

SUPREME COURT COPY

No. S198387

SUPREME COURT
FILED

DEC 21 2011

Frederick K. Chlrich Clerk

Deputy

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

JULIE VANDERMOST,

Petitioner,

v.

DEBRA BOWEN, SECRETARY OF STATE OF CALIFORNIA,

Respondent,

CITIZENS REDISTRICTING COMMISSION,

Intervener.

**REQUEST FOR JUDICIAL NOTICE OF
AMICUS CURIAE SENATOR DARRELL STEINBERG;
DECLARATION OF BRIAN METZKER**

Robin B. Johansen, State Bar No. 79084
Thomas A. Willis, State Bar No. 160989
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Attorneys for Amicus Curiae
Senator Darrell Steinberg

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Attorneys for Amicus Curiae
Senator Darrell Steinberg

REQUEST FOR JUDICIAL NOTICE

Pursuant to California Rule of Court 8.252 and California Evidence Code section 452, amicus curiae Senator Darrell Steinberg hereby requests that the Court take judicial notice of the following documents:

1. December 20, 2011, Random Sample Update from the California Secretary of State for “1499. Redistricting. State Senate Districts. Referendum.”, attached to the Declaration of Brian Metzker as Exhibit A.
2. Electronic Reports filed with the California Secretary of State by the California Republican Party showing contributions of \$5,000 or more to the Fairness & Accountability in Redistricting (“F.A.I.R.”) Committee, attached to the Declaration of Brian Metzker as Exhibit B. F.A.I.R. was the committee established to circulate the redistricting referendum at issue in this case. The attached reports show that between October 9, 2011 and October 13, 2011, the California Republican Party contributed \$475,000 to F.A.I.R.

Exhibits A and B are properly the subject of judicial notice under section 452(c), which permits the Court to take judicial notice of the records and files of government agencies. (*Pearson v. State Social Welfare Bd.* (1960) 54 Cal.2d 184, 210 [taking judicial notice of the records of state agencies].)

Exhibit A is relevant to show the current status of the random sampling process for the redistricting referendum.

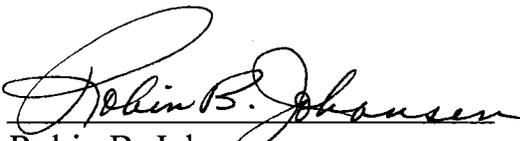
Exhibit B is relevant to show the contributions the California Republican Party made to F.A.I.R. in the last month proponent was circulating the referendum.

Based upon the above authorities, amicus curiae requests that the Court take judicial notice of Exhibits A and B attached to the Declaration of Brian Metzker.

Dated: December 21, 2011

Respectfully submitted,

REMCHO, JOHANSEN & PURCELL, LLP

By: 
Robin B. Johansen

Attorneys for Amicus Curiae
Senate Democratic Caucus

DECLARATION OF BRIAN METZKER

I, Brian Metzker, declare under penalty of perjury that:

1. I am the paralegal at Remcho, Johansen & Purcell, LLP, attorneys for amicus curiae Senator Darrell Steinberg in this case. I submit this declaration in support of the amicus brief filed by amicus curiae.
2. Attached as Exhibit A is a true and correct copy of the December 20, 2011 Random Sample Update from the California Secretary of State for "1499. Redistricting. State Senate Districts. Referendum." I obtained a copy of this spreadsheet on Wednesday, December 21, 2011 from the California Secretary of State website at http://www.sos.ca.gov/elections/pend_sig/init-sample-1499-122011.pdf
3. Exhibit A shows 254,093 of the total 709,013 signatures submitted for the referendum have been counted, leaving 454,920 uncounted signatures in 20 counties.
4. The validity rate for the 254,093 counted signatures is 73.29%, or 186,234 valid signatures. To qualify by random sampling requires 555,236 valid signatures.
5. Therefore, the validity rate for the remaining 454,920 uncounted signatures would need to be 81.11% or higher. That validity rate is calculated by dividing the remaining 369,002 valid signatures needed to qualify by random sample by the 454,920 remaining uncounted signatures.
6. From 2005 to present, Los Angeles County's average validity rate (71.78%) was 3.37% lower than the average statewide validity rate (75.15%) for measures qualifying under the random sample process, and 2.74% lower (68.98%) than the statewide average validity rate (71.72%) for measures qualifying under a full count. These averages were

calculated by extracting each validity rate for Los Angeles County and each total validity rate from all ballot initiatives qualified by random sample and full count from 2005 to present, and dividing each of the sums for those two groups of validity rates by the number of ballot initiatives. The difference was calculated by subtracting the average Los Angeles County validity rate from the average statewide validity rate. This data can be found as Exhibit B to the Declaration of Charles H. Bell, Jr. Regarding the Likelihood of Qualification of Referendum #1499 ["Bell Decl."].

