ 52.) To the extent that she suggests that Senate District 1 should have been combined with the northern Central Valley region (including counties such as Sutter, Butte, and Yuba in what is now Senate District 4), this is contrary to substantial public testimony. (See, e.g., Appen. 15, 60-62, 150, 174, 319, 324, 611.) For instance, Yuba and Sutter in the Central Valley grow crops such as rice, tomatoes, and almonds—none of which are grown in the mountain counties such as Siskiyou and Modoc, which are more focused on timber, fires, and grazing. (See, e.g., Appen. 54, 324.) Consequently, Vandermost's configuration for this district would have combined communities that are not linked by shared interests, as confirmed by the public testimony and inconsistent with the fourth criterion under Article XXI, section 2(d). (Quinn Supp. (V'most) Dec. at p. 3.)

To the extent Vandermost is suggesting that the Commission "bypassed" the northern coastal populations when drawing Senate District 1, this ignores the overwhelming testimony supporting keeping the coast separate from the interior northern region of the State. (See, e.g., Appen. 53-54, 83-84, 86-89, 318-319, 399.)

Vandermost's Petition also contends that the Commission should not have included the City of Redding in the same Senate District as the northern suburbs of Sacramento County. There was scant public comment to suggest

that including Sacramento in the same district as Redding might be problematic. To address any concern that rural voices would be overshadowed by urban Sacramento voters, the Commission included only around 145,000 residents from Sacramento in Senate District 1 (less than 1/5 of the entire district). Again, Vandermost's different, *post hoc* notion of what should have been done is irrelevant to whether a reasonable commission could have made the decisions made by the Commission based on the public record before it.

Vandermost also contends that Senate District 1 separates the "northernmost counties, Shasta and Siskiyou, from the rest of the region." (V'most Pet. ¶ 53.) To the extent she is referring to the "region" of Del Norte and Humboldt Counties, she ignores the substantial public testimony supporting keeping those counties separate from Shasta and Siskiyou. (See, e.g., Appen. 69-70, 305-306, 318, 399.) In fact, the Commission's initial draft maps had split Siskiyou so that the western half was joined with the coastal region, but there was overwhelming objection to that split. (See draft map, June 10, 2011, available at <http://wedrawthelines.ca.gov/maps-senate-1st-draft.html>.)

There simply is no basis in the record or in law for a determination that this Senate district was not compact or unnecessarily split Sacramento County. Therefore, Vandermost's First and Second Causes of Action as to Senate District 1 should be dismissed.

Senate District 3

Vandermost contests Senate District 3 on compactness grounds and for splitting Sacramento County. As the map depicts, the district does not violate the compactness criterion, and the portion of Sacramento County included in this district included the Sacramento River Delta, an area that fit well within Senate District 3. Vandermost fails to demonstrate that the drawing of this district was not a reasonable application of the redistricting criteria.

Senate District 3 is a wine-making region including Napa and much of Yolo County.[51] To achieve population equality, the Commission combined the

[51] Significant public input urged the Commission to keep Yolo County together. (See, e.g., Appen. 229-230, 278-279; Appen. Sec. 74.)

cities of Sonoma, Petaluma, and Rohnert Park from Sonoma County.[52] Those cities fit well within Senate District 3 because of their focus on agricultural (particularly grape-growing) industries. (See, e.g., Appen. 90.) The Commission also included Solano County and added population from Contra Costa County, including Martinez and Pleasant Hill across the Benicia-Martinez Bridge, to achieve population equality. (Appen. 179, 622-628, 682.) This area of northern Contra Costa County was a better fit with the other areas of Senate District 3 than other available population centers. (See, e.g., Appen. 404.)

Senate District 3 also contains 0.6% of Sacramento County (8,858 people). The portion of Sacramento County included in Senate District 3 is made up entirely of the Sacramento River Delta. There was significant public testimony in favor of keeping the entire Delta region in one Senate District. (See, e.g., Appen. 105; see also May 19, 2011 Public Input Meeting, speaker no. 51, available at <http://wedrawthelines.ca.gov/video-archive-may-19-2011-auburn.html>; June 28, 2011 Meeting, speaker nos. 38, 74, 84, 99, available at <http://wedrawthelines.ca.gov/video-archive-june-28-2011-sacramento-2.html>.) This area has significant and unique concerns, including flooding and diversion of water to Southern California, so the Commission decided it was important to keep the Delta in a single Senate district. (*Ibid.*) In addition, public input supported combining the Delta with other areas of Senate District 3. (See, e.g., Appen. 105.) There simply is no basis for an argument that it was unreasonable to split off this small portion of Sacramento County. And it is perfectly consistent with Article XXI section 2, subdivision (d)(4) to maintain a

[52] Sonoma and Petaluma are a natural fit with Napa County and the largely agricultural Yolo County. The Commission received public testimony urging that these wine-growing regions be placed together. (Appen. 179, 215.)

community of interest that crosses a county line. The resulting division of Sacramento County is a reasonable application of constitutional criteria.

Vandermost also challenges this same district on compactness grounds, but again, a review of the map demonstrates this district is not within the realm of "bizarre" districts that could genuinely be contested as not compact. (*Vera*, *supra*, 517 U.S. at p. 965.)

Vandermost's main argument is that the Commission should not have crossed the Benicia-Martinez Bridge to include Martinez and Pleasant Hill.[53] But this has nothing to do with splitting Sacramento County or compactness. Vandermost argues that the Commission should instead have crossed the Golden Gate Bridge when drawing Senate Districts. (V'most Pet. ¶ 130.) This argument ignores overwhelming public testimony against crossing the Golden Gate Bridge. (See, e.g., Appen. 85, 91, 92, 95, 109, 195-196, 202, 391; see also Public Hearing, May 20, 2011, available at <http://wedrawthelines.ca.gov/video-archive-may-20-2011-santa-rosa.html>.) Residents were concerned that the approximately 800,000 residents in San Francisco would overwhelm and overshadow the 100,000 residents in Marin if both were swept into the district. (See, e.g., Appen. 2-4.) Vandermost offers no evidence (other than 20-year-old maps) that it is more reasonable to cross the Golden Gate Bridge than the Carquinez or Benicia-Martinez bridges. (V'most Pet. ¶ 64.) Again, Vandermost's different approach to the Commission's work says nothing about

[53] Quinn takes issue with the Final Report's statement "[t]he District also includes a portion of Contra Costa County, including the cities of Martinez and Pleasant Hill, which were included to achieve population equality and are connected through the Benicia-Martinez Bridge." (Appen. 682.) He argues this sentence is inaccurate because Martinez and Pleasant Hill are both in Contra Costa County and not connected by the Benicia-Martinez Bridge (V'most Pet. ¶ 132.) Fairly read, the Final Report is merely stating that the cities are connected to the rest of the district by the Benicia-Martinez Bridge. (Appen. 682.)

whether a reasonable commission could have drawn Senate District 3 in its current form. The Commission acted reasonably in drawing Senate District 3.

Vandermost also claims that Senate District 3 should not have included the working-class communities of Northern Contra Costa County (Martinez and Pleasant Hill) together with the wine country in Napa and Sonoma. However, this fails to recognize that some of the population of Contra Costa County needed to go with Napa County in Senate District 4 for population equality reasons. This particular portion of Contra Costa County was the best fit with Senate District 3, because Martinez and Pleasant Hill have shared interests with Benicia and Vallejo. (Appen. 320-321, 404.)

None of Vandermost's arguments suggest, much less demonstrate, that this Senate district was not compact or unnecessarily split Sacramento County. Vandermost's challenges to Senate District 3 should be rejected.

Senate District 4

Vandermost claims that District 4 is not compact and unnecessarily divides Sacramento County. The district is compact and the Sacramento County split was done to achieve population equality, a higher criterion than compactness. Vandermost's arguments are wrong.

Senate District 4 is a northern Central Valley region and includes Yuba County, which is covered by Section 5. Yuba's Latino VAP benchmark was 13.41%. (Appen. 183-185, 220, 728.) The certified district has a Latino VAP of 16.37%. (*Ibid.*) The Commission added portions of Placer County (including Roseville) and Sacramento County to meet the Section 5 benchmark and to achieve sufficient population. (See, e.g., Appen. 351, 614, 682.)

Again, Vandermost contests the split in Sacramento County, but it was necessary to include this portion of Sacramento County for population equality reasons and to avoid retrogression of Latino voting strength for purposes of VRA Section 5. (Appen. 351, 614, 682.) The Commission chose this specific portion of Sacramento County because areas further west would have required splitting the City of Sacramento. (Appen. 306, 325.) Balancing the splitting of cities and counties is part and parcel of the Commission's application of the fourth highest constitutional criterion, and contrary to Vandermost's argument, the Constitution does not prefer counties over cities. (Cal. Const., art. XXI, § 2, subd. (d)(4).)

Vandermost also challenges this district on compactness grounds, but its shape is not "bizarre." (*Vera*, *supra*, 517 U.S. at p. 965.) The map depiction above shows that the district is compact. Nor has Vandermost presented any evidence that the district reduces "the ability of citizens to relate to each other and their representatives, and of the representatives to relate effectively to their constituency." (*Wilson IV*, *supra*, 1 Cal. 4th at p. 719.) The argument that Red Bluff and Redding have never been combined is no basis for a conclusion that it would be unconstitutional to do so. (V'most Pet. ¶ 58.) Nor is it unreasonable to meet population requirements by including some suburban population with more sparsely populated areas.

For all the reasons discussed above, Vandermost's challenges to Senate District 4 must be rejected.

Senate District 8

Vandermost claims that Senate District 8 violates the California Constitution because it is not compact and unnecessarily divides Sacramento County. She is again wrong.

Senate District 8 is a large geographic area bounded to the east by California's border with Nevada. To the west, its neighbors include Senate Districts 12 and 14, which are covered by Section 5. It also includes Inyo and Mono counties, which have very low population density.

Once again, Vandermost contests the split of Sacramento County, which was done for population reasons that overcome the lesser goal of minimizing community splits. (Appen. 615; Cal. Const., art. XXI, § 2, subd. (d)(1).) The area covered by much of Senate District 8 is geographically expansive and yet

contains little population. (*Ibid.*) For instance, Inyo and Mono Counties together contain about 32,000 people, yet these two counties make up a significant portion of California's eastern border. Accordingly, to meet the population-equality requirement for Senate District 8—the Commission's highest criterion—it became necessary to include population from the valley floor to the west (Fresno, Turlock and Clovis) as well as Sacramento County to the north. (*Ibid.*)

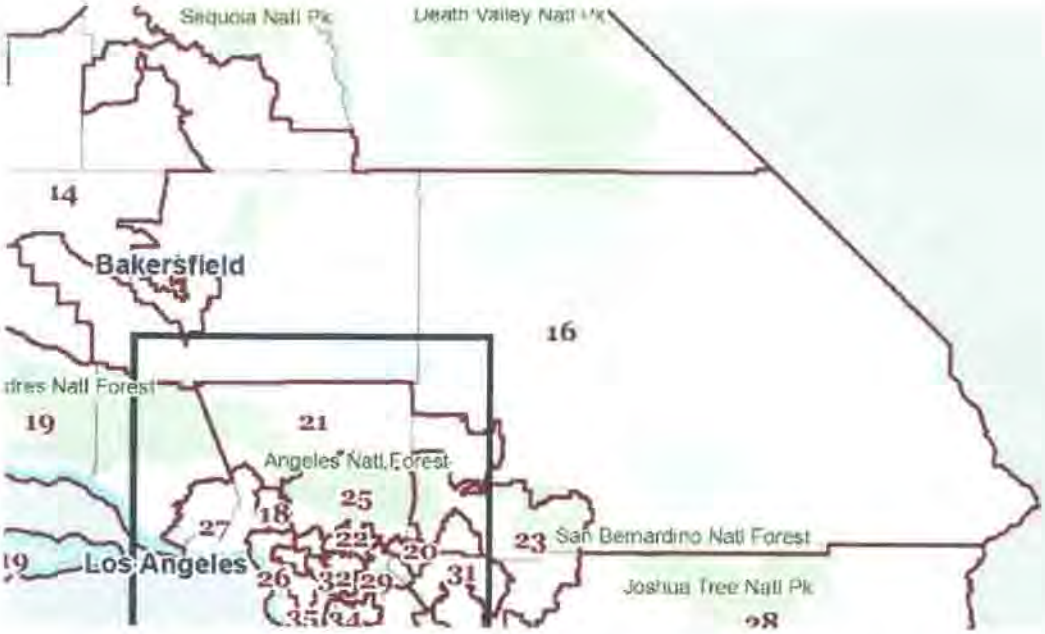
Nor is Senate District 8 unconstitutionally non-compact. It is not a "bizarre" district (*Vera, supra*, 517 U.S. at p. 965), and its shape is dictated by population equality issues (as discussed above) and VRA requirements for neighboring districts.

While Senate District 8 does not itself contain any county that is subject to the requirements of VRA Section 5, it lies directly to the east of two such districts—Senate Districts 12 (Merced County) and 14 (Kings County). The location of these two Section 5 counties imposed significant constraints on the possible configurations for a foothills district. (Appen. 683.) Vandermost contends that Senate District 8 should not have included any portion of the city of Fresno. (V'most Pet. ¶ 75.) It was necessary, however, to adjust and split portions of Fresno from Senate Districts 12 and 14, so that they could meet their Latino VAP benchmarks. (Appen. 182A-182F.)

Substantial public testimony advocating for separating valley portions of Central California from the foothills region. (See, e.g., Appen. 23, 155, 156, 182, 182A-182F, 330-331, 348, 500.) The Commission chose the configuration that best complied with Article XXI and provided for effective and fair representation, while achieving population equality.

No support exists for Vandermost's challenges based on compactness or the "unnecessary" split of Sacramento County.

3. The Inland Empire Senate Districts Are Constitutional.



Vandermost alleges two causes of action challenging Senate Districts 16, 23, and 25. She claims that these districts are unconstitutionally non-compact and that they unnecessarily divide San Bernardino County. These claims fail for reasons similar to those discussed above: Nothing suggests the Commission's treatment of San Bernardino County or the Senate Districts was unreasonable or based on misapplication of the constitutional criteria.

San Bernardino County is geographically the largest county in the state, spanning almost 20,000 square miles. It has a population of 2,035,210, meaning that it had to be divided into at least three state Senate districts.[54] Creating Senate districts within this large county did not occur in a vacuum. Instead, the districts were created as pieces in a statewide puzzle.

[54] (See U.S. Census 2010, <http://2010.census.gov/2010census/popmap/>.)

Vandermost complains that the Commission failed to draw a Senate District wholly within San Bernardino County. No such district was required under the constitutional criteria. The Commission reasonably divided San Bernardino County into multiple Senate Districts due, in large part, to the size of the county and the various and diverse communities of interest within the county. San Bernardino County is bordered by Arizona and Nevada to the east, Riverside and Orange Counties to the south, and Los Angeles and Kern Counties to the west. It includes two main transportation corridors: I-15 and I-40. The County contains a mix of geographic areas, including the Mojave Desert and mountain areas such as the San Bernardino National Forest, Big Bear Lake, and Lake Arrowhead. With such a large district and such varying interests, the Commission had no choice but to divide the County among various Senate Districts. Moreover, Vandermost states no facts to demonstrate that the Commission's decisions about San Bernardino area Senate Districts are not a reasonable application of the criteria.

The San Bernardino County Senate district boundaries were also influenced by the Commission's need to balance the interest of surrounding districts. For example, the shape of Senate District 14, based in Kings County to the northwest of San Bernardino County, was dictated by its VRA benchmark, and that necessarily impacted Senate District 16, which covers a large portion of San Bernardino County. (Appen. 496-499, 617.) In addition, Senate Districts 20 and 24, which are located southwest of San Bernardino County, were drawn in accordance with VRA Section 2 and dictated the boundaries of their neighbors, including Senate Districts 23 and 25. (Appen. 470-471, 657-658.)

