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DEPARTMENT OF JUSTICE



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January 6, 2012

The Honorable Chief Justice Tani Cantil-Sakauye
and Associate Justices of the California Supreme Court
350 McAllister Street
San Francisco, CA 94102-7303

RE: *Vandermost v. Bowen*, Case No. S198387
Supplemental Letter Reply Brief

Dear Chief Justice and Associate Justices:

Respondent Debra Bowen, California Secretary of State, respectfully submits this reply to the letter brief of petitioner Julie Vandermost dated January 4, 2012. This round of briefing responds to the Court's December 29, 2011 order requesting supplemental briefing 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?

Respondent's preliminary opposition noted that Ms. Vandermost had originally told the Court that she would obtain more than 780,000 raw signatures, but in fact submitted just under 710,000, leaving "considerable doubt as to whether the referendum will qualify." (Respondent's Preliminary Opposition [12/6/11] at pp. 1, 5.) Nothing has happened since then to change that conclusion. As explained in respondent's opening letter brief, the random sampling process accurately does what it is supposed to do: It determines whether the number of signatures on a petition is within a broad range. The process is not designed to give reliable results at the level of precision required here. (Respondent's Letter Brief [1/4/12] at pp. 3-4.)

The most recent spreadsheet on referendum #1499, with more than 90% of petition signatures statewide sampled, suggests that the full results of the random sampling process will show a validity rate close to the current 72.14%. A 72.14% validity rate translates into a ratio of estimated valid signatures to the minimum 504,760 needed to qualify of only 1.0133. Stated differently, the projected number of valid signatures from the full results of the random sampling process would be only 101.33% of the minimum. A hand count of the petition signatures is now necessary; it is mathematically impossible for the referendum to qualify through the random sampling process, which requires a validity rate over 110%.¹

Petitioner's opening letter brief makes another point, not related to the random sampling process, which merits reply. Petitioner argues that recent historical experience makes it "probable" or "likely" that any petition that samples at over 100% will in fact qualify for the ballot, and cites as authority for this statement Exhibit C to Petitioner's Request for Judicial Notice. (Petitioner's Letter Brief [1/4/12] at p. 2.) This is simply wrong. Exhibit C is petitioner's calculation of various data concerning 48 initiative and referendum measures that qualified for the ballot in 2005-2010. The second-to-last column shows the ratio of the number of raw signatures to the number of signatures needed to qualify. This ratio for referendum #1499 – 140.46 – is *lower* than any measure on the list. At the same time, several of these measures came perilously close to not qualifying, most notably #1182, which qualified by fewer than 8,000 signatures. (See Petitioner's Request for Judicial Notice Regarding Likelihood of Qualification [12/2/11] at pp. 23, 84.) Petitioner's own calculations show that qualification of her referendum is problematic.

In summary, using the random sampling process to resolve the question of whether a referendum is likely to qualify for the ballot is impractical for two reasons. First, the random sampling process is not precise enough to shed much light on this issue. Second, under article XXI and the Elections Code, completion of the random sampling process will almost always occur too late in the election cycle to permit a new line-drawing process before the June primary.² A referendum of a Commission map in 2021

¹ A copy of the most recent spreadsheet [1/5/12] is attached. It is also available on the Secretary of State's website at <http://www.sos.ca.gov/elections/ballot-measures/pending-signature-verification.htm>.

² A possible exception would be if the proponent of a referendum were able to gather and file a huge number of signatures in a very short period of time, which apparently is what happened in 1981. (See Return of Respondent to Order to Show Cause [12/14/11] at p. 3.) If so, the deadline to complete the random sampling process

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or 2031, submitted on the last possible day as in this case, would inevitably encounter the same insurmountable obstacle; the results of the random sampling process would not be known until January 10 (give or take a few days) of the year in which that map must first be used. As respondent has explained on several occasions, this is too late to start drawing new lines for a June election.

Sincerely,



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Deputy Attorney General

For KAMALA D. HARRIS
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could conceivably fall in early December. However, under this circumstance, it seems more likely that a proponent could offer competent evidence well before completion of the random sample that a referendum is "likely to qualify."

