

S 198387

IN THE SUPREME COURT OF CALIFORNIA

JULIE VANDERMOST
Petitioner,

vs.

DEBRA BOWEN, SECRETARY OF STATE
OF CALIFORNIA
Respondent.

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
PETITIONER'S REPLY TO RETURNS SUBMITTED BY
RESPONDENT SECRETARY OF STATE AND INTERVENOR
CITIZENS REDISTRICTING COMMISSION AND IN SUPPORT
OF PETITION FOR WRIT OF MANDATE**

Charles H. Bell, Jr., SBN 060553
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Attorneys for Petitioner

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

Petitioner Julie Vandermost requests the Court to take judicial notice of the documents identified herein and submitted herewith:

1. Exhibit "A" - A true and correct copy of a letter from Anthony L. Miller, Chief Counsel of the Secretary of State of California, to Honorable Rose Elizabeth Bird, dated October 30, 1981 in reference to *Assembly of the State of California, et al. v. George Deukmejian, et al.* (SF#24349), attached hereto, pages 1-5.

2. Exhibit "B" – A true and correct copy of Supreme Court Orders to Show Cause dated December 4, 1981 in *Assembly v. Deukmejian* (SF # 24348); *Assembly v. Deukmejian* (SF # 24349); *Senate of the State of California v. Eu* (SF #24354); and *Burton et al v. Eu* (SF #24356), attached hereto, pages 6-13.

MEMORANDUM OF POINTS AND AUTHORITIES

Evidence Code section 452(c) provides that judicial notice may be taken of "...Official acts of the legislative, executive, and judicial departments ... of any state of the United States." Section 452(c) also provides that judicial notice may be taken of any document published, recorded, or filed by any executive department. (See also *Serrano v. Priest* (1971) 5 Cal.3d 584, 591; *Moore v. Superior Court* (2004) 117 Cal.App.4th 401, 407 n.5; *Wolfe v. State Farm Casualty & Insurance Company* (1996) 46 Cal.App.4th 554, 567 n. 16; *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1750, *Hogen v. Valley Hospital* (1983) 147 Cal.App.3d 119, 125.) "Official acts" include reports, records, files, and notices maintained by local governments, including counties. (*Cruz v. County of Los Angeles* (1985) 173 Cal.App.3d 1131, 1134.)

Exhibits A and B herein are documents received, filed and/or maintained by public agencies and for which judicial notice may be taken.

Dated: December 9 2011 Respectfully Submitted,

BELL, McANDREWS & HILTACHK, LLP
Charles H. Bell, Jr.
Thomas W. Hiltachk
Colleen C. McAndrews
Brian T. Hildreth
Ashlee N. Titus

By: 

Charles H. Bell, Jr.
Attorneys for Petitioner
JULIE VANDERMOST

CERTIFICATE OF SERVICE

I, Shannon Diaz, Declare:

I am a resident of the State of California and over the age of eighteen years and not a party to the within-entitled action; my business address is 455 Capitol Mall, Suite 600, Sacramento, California 95814. On December 20, 2011, I served the following document(s) described as:

- **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PETITIONER'S REPLY TO RETURNS SUBMITTED BY RESPONDENT SECRETARY OF STATE AND INTERVENOR CITIZENS REDISTRICTING COMMISSION AND IN SUPPORT OF PETITION FOR WRIT OF MANDATE**

on the following party(ies) in said action:

George Waters
Deputy Attorney General
Department of Justice
1300 "I" Street, 17th Floor
Sacramento, CA 95814
EM: George.Waters@doj.ca.gov
Tel: 916-323-8050

*Attorney General's office
(Email & Hand Delivery)*

Lowell Finley
Chief Counsel
Office of the Secretary of State
1500 11th St
Sacramento, CA 95814
EM: Lowell.Finley@sos.ca.gov
Telephone: (916) 653-7244

*Attorney for Respondent
SECRETARY OF STATE
(Email & Hand Delivery)*

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*Attorney for Intervenor
Citizens' Redistricting Commission
(Email & Federal Express)*

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Attorney for Intervenor
Citizens' Redistricting Commission
(Email & Federal Express)

X **BY ELECTRONIC MAIL:** By causing true copy(ies) of PDF versions of said document(s) to be sent to the e-mail address of each party listed.