Finally, Vandermost complains that no Senate district was drawn entirely within San Bernardino County; however, almost 85% of the population in

Senate District 20 is derived from San Bernardino County. (Appen. 757.) Senate District 20 was drawn based on public input from the communities of Pomona, Ontario, Montclair and Chino, which expressed strong shared interests. (See, e.g., Appen. 75-78, 165-166.) In addition, Senate District 20 was drawn in consideration of the Commission's obligations under VRA Section 2. (Appen. 618.) The Commission was reasonable in drawing Senate District 20 because it allowed the Commission to group communities that had expressed shared interests, most of which are located in San Bernardino County, and it met the VRA requirements.

Vandermost also has no real argument that the San Bernardino districts are unconstitutionally non-compact. She says that they are not drawn exactly to her proffered expert's preference, but there is no allegation that these districts approach the bizarre shapes that have been held to warrant greater scrutiny. Nor do Quinn's superficial and conclusory assertions, without reference to the public record, that certain groups should not have been combined hold water.

Vandermost's arguments regarding compactness and the division of San Bernardino County fail because she presents no evidence contradicting the Commission's reasonable application of public input and the constitutional criteria in developing state Senate districts in and around the county.

Senate District 16

Contrary to Vandermost's allegations, Senate District 16 is compact and does not unnecessarily split San Bernardino County. The Commission drew Senate District 16 based on public input regarding shared interests in the area and as the result of the boundaries of VRA-required Senate District 14. Vandermost's arguments are meritless.

Vandermost's claim that Senate District 16 violates the compactness criterion of the California Constitution is unsupportable. This district logically contains the portions of Kern and Tulare Counties that were not made part of

Senate District 14, as well as a large, sparsely populated section of San Bernardino County. It does not bear an irregular shape. (*Vera, supra*, 517 U.S. at p. 965; *Wilson IV, supra*, 1 Cal. 4th at pp. 722-723.) Nor has Vandermost presented any evidence that residents of this district cannot relate to each other or their representatives. (*Wilson IV, supra*, 1 Cal.4th at p. 719.)

Vandermost's claim that Senate District 16 is not compact is unsupported by the law and the record. (V'most Pet. ¶¶ 97-98.) First, that the district covers a large swath of sparsely populated desert land (Appen. 74), and required the addition of other population centers (Appen. 617), does not make it non-compact. Moreover, the district was drawn in part to achieve population equality (*ibid.*), which is the highest criterion, trumping compactness. (Cal. Const., art. XXI, § 2, subd. (d)(1).)

Senate District 16 was also drawn to unify various communities of shared interests. The Commission drew Senate District 16 to combine numerous small, rural towns as well as communities along the I-15 and I-40 transportation corridors. For example, while Quinn proposes grouping "Upland, Rancho Cucamonga, and eastern San Bernardino desert communities" together (Quinn Supp. (V'most) Dec. at 6), public input contradicts his suggestion and supports the Commission's boundaries. Specifically, Yucca Valley wanted to be grouped with desert towns like Barstow and Twentynine Palms, as opposed to urban areas like Redlands, Upland, and Rancho Cucamonga. (See, e.g., Appen. 238, 274-277.) Again, Vandermost has not established that the Commission's choices were not a reasonable application of the criteria.

Substantial public comment reflected other communities of shared interest in Senate District 16. Community groups in Ridgecrest requested to be

grouped with Kern County, and the Commission accommodated that request. (See, e.g., Appen. 56, 57, 66.) The Commission also drew Senate District 16 to combine the military interests of China Lake, Edwards Air Force Base, and the Twentynine Palms Marine base in Senate District 16—a shared interest that Quinn's plan ignores. (See, e.g., Appen. 25-26, 66.) Vandermost does not cite or acknowledge the voluminous public record utilized in the Commission's efforts. Instead, she and Quinn merely assert, without evidence or logic, that this district should have been done differently.

Vandermost also claims that San Bernardino County is divided unnecessarily. (V'most Pet. ¶ 94.) By focusing solely on the division of San Bernardino County, Vandermost fails to recognize that Senate District 16 is comprised, almost entirely, of whole cities. (Appen. 764.) The one-city split, Bakersfield, was done to accommodate Senate District 14's population and Latino VAP requirements and in accordance with public input on how Bakersfield should be divided. (See, e.g., Appen. 5-7, 8-10.) Despite Vandermost's assertions, the California Constitution does not prioritize the unity of counties over cities or other community units.

Because the Commission's proposal for Senate District 16 was based on public input and drawn in accordance with the hierarchy of priorities set forth by voters in the California Constitution, the district is a reasonable application of the constitutional criteria.

Senate District 23

Vandermost challenges Senate District 23 as non-compact and unnecessarily dividing San Bernardino County. The Commission drew Senate District 23 to combine several communities with shared interests, and in a way that respects the boundaries of Senate District 20, which was drawn in accordance with VRA Section 2. The boundaries of Senate District 23 are reasonably based on public input and the hierarchy of constitutional criteria. Vandermost's arguments are unsupported and wrong.

Vandermost complains that Senate District 23 is not compact. (V'most Pet. ¶¶ 99-100.) If she is contesting the shape of the district, however, it was influenced by adjacent Senate District 20, which was drawn as a district under VRA Section 2, and groups communities with shared interests. Moreover, Senate District 23 cannot reasonably be contested under *Vera, supra*, 517 U.S. at p. 965, or *Wilson IV, supra*, 1 Cal.4th at pp. 722-723, based on its shape. Nor has Vandermost presented any evidence that residents of this district cannot relate to each other or their representatives. (*Wilson IV, supra*, 1 Cal.4th at p. 719.)

Vandermost complains that Senate District 23 is not compact because "Rancho Cucamonga should have been united with neighboring Upland and those communities kept within a San Bernardino district." (V'most Pet. ¶ 100.) The decision to place Rancho Cucamonga in Senate District 23 and Upland in Senate District 25 was driven by population equality needs, a higher criteria than compactness. (See, e.g., Appen. 392-393, 471-472.) Moreover, Rancho Cucamonga was ultimately grouped with other San Bernardino County towns such as Redlands, Highland, and a large portion of the City of San Bernardino. (Appen. 765.) While Petitioner can hypothesize infinite variations of the boundaries of this district, that exercise is not a legal or factual basis to reject the Commission's map, which contains whole cities and communities of shared interest *and* meets the population-equality requirement. (Appen. 192-193.)

Finally, Vandermost's compactness claim fails because Senate District 23 is full of communities of shared interests. (See, e.g., Appen. 481-483, 620-621.) While Vandermost fails to acknowledge or cite any public input related to this region, the record shows that several included communities expressed a desire to be grouped together, including the Big Bear mountain communities (see June 19, 2011 Public Hearing, speaker nos. 55, 58, and 64, available at

<http://wedrawthelines.ca.gov/video-archive-june-19-2011-san-bernardino.html>), the San Jacinto Valley communities (see, e.g., Appen. 511-512A), Redlands and Loma Linda (see, e.g., Appen. 307-308, 323-333), and the communities of Beaumont, Banning, Yucaipa, and Calimesa (see, e.g., Appen. 73, 144, 216). By linking these communities within Senate District 23, the Commission fulfilled its obligation to create a compact district.[55]

Vandermost also claims that this district unnecessarily divides the city of San Bernardino. (V'most Pet. ¶¶ 151-154.) Yet again, she misses the point: The Commission properly ordered and balanced the various constitutional criteria. While Senate District 23 contains areas from three counties, it is comprised almost entirely of whole cities, and it groups together many cities and communities with shared interests. (See, e.g., Appen. 756-769.) The only city split in Senate District 23 is the city of San Bernardino, which was split between Senate District 20 and Senate District 23. The Commission divided the city of San Bernardino for population reasons, and chose this large city for a split to keep smaller communities whole. (See Appen. 163.)

Vandermost's challenges to Senate District 23 based on "compactness" and the "county split" are meritless.

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[55] Vandermost also claims that "the Commission should have followed the lead of the masters in constructing a High Desert San Bernardino County district and a second district that while surrounding the Section 23 district, nevertheless would have included Upland, Rancho Cucamonga with cities like Twenty Nine Palms [*sic*] and Yucca Valley." (V'most Pet. ¶ 154.) As discussed above, this claim ignores public input requesting this configuration. Further, Vandermost fails to provide any factual basis for asserting that these towns share any interests other than a county seat.

Senate District 25

Contrary to Vandermost's allegations, Senate District 25 is compact and does not unnecessarily split San Bernardino County in violation of the geographic integrity requirement. The Commission drew the district to unify the communities of shared interests in the foothills of the San Gabriel Mountains and to respect the boundaries of adjacent Senate Districts 20 and 24, which were drawn in accordance with VRA Section 2. Again, Vandermost fails

to show why no reasonable commission could have made these choices or that the districts do not reflect a reasonable application of the criteria.

First and foremost, Vandermost's compactness claim fails because Senate District 25 is not the type of "bizarre" shape that can reasonably be contested under *Vera*, *supra*, 517 U.S. at p. 965, or *Wilson IV*, *supra*, 1 Cal.4th at pp. 722-723. Senate District 23 links a number of communities in the foothills of the San Gabriel Mountains. Vandermost has not presented any evidence that residents of this district cannot relate to each other or their representatives. (*Wilson IV*, *supra*, 1 Cal.4th at p. 719.)

Vandermost's compactness claim also fails because the boundaries for Senate District 25 are entirely reasonable. The shape of the district was influenced, in part, by its proximity to Senate Districts 22 and 24, which were drawn to satisfy VRA Section 2. (Appen. 472-473.) Because the boundaries of Senate Districts 24 and 20 were determined by the VRA, the Commission was limited in its ability to gather population from south of Senate District 25. (Appen. 377, 470-473.) Moreover, Senate District 18, to the west of the district, was created according to voluminous public input about San Fernando Valley communities. (See, e.g., Appen. 113, 114; see also April 28, 2011 Public Hearing, speaker no. 12, available at <http://wedrawthelines.ca.gov/video-archive-april-28-2011-los-angeles.html>.) Because the communities in Senate District 18 were grouped according to public input, the Commission was also constrained from acquiring population for Senate District 25 from the west. As the result of all of these influences, the Commission had to achieve population equality, and did so by adding the San Bernardino County cities of Upland and San Antonio Heights. (Appen. 165, 471-472.)

Vandermost complains about this district's compactness because of the inclusion of Upland and San Antonio Heights—two San Bernardino County cities. (V'most Pet. ¶ 107.) However, the Commission included Upland in order to achieve population equality, the highest constitutional criteria. (See, e.g., Appen. 471-473.) The Commission also included Upland as a way to keep the city whole and to group it with other communities, such as Claremont, with which it has shared interests. (See, e.g., Appen. 473.) Furthermore, Upland and Claremont residents are linked by I-210, which is at the heart of Senate District 25. (Appen. 33, 501-510.) Moreover, Claremont residents utilize I-210, and travel west for commerce and entertainment, as opposed to east into San Bernardino County. (*Ibid.*) The Commission's decision to include Upland and to group the communities in the Claremont/Upland area together in Senate District 25 was therefore reasonable and supported by the public record. Vandermost cites no evidence to the contrary.

Vandermost also incorrectly argues that "if the Commission had kept Burbank whole and added adjacent Los Angeles territory, it would not have been necessary to reach as far as Upland for population for this district." (V'most Pet. ¶ 107.) However, the city of Burbank was split to provide only approximately 14,000 people to Senate District 18 (directly west of Senate District 25). (Appen. 738-796.) If those 14,000 people had been included in Senate District 25, the District would still have needed some of the approximately 72,000 people from Upland to meet the population-equality requirement; but under Vandermost's plan, Upland would have been divided, as well. There is no basis for substituting Quinn's atomized divisions for the Commission's integrated determinations.

Vandermost's compactness claim also ignores the record, which shows that Senate District 25 was drafted to unify the San Gabriel Mountains and its

surrounding foothill communities. (Appen. 473, 619.) Substantial public comment supported combining the towns of Burbank, Glendale and Pasadena (see, e.g., Appen. 34-52); maintaining the close relationship between Pasadena and Altadena (see, e.g., Appen. 34-49, 50-52, 223-224); and grouping the East San Gabriel Valley communities of Claremont, Upland, and La Verne (see, e.g., Appen. 474, 501-510). The Commission's decision to draw Senate District 25 to accommodate these suggestions was reasonable.

4. Senate District 28 Is Constitutional.

Contrary to Vandermost's allegations, Senate District 28 cannot be challenged on compactness grounds. The shape of the district mirrors the shape of Riverside County itself, and the district successfully unifies a number of communities with shared interests.

As with the other districts, Senate District 28 cannot reasonably be contested under applicable precedent on compactness grounds. (*Vera*, *supra*, 517 U.S. at p. 965; *Wilson IV*, *supra*, 1 Cal.4th at pp. 722-723.)

Vandermost's claim against Senate District 28 is facially inconsistent. While she argues elsewhere against the Commission's decision to divide San

Bernardino County, here she suggests the Court change Senate District 28, which is contained entirely within Riverside County, into a district that would be in *three* counties: Riverside, San Diego, and Imperial. (Quinn Supp. (V'most) Dec. at 8-9, Exs. C & E.)

The Commission drew Senate District 28 to maintain the integrity of the Coachella Valley. Senate District 28 includes only whole cities and whole neighborhoods, as well as a variety of communities that provided public input regarding their shared interests, such as the Coachella Valley. (See, e.g., Appen. 167-168, 391, 394-395.) The boundaries of this district are reasonable and grounded in public input.

In claiming that the district is "elongated and illogical" and "awkward" because it "begins at the Arizona border and extends all the way to the Orange County line" (V'most Pet. ¶ 112), Vandermost ignores geography. Riverside County itself—a county which remains whole in the district—stretches from the Arizona border to the Orange County line. In seeking to chastise the Commission for this boundary, Vandermost and Quinn reveal that their assertions are agenda-driven and not rooted in fact. Petitioner's suggestion that the district be redrawn to include eastern San Diego County and parts of Imperial County flies in the face of her overall argument that it is imperative to keep counties whole. (V'most Pet. ¶ 114.)

Vandermost claims that the 1991 maps, which were based on a less populous Riverside County, "unit[ed] the Coachella Valley." (V'most Pet. ¶ 114.) However, the Commission's map does unite the Coachella Valley, and Vandermost has provided no alternative definition for that region. The Commission received much public input regarding the Coachella Valley and its desire to remain united. (See, e.g., Appen. 167-168, 391, 394-395.) Moreover,

the Commission received testimony that the San Jacinto Valley, which is included in Senate District 23, did not want to be grouped with the Coachella Valley. (See, e.g., Appen. 239-240, 256-270, 484.) The Commission reasonably accommodated both requests.

Finally, Vandermost claims that the 1991 maps are superior because they included Imperial County cities; but she does not explain why any part of Imperial County is necessary to unite the Coachella Valley. (See V'most Pet. ¶ 113.) Moreover, she ignores the public record, which contains numerous examples of public input urging the Commission to keep Coachella Valley whole and separate from Imperial County communities. (See, e.g., Appen. 167-168, 222, 283.)

5. Senate District 27 Is Constitutional.

Vandermost challenges Senate District 27 in her First Cause of Action on compactness grounds, arguing that it fails to include the city of Camarillo and should be redrawn to create a Latino influence district in Senate District 18. The Commission's determination was reasonable—and again, none of Vandermost's arguments suggest anything to the contrary.

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. It also includes the coastal area extending from Leo Carrillo State Beach to Malibu and on to Topanga Canyon. Additionally, it captures the communities of Calabasas, West Hills and a portion of Santa Clarita in Los Angeles County. It maintains the coastal mountain range and watershed. This district keeps whole the cities in Eastern Ventura County above the Conejo Grade and combines them with communities in the greater Santa Monica Mountain area and the western San Fernando Valley along the Highway 101 and 118 corridors. (Appen. 643, 708.) The cities of Santa Clarita and Los Angeles were split to achieve population equality. (Appen. 489-495.)

