

S 198387

IN THE SUPREME COURT OF CALIFORNIA

JULIE VANDERMOST
Petitioner,

vs.

DEBRA BOWEN, SECRETARY OF STATE
OF CALIFORNIA
Respondent,

CITIZENS REDISTRICTING COMMISSION
Real Party in Interest.

**SECOND SUPPLEMENTAL DECLARATION OF DR. T.
ANTHONY QUINN, PhD 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**

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INTRODUCTION

1. I incorporate by reference my statement of qualifications as an expert as set forth in my Declaration and Supplemental Declaration in this proceeding. I have reviewed the Citizen's Redistricting Commission's Return to the Court's Order to Show Cause in this Matter and the Declaration of Karin Mac Donald submitted in support of that Return, and offer the following comments as expert opinion and rebuttal opinion in this matter.

2. Once again the Commission obscures, obfuscates and confuses the issues before the Court in its attacks on Petitioner's proposed remedies. First, the only issue the Court must grapple with is what to do with the 20 odd-numbered districts up for election in 2012. The 2001 even-numbered districts will never be at issue. They remain in effect until November 2014 at which time they will be replaced either by new Masters-drawn districts (referendum succeeds) or by the Commission's districts (referendum fails).

3. All comments herein relate to the odd-numbered districts. Petitioner does not urge that the proposed Simple Nesting Plan apply to the even-numbered districts – in fact, the even-numbered districts in the Central Valley cannot be nested as they would not comply with Section 5 of the Voting Rights Act. Some modifications will be necessary. And unlike the situation facing the Court in *Assembly v. Deukmejian*, where all 80 Assembly districts were at issue as well as Senate districts, Petitioner is urging this Court to consider using the old 2001 districts only in 20 odd-numbered Senate districts

THE SIMPLE NESTING PLAN IS PERFECTLY CONSTITUTIONAL

4. The objective of the Simple Nesting Plan is to provide the Court a way to simply nest one half the unchallenged Assembly districts to provide for 20 odd-numbered Senate districts that could elect in 2012. It was not, as the Commission implies, to create some plan for the remaining elections of this decade.

5. These constitutional and unchallenged Assembly districts were drawn by this Commission after all the public input the Commission has cited in its briefs. It is very hard to understand why they cannot be nested into 20 constitutional Senate districts for temporary one time use. In fact, they can.

6. Petitioner's nesting plan is one way to nest Assembly districts into Senate districts, but it is not the only way to nest. It is offered simply as an example of how nesting may be done.

7. The Commission very helpfully provided its chart of the deferred populations in its own districts and the Senate districts petitioner has submitted (Karin MacDonald declaration). The Petitioner accepts all of Ms. MacDonald's numbers as accurate.

8. The Commission asserts that the Petitioner has increased the number of deferred persons between odd and even-numbered districts from the Commission's deferral of 3,972,984 persons to 4,592,350 persons. While this is interesting, it is also not relevant, and can be corrected.

9. I did not have access to Ms. MacDonald's computer program that assigned the population based on the 2001 districts, but as I explained in my earlier declarations, proper assigning of district numbers based on prior odd and even-numbered district population is very important. To help the Court better understand this arcane matter, listed here side by side are

the deferrals in the Commission plan and in Petitioner’s plan, which Ms. MacDonald identifies as “TQ Districts”.