X **BY HAND DELIVERY:** By placing said document(s) in a sealed envelope and causing said envelope to be served on said party(ies), by hand delivery.

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 20, 2011 at Sacramento, California.


SHANNON DIAZ



October 30, 1981

Honorable Rose Elizabeth Bird
Chief Justice
California Supreme Court
State Building
San Francisco, California 94102

Re: Assembly of the State of California et al.

v.

George Deukmejian et al.

SF 24349.

(Petition for Writ of Mandamus to Invalidate Misleading and Legally Defective Petitions)

Dear Chief Justice Bird:

Respondent Secretary of State March Fong Eu hereby urges that the alternative writ prayed for in the above-referenced action be granted for the reasons set forth below:

Respondent Eu is California's Chief Elections Officer, charged with the responsibility of seeing that California elections are efficiently conducted and that state elections laws are enforced. Elections Code section 55; Government Code section 12172.5. The ability to discharge that responsibility is currently threatened as a result of legal and political circumstances of truly historic proportion.

Pursuant to article XXI of the California Constitution, the Legislature and the Governor have enacted statutes providing for the reapportionment of congressional and legislative districts. (Stats. 1981, ch. 535, ch. 536, and ch. 537.) Respondent, in conjunction with the fifty-eight county clerks and registrars, has been diligently preparing for the implementation of said plans in time for their use in the 1982 Primary Election.

It should be stressed that a considerable amount of time is required by elections officials to re-allocate some eleven million voters into the new districts, to prepare the publications necessary for candidates to run in

particular districts and to ensure that appropriate ballots and related materials can be prepared timely for use in the election. The precincting itself of such voters as is required by the new law involves considerable detailed cartographic analysis, computer programming, and data base reformulation. Such work has been in progress at the county level since the new laws were enacted on September 16, 1981, and will necessarily continue in preparation for the June 1982 Primary well into the month of December in most counties.

Concurrent with the preparations for implementing the new laws, proponent and real party in interest, Tirso del Junco, has been circulating referendum petitions attempting to refer those laws directly to the people pursuant to Article II, section 9, of the California Constitution. Persons circulating said petitions of proponent throughout California are representing to prospective signers that, if enough signatures are obtained on the petitions, the operation of the new laws will be stayed pending a vote of the people. There is a significant -- but by no means conclusive -- body of law which supports that position. If that view is correct, however, candidates will be compelled to run in legislative districts which are grossly and unconstitutionally mal-apportioned.

The enactment of the new reapportionment laws pursuant to article XXI of the California Constitution, coupled with the possible qualification of referendum measures pursuant to article II of the same Constitution, has resulted in a classic confrontation between constitutional mandates, a confrontation which is complicated further by the requirement of the United States Constitution that legislative districts be apportioned on the basis of "one person, one vote" and that California be represented by a complete complement of congressional representatives.

It is in this atmosphere of contradiction, confrontation and confusion that the instant litigation has been filed.

Petitioners in the instant action have raised numerous substantive questions of constitutional and statutory law which must be resolved if there is to be an orderly election conducted in 1982. Only this court, exercising its original jurisdiction pursuant to article VI, section 10, of the California Constitution has the ability and authority to resolve such questions in a definitive and timely fashion.

There can be no delay in such resolution. County clerks and registrars of voters must know on or about December 15,

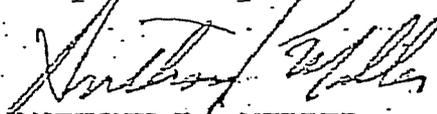
1981, which districts are to be in effect for the 1982 elections. Actual petitions for collecting signatures in lieu of filing fee must be made available in the proper districts by January 4, 1982. (Elections Code section 6555.) Any significant delay beyond December 15, 1981, will necessarily infringe upon the right of candidates to seek public office and will, in fact, jeopardize the ability of election officials to conduct the election fairly and efficiently.