Vandermost includes this district under her "compactness" cause of action, but she does not argue with any conviction—nor could she—that the district is not compact, much less "bizarre." (*Vera, supra*, 517 U.S. at p. 965.) Instead, she 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 District 27 could have been drawn primarily in Ventura County. (V'most Pet. ¶ 164; Quinn Supp. (V'most) 8, Ex. E.) However, the maps Quinn proposes would divide the city of Oxnard from the Route 126 border, a community that, based on substantial public comment, the Commission decided to keep together. (See, e.g., Appen. 108, 194, 203, 225.) Moreover, as discussed above, District 17 complies with the constitutional criteria, and Vandermost's preference is not a basis for overturning the Commission's maps.

Vandermost also complains that the city of Camarillo is split from the rest of Eastern Ventura County. (V'most Pet. at ¶ 108.) However, public comment regarding East Ventura County made less mention of Camarillo, and focused on Moorpark, Simi Valley and Thousand Oaks. (See, e.g., Appen. 242-

248.) Public input urged that Camarillo be combined with Oxnard and Port Heuneme in West Ventura County. (See June 22, 2011 Public Hearing, speaker nos. 84, 109, available at <http://wedrawthelines.ca.gov/video-archive-june-22-2011-oxnard.html>; see also Appen. 65, 103, 108.) The Commission therefore had a reasonable basis for this division.

Finally, Vandermost argues that Senate District 27 resulted in the dilution of the Latino VAP in the neighboring Senate District 18. (V'most Pet. ¶¶ 108, 111.) 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. (See <http://c365736.r36.cf2.rackcdn.com/maps_20110610_q2_sd_la_lasfe.pdf>; see also Quinn Supp. Dec. (V'most) Ex. E.) As discussed below in section III(C)(1), the Commission was under no obligation to draw a maximum Latino influence district under the VRA in neighboring Senate District 18.

Once again, Vandermost provides no facts on which this Court can conclude that no reasonable commission could have drawn Senate District 27. Vandermost presents no basis for a finding that Senate District 27 was unconstitutionally drawn on compactness grounds.

C. Vandermost Has Not Stated a Cause of Action Under the Voting Rights Act.

Vandermost's Third Cause of Action for violation of the Voting Rights Act ("VRA") is facially deficient as a matter of law. It fails to allege facts that would constitute a VRA violation.

1. Vandermost's VRA Section 5 Claim Fails Because It Does Not Allege Retrogression in Any Senate District.

The Petition asserts erroneously that Senate Districts 12 and 17 violate Section 5 of the VRA. (V'most Pet. ¶¶ 166-174.) This claim fails as a matter of law because the challenged districts have not retrogressed since the last approved redistricting plan.

Section 5 of the Voting Rights Act requires covered jurisdictions[56] to show that new boundary lines do not have the "purpose" or "effect" of "diminishing the ability of any citizens of the United States on account of race or color or . . . [language minority] to elect their preferred candidates of choice . . . ." (42 U.S.C. § 1973c(b).) Vandermost does not allege that the Commission drew Senate districts with a discriminatory purpose.

Redistricting plans have the "effect" of "denying or abridging the right to vote" if they "lead to a retrogression in the position of racial [or language] minorities with respect to their effective exercise of the electoral franchise." (*Beer v. United States* (1976) 425 U.S. 130, 141; see also *League of United Latin Am. Citizens v. Perry* (2006) 548 U.S. 399, 478; *Riley, supra*, 553 U.S. at p. 412 ["[C]overed jurisdictions may not 'leave minority voters with less chance to be effective in electing preferred candidates than they were' under

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[56] Only four California counties—Monterey, Kings, Yuba, and Merced—are covered by Section 5. (28 C.F.R. Part 51, Appendix.) Accordingly, Section 5 applies to statewide changes to California's voting procedures only to the extent that "it affects covered counties." (*Lopez v. Monterey Cty.* (1999) 525 U.S. 266, 280-281.) Vandermost asserts—in the context of her Section 2 claim—that Senate District 18 has "regress[ed] from 47 percent to only 38.04 percent." (V'most Pet. ¶ 162.) But District 18 does not include any of the four counties covered by Section 5.

the prior districting plan."]; *Georgia v. Aschroft*, *supra*, 539 U.S. at p. 477 [prohibiting changes to voting procedures "that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise"].)

"Retrogression, by definition, requires a comparison of a jurisdiction's new voting plan with its existing plan. It also necessarily implies that the jurisdiction's existing plan is the benchmark against which the 'effect' of voting changes is measured." (*Reno v. Bossier Parish Sch. Bd.* (1997) 520 U.S. 471, 478; citation omitted.) Newly drawn districts that improve or maintain the voting rights and voting power of minority groups satisfy Section 5. As the Supreme Court explained in *Beer*, *supra*, a "reapportionment that enhances the position of racial minorities with respect to their effective exercise of the electoral franchise can hardly have the 'effect' of diluting or abridging the right to vote on account of race within the meaning of [Section] 5." (425 U.S. 130 at p., 141.) Plainly stated, "a plan that is not retrogressive should be precleared under § 5." (*Georgia v. Aschroft*, *supra*, 539 U.S. at p. 477.)

Vandermost's Section 5 claim fails because the Senate Districts identified—Districts 12 and 17—do not retrogress and therefore satisfy Section 5. The new boundaries for Senate Districts 12 and 17 resulted in *increases* in the Latino voting age population ("VAP"). Under the 2001 benchmark, the Latino VAP for District 12 was 53.48%, and under the new district lines it increased to 59.14%. (Appen. 183, 728.) The Latino VAP for Senate District 17 increased from a benchmark of 26.22%, to 26.28% under the new district lines. (Appen. 184, 728.)

2. Vandermost's Section 2 Claim Fails Because It Does Not Allege a Potential Senate District With a "Minority-Majority Population" of More Than 50 Percent.

Vandermost alleges that the Commission drew Senate Districts 12, 17 and 27 in a manner that diluted the voting strength of Latino voters, thus violating VRA Section 2 (42 U.S.C. § 1973). (V'most Pet. ¶¶ 160-165.) Her claim fails as a matter of law because she does not allege facts sufficient to meet the first of the three "necessary preconditions" to a vote dilution claim established by *Thornburg v. Gingles* (1986) 478 U.S. 30—that the minority group "is sufficiently large and geographically compact to constitute a majority in a single-member district." (*Id.* at p. 51.)[57]

As Vandermost concedes (Pet. 114), she must satisfy all three *Gingles* preconditions to state a Section 2 claim. (*Bartlett v. Strickland* (2009) 129 S.Ct. 1231, 1241; *Voinovich v. Quilter* (1993) 507 U.S. 146, 158.) "[O]nly when a party has established the *Gingles* requirements does a court proceed to analyze whether a violation has occurred based on the totality of the circumstances." (*Bartlett*, *supra*, 129 S.Ct. at p. 1241.)

Bartlett held, consistent with 20 years of "uniform interpretation" by the federal courts, that to satisfy the first *Gingles* precondition "a party asserting § 2 liability must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent." (*Id.* at p. 1246.) In applying this "majority-minority" rule, courts consider citizen voting age population ("CVAP"). (*Romero v. City of Pomona* (9th Cir. 1989) 883 F.2d 1418, 1425-1426, overruled on other grounds by *Townsend v. Holman*

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[57] A fuller discussion of the requirements of a Section 2 VRA claim is below at Section IV, addressing the Radanovich Petition.

Consulting Corp. (9th Cir. 1990) 914 F.2d 1136; *Reyes v. City of Farmers Branch Texas* (5th Cir. 2009) 586 F.3d 1019, 1023 [explaining that *Bartlett* requires consideration of CVAP].)

By adopting a majority-minority rule, *Bartlett* "provide[d] straightforward guidance to courts and to those officials charged with drawing district lines to comply with § 2." (129 S.Ct. at p. 1245.) Allegations of dilution in districts with minority CVAPs close to but below 50 percent do not meet the first *Gingles* precondition. (*Ibid.*)

Given this straightforward 50%-or-greater threshold, Vandermost has failed to allege a Section 2 claim.

a. Senate Districts 12 and 17 Comply with Section 2.

Vandermost argues that the Commission should have created a Section 2 Latino-majority district in Northern Monterey and Santa Clara County:

> [It] should have attached Merced County [in Senate District 12] to Kings County and Latino portions of Fresno and Kern Counties [Senate District 14] to meet Section 5 concerns (this district currently has a Latino Senator and there would be no Section 5 regression). The Commission could then have taken the Latino portions of Monterey County, also Section 5, and created a Latino Senate district in combination with Santa Clara County Latinos.

(V'most Pet. ¶ 82.)

The argument is wrong for at least two reasons. *First*, no Section 2 district is required because the proposed district in Santa Clara and Monterey Counties would not have a Latino CVAP that even approached 50 percent.

Second, the Merced/Kings district that Vandermost proposes to comply with Section 5 would, in fact, retrogress and violate Section 5.

Vandermost's proffered Section 2 district, originally proposed during the public comment period by Professor Joaquin Avila and considered by the Commission (see June 29, 2011 Tr. at 107, 112-13), estimated that this proposed district would have a 38.6% Latino Citizen Voting Age Population. (See V'most RJN Ex. E.) The proposed district therefore does not meet the first *Gingles* requirement that "that the minority population in the potential election district is greater than 50 percent." (*Bartlett*, *supra*, 129 S.Ct. at p. 1246.)

In addition, Vandermost's proposal—that populations from Merced County be merged with the population in Kings County—results in retrogression and does not comply with Section 5. Kings County, which is part of Senate District 14, has a benchmark Latino VAP of 66.19%. Vandermost proposes that "Merced County could have been placed in the Central Valley Section 5 district (Senate District 14) and it could have been drawn to more than 60 percent Latino (Merced County itself is 55 percent Latino)." (V'most Pet. ¶ 172.) This proposal would violate Section 5 since it would retrogress the Kings County VAP below the benchmark of 66.19%.

b. Senate Districts 18 and 27 Comply With Section 2.

Vandermost also argues that, by including Reseda and Encino in Senate District 27, Senate District 18's Latino CVAP was reduced from 47% to 38% thereby violating VRA Section 2. (V'most Pet. ¶¶ 108, 162-163.) This claim is also facially deficient. As with the proposed Monterey/Santa Clara District, Vandermost's proposed Senate District 18 does not reach 50%. Accordingly, the Petition does not meet the first *Gingles* precondition "that the minority

population in the potential election district is greater than 50 percent." (*Bartlett*, *supra*, 129 S.Ct. at p. 1246.)[58]

Vandermost's assertion that by dividing Latino voters between Districts 27 and 18 the Commission failed to create an "influence district" (V'most Pet. 114) is also unavailing. "A redistricting plan that does not adversely affect a minority group's potential to form a majority in a district, but rather diminishes its ability to form a political coalition with other racial or ethnic groups, does not result in vote dilution 'on account of race' in violation of Section 2." (*Hall v. Virginia* (4th Cir. 2004) 385 F.3d 421, 431.) No court has found a Section 2 violation based on failure to create an "influence district." (See *Bartlett*, *supra*, 129 S. Ct. at p. 1242 ["§ 2 does not require the creation of influence districts"].)

IV. RADANOVICH'S CHALLENGES TO THE CONGRESSIONAL DISTRICTS ARE MERITLESS.

A. Overview of the Radanovich Petition.

The Radanovich Petition challenges the Commission's Congressional Districts in Los Angeles County. Radanovich makes two inconsistent and illogical claims concerning African American voters in Los Angeles. First, he argues that the Commission failed to take race into account, to the detriment of African Americans. Second, Radanovich asserts that the Commission improperly *did* take race into account, to benefit African Americans. He is wrong on both counts.

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[58] None of the alternative plans submitted to the Commission during the public-input process for the area that became Senate District 18 proposed a configuration with a Latino CVAP exceeding 50%. For example, MALDEF's May 26, 2011 submission for this district had a CVAP of 45.4%. (Appen. 132-132D.) In MALDEF's later submission to the Commission, the district was drawn with 45.7% Latino CVAP. (Appen. 250.)

Radanovich focuses primarily on three Congressional districts in the southwestern portion of Los Angeles County—Districts 37, 43, and 44—which contain diverse populations, including African Americans, although none of these districts are African American-majority districts. Radanovich contends that the Commission violated Section 2 of the Voting Rights Act because it did not draw at least one African American-majority district in this portion of Los Angeles County. This claim lacks merit because Radanovich neither pleads nor presents facts that satisfy the *Gingles* preconditions as to African Americans in Los Angeles.

Radanovich also asserts that the Commission's failure to create an African American-majority district was due to a "racial gerrymander," in violation of the Fourteenth Amendment. That claim fails on its face because the public record makes plain that race was not the *predominant* factor in the Commission's map-drawing effort, and the resulting districts are rationally related to legitimate, race-neutral redistricting criteria.

Radanovich's Voting Rights Act and Fourteenth Amendment claims are completely contrary to the evidence and well settled case law. His third and fourth causes of actions for "unnecessary city splits" and "compactness" violations—which are premised on a supposed "ripple effect" from the non-existent "racial gerrymander" of Los Angeles Congressional Districts 37, 43, and 44—are similarly baseless. The Commission conducted its mapping effort in Los Angeles in the same manner as for the rest of the State. It took extensive public comment, evaluated the application of the Voting Rights Act, and created districts by grouping together related cities, local neighborhoods, and local communities of interest, while minimizing their division to the extent possible in light of higher-priority criteria such as population equality. The resulting

districts reflect a reasonable application of the redistricting criteria, and Radanovich fails to allege any facts that would lead to a contrary conclusion.

The Congressional Districts should be upheld and the Petition denied.

B. Applicable Legal Standards.

1. Section 2 of the Voting Rights Act.

"A violation [of Section 2] is established if, based on the totality of circumstances, it is shown that the political processes . . . are not equally open to participation by members of a class of [protected] citizens . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." (42 U.S.C. § 1973(b); see *Gingles*, *supra*, 478 U.S. at p. 63.)

To state a claim under Section 2, a plaintiff must first satisfy the three threshold "*Gingles* preconditions" articulated by the Court in *Thornburg v. Gingles*. (*Growe v. Emison* (1993) 507 U.S. 25, 37-42.) The *Gingles* preconditions are:

- "First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district."
- "Second, the minority group must be able to show that it is politically cohesive."
- "Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate."

(*Gingles*, *supra*, 478 U.S. at pp. 50–51.) These standards apply in the redistricting context.[59]

As discussed above (Section III.C.2, *supra*), the first *Gingles* precondition requires that "the minority population in the potential election district is greater than 50 percent." (*Bartlett*, *supra*, 129 S.Ct. at p. 1246.) The *Gingles* "compactness" inquiry focuses on the compactness of the *minority population*, not the shape of the district itself. (*LULAC*, *supra*, 548 U.S. at p. 433.)[60]

Although the Supreme Court has not expressly defined the proper measure of a majority-minority population, the Ninth Circuit Court of Appeals has endorsed the use of citizen voting age population ("CVAP") statistics, rather than total population or voting-age population statistics, to satisfy the first *Gingles* precondition. (*Romero*, *supra*, 883 F.2d at p. 1426; see also *LULAC*, *supra*, 548 U.S. at p. 429 [observing, in dicta, that CVAP "fits the language of

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[59] (See generally *Growe*, *supra*, 507 U.S. at p. 25.)

[60] A district in which minority voters make up less than a majority, but can elect a candidate of the minority group's choice where majority voters "cross over" to support the minority's preferred candidate is referred to as a "cross-over district." (*Bartlett*, *supra*, 129 S.Ct. at pp. 1242-1243.) Cross-over districts are not required by Section 2, but may legitimately be considered by line-drawers to enhance or protect minority voting interests: "crossover districts may serve to diminish the significance and influence of race by encouraging minority and majority voters to work together toward a common goal. The option to draw such districts gives legislatures a choice that can lead to less racial isolation, not more." (*Id.* at p. 1248.)