Deferrals: Persons now in a 2014 district formerly in a 2012 district

<u>District Number</u>	<u>Commission Deferral</u>	<u>“TQ” Deferral</u>
SD 2	304,650	372,812
SD 4	183,087	140,556
SD 6	267,305	234,590
SD 8	133,725	451,575
SD 10	179,485	184,214
SD 12	1,493	234,243
SD 14	0	0
SD 16	28,234	0
SD 18	227,481	247,983
SD 20	109,351	109,351
SD 22	184,541	230,500
SD 24	106,482	83,004
SD 26	411,620	419,513
SD 28	383,515	339,788
SD 30	137,525	332,722
SD 32	345,132	275,495
SD 34	408,225	529,759
SD 36	367,489	115,734
SD 38	38,506	0
SD 40	154,947	290,509
TOTAL	3,972,984	4,592,350

10. Highlighted in bold are three districts. In “TQ District 8” the deferral is 451,575 people. This district is virtually the same as the Commission’s SD 11, the city of San Francisco and a portion of San Mateo County. I have given this district an even number because the majority of the population came from an even-numbered district. The Commission gave this same district an odd number, even though the majority of the population was even:

Commission SD 11: Formerly even: 479,278, formerly odd: 451,575
 “TQ SD 8”: Formerly even: 483,693, formerly odd: 451,575

11. Had the Commission given this district an even number, the Commission deferral would have increased by 451,575 people. However, I

understand why the Commission did not do this. There is more “even” population than “odd” population in California, and so one district that should be even must be given an odd number. The Commission chose the San Francisco district; Petitioner chose nested SD 33, in south central Los Angeles.

12. The second district is SD 12. The Commission’s deferral is very low because the Commission retained the old 2001 legislative gerrymander that was drawn for a favored Assembly member. Petitioner’s nesting used the Latino portion of SD 12 in Monterey County to form a Latino district in an area with a long history of electing Latino legislators. This explains the disparity in this area.

13. The third district is Petitioner’s SD 34, which has the largest deferral of any “TQ districts”, 529,759. This deferral is in excess of half the district. As originally submitted, SD 34 has a majority of odd numbered population and thus should have an odd number. However, it was not our intention to create an odd-numbered district in central Orange County. Since 1966, Orange County has had one even-numbered district, and current SD 34 is that district today. It also has a Latino Senator. Thus, Petitioner is re-nesting two Orange County districts to keep SD 34 as even-numbered. (See Attachment “A,” incorporated by this reference herein).
SD 29: ADs 55 and 68. This is majority odd-numbered population.
SD 34: ADs 65 and 69. This tracks the current SD 34 and is majority even-numbered.

This should significantly reduce the deferrals in the “TQ districts”.

14. Finally, the Commission makes an entirely false and misleading allegation that the Petitioner has created districts in violation of Section 5 of the Voting Rights Act. The Commission asserts that my “proposed nesting plan would fall well below the 2001 benchmark for covered Section 5 counties and impact California’s preclearance

submission to the Justice Department for the covered jurisdictions (Monterey, Merced, Yuba and Kings Counties).”

15. As noted earlier, the Section 5 counties of Yuba, Merced, and Kings are currently within even-numbered districts; the Commission keeps them in even-numbered districts, and Petitioner’s plans do the same. They are wholly irrelevant because the districts containing these counties do not elect until 2014.

16. The Commission attacks the Petitioner’s nesting plan for the one Section 5 county that does elect in 2012, Monterey County. The Commission asserts that, “His (Quinn’s) proposed Senate districts 13 and 15 fall far below the 2001 benchmark levels and thus violate Section 5. His proposed district 13 covering north Monterey County falls from the 2001 benchmark of 26.22% Latino Voter Age Population (LVAP) to 17.66% LVAP. Similarly, Quinn’s proposed Senate district 15 reduces the benchmark for South Monterey from 53.48% LVAP to 51.31 LVAP.”

17. It is true that the Petitioner’s nesting plan reduces the Latino VAP in the non-Latino portion of the county (SD 13) because we have purposely shifted this Latino VAP to the Latino portion of the county. And we have taken all of the heavily Latino portions of the county, which the Commission rightly united into Assembly District 30, and combined them with the historically Latino Assembly district in San Jose, Assembly District 27. The Commission was asked to form this district but did not do so. However, in the submission of the Mexican American Legal Defense and Education Fund (MALDEF) dated June 28, 2011, this exact district is formed (SJMONT in MALDEF map submission).