The critical time frame within which election preparations must be conducted can be illustrated best, perhaps, by referring to the "Direct Primary Election Calendar (Draft)" dated November 28, 1981, and attached hereto as Exhibit "A". Any significant delay beyond December 15, 1981, could trigger a chain of missed deadlines impacting all the way to the election itself. Any significant delay beyond December 15, 1981, will shave any margin of time for performing the myriad functions required of elections officials to a razor-thin and utterly hazardous and unacceptable level.

With respect to the instant action challenging the validity of the referenda petitions themselves, an even more imminent deadline approaches. It is the understanding of Respondent Eu that the proponent of the referendum petitions plans to submit said petitions to the county clerks and registrars for verification on or about November 18, 1981. The filing of said petitions will trigger a complicated, time-consuming, and expensive process which, pursuant to article II, section 9, of the California Constitution and Elections Code section 3520, must be completed by December 15, 1981. Should petitioners in the instant action ultimately prevail on the merits with the effect being that the petitions are held to be invalid, a significant and unlawful diversion of funds will have occurred at a time when state and local governments face financial deficits of increasing magnitude. To avoid such a consequence, a resolution of the issues pending in the instant action is necessary by November 18, 1981.

For the reasons set forth above, Respondent Eu joins in the prayer of petitioners and urges that the court issue its alternative writ of mandate in the form of an order to show cause why the peremptory writ prayed for should not be granted, with a return date at the earliest possible time in order to permit an expeditious resolution of the issues raised.

Respectfully submitted,



ANTHONY L. MILLER
Chief Counsel

I am over 18 years of age, and not a party to the within cause; my business address is 1230 J Street, Sacramento California 95814; I served a copy of the attached letter to the Honorable Rose Elizabeth Bird regarding

Assembly et al. v Deukmejian et al, S.F. 24349

on each of the following by placing same in an envelope(s) addressed

as follows:

JOSEPH REMCHO, ESQUIRE

Rosen & Remcho

155 Montgomer Street, 8th Floor

San Francisco, California 94104

Attorney for Petitioners

Charles C. Marson

Stanford Law School, Room 311

Stanford, California 94305

Attorney for Petitioners

Honorable George Deukmejian

Attorney General of California

555 Capitol Mall, Suite 350

Sacramento, California 95814

Republican National Committee

310 First Street, S. E.

Washington, D. C. 20003

Each said envelope was then, on

John J. Corcoran, Clerk

County of Los Angeles

500 West Temple Street, Room 358

Los Angeles, California 90012

Carl M. Olsen, Clerk

City Hall, Room 313

San Francisco, California 94102

Leonard Panish, Registrar-Recorder

P. O. Box 30450

Los Angeles, California 90030

Jay Patterson, Registrar of Voters

City Hall, Room 155

San Francisco, California 94102

Dobbs & Nielsen

2500 One Maritime Plaza

San Francisco, California 94111

Attorneys for Real Parties in Interest

October 30, 1981

sealed and deposited in the United States Mail at Sacramento,

California, the county in which I am employed, with the postage

thereon fully prepaid.

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

Executed on October 30, 1981 at Sacramento,

California.


Declarant

EXHIBIT B

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

ASSEMBLY OF THE STATE OF CALIFORNIA, ET AL., Petitioners,

v.

DEUKMEJIAN, ETC., ET AL., Respondents;
TIRSO del JUNCO, M.D., ETC., ET AL.,
Real Parties in Interest.

SUPREME COURT
FILED
DEC 4 - 1981
LAURENCE P. GILL, Clerk

Deputy

The above entitled matter is ordered consolidated with
S. F. Nos. 24349, 24354 and 24356.