§ 2 because only eligible voters affect a group's opportunity to elect candidates"].)[61]

In addressing the second and third *Gingles* preconditions (often referred to collectively as "racially polarized voting"), courts first assess whether a politically cohesive minority group exists, i.e., "a significant number of minority group members usually vote for the same candidates." (*Gingles*, *supra*, 478 U.S. at p. 56.) Then, courts look separately for legally significant majority bloc voting, i.e., a pattern in which the majority's "bloc vote . . . normally will defeat the combined strength of minority support plus [majority] 'crossover votes.'" (*Ibid.*) An allegation of such bloc voting typically requires the support of expert testimony. (See, e.g., *id.* at pp. 53-74.)

If, and only if, a plaintiff has established all three *Gingles* preconditions, a court must then consider whether, based on the "'totality of the circumstances,' minorities have been denied an 'equal opportunity' to 'participate in the political process and to elect representatives of their choice.'" (*Abrams v. Johnson* (1997) 521 U.S. 74, 91, quoting 42 U.S.C., § 1973(b); see also *LULAC*, *supra*, 548 U.S. at pp. 425-426.) To make the determination whether, based on the totality of circumstances, a Section 2 violation exists, courts look to a long, non-exhaustive list (the so-called "Senate Report Factors," based on the Senate Report accompanying the 1982 amendments to Section 2). (*Gingles*, *supra*, 478 U.S. at pp. 36-37; *LULAC*, *supra*, 548 U.S. at p. 426.)

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[61] The decennial Census does not collect or report CVAP data. However, the Census Bureau's American Community Survey ("ACS") provides a rolling estimate of CVAP in a given geographic area over a 5-year period. Because of the requirements of the Voting Rights Act, the Commission needed to use the most readily available and commonly used data to make its determinations about whether the Voting Rights Act required the drawing of certain districts. The Commission's mapping consultant therefore used CVAP data from California's Statewide Database (which is based on the ACS CVAP).

2. Equal Protection in the Redistricting Context.

The Equal Protection Clause of the Fourteenth Amendment prohibits a state from using race as the *predominant* factor in constructing districts, unless doing so satisfies "strict scrutiny" because it is necessary to achieve a compelling state interest. (See, e.g., *Vera*, *supra*, 517 U.S. at pp. 958-959.)

But the Fourteenth Amendment does not preclude *any* consideration of race in redistricting. Indeed, the U.S. Supreme Court has instructed courts to be "sensitive to the complex interplay of forces that enter a legislature's redistricting calculus. Redistricting legislatures will, for example, *always* be *aware* of racial demographics; but it does not follow that race predominates the redistricting process." (*Miller v. Johnson* (1995) 515 U.S. 900, 915-916, italics added.) Accordingly, courts must exercise "extraordinary caution" when assessing whether districts lines have been drawn predominantly based on race; redistricting bodies must have "discretion" to "balance competing interests." (*Easley v. Cromartie* (2000) 532 U.S. 234, 242; quotations omitted.)

Strict scrutiny applies only where race is the "*predominant* factor motivating the [redistricting] decision." (*Vera*, *supra*, 517 U.S. at pp. 958-959, emphasis added.) Conversely, where race is one of the factors—but not the predominant factor—used to draw a district in a particular way, then a court will analyze a Fourteenth Amendment challenge using a deferential "rational basis" review. (See *id.* at pp. 958-959; see also *LULAC*, *supra*, 548 U.S. at p. 475 (conc. opn. of Stevens, J. ["strict scrutiny does not apply merely because race was one motivating factor behind the drawing of a majority-majority district"].)

A plaintiff must establish that race was the predominant factor motivating a redistricting decision by showing that "the legislature subordinated

traditional race-neutral districting principles, including but not limited to compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests, to racial considerations." (*Miller*, *supra*, 515 U.S. at p. 916.) Stated differently, race must not simply be "*a* motivation" for the drawing of the district; it must be "*the predominant factor* motivating the legislature's districting decision." (*Easley*, *supra*, 532 U.S. at p. 241, internal quotation marks omitted.) The Court has described this burden as a "demanding one." (*Ibid.*, internal quotations omitted.)

Ultimately, under this "demanding" standard, a court must apply rational-basis review unless a petitioner is able to "show that a racially neutral law is *unexplainable on grounds other than race*." (*Easley*, *supra*, 532 U.S. at pp. 241-42, italics added; accord *Cano v. Davis* (C.D.Cal. 2002) 211 F.Supp.2d 1208, 1215 [describing the "extraordinarily high burden" facing a plaintiff who seeks to prove racial gerrymandering]; *Robertson v. Bartels* (D.N.J. 2001) 148 F.Supp.2d 443, 454.)

C. The Los Angeles Congressional Districts Resulted from a Careful Process that Considered All the Article XXI Criteria.

As described in the Commission's Final Report, the Commission's line-drawing process complied carefully with the redistricting criteria and priorities mandated by Article XXI. To ensure compliance with the Voting Rights Act (the Commission's second-highest criterion), the Commission worked with its mapping consultants and counsel to identify areas of the State in which a geographically compact concentration of a single minority group potentially could form a majority in a Congressional District. The Commission then evaluated whether Section 2 required them to draw a majority-minority district in that area. (Appen. 656; see also *id.* at 59.)

This process heavily influenced the ultimate configuration of the certified Los Angeles districts. The Commission did not draw each district in a vacuum; everything was interrelated to an extent, and every decision had consequences for neighboring districts. As described below, the Commission concluded that Section 2 of the Voting Rights Act required it to draw several Latino-majority Congressional Districts in Los Angeles County. Once the Commission drew those districts, this limited the possible configurations for the remaining districts throughout the County.

As discussed in the following sections, the Commission also concluded that Section 2 of the Voting Rights Act did *not* require it to draw any African American-majority districts in Los Angeles County.

Accordingly, after drawing six Latino-majority districts in Los Angeles County in mid-July 2011, and after configuring the rest of the County in light of the priorities expressed in Article XXI, the Commission had three final districts to draw in the southwestern portion of the County, along the Coast. These three remaining districts presented the Commission with a choice between (a) one coastal district and two urban districts, and (b) two coastal districts and one urban district (which happened to be an African American-majority district). The Commission chose the former configuration because it better reflected the socioeconomic and other interests that the Commission sought to group together where practicable, as explained in detail below.

1. The Commission Drew Several Majority-Latino Districts in Los Angeles County in Consideration of Section 2, Which Significantly Affected the Line-Drawing Process.

The Commission evaluated the legal requirements of Section 2 of the Voting Rights Act and concluded that it should draw several Latino-majority

districts to comply. The Commission reasonably concluded that the three *Gingles* preconditions had been satisfied with respect to Latinos in Los Angeles County, and that the totality of circumstances evidenced the lack of opportunities for Latinos to participate in the political process and elect candidates of their choice. The Commission received extensive evidence, uncontradicted during the redistricting process, of the history of discrimination against Latinos in Los Angeles County, discrimination in voting (including majority bloc voting to defeat Latino-preferred candidates), and the lingering effects of past discrimination. (Appen. 656-657.)

The Commission, after receiving advice from its retained expert consultants about all of the above, decided to draw districts in Los Angeles in a manner that would be consistent with all of the redistricting criteria, result in several Latino-majority districts, and avoid the over-concentration (or "packing") of Latinos in any single district. This was a careful, comprehensive, and iterative process involving extensive consultations and deliberations during the Commission's public meetings.[62]

As a result of this unprecedented public process, the Commission drew the following districts, concluding that they fully satisfied the Commission's obligations under Section 2 of the Voting Rights Act as to Latinos in Los Angeles County:

- District 29, in the San Fernando Valley, which has a Latino VAP of 64.12% and a Latino CVAP of 50.74%.

- District 32, toward the eastern portion of the County, which has a Latino VAP of 57.83% and a Latino CVAP of 50.21%.

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[62] (See, e.g., <http://wedrawthelines.ca.gov/downloads/transcripts/201107/transcripts_20110714_sacto_vol2.pdf>.)

- District 34, which includes the core of downtown Los Angeles and has a Latino VAP of 60.50% and a Latino CVAP of 50.28%.

- District 38, near the center of the County along the I-5 and I-605 freeways, which has a Latino VAP of 57.04% and a Latino CVAP of 51.46%.

- District 40, including the Southeast or "Gateway" cities, which has a Latino VAP of 84.32% and a Latino CVAP of 73.49%.

- District 44, which includes the Port of Los Angeles and the City of Compton, and has a Latino VAP of 69.34% and a Latino CVAP of 49.06%.[63]

(Appen. 658; *id.* at 731-737.)

Neither petition takes issue with any of these Latino-majority districts or the Commission's conclusion that the Voting Rights Act required several Latino-majority districts to be drawn in Los Angeles County. And while Radanovich argues the Commission should have drawn even *more* Latino-majority districts (R'vich Pet. ¶ 39), he provides neither evidence nor legal authority requiring the Commission to do so.[64]

Creating these six Latino-majority districts in consideration of Section 2 (the Commission's second-highest criterion under Article XXI) in mid-July 2011, significantly affected (and in many ways limited) the possibilities for drawing the remaining districts in Los Angeles County. Especially given the

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[63] Ironically, Radanovich claims that Congressional District 44 was a racial gerrymander that favors African Americans. (R'vich Pet. ¶ 57.) No evidence supports the claim.

[64] Under *DeGrandy*, *supra*, no additional Latino-majority districts are required. (512 U.S. at p. 1022 [rejecting the "misconstruction of § 2 that equated dilution with failure to maximize the number of reasonably compact majority-minority districts"].)

strict "+/- one person" population-equality standard applicable to Congressional Districts, there were only so many options for drawing the remainder of the Los Angeles County districts.

2. The Commission Concluded that the Voting Rights Act Did Not Require the Creation of African American-Majority Congressional Districts in Los Angeles County.

The Commission also considered whether Section 2 of the Voting Rights Act required one or more African American-majority districts to be drawn in Los Angeles County. The evidence provided to the Commission was overwhelmingly against the creation of an African American-majority district. That evidence shows that the requirements needed for a Section 2 claim cannot be satisfied.

The Commission preliminarily identified at least one reasonably compact geographic area in Los Angeles County where African Americans could form a majority CVAP Congressional District. (Appen. 658.) The Commission also had evidence that African Americans vote in a politically cohesive manner in Los Angeles County. (*Ibid.*) Accordingly, the Commission preliminarily found that the first and second *Gingles* preconditions likely could be satisfied as to African Americans in Los Angeles County.

The Commission did not, however, receive evidence that satisfied the third *Gingles* precondition—a demonstration that the "majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." (*Gingles*, *supra*, 478 U.S. at pp. 50-51.)

Indeed, the record was overwhelmingly to the contrary. The evidence the Commission received concerning the history of African American politics

and electoral effectiveness in Los Angeles contradicted any conclusion that African Americans had been denied an opportunity to participate equally in the political process and elect candidates of their choice. (Appen. 658-659; see also Section IV(E)(1), *post*.) The Commission received an abundance of public testimony and evidence submitted by organized groups—uncontradicted during the redistricting process—demonstrating that African Americans have enjoyed substantial electoral success for many years in Los Angeles by forming coalitions with other groups. (Appen. 658-659.) Based on this evidence, the Commission reasonably concluded that the third *Gingles* pre-condition was not met and that, under the "totality of circumstances" test, Section 2 did not require the creation of any African American-majority district to protect the ability of African Americans to elect candidates of their choice. (*Id.* at 659.)

3. The Commission Reasonably Selected One of Two Possible Configurations for Drawing Congressional Districts 33, 37, and 43.

By mid-July 2011, the Commission had drawn the six Latino-majority districts discussed above in consideration of Section 2 of the Voting Rights Act, which significantly affected the possible configurations of the remaining districts. The Commission worked hard to balance competing concerns, to group shared interests together in a way that made sense, and to minimize the divisions of cities and local neighborhoods and communities of interest.

By late July 2011, the Commission was down to three remaining Congressional districts along the coast, in the southwestern portion of Los Angeles County. These districts ultimately became Congressional District 33 (which Radanovich challenges on compactness grounds only), District 37, and District 43. Two possible configurations for these districts existed:

Option 1. The Commission's first option for the final three Congressional Districts proposed (a) a single coastal district running from Rancho Palos Verdes in the south to Western Malibu in the north, (b) an urban district containing West Los Angeles and Culver City, and (c) a second urban district uniting the cities of Hawthorne, Lawndale, Inglewood, and the eastern portion of Torrance. (See generally Appen. 518-548, 549-606.)

Option 2. The Commission's second option proposed (a) a coastal district running from Malibu down to Marina Del Rey, (b) an urban district that included Inglewood and also contained a short stretch of the coast, which would have had an African American CVAP of just over 50%, and (c) a southern coastal district from El Segundo down to San Pedro, which would have included cities such as Hawthorne, Lawndale, and Torrance in the same district as Rancho Palos Verdes and Manhattan Beach. (See generally Appen. 518-548, 549-606.)

On July 24, 2011, following a lengthy and robust debate, the Commission settled on the first option for the remaining Congressional Districts. The Commission determined that this first option better reflected the communities of interest and grouped together populations with shared socioeconomic concerns. (See Section IV.F, *post*, discussing Equal Protection and evidence cited.) The resulting districts became Congressional District 33 (the coastal district), District 37 (the urban district including Culver City), and District 43 (the urban district including grouping Inglewood together with Lawndale, Hawthorne, and a portion of Torrance).

D. Each of the Challenged Congressional Districts Satisfies the Article XXI Redistricting Criteria.

1. Congressional District 37

The Commission's Final Report describes Congressional District 37 as follows:

> CD 37 includes the Los Angeles County cities and neighborhoods of Culver City, Century City, West Los Angeles, Cheviot Hills, Beverlywood, Rancho Park, Mar Vista, Palms, Pico-Robertson, Blair Hills, Mid-City, West Adams, Ladera Heights, Leimert Park, View Park-Windsor Hills, Baldwin Hills, View Park, and Hyde Park. This district is characterized by very high residential density, the University of Southern California, West Los Angeles Community College, the Kenneth Hahn State Recreation area, Exposition Park, including the Los Angeles Coliseum and Sports Arena, Natural History Museum, California Science Center, and California African American Museum, as well as many historic African American neighborhoods. The cities of Inglewood and Los Angeles were split to achieve population equality.

(Appen. 698.)

District 37 contains 702,904 people—a deviation of -1 person from the ideal population of a California Congressional District. (Appen. 731.) District 37 contains a diverse racial makeup: 20.82% Latino CVAP; 34.03% white CVAP; 34.52% Black CVAP; and 9.37% Asian CVAP. (Appen. 731.)

District 37 is geographically contiguous—the entire district shares a single border without any breaks.

District 37 is entirely within Los Angeles County. It contains the whole city of Culver City, and contains 17.0% (645,910 people) of the City of Los Angeles, which is too large to be included in a single Congressional district (the County's population of almost 10 million people must necessarily be split between at least 14 Congressional districts). District 37 also adds 0.3% (286 people) of the City of Inglewood, for purposes of meeting the strict "+/- one person" deviation standard applicable to Congressional districts. (Appen. 736-737.)

2. Congressional District 43

The Commission's Final Report describes Congressional District 43:

> CD 43 includes the Los Angeles County cities and communities of Gardena, Hawthorne, Inglewood, Westchester, Lawndale, Alondra Park, Lennox, Playa Vista, Playa Del Rey, Harbor Gateway, Torrance, and West Carson. This district is characterized by very high residential density and the transportation corridor of the Harbor Freeway (I-110), which runs north-south through the entire district. The cities of Inglewood, Los Angeles and Torrance were split to achieve population equality. Prominent features include the Los Angeles International Airport, as well as

> institutions such as Loyola Marymount University, Centinela Hospital, and Los Angeles Metropolitan Medical Center.

