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January 4, 2012

Honorable Chief Justice Tani Cantil-Sakayue
And Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: **Case No. S 198387, *Vandermost v. Bowen* – Petitioner’s Response to Court’s Request for Supplemental Letter Brief**

Dear Chief Justice Cantil-Sakayue and Associate Justices:

The Petitioner hereby responds to the Court’s request for a supplemental letter brief on the following question:

What significance does the signature validity rate from the completed random sampling process have for the issue of whether a referendum is “likely to qualify” under article XXI, section 3, subdivision (b)(2) of the California Constitution?

Response: The Petitioner assumes that the question more narrowly is what significance signature validity rates between 95% and 110% have for the issue of whether the referendum is “likely to qualify,” since under Elections Code, §§ 9030, subs.(f) & (g) and 9031, subd.(a), petitions that attain less than a 95% signature validity rate are deemed as “insufficient” and do not qualify and those attaining more than 110% signature validity rate are deemed “sufficient” and qualify by random sample. Based upon the history of recent initiatives and referenda, a petition that attains less than a 100% signature validity rate from the completed random sampling cannot be said to be “likely” to qualify, and the Court should retain jurisdiction to take further action in the event it should actually qualify. A petition that attains more than 100% is likely to qualify, and the Court should exercise jurisdiction to initiate map drawing activity as it did in *Wilson v. Eu* (*Wilson I*) 54 Cal.3d 471 and *Legislature v. Reinecke* (*Reinecke II*)

(1972) 6 Cal.3d 595, to ensure that the 2012 Senate elections are run in constitutional districts while giving effect to the people's exercise of the referendum.

The Petitioner has met the threshold for jurisdiction under article XXI, section 3, subdivision (b)(2) by submitting raw signatures well in excess of 100% of the total number of valid signatures required to qualify her referendum. The signature validity rate from the "completed" random sampling process will indicate a signature validity rate above 100% which based upon recent historical experience makes it "probable" or "likely" that the Petitioner's petition will qualify for the ballot.¹ These data would be sufficient for the Court to exercise jurisdiction to undertake preliminary efforts to draw maps contingent upon the measure's actual qualification for the ballot.

In *Wilson I, supra*, the Court exercised jurisdiction to initiate the Special Master process in accordance with *Reinecke II, supra*, on a *contingent basis*, in deference to the power of the Legislature to enact and the governors to approve legislation enacting district boundaries while the Court commenced its preliminary activity. In both cases the Court stated that it would stay its hand in implementing the maps it would draw if the Legislature and governors completed the redistricting process in a timely fashion. This referendum presents a similar obligation for the Court to act on a contingent basis so that when the referendum qualifies for the ballot and stays the Commission's Senate maps, the referendum stay may be given effect. Unlike the contingencies in *Wilson I* and *Reinecke II*, the contingency at bench is the qualification or non-qualification of the referendum.

Background

The Legislature adopted a signature validity rate standard in California Elections Code, §§ 9030 and 9031, subd.(a), to allow for efficient administration of the signature verification process. The standard allows the Secretary of State (in the case of state measures) to certify ballot measures on a sampling basis, without requiring county election officials to validate each petition signature. Election officials are not required to verify a petition that in the first instance contains an insufficient number of raw

¹The Petitioner has submitted official records of the Secretary of State concerning the qualification details of 48 initiative and referendum measures submitted for signature verification between 2005 and 2011 which demonstrates that initiative and referendum measures submitted with a similar percentage of raw signatures to that of the Petitioner's petition have qualified for the ballot either by random sample or full count verification. (Pet. RJN, Exh. "C" and "D".)

signatures to qualify. If raw signatures are submitted that exceed the number of valid signatures required to qualify, random sampling must be conducted. If the random sample percentage is less than 95%, the statute deems the petition insufficient and no further verification is required. If the random sample percentage is greater than 110%, the statute deems the petition sufficient and no further verification is required. Only when the random sample percentage is between 95 and 110% of the 504,760 valid signatures required to qualify the referendum for the ballot is full count verification required. (§ 9031, subd.(a).)

Under Elections Code, § 9030, subdiv.(d), when a statutory initiative measure or referendum petition against a statute adopted by the Legislature is presented to county election officials for signature verification, election officials are authorized to use a “random sample” verification process which requires them to verify the lesser of 3% of the raw signatures on petitions submitted in their counties or 500 signatures. The Secretary of State has adopted regulations defining the random sampling formula and process. (2 Cal.Code Regs., §§ 20520-20532.)

The Secretary of State determines the “random sample deadline” which for the Petitioner’s Referendum (SOS #1499) is January 10, 2012. The Secretary of State publishes periodically the number of signatures an initiative petition must obtain to qualify for the ballot (the 100% number) as well as the 95% and 110% numbers.

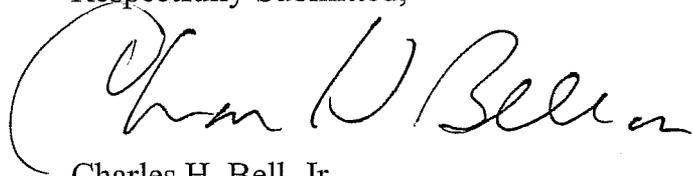
The 100% number is based upon the Constitutional requirement that a statutory initiative or any state referendum must attain signatures equal to 5% of the votes cast at the preceding gubernatorial election to qualify for the ballot. Initiatives and referendum measures must attain 504,760 signatures to qualify for the ballot based upon the 2010 gubernatorial election vote. (Art. II, §§ 8(a)[initiative] and 9(b) [referendum].)

Before 1974, California law had required a full count of all petition signatures. In 1975, the Legislature adopted the first random sampling provisions for then-Elections Code, § 3520. (Ch. 1543, Stats. 1975.) That statute required a 5% random sampling (as contrasted with the current 3% random sampling) and also required a full count of signatures if a measure attained between 90 and 110% of the total signatures required to qualify. In 1982, the Secretary of State petitioned the superior court to deem Proposition 8 to have qualified after it attained 108.76% of the total signatures required to qualify for the June 1982 ballot by random sample. (*Brosnahan v. Eu* (1982) 31 Cal.3d 1, 2.) The Secretary of State argued that the measure had “substantially complied” with the law and

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therefore should go on the June 1982 statewide ballot without a full count of signatures. The Secretary of State believed that a $\pm 5\%$ standard was sufficient given modern sampling techniques to determine whether a measure had sufficient valid signatures to qualify for the ballot. The Legislature swiftly amended section 9030 (then numbered as section 3520, subd.(g)) to allow measures to qualify by random sample between 95 and 105% of the actual number of valid signatures required. The Secretary of State's position was challenged in an original mandate petition in this Court in *Brosnahan v. Eu, supra*, 31 Cal.3d at p. 3. The Court dismissed the claim as moot based on the Legislature's amendment adopting the 95-105% standard. (*Id.*) The Legislature in 1987 (Ch. 127, Stats. 1987) subsequently modified the range to 95-110% and lowered the random sample percentage from 5% to the lesser of 3% or 500 signatures.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Charles H. Bell, Jr.", written in a cursive style.

Charles H. Bell, Jr.

Attorney 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 January 4, 2012, I served the following document(s) described as:

- **Petitioner's Supplemental Letter Brief**

on the following party(ies) in said action:

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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.

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 January 4, 2012, at Sacramento, California.


SHANNON DIAZ