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	01/04/12	35,473	1,064	805	259	2	24,682	69.6%
2. ALPINE									0	0.0%
3. AMADOR	11/13/11	11/16/11	11/21/11	269	269	227	42	2	227	84.4%
4. BUTTE	11/13/11	11/17/11	12/01/11	10,220	500	410	90	4	6,791	66.4%
5. CALAVERAS	11/13/11	11/21/11	11/21/11	281	281	226	55	5	226	80.4%
6. COLUSA	11/13/11	11/14/11	11/17/11	54	54	38	16	0	38	70.4%
7. CONTRA COSTA	11/13/11	11/18/11	12/15/11	19,779	593	466	127	1	14,464	73.1%
8. DEL NORTE	11/10/11	11/21/11		207					0	0.0%
9. EL DORADO	11/13/11	11/21/11	12/06/11	2,327	500	414	86	2	1,893	81.3%
10. FRESNO	11/13/11	11/15/11	12/13/11	26,357	791	603	188	1	19,016	72.1%
11. GLENN	11/13/11	11/15/11	12/01/11	192	192	139	53	9	139	72.4%
12. HUMBOLDT	11/10/11	11/17/11	12/27/11	172	172	145	27	2	145	84.3%
13. IMPERIAL	11/13/11	11/13/11	12/09/11	710	500	335	165	2	475	66.8%
14. INYO									0	0.0%
15. KERN	11/13/11	11/16/11	11/29/11	18,131	544	363	181	0	12,098	66.7%
16. KINGS	11/13/11	11/17/11	12/05/11	2,353	500	348	152	2	1,603	68.1%
17. LAKE	11/13/11	11/21/11	12/20/11	3,449	500	375	125	3	2,465	71.5%
18. LASSEN	11/10/11	11/21/11	11/30/11	185	185	145	40	1	145	78.4%
19. LOS ANGELES	11/13/11	11/23/11	01/04/12	209,163	6,275	4,599	1,676	9	143,598	68.7%
20. MADERA	11/13/11	11/14/11	11/30/11	3,783	500	394	106	0	2,981	78.8%
21. MARIN									0	0.0%
22. MARIPOSA	11/13/11	11/16/11		164					0	0.0%
23. MENDOCINO	11/13/11	11/14/11		591					0	0.0%
24. MERCED	11/13/11	11/18/11	11/23/11	3,153	500	372	128	2	2,279	72.3%
25. MODOC	11/10/11	11/17/11	11/17/11	19	19	12	7	0	12	63.2%
26. MONO	11/10/11	11/17/11	11/17/11	1	1	1	0	0	1	100.0%
27. MONTEREY	11/13/11	11/16/11	12/30/11	5,613	500	359	141	1	3,915	69.8%
28. NAPA	11/13/11	11/16/11	11/30/11	2,147	500	396	104	3	1,658	77.2%
29. NEVADA	11/13/11	11/14/11		854					0	0.0%
30. ORANGE	11/13/11	11/22/11	12/21/11	38,014	1,140	916	224	0	30,545	80.4%
31. PLACER	11/13/11	11/15/11		2,972					0	0.0%
32. PLUMAS	11/13/11	11/15/11	11/16/11	41	41	30	11	0	30	73.2%
33. RIVERSIDE	11/13/11	11/22/11	01/04/12	31,502	945	753	192	1	24,024	76.3%
34. SACRAMENTO	11/13/11	11/23/11	12/2/11	23,140	694	497	197	1	15,493	67.0%
35. SAN BENITO	11/13/11	11/14/11	12/12/11	868	500	397	103	6	682	78.5%
36. SAN BERNARDINO	11/13/11	11/21/11	01/04/12	48,020	1,441	1,144	297	3	34,891	72.7%
37. SAN DIEGO	11/13/11	11/17/11	12/12/11	58,632	1,759	1,491	268	1	48,621	82.9%
38. SAN FRANCISCO	11/13/11	11/21/11	12/08/11	11,210	500	355	145	0	7,959	71.0%
39. SAN JOAQUIN	11/13/11	11/23/11	12/16/11	12,556	500	357	143	0	8,965	71.4%
40. SAN LUIS OBISPO	11/13/11	11/17/11	01/05/12	8,325	500	380	120	3	5,545	66.6%
41. SAN MATEO	11/13/11	11/16/11		4,514					0	0.0%
42. SANTA BARBARA	11/13/11	11/16/11	12/07/11	4,189	500	387	113	0	3,242	77.4%
43. SANTA CLARA	11/13/11	11/23/11	12/22/11	49,402	1,482	1,168	314	2	36,779	74.4%
44. SANTA CRUZ	11/13/11	11/23/11	11/30/11	3,849	500	381	119	2	2,830	73.5%
45. SHASTA	11/13/11	11/22/11		4,320					0	0.0%
46. SIERRA	11/13/11	12/08/11	12/08/11	25	25	23	2	0	23	92.0%
47. SISKIYOU	11/10/11	11/10/11	12/01/11	1,305	500	437	63	5	1,120	85.8%
48. SOLANO	11/13/11	11/29/11	11/29/11	7,732	500	376	124	4	4,920	63.6%
49. SONOMA	11/13/11	11/15/11	11/23/11	7,618	500	377	123	2	5,310	69.7%
50. STANISLAUS	11/13/11	11/18/11		13,380					0	0.0%
51. SUTTER	11/13/11	11/16/11		1,170					0	0.0%
52. TEHAMA	11/13/11	11/17/11	12/02/11	1,466	500	422	78	5	1,209	82.5%
53. TRINITY	11/11/11	11/22/11		226					0	0.0%
54. TULARE	11/13/11	11/18/11	12/19/11	9,685	500	359	141	1	6,598	68.1%
55. TUOLUMNE	11/13/11	11/15/11		838					0	0.0%
56. VENTURA	11/13/11	11/21/11	12/13/11	17,768	533	402	131	1	12,323	69.4%
57. YOLO									0	0.0%
58. YUBA	11/13/11	11/14/11	12/05/11	599	500	335	165	7	400	66.7%
TOTAL:				709,013	29,000	22,159	6,841	95	490,357	72.14%

For questions regarding this spreadsheet please contact:
 Secretary of State| Elections Division (916) 657-2166
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DECLARATION OF SERVICE BY EMAIL AND U.S. MAIL

Case Name: **Vandermost v. Bowen**
Supreme Court of California No.: **S198387**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On January 6, 2012, I served the attached

Supplemental Reply Letter Brief

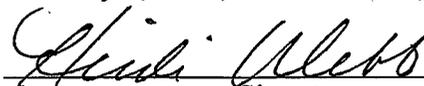
by transmitting a true copy via E-MAIL. In addition, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 6, 2012, at Sacramento, California.

Heidi Webb

Declarant



Signature

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