(Appen. 699.)

District 43 contains 702,904 people—a deviation of -1 person from the ideal population of a California Congressional District. (Appen. 731.) Like District 37, District 43 does not contain a majority of any one race; it encompasses 28.72% Latino CVAP; 24.20% white CVAP; 32.76% Black CVAP; and 12.74% Asian CVAP. (Appen. 737-737.)

District 43 is geographically contiguous—the entire district shares a single border without any breaks.

District 43 is entirely within Los Angeles County. It contains the whole cities of Hawthorne, Gardena, Lawndale, and Lomita and contains 5.5% (207,412 people) of the City of Los Angeles, which is too large to be included in a single Congressional district. District 43 also includes essentially all (99.7%, or 109,387 people) of Inglewood. Finally, District 43 includes 57.6% (83,839 people) of the City of Torrance, which needed to be split to achieve population equality. (Appen. 794.)

3. Congressional District 44

The Commission's Final Report describes Congressional District 44:

> CD 44 includes the Los Angeles County cities and communities of Compton, Carson, Lynwood, and South Gate. Prominent communities include Walnut Park, Rancho Dominguez, East Rancho Dominguez, Watts, Willowbrook, Rosewood, Longwood, North Long Beach, Hollydale, Lincoln Village, Hamilton, Sutter, Lindberg, Cherry Manor, Ramona Park,

> Davenport Park, Douglas Junction, Avalon Village, Terminal Island, and San Pedro. Catalina Island is also included in the district. The cities of Long Beach and Los Angeles were split to achieve population equality.

(Appen. 699.)

District 44 contains 702,906 people—a deviation of +1 person from the ideal population of a California Congressional District. (Appen. 731.) As noted above, District 44 is a Latino-majority district. It has a Latino VAP of 69.34% and a Latino CVAP of 49.06%, as well as an African American CVAP of 27.87%, a white CVAP of 46,049, and an Asian CVAP of 21,738. (Appen. 736-737.)

District 44 is geographically contiguous—the entire district shares a single border without any breaks.

District 44 is entirely within Los Angeles County. It contains the whole cities of Compton, South Gate, Carson, and Lynwood. District 44 also includes 4.4% (166,230 people) of the City of Los Angeles, which is too large to be included in a single Congressional district. The Commission also added 18.0% (83,417 people) of Long Beach to achieve strict population equality. (Appen. 794.) This district also contains the Port of Los Angeles.

E. The Challenged Congressional Districts Comply Fully with the Voting Rights Act.

Radanovich's Second Cause of Action asserts that the Commission drew Congressional Districts 37, 43, and 44 "in a manner that denied or abridged the right to vote of affected African American minority groups in violation of Section 2 of the Voting Right Act." (R'vich Pet. ¶ 32.) According to Radanovich, Section 2 required the Commission to draw "one or possibly two"

African American-majority districts in Los Angeles instead of the current districts. (*Id.* at ¶ 20.) Radanovich argues that the Commission improperly drew Congressional Districts 37, 43, and 44—which Radanovich's expert curiously refers to as "non-Section 2 *African American* districts" (Quinn Dec. (R'vich) ¶ 22, italics added), even though District 37 contains only 34.52% African American CVAP, District 43 contains only 32.76% African American CVAP, and District 44 is a Latino-majority district with only 27.87% African American CVAP. (Appen. 736-737.)

Radanovich's Section 2 claim fails because he does not and cannot satisfy all three *Gingles* preconditions as to African Americans in Los Angeles County. Moreover, the totality of circumstances and the history of African American electoral effectiveness in the County leave no doubt that African Americans in Los Angeles have had, and continue to have, an equal opportunity to participate in the political process and elect candidates of their choice. Therefore, Section 2 did not require the Commission to draw any African American-majority districts in Los Angeles County.

1. Radanovich Fails to Establish the *Gingles* Preconditions as to African Americans in Los Angeles County.

Radanovich fails to assert a viable Section 2 claim on behalf of African Americans in southwestern Los Angeles County because he does not and cannot establish the third *Gingles* precondition.[65]

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[65] The Commission preliminarily concluded during the map-drawing process that the first two *Gingles* conditions likely were satisfied as to African Americans in Los Angeles County, and thus the Commission does not dispute that point here.

The third *Gingles* precondition, which Radanovich has not properly alleged and which is refuted by the public record, requires him to show that the majority of voters in the portion of Los Angeles in which he seeks to impose a 50% African American-majority district "vote[] sufficiently as a bloc to enable [the non-African American majority] . . . usually to defeat [African Americans'] preferred candidate." (*Gingles*, *supra*, 478 U.S. at pp. 50-51.) In the redistricting context, courts look at the results of past elections in the challenged area, and may also consider the projected results of future elections in the new districts, to determine whether the majority will usually vote as a bloc to defeat the minority's preferred candidate. (See, e.g., *LULAC*, *supra*, 548 U.S. at p. 427.) Radanovich offers no evidence or expert opinion in support of the third *Gingles* precondition.

Radanovich relies principally on the analysis conducted by the Commission's Voting Rights Act counsel and expert (Dr. Matt A. Barreto) finding racially polarized voting with respect to *Latinos* in Los Angeles. (R'vich Pet. ¶ 38; Quinn Dec. (R'vich) ¶¶ 12-17; see Appen. 410.) But the cited analysis did *not* address racially polarized voting as to *African Americans* in Los Angeles County or elsewhere in California, particularly with respect to the third *Gingles* precondition.

The Commission was advised that "a significant number of *Latinos* vote together for the same candidate, while *non-Latinos* vote in significant numbers for different candidates." (Appen. 409, italics added.) Notably, "non-Latinos" include African Americans and several other racial groups (including whites, Asian Americans, Hawaiian or Pacific Islanders, American Indians, and "other"), and make up approximately 79% of the CVAP in Congressional District 37, approximately 71% of the CVAP in Congressional District 43, and approximately 50% of the CVAP in Congressional District 44. (Appen. 736-

737.) Nothing about the analysis provided to the Commission supports the third *Gingles* precondition as it applies to African Americans. Moreover, nothing in the public record evidences that non-African Americans in Los Angeles County usually vote as a bloc to defeat African Americans' candidates of choice.

Quinn refers to a number of past elections in which Latinos and African Americans have voted for different candidates—including the 2008 Democratic presidential primary election, the 2010 Democratic election for California Attorney General, and a 2007 special election for the 37th Congressional District. (Quinn Dec. (R'vich) ¶¶ 14-15.) Yet in each of these elections, the African American-preferred candidate *prevailed* over the Latino-preferred candidate: In Los Angeles County voting, Barack Obama defeated Hillary Clinton, Kamala Harris defeated Rocky Delgadillo and Alberto Torrico, and Laura Richardson defeated Jenny Oropeza. (Appen. 417.)

Indeed, Radanovich's proffered expert admits that African American voters in this region of Los Angeles County "have a long history of voting for *and electing* minority group candidates of choice." (Quinn Dec. (R'vich) ¶ 11, italics added; see *id.* at ¶ 5 [noting that the "African American members of congress [in Districts 37, 43, and 44] have been elected by overwhelming margins"]; see also *Gingles*, *supra*, 478 U.S. at p. 77 [faulting the district court for "ignoring the significance of the *sustained* success black voters have experienced in House District 23"].) The sustained electoral success of African American-preferred candidates precludes Radanovich's Section 2 claim. (*Gingles*, *supra*, 478 U.S. at p. 77 & fn.38 [stating that "persistent proportional representation is inconsistent with [racially polarized voting]" in the absence of "special circumstances" that would explain why such "sustained success does not accurately reflect the minority group's ability to elect its preferred representatives"].)

Quinn also opines "it is *conceivable* that all three of these districts could be lost to a person of another race over the 10-year life of this plan." (Quinn Dec. (R'vich), ¶ 28, italics added.) He points to population shifts in Los Angeles, the assumption that congressional incumbents may retire at some point during this decade, and the fact that California will utilize a "top-two runoff" system starting in 2012. (*See id.* at ¶¶ 2-3, 28-30.) But sheer *speculation* that an African American candidate *might* not be elected in one or more of the challenged districts at some point during the next decade is neither relevant nor sufficient to meet the third *Gingles* precondition. (Cf. *Gomez v. City of Watsonville* (9th Cir. 1988) 863 F.2d 1407, 1416 [in analyzing *Gingles* preconditions, courts should look "only to *actual voting patterns* rather than speculating as to the reasons why many minorities fail to vote"].) And the assertion implicitly assumes that African Americans are not free to choose someone other than their own race as a preferred candidate over time. No interpretation of the Voting Rights Act supports such an assumption or reliance on this kind of speculation.

Radanovich's expert has done no statistical or other quantifiable analysis to predict the results of future elections in these districts, which courts typically require in support of this kind of vote-dilution claim. (See, e.g., *LULAC*, *supra*, 548 U.S. at p. 427 ["[T]he projected results [according to an expert's statistical regression analysis] in new District 23 show that the Anglo citizen voting-age majority will often, if not always, prevent Latinos from electing the candidate of their choice in the district."]; *Growe*, *supra*, 507 U.S. at pp. 41-42 [noting that "the record simply 'contains no statistical evidence' of minority political cohesion or of majority bloc voting . . . . A law review article on national voting patterns is no substitute for proof that bloc voting occurred . . . ."]; *Garza v. County of Los Angeles* (C.D.Cal. 1990) 756 F.Supp. 1298, 1334 ["The Court finds that the ecological regression and extreme case analysis performed by

plaintiffs' experts, as supplemented by the analysis of correlation coefficients[,] are sufficiently reliable to make the requisite determinations about polarized voting between Hispanics and non-Hispanics."].)

More importantly, even if it is "conceivable" that an African American-preferred candidate *might* lose an election in one of the challenged districts in the next ten years (Quinn Dec. (R'vich) ¶ 28), that is not evidence that the majority "usually" will "defeat" the African-Americans' candidate of choice in the new districts. (*Gingles*, *supra*, 478 U.S. at pp. 50-51, italics added.) An equal opportunity to elect does not guarantee success. (See *DeGrandy*, *supra*, 512 U.S. at p. 1017 ["One may suspect vote dilution from political famine, but one is not entitled to suspect (much less infer) dilution from mere failure to guarantee a political feast."].) The mere possibility of losing an election is not the same as a *pattern* of polarized voting and does not satisfy the third *Gingles* precondition: "the usual predictability of the majority's success distinguishes structural dilution from the mere loss of an occasional election." (*Gingles*, *supra*, 478 U.S. at p. 51.)

In any event, as Radanovich acknowledges, the Commission received evidence from members of the public, including African Americans, and from organized groups, supporting the conclusion that racially polarized voting does not exist in Los Angeles County as to African Americans. (R'vich Pet. 53.) For instance, Alice Huffman, chair of the California NAACP, explained that her group had looked at Assembly, Senate, and Congressional elections since 1990. According to Ms. Huffman, the success of African American-preferred candidates in these districts, despite the lack of a numerical voting majority, "clearly demonstrates the *absence* of polarized voting" against African Americans. (Appen. 187, italics added.)

The African American Redistricting Collaborative ("AARC") observed that African Americans have enjoyed a long history of "electoral effectiveness" in south Los Angeles by forming coalitions with other groups, even where African Americans make up less than 30% of a district. (Appen. 137-139.) The AARC submission also described how the elected officials for these communities were responsive to the particularized needs of African Americans. (*Ibid.*)

Similarly, the Black Farmers and Agriculturalist Association pointed out that "Black people have persistently won seats in jurisdictions with less than 20% Black populations. As constituents and candidates, we must organize these potential districts when we build coalitions with recent immigrants and our friends and neighbors." (Appen. 121.)

On June 23, 2011, the Commission received a letter co-signed by groups including AARC, the Asian Pacific American Legal Center ("APALC"), MALDEF, and the National Association of Latino Elected and Appointed Officials Education Fund ("NALEO"). This letter explained that Section 2 of the Voting Rights Act did not require the Commission to draw an African American-majority district in south Los Angeles "given that African American populations in South Los Angeles have demonstrated an ability to elect preferred candidates when they comprise less than 50% of the district's CVAP." (Appen. 235.) Indeed, AARC and APALC suggested that intentionally creating an African American-majority district in Los Angeles County could lead to a Section 2 "packing" claim, because consolidating African Americans in a single district could diminish their ability to elect candidates of their choice in neighboring districts. (*Ibid.*)

In sum, Radanovich fails to meet the third *Gingles* precondition because he has not shown—or even alleged—that the non-African American majority usually defeats African American-preferred candidates in the southwest portions of Los Angeles County. The Court should therefore deny Radanovich's claim under Section 2 of the Voting Rights Act.

2. Even Assuming Arguendo that Radanovich Could Meet the *Gingles* Preconditions, Radanovich's Section 2 Claim Still Fails Under the Totality of Circumstances.

Even if Radanovich had established the three *Gingles* preconditions as to African Americans in Los Angeles County (he plainly did not), that would not demonstrate a Section 2 violation. Instead, Radanovich would then need to establish that under the "totality of circumstances," African Americans have been denied an equal opportunity to participate in the political process and elect representatives of their choice. (*Abrams*, *supra*, 521 U.S. at p. 91.) This he does not and cannot do.

Radanovich fails even to *mention* the totality of circumstances in his brief (other than a quote from *Wilson IV*, *supra*, which simply notes the legal standard for asserting a Section 2 claim (R'vich Pet. 50)), let alone offer evidence or argue that the totality of circumstances are met here. Radanovich's Section 2 claim as to African Americans in Los Angeles County fails for this reason alone. (*DeGrandy*, *supra*, 512 U.S. at pp. 1011-1012 ["[I]f *Gingles* so clearly identified the three [preconditions] as generally necessary to prove a § 2 claim, it just as clearly declined to hold them sufficient in combination, either in the sense that a court's examination of relevant circumstances was complete once the three factors were found to exist, or in the sense that the three in combination necessarily and in all circumstances demonstrated dilution . . . . [C]ourts must also examine other evidence in the totality of circumstances,

including the extent of the opportunities minority voters enjoy to participate in the political processes."].)

For many of the same reasons the third *Gingles* precondition is not established in Los Angeles as to African Americans, examining the totality of circumstances leaves no doubt that African Americans *have* historically enjoyed equal opportunities to participate in the political process in Los Angeles County and to elect representatives of their choice.

Most importantly, as discussed above (Sections IV.E.1-2, *supra*), African Americans in Los Angeles County have enjoyed a long period of "electoral effectiveness." This is perhaps why the African American organized groups overwhelmingly advocated *against* combining the African American population in southwest Los Angeles County into a single African-American-majority district. (See, e.g., Appen. 235 ["We note here that the drawing of 50% African American CVAP districts in South Los Angeles would neither be appropriate from a community empowerment perspective nor warranted under Section 2, given that African American populations in South Los Angeles have demonstrated an ability to elect preferred candidates in districts where they comprise less than 50% of the district's CVAP."].)

Two of the most relevant "totality of circumstances" factors are (a) "the extent to which members of the minority group have been elected to public office in the jurisdiction," and (b) "whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group." (*Gingles*, *supra*, 478 U.S. at p. 37.) As demonstrated by the evidence presented to the Commission, both of these factors weigh heavily against any conclusion that African Americans have been denied an ability to participate in the political process in Los Angeles County.

3. To the Extent Radanovich Seeks to Bring a Section 2 Claim on Behalf of Latinos or Asians, Such Claims Would Similarly Fail.

Radanovich also suggests that the Commission violated Section 2 of the Voting Rights Act by not creating additional *Latino*-majority districts in Los Angeles. (See, e.g., R'vich Pet. ¶¶ 34, 39, *id.* at 39, 53, 55.) To the extent Radanovich intends to bring a Section 2 claim on behalf of Latinos in Los Angles, such a claim would be completely misguided.