7. Of those 49 measures qualified since 2005, 48 are contained in the California Secretary of State's summary, found as Exhibit C to the Bell Decl. Los Angeles County had a lower validity rate than the statewide average rate in 41 out of 44 ballot initiatives qualified by random sample and 4 out of 4 ballot initiatives qualified by full count.

8. Of the 44 ballot initiatives that qualified by random sample, Los Angeles County's validity rate was higher than the statewide average for only three initiatives, and the average difference was only 0.67%. The average difference was calculated by dividing the sum of the three higher than average validity rates by the number of ballot initiatives.

9. Attached as Exhibit B are true and correct copies of electronic reports filed with the California Secretary of State by the California Republican Party showing contributions of \$5,000 or more to the Fairness & Accountability in Redistricting ("F.A.I.R.") Committee. Our office caused to print these reports on or about Thursday, October 20, 2011 from the California Secretary of State's electronic campaign finance database, CAL-ACCESS at <http://cal-access.sos.ca.gov>. These reports show that the California Republican Party contributed a total of \$475,000 to F.A.I.R. between October 9, 2011 and October 13, 2011. The California

Republican Party largely funded the referendum process and made multiple other contributions in addition to those shown here.

I declare under penalty of perjury that the foregoing is true and correct. I have firsthand knowledge of the same, except as to those matters described on information and belief, and if called upon to do so, I could and would testify competently thereto. Executed this 21st day of December, 2011, in San Leandro, California.



BRIAN METZKER

1499. Redistricting. State Senate Districts. Referendum.

COUNTY	PETITION	SOS	SOS	RANDOM			VALID OR			%
	FILED	REC'D	REC'D	RAW	SAMPLE/	VALID	INVALID	DUP.	PROJ. VALID	
	W/COUNTY	RAW	RANDOM	COUNT	FULL CHECK	SIGS.				
1. ALAMEDA	11/13/11	11/23/11		35,473					0	0.0%
2. ALPINE									0	0.0%
3. AMADOR	11/13/11	11/16/11	11/21/11						0	0.0%
4. BUTTE	11/13/11	11/17/11	12/01/11						0	0.0%
5. CALAVERAS	11/13/11	11/21/11	11/21/11						0	0.0%
6. COLUSA	11/13/11	11/14/11	11/17/11						0	0.0%
7. CONTRA COSTA	11/13/11	11/18/11	12/15/11						0	0.0%
8. DEL NORTE	11/10/11	11/21/11							0	0.0%
9. EL DORADO	11/13/11	11/21/11	12/06/11						0	0.0%
10. FRESNO	11/13/11	11/15/11	12/13/11						0	0.0%
11. GLENN	11/13/11	11/15/11	12/01/11						0	0.0%
12. HUMBOLDT	11/10/11	11/17/11							0	0.0%
13. IMPERIAL	11/13/11	11/13/11	12/09/11						0	0.0%
14. INYO									0	0.0%
15. KERN	11/13/11	11/16/11	11/29/11						0	0.0%
16. KINGS	11/13/11	11/17/11	12/05/11						0	0.0%
17. LAKE	11/13/11	11/21/11	12/20/11						0	0.0%
18. LASSEN	11/10/11	11/21/11	11/30/11						0	0.0%
19. LOS ANGELES	11/13/11	11/23/11							0	0.0%
20. MADERA	11/13/11	11/14/11	11/30/11						0	0.0%
21. MARIN									0	0.0%
22. MARIPOSA	11/13/11	11/16/11							0	0.0%
23. MENDOCINO	11/13/11	11/14/11							0	0.0%
24. MERCED	11/13/11	11/18/11	11/23/11						0	0.0%
25. MODOC	11/10/11	11/17/11	11/17/11						0	0.0%
26. MONO	11/10/11	11/17/11	11/17/11						0	0.0%
27. MONTEREY	11/13/11	11/16/11							0	0.0%
28. NAPA	11/13/11	11/16/11	11/30/11						0	0.0%
29. NEVADA	11/13/11	11/14/11							0	0.0%
30. ORANGE	11/13/11	11/22/11							0	0.0%
31. PLACER	11/13/11	11/15/11							0	0.0%
32. PLUMAS	11/13/11	11/15/11	11/16/11						0	0.0%
33. RIVERSIDE	11/13/11	11/22/11							0	0.0%
34. SACRAMENTO	11/13/11	11/23/11	12/2/11						0	0.0%
35. SAN BENITO	11/13/11	11/14/11	12/12/11						0	0.0%
36. SAN BERNARDINO	11/13/11	11/21/11							0	0.0%
37. SAN DIEGO	11/13/11	11/17/11	12/12/11						0	0.0%
38. SAN FRANCISCO	11/13/11	11/21/11	12/08/11						0	0.0%
39. SAN JOAQUIN	11/13/11	11/23/11	12/16/11						0	0.0%
40. SAN LUIS OBISPO	11/13/11	11/17/11							0	0.0%
41. SAN MATEO	11/13/11	11/16/11							0	0.0%
42. SANTA BARBARA	11/13/11	11/16/11	12/07/11						0	0.0%
43. SANTA CLARA	11/13/11	11/23/11							0	0.0%
44. SANTA CRUZ	11/13/11	11/23/11	11/30/11						0	0.0%
45. SHASTA	11/13/11	11/22/11							0	0.0%
46. SIERRA	11/13/11	12/08/11	12/08/11						0	0.0%
47. SISKIYOU	11/10/11	11/10/11	12/01/11						0	0.0%
48. SOLANO	11/13/11	11/29/11	11/29/11						0	0.0%
49. SONOMA	11/13/11	11/15/11	11/23/11						0	0.0%
50. STANISLAUS	11/13/11	11/18/11							0	0.0%
51. SUTTER	11/13/11	11/16/11							0	0.0%
52. TEHAMA	11/13/11	11/17/11	12/02/11						0	0.0%
53. TRINITY	11/11/11	11/22/11							0	0.0%
54. TULARE	11/13/11	11/18/11	12/19/11						0	0.0%
55. TUOLUMNE	11/13/11	11/15/11							0	0.0%
56. VENTURA	11/13/11	11/21/11	12/13/11						0	0.0%
57. YOLO									0	0.0%
58. YUBA	11/13/11	11/14/11	12/05/11						0	0.0%
TOTAL:				709,013	15,481	11,890	3,591	72	186,234	73.29%