18. The Petitioner’s nested ADs form the same Latino SD as the MALDEF plan; the Commission SD does not. We would be happy anytime to compare our nested SD 15 with the Commission’s overlapping

SD and judge which is more likely to elect a Latino Senator and thus meet the requirements of Section 5 of the Voting Rights Act.

**16.4 PERCENT POPULATION DEVIATION
BETWEEN LEGISLATIVE DISTRICTS IS CONSTITUTIONAL
UNDER SUPREME COURT PRECEDENT CITED BY
THE COMMISSION'S VOTING RIGHTS ACT COUNSEL**

19. On April 28, 2011, Gibson Dunn Crutcher, the Commission's Voting Rights Act counsel, issued a lengthy "Outline of Redistricting Law" that became the Commission's template for its legal decisions in drawing districts. At page 26 of Tab 2, the analysis noted:

"a. For state redistricting, the constitutional (sic) allows more flexibility to deviate from absolute equality, compared with Congressional redistricting, as long as the deviations are supported by consistently applied, legitimate nondiscriminatory reasons."

20. Gibson Dunn cited a number of cases and concluded that, "Supreme Court decisions indicate that deviations under 10% may be presumptively constitutional." Gibson Dunn cites the case of *Brown v. Thomson*, 462 US 835 (1983) to support the 10 percent constitutionality. This US Supreme Court case involves Wyoming districts with an average deviation of 16 percent and a maximum deviation of 89 percent. Those permissible levels of deviation remain the law today.

21. However, the Commission in its reply brief insists on applying the standards set in *Assembly v. Deukmejian*: "The Supreme Court has not established a rigid numerical limit for legislative districts. However, the high court has developed guidelines for permissible deviations. As summarized by one federal district court, a maximum deviation of less than 10 percent between the largest and smallest districts is permissible and need not be justified by the state. However, a maximum deviation of 10 to 16.4 percent is permissible only if the state can

demonstrate that the deviation is the result of a rational state policy. A maximum deviation greater than 16.4 percent is intolerable under the equal protection clause.”

22. Here are the populations, deviations and percent of deviations for the odd-numbered districts as submitted to the Court in the Commission’s reply brief (Karin MacDonald declaration). Petitioner accepts these as true and accurate population figures.

<u>District</u>	<u>Population</u>	<u>Deviation</u>	<u>Percent Deviation</u>
SD 1:	1,002,597	71,248	7.65%
SD 3:	880,421	-50,928	- 5.47%
SD 5:	1,032,613	101,264	10.87%
SD 7:	947,426	16,077	1.73%
SD 9:	878,605	-52,744	-5.66%
SD 11:	876,710	-54,639	-5.87%
SD 13:	895,425	-35,924	-3.86%
SD 15:	903,066	-28,283	-3.04%
SD 17:	1,098,146	166,797	17.91%
SD 19:	911,685	-19,664	-2.1%
SD 21:	855,019	-76,336	-8.20%
SD 23:	899,067	-32,282	-3.47%
SD 25:	860,352	-70,997	-7.62%
SD 27:	857,163	-74,186	-7.97%
SD 29:	881,748	-49,601	-5.33%
SD 31:	989,662	58,314	6.26%
SD 33:	936,082	4,733	.51%
SD 35:	899,261	-32,088	-3.45%
SD 37:	1,215,876	284,527	30.55%
SD 39:	897,570	-33,779	-3.63%

23. The Commission contends that, “Applying this standard (*Assembly v. Deukmejian*), 19 of the 20 odd numbered districts deviate by more than 16.4 percent and are thus patently unconstitutional.”