For one thing, Radanovich ignores the fact that Congressional District 44—which he refers to as a "non-Section 2 African American district[] (R'vich Pet. 55)—is already a *Latino-majority* district. It contains 69.34% Latino voting age population and 49.06% Latino CVAP; the African American CVAP in District 44 is only 27.87%. (Appen. 734-737.) Thus, the "additional Latino District[]" that Radanovich seeks (R'vich Pet. 55) already exists.

In any event, *DeGrandy, supra,* made clear that there is no Section 2 violation for "failure to maximize the number of reasonably compact majority-minority districts." (*Id.*, 512 U.S. at p. 1022.) This is because "reading § 2 to define dilution as any *failure to maximize* tends to obscure the very object of the statute and to run counter to its textually stated purpose . . . . Failure to maximize cannot be the measure of § 2." (*Id.* at pp. 1016-1017, italics added.)

Radanovich has utterly failed to set forth any legal basis for requiring Latino-majority districts to be drawn in Los Angeles beyond the six that the Commission already drew. Among other deficiencies, he has not identified a reasonably compact Latino population that could form 50% of a hypothetical Congressional District—the first *Gingles* precondition—and which is not *already* in such a district. Therefore, to the extent Radanovich intended to bring a Section 2 claim on behalf of Latinos in Los Angeles, that claim fails.

Likewise, Quinn's declaration suggests that the Commission violated Section 2 by "denying Asian voters in Orange County an opportunity to elect a candidate of their choice by splitting their community" between Congressional District 47 and Congressional District 48. (Quinn Dec. (R'vich) ¶¶ 25-26.) But the Asian CVAP for District 47 is 79,783, and the Asian CVAP for District 48 is 75,052—or a combined 154,835 people. (Appen. 736-737.) The *total* Asian population combined between these two districts is 284,589 people. (*Ibid.*)

Consequently, Quinn has not identified any reasonably compact Asian population that could make up 50% of a hypothetical California Congressional District, which must contain between 702,904 and 702,906 people. Therefore, there can be no viable Section 2 claim on behalf of Asian Americans in Orange County because the first *Gingles* precondition has not been met (nor has Quinn referred to any evidence supporting the second and third *Gingles* preconditions, or the totality of circumstances).

4. Radanovich Cannot Bring a Section 5 Claim Based on Los Angeles Congressional Districts.

Radanovich also discusses *Section 5* of the Voting Rights Act. (R'vich Pet. 54-55.) Although it is not entirely clear, Radanovich seems to be suggesting that the Commission violated Section 5 by retrogressing the voting strength of either Latinos or African Americans in Los Angeles County. (*Ibid.*) Radanovich's discussion of Section 5 evidences his fundamental misunderstanding of the Voting Rights Act.

Simply put, *Section 5 does not apply to Los Angeles County*. Rather, Section 5 applies only to changes made in covered counties—those that have imposed a test or device as a prerequisite to voting and in which fewer than half of the residents of voting age were registered to vote, or voted in the

presidential elections of 1964, 1968, or 1972. (See 42 U.S.C. § 1973b(b).) Kings and Merced Counties were designated covered jurisdictions subject to preclearance requirements on September 23, 1975. (40 Fed. Reg. 43746 (Sep. 23, 1975).) Monterey and Yuba Counties were designated covered jurisdictions on March 27, 1971. (36 Fed. Reg. 5809 (Mar. 27, 1971).) Los Angeles County is not and has never been a covered jurisdiction.

F. The Challenged Congressional Districts Comply with the Fourteenth Amendment.

Radanovich's First Cause of Action accuses the Commission of drawing "the 37th, 43rd and 44th Congressional District[s] based upon the predominant factor of race, without a compelling state interest," in violation of the Fourteenth Amendment to the U.S. Constitution (which is also a violation of Article XXI). (R'vich Pet. ¶ 24.) Specifically, Radanovich argues that (1) Section 2 of the Voting Rights Act required the Commission to draw one or more African American-majority districts in Los Angeles County (which, as discussed above in Sections IV(E)(1)-(2), *supra*, the Commission was not required to do); and (2) instead of doing so, the Commission chose to create Congressional Districts 37, 43, and 44 for the sole purpose of "diluting the African-American [population]" in southwestern Los Angeles and thus "protect[ing] the current [African American] incumbents" in these districts. (R'vich Pet. ¶ 28.)

Radanovich's claim is legally and factually baseless because the Commission adhered to traditional, race-neutral criteria in drawing the challenged districts. To the extent race played a role, it was simply *one* permissible factor, among others, and not the predominant factor in the Commission's redistricting calculus.

1. Because Race Was Not the Predominant Factor Used to Draw Congressional Districts 37, 43, and 44, the Commission's Drawing of Those Districts Is Subject to Rational-Basis Review.

Radanovich claims that the Commission ignored traditional redistricting criteria and that race was the predominant factor motivating it to draw Congressional Districts 37, 43 and 44. (R'vich Pet. 56.) He comes nowhere near meeting the "demanding" standard for a racial gerrymandering claim because he does not and cannot establish that Congressional Districts 37, 43, and 44 are "unexplainable on grounds other than race." (*Easley*, *supra*, 532 U.S. at pp. 241-242.) To the contrary, the Commission adhered to traditional redistricting criteria when drawing the challenged districts, and focused on minimizing the divisions of local neighborhoods and communities of interest. That the Commission was aware of and considered racial demographics is not evidence that race was elevated above all other factors during the redistricting process. Accordingly, this Court should review the challenged districts using a rational basis standard.

a. The Commission Adhered To Traditional Redistricting Criteria When Drawing Congressional Districts 37, 43, and 44.

Radanovich argues that in the process of drawing Congressional Districts 37, 43, and 44, "traditional redistricting criteria [were] ignored [and] clearly became subordinate to race." (R'vich Pet. 59.) In particular, Radanovich maintains that "there is nothing contiguous" about the challenged districts because the "African American community of district 37 and district 43 are divided in half," and that "compactness was of no regard" in drawing these "oddly shaped" districts. (*Id.* at 58-59.) Radanovich's conclusory assertions are totally contrary to the record.

As noted above (Section IV.D, *supra*), each of the challenged districts complied with the strict "+/- one person" population-equality standard that the U.S. Constitution requires for Congressional Districts. That was the Commission's highest priority under Article XXI.

These districts fully comply with the Voting Rights Act—the Commission's second priority under Article XXI (see Section IV(E), *supra*). The Commission's decision to draw six Latino-majority Congressional districts in the surrounding area in consideration of Section 2 significantly affected all of the remaining districts in Los Angeles—including Districts 37, 43, and 44.

Districts 37, 43, and 44 also are "geographically contiguous"—the Commission's third priority under Article XXI—because each district shares a single border without any breaks.

Districts 37, 43, and 44 also respect the geographic integrity of counties and cities to the extent possible—the Commission's fourth priority under Article XXI. Each of the challenged districts is wholly within Los Angeles County and contains a number of whole cities; they also contain a portion of the City of Los Angeles, which is too large to be included in a single Congressional district. (See Section IV(D), *supra*.) The only city splits other than Los Angles were done to meet the strict population-equality requirement: District 37 adds 286 people from Inglewood; District 43 includes the rest of Inglewood and 83,839 people from Torrance; and District 44 includes 83,417 people from Long Beach. (Appen. 793-794.) "Courts examining racial gerrymandering claims have found adherence to local political subdivisions to be highly probative evidence that a district does not violate the Equal Protection Clause." (*Cano*, *supra*, 211 F.Supp.2d at p. 1221.)

Finally, the Commission drew each of these districts, to the extent practicable in light of the higher-ordered criteria, to encourage geographic compactness, in accordance with the Commission's fifth criterion under Article XXI. Although Radanovich makes an unspecific reference to "multisided, irregularly shaped districts" (R'vich Pet. ¶ 57), perfectly circular districts were not realistic (or required) in the nation's most populous county given the higher criteria expressed in Article XXI—including complying with the +/- one person deviation standard, and drawing numerous Latino-majority districts in the surrounding area in consideration of Section 2 of the Voting Rights Act.

The Commission's careful adherence to these traditional redistricting criteria set forth in Article XXI is dispositive proof that race was not—and indeed could not have been—the predominant factor used to draw Districts 37, 43, and 44. (See *Cano*, *supra*, 211 F.Supp.2d at p. 1222 ["There is undisputed evidence in the record that the redistricting statute both achieved the precise mathematical equality in congressional district populations … and decreased the number of city-splits in congressional districts statewide…. More important, though, there is also specific, uncontradicted evidence that the traditional districting principles applied statewide were not abandoned, but rather were rigorously applied"].)

b. The Commission Drew Congressional Districts 37, 43, and 44 by Respecting Local Neighborhoods and Communities of Interest.

Throughout the course of drawing the maps, the Commission undertook a painstaking effort to identify and respect local neighborhoods and local communities of interest by minimizing their divisions to the extent practicable without violating higher-priority criteria, consistent with the fourth requirement of Article XXI. (Appen. 652, 663.) In particular, the Commission focused on

shared social and economic interests—including living standards, education, transportation, employment, housing, communication, recreation, commerce, religion, and language—and attempted to group such interests together where possible for purposes of effective and fair representation.

There is abundant evidence in the record that the Commission drew Districts 37, 43, and 44 with the goal of minimizing the division of local neighborhoods and local communities of interest where practicable. For instance, the Commission's final report explains that District 37 includes the neighborhoods of Pico-Robertson, Mid-City, West Adams, Ladera Heights, and Hyde Park. (Appen. 698.) District 37 also includes the University of Southern California, West Los Angeles Community College, the Kenneth Hahn State Recreation area, Exposition Park (including the Los Angeles Coliseum and Sports Arena), the Natural History Museum, and the California Science Center. (*Ibid.*)

District 43 includes the area in the flight path of the Los Angeles International Airport ("LAX") and "is characterized by very high residential density and the transportation corridor of the Harbor Freeway (I-110), which runs north-south through the entire district." (Appen. 699.) District 43 also keeps the eastern portion of Torrance together with Hawthorne, Lawndale, and Inglewood. (*Ibid.*)

District 44 includes the communities of Walnut Park, Watts, East Rancho Dominguez, Rosewood, North Long Beach, and Lindberg, as well as the Port of Los Angeles. (Appen. 699.)

As noted above, the Commission might have been able to draw an African American-majority district in central Los Angeles (although that was not required by Section 2 of the Voting Rights Act). (See Sections IV(E)(1)-

(2), *supra*.) But that configuration would have forced the Commission to join working-class communities such as Lomita, Hawthorne, Lawndale, and the eastern portion of Torrance with the more affluent coastal communities. (See generally Appen. 518-548, 549-606.) The Commission decided to keep these communities separate from the coastal district (District 33) because "[t]here is quite a divers[ity] in economics between those that have homes right along the coastal area in just a – just a few miles away. So, you're seeing a … very different standard of living just a few miles away from the coastal areas." (Appen. 558; see also *id.* at 568 [commenting that if Lawndale and Hawthorne were included in the coastal district: "there [would be] very little connection with the beach …. [T]he two extensions of that [proposed] districts are very privileged, and the middle district is just not"].)

Similarly, "the city of Lomita [which was ultimately included in District 43] has close to 54 to 55 percent of the people there [who] are renters. In Gardena [also in District 43], 50 percent of the people who live there are renters. And Rolling Hills Estates [in coastal District 33], 90.5 percent are homeowners…. Rancho Palos Verdes [in coastal District 33] is 80 percent owners, and has a median income of $129,000 per family." (Appen. 576-577; see also *id.* at 571 [the coastal district "keeps the Santa Monica Mountains together, and it keeps the whole coastline together. It also happens to be correlated to higher income areas"].) The Commission wanted to "group the high value – hi[gh] status or high value communities together with these beach cities," and these concerns are a higher priority than compactness under Article XXI. (Appen. 586; see *id.* at 589 ["compactness is pretty far down on our list, and communities of interest and socioeconomic commonalities is above compactness"].)

The Commission also focused on the unique concerns of residents in the "core" of Los Angeles, who did not want to be linked with a coastal district:

> This is the area where unemployment is the highest, gang violence, hospital care. There is only one trauma center there. Schools are overcrowded, crime rates are high, streets, infrastructure, urban decay is occurring because the City doesn't have a budget to maintain certain social services, and overcrowded busses, lack of job training programs.

(Appen. 559; see also *id.* at 561 ["But the underlying point of that was an economic Community of Interest for all three of those districts."]; 580 [noting that "economic, educational social services, even the services provided for law enforcement, all of those things would be better recognized in" the configuration that resulted in Districts 37, 43, and 44]; 588 [agreeing that Districts 37, 43, and 44 "better capture[] several interests, whether you look at it as socioeconomic interest along the coast, lower income, working class, in many areas, you know, really quote depressed communities."].)

In addition, Congressional Districts 37, 43, and 44 "kept the Inglewood, Lennox, and Hawthorne [communities of interest] together, which we've heard so much about. You know, it also kept the historic Japanese Community together." (Appen. 571.) "The Torrance Memorial Medical Center is also right in that area [in District 43]. So, that community, the ambulances come from there to there, and that the quickest medical – the closest medical facility. You have the [Pacific Coast Highway], and you have Lomita Boulevard." (*Id.* at 596; see also *id.* at 624 ["the 710 Freeway, which is on the [eastern] edge of this district [District 44] runs along the cities that are being impacted environmentally, so they would have a little more to say in terms of the management of the environmental issues"].)

The Commission also focused on some of the common concerns for residents in the area surrounding the Los Angeles International Airport, which is in District 43. "[I]f you think about the kind of funding that goes, you know, to education, healthcare, transportation, this is why we thought it was important to keep the airport together in the Congressional incarnation, these are all things that require federal funding." (Appen. 571; see also *id.* at 622-623 ["that area is linked with the airport, it's right under the flight pattern and they have worked, as well as Westmont to the south, closely with the airport, the Bureau of Airports to mitigate, sound proof, and deal with sound proofed and weatherized windows."].)

In short, Congressional Districts 37, 43, and 44 are the result of the Commission's thoughtful and comprehensive effort to group local neighborhoods and local communities of interest together, where practicable, which is exactly what Article XXI requires. The Commission exercised its judgment and decided against a different configuration that would have resulted in an African American-majority district (which was not required by Section 2 of the Voting Rights Act). The Commission's reasons for rejecting this alternative configuration were based on socio-economic and other race-neutral concerns.

c. The Commission Was Not Required to Ignore Race when Drawing Districts 37, 43, and 44.

Radanovich overlooks the overwhelming and unrebutted evidence that the Commission adhered to the traditional redistricting criteria set forth in Article XXI when drawing Congressional Districts 37, 43, and 44. He claims that race *predominated* in drawing these districts because the Commission "exploited" the "detailed racial data" available for these areas. (R'vich Pet. 59.) Radanovich's racial gerrymandering claim fails as a matter of law because he

blurs the critical "distinction between *being aware* of racial considerations and being motivated by them." (*Miller*, *supra*, 515 U.S. at p. 916, italics added.)

Each of the challenged Congressional districts is ethnically diverse. District 37 contains 20.82% Latino CVAP; 34.03% white CVAP; 34.52% Black CVAP; and 9.37% Asian CVAP. (Appen. 736-737.) District 43 contains 28.72% Latino CVAP; 24.20% white CVAP; 32.76% Black CVAP; and 12.74% Asian CVAP. (*Ibid.*) District 44 contains 69.34% Latino voting age population and 49.06% Latino CVAP; 14.04% white CVAP; 27.87% Black CVAP; and 6.63% Asian CVAP. (*Ibid.*) These statistics demonstrate that there is no single "majority" voting in the affected areas. Such diverse demographics alone seriously undercut (or preclude) any equal protection claim. (See, e.g., *Cano*, *supra*, 211 F.Supp.2d at p. 1217 [rejecting equal protection claim where "the districts at issue here are diverse and multi-ethnic; each contains a variety of racial and ethnic groups; none unites any single group of individuals within its borders for the purpose of permitting that group to exercise hegemony"].)