Let an alternative writ of mandate issue, to be heard before
this court at a specially scheduled session in its San Francisco
courtroom at 10:00 a.m., on January 11, 1982.

The alternative writ is to be issued, served and filed on
or before 5:00 p.m., December 11, 1981.

The written return to the writ is to be served and filed on
or before 4:00 p.m., December 31, 1981.

Bird

Chief Justice

Tobriner

Justice

Mosk

Justice

Richardson

Justice

Newman

Justice

Keene

Justice

Bronson

Justice

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

ASSEMBLY OF THE STATE OF CALIFORNIA, ET AL., Petitioners,

v.

DEUKMEJIAN, ETC., ET AL., Respondents;
TIRSO del JUNCO, M.D., ETC., ET AL.,
Real Parties in Interest.

SUPREME COURT
FILED

DEC 4 - 1981

LAURENCE P. GILL, Clerk

Deputy

The above entitled matter is ordered consolidated with
S.F. Nos. 24348, 24354 and 24356.

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or before 4:00 p.m., December 31, 1981.

Bird

Chief Justice

Roberts

Justice

Mosk

Justice

Richardson

Justice

Newman

Justice

Kranz

Justice

Allen J. Brunson

Justice

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

BURTON ET AL., Petitioners,
v.

EU, ETC., ET AL., Respondents;
TIRSO del JUNCO, M.D., ETC., ET AL.,
Real Parties in Interest.

SUPREME COURT
FILED
DEC 4 - 1981
LAURENCE P. GILL, Clerk
Deputy

The above entitled matter is ordered consolidated with
S.F. Nos. 24348, 24349 and 24356.

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this court at a specially scheduled session in its San Francisco
courtroom at 10:00 a.m., on January 11, 1982.

The alternative writ is to be issued, served and filed on
or before 5:00 p.m., December 11, 1981.

The written return to the writ is to be served and filed on
or before 4:00 p.m., December 31, 1981.

The applications to intervene as real parties in interest,
and to add an additional party petitioner, are granted.

Bird

Chief Justice

Tobias

Justice

Mosh

Justice

Pickering

Justice

Newman

Justice

Voss

Justice

Brunson

Justice

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

SENATE OF THE STATE OF CALIFORNIA ET AL., Petitioners,

v.

SECRETARY OF STATE, Respondent;
TIRSO del JUNCO, M.D., ETC., ET AL.,
Real Parties in Interest.

SUPREME COURT
FILED

DEC 4 - 1981
LAURENCE P. GILL, Cler

Deputy

The above entitled matter is ordered consolidated with
S.F. Nos. 24348, 24349 and 24354.

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this court at a specially scheduled session in its San Francisco
courtroom at 10:00 a.m., on January 11, 1982.

The alternative writ is to be issued, served and filed on
or before 5:00 p.m., December 11, 1981.

The written return to the writ is to be served and filed on
or before 4:00 p.m., December 31, 1981.

The request to file an amicus brief in support of real
parties is granted, such brief to be filed on or before 4:00 p.m.,
December 31, 1981.

Bird

Chief Justice

Tobacco

Justice

Mosk

Justice

Richardson

Justice

Newman

Justice

Kerr

Justice

Allen E. Brennan

Justice

RE ADDITIONAL BRIEFING - REAPPORTIONMENT CASES

The court requests additional briefing on the following questions which have been suggested by several members of the court:

DEADLINES

1. As a practical matter, when must the county clerks, registrars of voters and candidates know which district boundaries apply for the 1982 primary election?

2. Which of the legal deadlines that the Secretary of State, county clerks, registrars of voters, and candidates must meet in preparation for the 1982 primary election require knowledge of which district boundaries apply?

3. In addition to legal deadlines, are there other practical considerations (requiring knowledge of the applicable boundaries) which the above mentioned individuals must take into account to enable them to prepare for the primary election?

4. Does either this court, or the Legislature, have the power to extend or postpone any relevant filing dates or similar deadlines? (See Legislature v. Reinecke, 10 Cal.3d 396, 406-407.)