For questions regarding this spreadsheet please contact:
 Secretary of State| Elections Division (916) 657-2166
 12/20/2011 3:53 PM

Late Contribution Report

Type or print in ink.
Amounts may be rounded to whole dollars.

LATE CONTRIBUTION REPORT

NAME OF FILER California Republican Party		Date of This Filing _____ 10/19/2011 _____	Date Stamp	CALIFORNIA FORM 497 For Official Use Only
AREA CODE/PHONE NUMBER _____	I.D. NUMBER (if applicable) 810163	Report No. _____ 2 _____	Page 1 of 3	
STREET ADDRESS _____		<input type="checkbox"/> Amendment to Report No. _____ (explain below)		
CITY Burbank	STATE CA	ZIP CODE 91506	No. of Pages _____ 3 _____	

Late Contribution(s) Received

DATE RECEIVED	FULL NAME, MAILING ADDRESS AND ZIP CODE OF CONTRIBUTOR <small>(IF COMMITTEE, ALSO ENTER I.D. NUMBER)</small>	CONTRIBUTOR CODE *	IF AN INDIVIDUAL ENTER OCCUPATION AND EMPLOYER <small>(IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)</small>	AMOUNT RECEIVED
		<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		
		<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		
		<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		

*Contributor Codes

IND - Individual	PTY - Political Party
COM - Recipient Committee (other than PTY or SCC)	SCC - Small Contributor Committee
OTH - Other	

Reason for Amendment:

10/19/11

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STREET ADDRESS _____		<input type="checkbox"/> Amendment to Report No. _____ <small>(explain below)</small>		
CITY Burbank	STATE CA	ZIP CODE 91506	No. of Pages _____ 3 _____	

Late Contribution(s) Made

DATE MADE	FULL NAME, MAILING ADDRESS AND ZIP CODE OF RECIPIENT (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CANDIDATE AND OFFICE OR MEASURE AND JURISDICTION	AMOUNT OF CONTRIBUTION	DATE OF ELECTION (IF APPLICABLE)
10/09/2011	FAIR-Fairness & Accountability in Redistricting Willows, CA 95988 ID# 1339774 Memo Reference: 101920110E81039	FAIR-Fairness & Accountability	\$25,000.00	

Reason for Amendment:

FPPC Form 497(June/01)
FPPC Toll-Free Helpline: 866/ASK-FPPC

Memo Reference: 101920110E81039
1339774

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LATE CONTRIBUTION REPORT

NAME OF FILER California Republican Party		Date of This Filing _____ 10/20/2011	Date Stamp Page 1 of 3	CALIFORNIA FORM 497 For Official Use Only
AREA CODE/PHONE NUMBER	I.D. NUMBER (if applicable) 810163	Report No. _____ 16		
STREET ADDRESS		<input type="checkbox"/> Amendment to Report No. _____ <small>(explain below)</small>		
CITY Burbank	STATE CA	ZIP CODE 91506	No. of Pages _____ 3	

Late Contribution(s) Received

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		<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		
		<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		
		<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		

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Reason for Amendment:

10/20/11 19.11.11

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CITY Burbank	STATE CA	ZIP CODE 91506		
		No. of Pages _____ 3 _____		

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10/13/2011	FAIR-Fairness & Accountability In Redistricting Willows, CA 95988 ID# 1339774 Memo Reference: Member Communication	FAIR-Fairness & Accountability	\$25,000.00	
10/11/2011	FAIR-Fairness & Accountability In Redistricting Willows, CA 95988 ID# 1339774 Memo Reference: Member Communication	FAIR-Fairness & Accountability	\$25,000.00	

Reason for Amendment:

FPPC Form 497(June/01)
FPPC Toll-Free Helpline: 866/ASK-FPPC

Memo Reference: 102020110E81041
1339774

Memo Reference: 102020110E81042
1339774

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LATE CONTRIBUTION REPORT

NAME OF FILER California Republican Party		Date of This Filing <u>10/13/2011</u>	Date Stamp Page 1 of 2	CALIFORNIA FORM 497 For Official Use Only
AREA CODE/PHONE NUMBER	I.D. NUMBER (if applicable) 810163	Report No. <u>1</u>		
STREET ADDRESS		<input type="checkbox"/> Amendment to Report No. _____ (explain below)		
CITY Burbank	STATE CA	ZIP CODE 91506	No. of Pages <u>2</u>	

Late Contribution(s) Received

DATE RECEIVED	FULL NAME, MAILING ADDRESS AND ZIP CODE OF CONTRIBUTOR <small>(IF COMMITTEE, ALSO ENTER I.D. NUMBER)</small>	CONTRIBUTOR CODE *	IF AN INDIVIDUAL ENTER OCCUPATION AND EMPLOYER <small>(IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)</small>	AMOUNT RECEIVED
		<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		
		<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		
		<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		

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COM - Recipient Committee (other than PTY or SCC)	SCC - Small Contributor Committee
OTH - Other	

Reason for Amendment:

FPPC Form 497(June/01)
FPPC Toll-Free Helpline: 866/ASK-FPPC

10/19/11 9:13 PM

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LATE CONTRIBUTION REPORT

NAME OF FILER California Republican Party		Date of This Filing 10/13/2011	Date Stamp Page 2 of 2	CALIFORNIA FORM 497 For Official Use Only
AREA CODE/PHONE NUMBER	I.D. NUMBER (if applicable) 810163	Report No. 1		
STREET ADDRESS		<input type="checkbox"/> Amendment to Report No. _____ <small>(explain below)</small>		
CITY Burbank	STATE CA	ZIP CODE 91506	No. of Pages 2	

Late Contribution(s) Made

DATE MADE	FULL NAME, MAILING ADDRESS AND ZIP CODE OF RECIPIENT (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CANDIDATE AND OFFICE OR MEASURE AND JURISDICTION	AMOUNT OF CONTRIBUTION	DATE OF ELECTION (IF APPLICABLE)
10/13/2011	F.A.I.R.-Fairness & Accountability In Redistricting Willows, CA 95988 ID# 1339774		\$400,000.00	

Reason for Amendment:

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause or action. My business address is 201 Dolores Avenue, San Leandro, CA 94577.

On December 21, 2011, I served a true copy of the following document(s):

**Request for Judicial Notice of Amicus Curiae
Senator Darrell Steinberg;
Declaration of Brian Metzker**

on the following party(ies) in said action:

Charles H. Bell	<i>Attorneys for Petitioner</i>
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Fax: (916) 442-7759	
Email: cbell@bmhlaw.com	

George Waters	<i>Attorneys for Respondent</i>
Office of the Attorney General	<i>Secretary of State Debra Bowen</i>
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Sacramento, CA 95814	
Phone: (916) 324-8050	
Fax: (916) 324-8835	
Email: George.Waters@doj.ca.gov	

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Debra Bowen
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Fax: (916) 651-8295
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Attorneys for Respondent
Secretary of State Debra Bowen

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Attorneys for Intervener
Citizens Redistricting Commission

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Fax: (213) 892-5454
Email: bfox@mofocom

Attorneys for Intervener
Citizens Redistricting Commission

- BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed envelope or package addressed to the person(s) at the address above and
- depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the businesses' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, located in San Leandro, California, in a sealed envelope with postage fully prepaid.
- BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

- BY MESSENGER SERVICE:** By placing the document(s) in an envelope or package addressed to the persons at the addresses listed and providing them to a professional messenger service for service.
- BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons at the fax numbers listed based on an agreement of the parties to accept service by fax transmission. No error was reported by the fax machine used. A copy of the fax transmission is maintained in our files.
- BY EMAIL TRANSMISSION:** By emailing the document(s) to the persons at the email addresses listed based on a court order or an agreement of the parties to accept service by email. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on December 21, 2011, in San Leandro, California.


Michael Narciso

(00160163)