The Commission was no doubt *aware* of these racial demographics and took them into account when drawing Congressional Districts 37, 43, and 44. Indeed, the Commission was *required* to consider race throughout the line-drawing process; otherwise it would have risked violating the Voting Rights Act by not drawing majority-minority districts where required. But the Commission also considered socioeconomic, geographic, commercial, environmental, and other factors when drawing each of its districts. Radanovich does not and cannot show that race *predominated* over these other factors in the line-drawing calculus. (*Miller*, *supra*, 515 U.S. at p. 916 ["Redistricting legislatures will, for example, always be aware of racial demographics; but it does not follow that race predominates the redistricting process."]; see also *Easley*, *supra*, 532 U.S. at pp. 241-242 [noting that race can permissibly be "*a* motivation" for drawing

districts, so long as it is not "the *predominant* factor", internal quotation marks omitted].)

Radanovich isolates the statements of two Commissioners during one hearing, taken out of context, and then argues that these statements prove that race dominated the entire line-drawing process for the Los Angeles districts. One of these Commissioners expressed concern about the implications of creating an African American-majority district in southwest Los Angeles (which the Commission ultimately did *not* do). This Commissioner opined that intentionally creating an African American-majority district that was not required by Section 2 of the Voting Rights Act may have made it more difficult for African Americans to run and be elected in neighboring districts. (R'vich Pet. 58-59.) A second Commissioner expressed her view that part of the Commission's job was to provide fair and effective representation for minorities. (*Id.* at 59.) These two Commissioners' statements demonstrate, at most, the Commission's *awareness* of race during the process and the fact that race was one of the factors considered.

Even viewed in the light most favorable to Radanovich, these Commissioner statements are analogous to the statements of the legislator in *Easley*, *supra*, who testified that the newly drawn districts satisfied the need for "racial balance." (*Easley*, *supra*, 532 U.S. at p. 253.) *Easley* found that statement wholly insufficient to invoke strict scrutiny because it established merely "that the legislature considered race, along with other partisan and geographic considerations; and so read it says little or nothing about whether race played a *predominant* role." (*Ibid.*)

In any event, to the extent the Commission discussed the implications of creating an African American-majority district in southwest Los Angeles, and

ultimately decided against it, that discussion was "not just about race.... This [area] is where Black and Brown, and lower income Whites, and lower income Asians are focused. And we just don't – that area will have less representation and less focus than it traditionally has had." (Appen. 559.) In other words, the Commission was "looking at it from a socioeconomic point of view [rather than] from a purely racial point of view." (*Id.* at 569.) Commissioners voted for Congressional Districts 37, 43, and 44 "not because of [any statements made about race], but because of the economic situation that has been brought forward by other Commissioners. And I just wanted the record to show that it's not because I'm concerned about how many people of difference races are going to get elected here ...." (Appen. 590-591.)

In sum, the Commission was not required to ignore race when drawing the new districts. The Commission properly considered race as *a* factor, but by no means the *predominant* factor, during the redistricting process. (Compare, e.g., *Shaw v. Hunt* (1996) 517 U.S. 899, 906 [applying strict scrutiny where the legislature had admitted its "overriding purpose" was to create two majority-Black districts], and *Vera*, *supra*, 517 U.S. at p. 962 [similar], with *Lawyer v. Dep't of Justice* (1997) 521 U.S. 567, 582 [affirming redistricting plan where race did not predominate over traditional redistricting criteria].) Consequently, Radanovich's assertions of racial gerrymandering fail to meet the "demanding" standard needed to show that Congressional Districts 37, 43, and 44 are "unexplainable on grounds other than race." (*Easley*, *supra*, 532 U.S. at pp. 241-242.)

2. Congressional Districts 37, 43, and 44 are Rationally Related to Legitimate State Interests.

Congressional Districts 37, 43, and 44 easily pass rational basis review because they are based on a reasonable application of the legitimate state

redistricting criteria set forth in Article XXI. As explained above, the challenged districts (a) meet the stringent population-equality standard for Congressional districts, (b) comply with the Voting Rights Act, (c) are geographically contiguous, (d) respect the geographic integrity of counties, cities, local neighborhoods, and local communities of interest to the extent possible, and (e) are as compact as practicable under the circumstances, including the fact that several of the surrounding districts were drawn as Latino-majority districts in consideration of Section 2 of the Voting Rights Act. Radanovich's equal protection claim therefore fails.

G. The Challenged Districts Were Not Drawn to Benefit Incumbents.

Radanovich also argues that the Commission drew Congressional Districts 37, 43, and 44 "to construct three politically gerrymandered districts to protect the current incumbents in those [districts]," in violation of Article XXI. (R'vich Pet. ¶ 28; see also *id.* at 53.) He is wrong.

Article XXI provides: "The place of residence of any incumbent or political candidate shall not be considered in the creation of a map. Districts shall not be drawn for the purpose of favoring or discriminating against an incumbent, political candidate, or political party." (Cal. Const., art. XXI, § 2, subd. (e).)

As noted above, the Commission held more than 70 business meetings and 34 public input hearings in 32 cities—all of the public meetings were live-streamed, captured on video, and placed on the Commission's website for viewing at any time. And transcripts of the meetings were placed on the Commission's website. Yet Radanovich does not refer to the slightest shred of evidence (and there is none) indicating that the Commission drew Districts 37,

43, and 44 (or any other district) in consideration of an incumbent's residence, or for the purpose of favoring an incumbent.[66]

To the contrary, as discussed above in Section IV.C, *supra*, the boundaries for Congressional Districts were the result of a careful process that considered all the Article XXI redistricting criteria. The Commission balanced competing concerns, grouped shared interests together in a way that made sense, and attempted to minimize to the extent possible the division of cities and local neighborhoods and communities of interest. The Commission gave no consideration to incumbency in its redistricting calculus.

Radanovich's "political gerrymander" claim therefore fails.

H. Radanovich Has Failed to Allege Facts Showing That the Commission Unreasonably Applied the Criteria for Compactness and Geographical Integrity (His Third and Fourth Causes of Action).

1. The Core Premise of Radanovich's Claims—That Article XXI's Criteria Were "Adopted Nearly Verbatim" from Prior Law—Is Wrong.

Radanovich's Third and Fourth Causes of Action are fatally flawed because they are premised on a misunderstanding of Article XXI's compactness and geographic integrity criteria. By copying verbatim the same flawed argument from the Vandermost petition based on Quinn's unsupported legal

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[66] Radanovich refers to the statement of one Commissioner who expressed concerns during a hearing about packing the African American population of south Los Angeles into a single district. (R'vich Pet. 58-59.) But there is no evidence or legitimate inference that this Commissioner's concerns included *incumbent-protection*. Rather, the Commissioner's focus was on the ability of African Americans to elect candidates of their choice (regardless of incumbency) in this part of the County.

opinions, Radanovich argues erroneously that Propositions 11 and 20 "incorporated" the criteria used by the map-drawers in *Reinecke II* and *Wilson IV*, and thus concludes that the Commission was required to apply these criteria as the masters applied them. (R'vich Pet. ¶¶ 50, 62-65.) As discussed in Section III(A), *supra*, this argument ignores the plain language of Article XXI, which establishes different criteria and required the Commission to follow a different order of priority than the masters did in *Reinecke II* and *Wilson IV*. Radanovich's fundamental misunderstanding of Article XXI's criteria dooms his Third and Fourth Causes of Action.

Moreover, even without regard to Proposition 11 and 20's amendments to Article XXI, Radanovich is simply wrong that demonstrating differences between the Commission's application of the criteria and the masters' line-drawing judgments in *Reinecke II* or *Wilson IV* would suggest a constitutional violation. (R'vich Pet. ¶ 50.) Neither *Reinecke II* nor *Wilson IV* held that the criteria must be applied the same way the masters applied them. Rather, the Court recognized that there inevitably will be many ways in which the line-drawers will exercise discretion, and that redistricting decisions should be approved "if they appear to reflect reasonable applications of the [applicable] criteria, even though alternatives urged upon [the Court] may appear equally reasonable." (*Reinecke II*, *supra*, 10 Cal.3d at p. 403; see also *Wilson IV*, *supra*, 1 Cal.4th at p. 729.)

For example, nothing in current Article XXI requires the Commission to "divide the state into geographic regions" (R'vich Pet. 61-62), let alone to divide the state into the specific regions that were used in prior redistricting efforts. (*Reinecke II*, *supra*, 10 Cal.3d at pp. 412, 418; see also *Wilson IV*, *supra*, 1 Cal.4th at pp. 719, 768.) Current Article XXI requires no such division and Proposition 11 *removed* any reference to "geographical regions," which

Reinecke II and *Wilson IV* construed as referring to mountain ranges, valleys, and coastal and desert areas. (*Reinecke II*, *supra*, 10 Cal.3d at p. 412; *Wilson IV*, *supra*, 1 Cal.4th at p. 719.) Following Radanovich's proposed approach, by contrast, would have handcuffed the Commission's ability to comply with higher-order criteria. The masters' approach in *Reinecke II* and *Wilson IV* was one reasonable approach, but not the only reasonable approach, and clearly not the approach mandated by current Article XXI.

2. The Commission Reasonably Applied the "Compactness" Criterion.

Radanovich's Third Cause of Action alleges that four Congressional Districts in or neighboring Los Angeles County (26, 27, 33, and 47) violate Article XXI's fifth level criterion "to encourage geographical compactness." (R'vich Pet. 22-27.)[67] As discussed above, creating Latino-majority districts in Los Angeles County to satisfy VRA Section 2 (Congressional Districts 29, 32, 34, 38, 40 and 44) significantly limited the options for drawing surrounding districts, including those challenged by Radanovich on compactness grounds. (Section V(A)(2)(b), *supra*.) Radanovich ignores the effect of drawing these Latino-majority districts in consideration of VRA Section 2—which he does not challenge—and bases his compactness challenge on his claim that the Commission created racially gerrymandered districts to benefit African American incumbents, which supposedly caused these surrounding districts to

[67] Although styled as a claim for violation of "Art. XXI, §2(d)(3); Violation of Geographic Compactness and Contiguity Requirements," Radanovich cannot seriously contend that any Congressional District violates the contiguity requirement, since each part of each district is connected through an unbroken sequence. (*Vera*, *supra*, 517 U.S. at p. 1017, fn. 16 ["contiguity" means the district is unbroken, permitting "any candidate, map in hand, to visit every residence in her district without leaving it"].)

be non-compact. (R'vich Pet. 25-26.) Because the racial gerrymandering claim lacks merit (Section V(D), *supra*), this dependent claim also fails.

Moreover, none of these districts has any of the indicia of non-compactness that courts have recognized. None has a "bizarre" shape. (*Vera*, *supra*, 517 U.S. at p. 965.) Nor has Radanovich presented any evidence showing that residents of these districts cannot relate to one other or their representatives. (*Wilson IV*, *supra*, 1 Cal.4th at p. 719; *Shaw*, *supra*, 509 U.S. at p. 644.)

As set forth below, the record demonstrates that each of the districts challenged by Radanovich was drawn to the extent practicable and without violating higher-priority criteria, to encourage geographic compactness:

Congressional District 33. Radanovich references the "elongated" shape of Congressional District 33 and a "narrow finger" in this district near Dockweiler Beach. (R'vich Pet. 25.) The Commission drew this district to keep the coastline together in light of (1) extensive public testimony regarding the shared interests of the people living within this district (see Section V(D)(2)(b), *supra*; see also Appen. 697), and (2) because Malibu "sits with this huge expanse of zero population" and "in order to get population to build a district" the Commission determined reasonably that it was necessary to extend the district down the coastline. (R'vich RJN 845-846.) Radanovich ignores that the "narrow finger" he cites is immediately adjacent to the Los Angeles International Airport, which the Commission found based on community testimony was important to keep with neighboring Congressional District 43 because of common concerns of residents in that district. (See Section V(D)(2)(b), *supra*.)

Congressional District 47. Radanovich complains that this district includes Long Beach and Orange County cities Garden Grove and Westminster, and "divides the Orange County Asian Community." (R'vich Pet. 25-26.) This community-of-interest argument, even *if* factually supported (which it is not), does not establish a violation of Article XXI.

The drawing of this district was influenced by Congressional District 38 to the north and Congressional District 44 to the west, which were drawn in consideration of VRA Section 2. It was also based on public testimony in favor of keeping the Port within that Los Angeles district. (See Section V(D)(2)(b), *supra*; R'vich RJN 803-804.) Once Districts 38 and 44 were drawn, the Commission included Long Beach with cities in Orange County to the extent necessary to satisfy the population-equality requirement. (R'vich RJN 803-804.) The Commission took "a lot of time in trying to maintain the Orange County and Los Angeles border, but [was] not able to achieve that goal through several iterations" in light of higher priority criteria. (*Id.* 804.)

Congressional District 27. Radanovich quibbles with the inclusion of Glendora and Upland in this district. (R'vich Pet. 26.) The Commission included both cities in this district to comply with the first-priority population equality requirement. The decision to include Glendora in this district was also influenced by neighboring Congressional District 32, which was drawn to satisfy VRA Section 2. The Commission could not have included Glendora in Congressional District 32, along with other foothill communities such as La Verne, Claremont, San Dimas, Azusa, and Duarte, and still made Congressional District 32 a Latino-majority district. (R'vich RJN 795-796, 955-957.)

Congressional District 26. In his Amended Petition filed October 6, 2011, Radanovich asserts for the first time that Congressional District 26 is not

compact and "unnecessarily divided Ventura" County by "diverting Simi Valley to the Los Angeles County District"—i.e., Congressional District 25. (R'vich Pet. 26-27.) This late-filed challenge also fails. As the Final Report explains, the Commission placed portions of Simi Valley into this district to achieve population equality. (Appen. 696.) In addition, the Commission received "ample testimony" reflecting similar communities of interest in Simi Valley and Santa Clarita (a city in Los Angeles County), that warranted keeping those communities intact. (R'vich RJN 888.) No basis exists for Radanovich's elevation of county lines over higher and equal priority considerations of population equality and communities of interest.

Radanovich's Amended Petition also tacks on a claim that the Commission "inexplicably" cut off Westlake Village from Los Angeles County and placed it with Ventura County in Congressional District 26. (R'vich Pet. 26.) The Commission reasonably decided to place Westlake Village into Congressional District 26 to achieve population equality and to "maintain[] the major shopping and transportation services along Highway 101 and Highway 23," which connect Westlake Village to neighboring Thousand Oaks and other Ventura County cities. (Appen. 696.) Placing Westlake Village in Congressional District 33, as Radanovich urges, would have severed those communities of interest.[68]

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[68] In addition, the Amended Petition contends that Congressional District 33 "should have been constructed westward along the coast and not have been driven eastward" and claims that Beverly Hills and Hancock Park "have no community interest with those of the coastal communities." (R'vich Pet. 27.) That unsupported contention is wrong. As the Final Report explains, the Commission reasonably determined that District 33's "prominent beaches in Southern California and many affluent inland communities in the Los Angeles area" share the common characteristic of "a relatively affluent socioeconomic urbanized area." (Appen. 697.)

In sum, the Commission reasonably applied the Article XXI criteria in drawing the challenged Congressional Districts. Radanovich's claims to the contrary should be summarily rejected.

3. The Commission Reasonably Applied the "Geographic Integrity" Criterion.

Radanovich's Fourth Cause of Action alleges a violation of Article XXI, section 2, subdivision (d)(4), for "unnecessary division of cities." (R'vich Pet. 27-30.) Citing city splits in the Los Angeles County area (Congressional Districts 27, 28, 32, 33, 37, 38, 40, 43, 44, and 47), he contends that "[m]any of these city splits were unnecessary and were caused by population ripples from the racial gerrymander that retains the three African American districts." (R'vich Pet. 27.) This claim fails as a matter of law because Radanovich fails to allege facts to support his contention that any city splits were "unnecessary" and he ignores record evidence demonstrating that each of these splits was necessary and appropriate to comply with Article XXI's higher and equal priority criteria.[69]

Radanovich cites no evidence and provides no explanation as to why any city split was "unnecessary" (aside from referring to his racial gerrymandering claim). As discussed above, Radanovich has failed to satisfy the "demanding" standard for a racial gerrymandering claim. (See Section V(D)(2), *supra*.) His challenge to city splits—premised on the racial-gerrymandering claim—necessarily also fails.[70]

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[69] On a statewide basis, only 41 of 476 cities smaller than a Congressional District were split. (R'vich RJN 159.)