5. What is the last day on which the Secretary of State may announce that the referenda petitions have qualified?

6. What is the minimum amount of time prior to the primary needed to ensure that the reapportionment referenda, if qualified, appear on the ballot? What legal provisions, if any, would prevent the Secretary of State from waiting until that time to announce that the referenda have qualified?

REFERENDA DEFECTS

7. Do the requirements of Elections Code section 3516 that a petition signer be "a qualified registered voter" and that he affix his "residence address" conflict with article II, section 9, subdivision (b), of the

California Constitution authorizing referendum petitions "signed by electors"? (See also Elec. Code, § 41.)

8. Assuming that the referenda petitions are deficient in calling for signers' addresses "as registered to vote," on whom falls the burden of proving that the deficiency did or did not produce enough invalid signatures to disqualify the referenda? (See Elec. Code, § 3519; *Wheelright v. County of Marin*, 2 Cal.3d 448, 458-459 (dis. opn. by Mosk, J.).) Or does this deficiency per se invalidate the referenda without regard to its actual effect? (See Elec. Code, § 3511; *Mayock v. Kerr*, 216 Cal. 171.)

9. Are there records or statistical samples available which indicate the probable number of persons who may have signed the referenda petitions after having moved from the address shown on voters' registration records? (E.g., prior samples gathered pursuant to Elec. Code, §§ 3520, 3521.) May we take judicial notice of such records?

10. Has the Ballot Initiatives Handbook prepared by the Secretary of State ever recommended a form of petition calling for signators' addresses "as registered to vote"? If so, during what period was this form recommended, has it been changed in this regard and, if so, when and why?

11. Did a representative of the Attorney General's Office recommend to real parties or their agents a form of the subject referenda petition using the term "your address as registered to vote"? If so, is there any legal basis for excusing real parties from complying with Elections Code section 3516 by reason of erroneous advice from public officials?

STAY OF REAPPORTIONMENT STATUTES

12. Could the Legislature effectively repeal a reapportionment statute and enact a new redistricting plan despite the pendency of a referendum attacking the former statute? (See *Martin v. Smith*, 176 Cal.App.2d 115, 118-119.)

13. In this connection, was chapter 538 of the 1981 statutes an effective repealer of chapter 536 as to Senate district boundaries?

14. Was section 1 of chapter 535 of the 1981 statutes an effective repealer of the present House of

Representatives boundaries by reason of the failure of the referenda petitions to challenge that section?

15. If so, and assuming that a qualified referendum will stay the remainder of chapter 535 (adopting new congressional districts) from taking effect, what House boundaries apply for purposes of the 1982 primary election?

16. Was section 2a(c) of title 2 of the United States Code (providing for at-large election of additional representatives to which a state is entitled) repealed or superseded by section 2c of that code (providing for election only from districts equal in number to the representatives to which each state is entitled)? (See *Whitcomb v. Chavis*, 403 U.S. 124, 158, fn. 39; *Priesler v. Secretary of State of Missouri*, 279 F.Supp. 952, 967-968, affd. 394 U.S. 526.)

17. Assuming that this court may order a temporary reapportionment plan for the 1982 primary and general elections, could the Legislature thereafter supersede that plan with a new plan for those elections? (See *Legislature v. Reinecke*, 6 Cal.3d 595, 598.) What types of reapportionment remedies are available and which of these would secure to California voters their "right to an adequate voice" in the 1982 state and federal elections? (See *Roman v. Sincock* (1963) 377 U.S. 695, 711.)

18. What criteria apply in determining whether or not a state has met "the minimal requirements for maintaining a reasonably current scheme of legislative representation"? (See *Reynolds v. Sims*, 377 U.S. 533, 583-584.)

Briefs responding to the foregoing inquiries should be filed with this court either in the return to the alternative writs issued herein or in letter form by 4:00 p.m., December 31, 1981.