[70] The mere existence of a city or county split does not per se violate the geographic integrity criterion. (*Wilson IV*, *supra*, 1 Cal.4th at p.726; *Nadler*,

(Footnote continues on next page.)

The Final Report demonstrates (as Radanovich acknowledges) that the city splits were done to accommodate higher or equal priority criteria, which Article XXI unquestionably permits. (Appen. 696-700; see also R'vich Pet. 28-29 [citing Final Report].) As discussed above, creating Latino-majority districts in consideration of VRA Section 2 (Congressional Districts 29, 32, 34, 38, 40 and 44) significantly limited the options for drawing surrounding districts in Los Angeles County, especially given the strict population equality standard for Congressional Districts. In light of these higher-priority criteria, the Commission satisfied the geographic integrity requirement for all challenged Congressional Districts. Radanovich has offered no contrary evidence.

In addition, the Commission has discretion under Article XXI, section 2, subdivision (d)(4), to weigh competing interests—including the integrity of local "communit[ies] of interest"—that are not defined by county or city lines. In exercising this discretion, "[w]hen those same-level criteria were in conflict and could not be simultaneously satisfied, the Commission chose the configuration that best reflected the shared interests of the community." (Final Report, contained at Appen. 663.) For example, the Commission received extensive testimony reflecting separate communities of interest in the city of Torrance. The Commission heard testimony that "part of Torrance is actually a Beach City, but part of Torrance is actually a more urbanized area that orients a different direction." (R'vich RJN 809.) In its discretion, the Commission reasonably decided to split Torrance "in a way that was more consistent with the [communities of interest] testimony regarding which portion of the city was oriented to the beach." (R'vich RJN 810.) Radanovich ignores these and other

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(Footnote continued from previous page.)

supra, 137 Cal.App.4th at p. 1339 [geographic integrity "does not expressly prohibit division of a city into different districts"].)

communities of interest entirely in elevating cities over the equal competing interests set forth in Article XXI, section 2, subdivision (d)(4).

Finally, Radanovich's claim of "unnecessary" city splits is absurd on its face, when considering some of the city splits he has challenged. For example, Radanovich does not and cannot explain how the Commission could have avoided splitting the City of Los Angeles, which has a population larger than a single Congressional District,[71] as well as a highly diverse population and irregular shape. Radanovich's conclusory and scattershot challenge to city splits—premised on his defective racial gerrymandering claim—does not withstand scrutiny and should be summarily rejected.

V. VANDERMOST'S POTENTIAL REFERENDUM DOES NOT JUSTIFY STAYING, OR APPOINTING MASTERS TO ADJUST, THE CERTIFIED SENATE MAPS.

Vandermost's Fourth Cause of Action alleges that her referendum petition on Senate maps may in the future be likely to qualify for the ballot and that the Court should therefore stay the implementation of the Commission's certified maps. (V'most Pet. ¶¶ 175-181 & pp. 119-120.) This claim fails because (1) Vandermost has made no showing that the referendum petition is likely to qualify; and (2) even if she had, a showing that the referendum is likely to qualify is not a basis under Article XXI to stay the certified maps.

Even if the referendum were actually to qualify, that would not justify the appointment of special masters or the adjustment of district lines. Article XXI provides for adjustments by masters "in accordance with the

[71] The population of the City of Los Angeles is approximately 3,792,621. (Appen. 28)—more than five times the ideal population of a Congressional District.

[constitutional] redistricting criteria" only "if voters disapprove a certified final map in a referendum." (Cal. Const., art. XXI, § 2, subd. (j).) Even in that instance, no modification would be necessary since the maps comply fully with the constitutional criteria.

A. Vandermost Has Not Shown That the Referendum Is "Likely to Qualify" for the 2012 Ballot, Which Is a Necessary Prerequisite to Filing Her Petition.

Article XXI, section 3, grants standing to a registered voter to file a writ petition based on a potential referendum only where the referendum is "likely to qualify" for an upcoming election—*a showing that Vandermost does not attempt to make here*. (Cal. Const., art. XXI, § 3, subd. (b)(2).) This plainly stated standing requirement is consistent with the basic principle that courts decide actual cases or controversies, not potential ones. (E.g., *Pacific Legal Found. v. Cal. Coastal Com.* (1982) 33 Cal.3d 158, 173 [claims relying on "speculative future events" are unripe for adjudication].)

Vandermost essentially concedes that, at minimum, it is too soon to tell whether the referendum is even "likely to qualify"—she promises to provide the Court "further notification" *if* she gathers enough signatures to make it appear that the referendum is likely to qualify. (V'most Pet. ¶ 4.) She provides no information that would permit the Court to evaluate whether the referendum has any reasonable prospect of qualifying for the ballot: The petition says nothing about the number of signatures gathered to date, the rate at which the proponents are gathering signatures, the process by which they are gathering

signatures, or the adequacy or sources of funding (if any) for signature gathering. (V'most Pet. ¶¶ 176-181.)[72]

In short, there is nothing for the Court to decide concerning the potential referendum, and the petition should be rejected to the extent it relies on Vandermost's Fourth Cause of Action. Absent a showing that the referendum has a reasonable prospect of qualifying, her claim seeks nothing more than "the resolution of abstract legal differences of opinion." (*Pacific Legal Foundation, supra*, 33 Cal.3d at p. 170; see also *Wilson & Wilson v City Council of Redwood* (2011) 191 Cal.App.4th 1559, 1573.)

As the following section explains, Vandermost's failure to show that her referendum-based claim is ripe is not excused by her misreading of Article XXI, section 3's "likely to qualify and stay" language.

B. Vandermost's Argument That the Certified Maps Could Be Stayed Based Merely on a Showing That a Referendum Is "Likely to Qualify" Is Wrong.

Vandermost seeks to excuse her failure to show that the referendum is likely to qualify based on a misreading of Article XXI: She argues erroneously that a showing that the referendum is "likely" to qualify in the *future* would effect a stay of the Commission's maps—and thus, by extension, that the Court may address the referendum issues now, including by issuing an anticipatory ruling that addresses the potential referendum. (V'most Pet. 120-121.) Not so.

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[72] Vandermost's Petition notes that 504,760 valid signatures are needed to qualify the referendum for the ballot, and concedes that as many as 780,000 "raw" signature (or more) may be needed given the problems typically associated with authenticating signatures. (V'most Pet. ¶ 177.)

Article XXI, section 2, provides: "Each certified final map shall be subject to referendum *in the same manner* that a statute is subject to referendum pursuant to Section 9 of Article II." (Cal. Const., art. XXI, § 2, subd. (i); italics added.) This "same manner" was addressed in *Deukmejian, supra*, where the Court explained that "under the mandate of article II of the state Constitution, *the filing of a valid referendum* challenging a statute normally stays the implementation of that statute until after the vote of the electorate." (30 Cal.3d at p. 656; italics added.)

Abundant additional authority confirms that a potential referendum challenging a statute (or a redistricting plan) does not affect the challenged statute or map—regardless of whether the referendum is *likely* to qualify; rather, it is the referendum's actual qualification for the ballot that renders the statute or map technically inoperative. (See, e.g., *Santa Clara Cty. Local Transportation Authority, supra*, 11 Cal.4th at p. 242 [a "constitutional referendum can be invoked only against a statute that has not yet *taken effect* and the filing of a referendum petition stays the effective date of the statute until it is voted on by the electorate"]; *Rider v. Cty. of San Diego* (1991) 1 Cal.4th 1, 22 [explaining that a referendum "is initiated by a petition signed by a relatively small percentage of the electorate and operates to suspend the effectiveness of a duly enacted legislative act that would otherwise go into effect of its own accord"; George, C.J., concurring]); *Midway Orchards v. Cty. of Butte* (1990) 220 Cal.App.3d 765, 781-783 [board of supervisors' resolution was stayed where a referendum petition was properly presented for filing before the resolution was scheduled to go into effect].)

Given this background, it is clear that Article XXI, section 3 contains a grant of standing only (not a stay provision):

> 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.

(Cal. Const., art. XXI, § 3, subd. (b)(2).)

Read together with its preceding sections, Article XXI, section 3 (b)(2) states only that a voter may file a petition once she can provide evidence that the referendum is likely to qualify—not that a showing that the referendum is likely to qualify would by itself effect a stay of the Commission's maps.

Accepting Vandermost's contrary interpretation of Article XXI, section 3(b)(2)—while ignoring Article II, section 9 and Article XXI, section 2 (i)—would run afoul of the principle that constitutional provisions "should be read together and construed in a manner that gives effect to each, yet does not lead to disharmony with the others." (*Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 209.)

Therefore, even if Vandermost were able to show that the potential referendum is likely to qualify, that would not provide a basis under Article XXI to stay the Commission's certified maps. Only actual qualification would result in a stay.

C. Even If, Arguendo, the Potential Referendum Was to Qualify for Ballot (at Earliest in November 2012), That Would Not Justify the Appointment of Special Masters or the Adjustment of District Lines.

The Constitution sets forth the limited circumstances in which the Court may consider adjusting district lines:

> [1] "If the court determines that a final certified map violates this Constitution" (Cal. Const., art. XXI, § 3 (b)(3)), or[73]
>
> [2] "If the commission does not approve a final map by at least the requisite votes[,] or"
>
> [3] "*if* voters *disapprove a certified final map in a referendum*, the Secretary of State shall immediately petition the California Supreme Court for an order directing the appointment of special masters to adjust the boundary lines *of that map in accordance with the redistricting criteria and requirements* set forth in subdivisions (d), (e), and (f)."

(Cal. Const., art. XXI, § 2, subd. (j); italics added.)

None of the three conditions for appointing special masters or venturing into the line-drawing process exist here. The potential referendum has not even qualified for the ballot, let alone succeeded—and, of course, the Secretary of State has not petitioned this Court for the appointment of special masters following a successful referendum. (*Ibid.*)

On October 7, 2011, the Governor signed Senate Bill 202, amending the Elections Code to provide that any referendum that might qualify for the ballot would appear during the general election *in November 2012*.[74] The necessary precondition to appointment of masters—that voters "disapprove a certified final map in a referendum"—could not happen for more than three years.

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[73] Article XXI, section (3)(b)(2), permits the Court to consider remedies for a constitutional violation only *if* the Court first determines such a violation has occurred. As discussed above, the maps are constitutional in every respect.

[74] See <http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0201-0250/sb_202_bill_20111007_chaptered.pdf> (Oct. 10, 2011).

Moreover, even *if* the potential referendum were to qualify *and succeed* in November 2012, the mandate of special masters at that time would be merely to "adjust" *the Commission's certified maps* (referred to as "that map" in the block quotation above) to comply with the constitutional criteria. (Cal. Const., art. XXI, § 2, subd. (j).) Because, for the reasons discussed above, the certified maps comply fully with the constitutional criteria, no adjustment by the special masters would be necessary.

D. Like in *Assembly v. Deukmejian*, the Certified Maps Should Be Used for the June 2012 Election Even If the Referendum Qualifies for the Ballot.

Finally, even if, arguendo, the potential referendum were to qualify for the ballot and render the certified senate maps technically inoperative, the approach taken in *Deukmejian*, *supra*, 30 Cal.3d 638, of using the certified maps pending a vote by the electorate on those maps is eminently sensible and would comport with the people's will in adopting Propositions 11 and 20.

Deukmejian concluded that the challenged maps—which, like a statute, were rendered technically inoperative by a referendum that had qualified for the ballot—should be used anyway in the next election cycle because, inter alia, (1) the challenged maps are based on current Census data and thus "far closer to the constitutional goal" of equal representation (the highest criterion in Article XXI) than the alternatives, and (2) permitting the voice of five percent of the electorate who had signed the referendum petition to override the maps would "perpetuate a potentially grave injustice on the majority of the people of the state" who supported the redistricting process. (*Deukmejian*, *supra*, 30 Cal.3d at pp. 666, 670.)

Deukmejian's conclusion applies forcefully here because under Article XXI, as amended by Propositions 11 and 20, the people of this State are

entitled to the benefits of the "open and transparent process enabling full public consideration of and comment on the drawing of district lines" that resulted from the Commission's multi-month public input and line-drawing process. (Cal. Const, art. XXI, § 2, subd. (b).) The Commission's work could not be approximated or replaced in time for use in the June 2012 election. And the certified maps are constitutional in every respect.

VI. RESPONSE TO PETITIONERS' ARGUMENTS ABOUT "REMEDIES AVAILABLE" AND "TIMING ISSUES"

For the reasons already discussed, none of the remedies sought by Petitioners are available. (Section V, *supra*.) The limited circumstances in which the Constitution authorizes the Court (or masters) to adjust district lines do not exist here. (Cal. Const., art. XXI, § 2, subd. (j).)

With regard to timing, Californians have a compelling interest in the prompt resolution of the issues presented by Petitioners. (Cal. Const., art. XXI, § 3, subd. (b)(3) [the "Court shall give priority to ruling"].) Applying the correct standard of review of significant deference to the Commission's work, the issues presented can and should be decided on the papers already presented.

If, arguendo, the Court were to request further briefing on any issue presented by Petitioners, the Commission suggests that the Court set a schedule that would permit an expeditious ruling by this Court—e.g., supplemental briefs due in several weeks following any request for further briefing.

CONCLUSION

For all the reasons discussed herein, both Petitions should be denied.

Dated: October 11, 2011

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

The undersigned counsel certifies that, pursuant to rules 8.204(c) and 8.486 of the Rules of Court, the text of this brief was produced using 13 point Roman type and contains 38,741 words. Counsel relies on the word count of the computer program used to prepare this brief.

This consolidated opposition brief is accompanied by an application to file an oversized brief.

Dated: October 11, 2011

By: _____
James J. Brosnahan

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ATTACHMENT A

(CERTIFIED SENATE DISTRICTS)

CRC Statewide Senate Plan Overview

for more detailed maps, see http://www.wedrawthelines.ca.gov or http://swdb.berkeley.edu

ATTACHMENT B

(CERTIFIED CONGRESSIONAL DISTRICTS)

CRC Statewide Congressional Plan Overview

for more detailed maps, see http://www.wedrawthelines.ca.gov or http://swdb.berkeley.edu

PROOF OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105-2482. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on October 11, 2011, I served a copy of:

CONSOLIDATED PRELIMINARY OPPOSITION TO PETITIONS FOR WRIT OF MANDAMUS OR PROHIBITION

☐ BY ELECTRONIC SERVICE [Code Civ. Proc sec. 1010.6; CRC 2.251] by electronically mailing a true and correct copy through Morrison & Foerster LLP's electronic mail system from bkeaton@mofo.com to the email addresses stated on the attached service list per instructions of the Court and in accordance with Code of Civil Procedure section 1010.6.

☐ BY OVERNIGHT DELIVERY [Code Civ. Proc sec. 1013(c)] by placing a true copy thereof enclosed in a sealed envelope with delivery fees provided for, addressed as follows, for collection by UPS, at 425 Market Street, San Francisco, California 94105-2482, in accordance with Morrison & Foerster LLP's ordinary business practices.

I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described above will be deposited in a box or other facility regularly maintained by UPS or delivered to an authorized courier or driver authorized by UPS to receive documents on the same date that it (they) is are placed at Morrison & Foerster LLP for collection.

Please see attached Service List.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Francisco, California, this 11th day of October, 2011.

B. Keaton (signature)

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