24. This is clearly not the case. SD 7, SD 13, SD 15, SD 19, SD 23, SD 33, SD 35, and SD 39 all deviate by less than five percent by the Commission’s own figures and thus fall within the ten percent maximum deviation range “and need not be justified by the state.” SD 1, SD 3, SD 9,

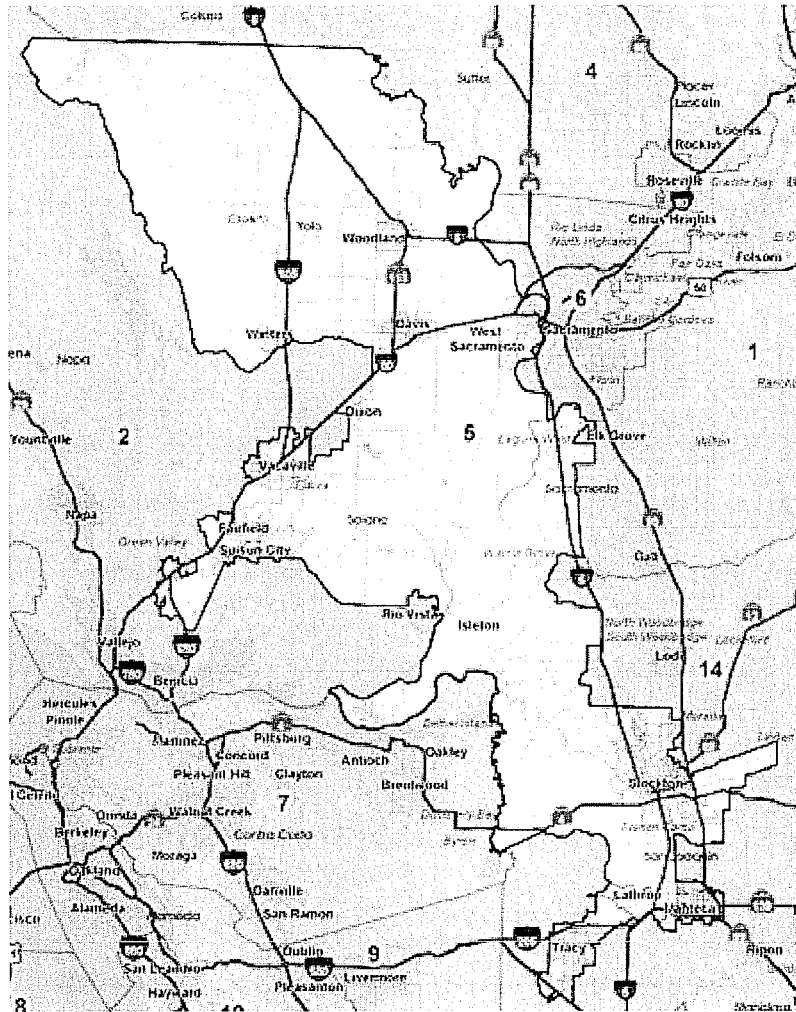
SD 11, SD 21, SD 25, SD 27, SD 29, and SD 31 all fall within the maximum deviation of 10 to 16.4 percent and are “permissible” as part of a “rational state policy.” Thus, as noted in my earlier declaration, only three districts (SD 5, SD 17, and SD 37) fall outside this range and are “intolerable under the equal protection clause,” using the *Assembly v. Deukmejian* standard.

25. The Court could easily resolve this problem by “ordering these three districts reduced in size.” The Commission’s reply creates a parade of horrors of having to do extensive redrawing of southern California with Voting Rights Act implications. None of this is true. There is no need for redrawing at all, because we are dealing with only 20 districts, not all 40 Senate districts. Consequently, population may be simply eliminated from the current districts for the purpose of the 2012 election without a concern where that population will be in 2014. No one is encouraging use of the old districts for the 2014 election.

26. The Court can instruct the Secretary of State and the counties to reduce the area of the three districts in question to bring them within the 10 to 16.4 percent population deviation.

Senate District 5.

27. The current population for this district is 1,032,613 people. The district is overpopulated by 101,264 people, or 10.87%. Below is a map of this district, taken from the California State Senate homepage, State Senate Districts.

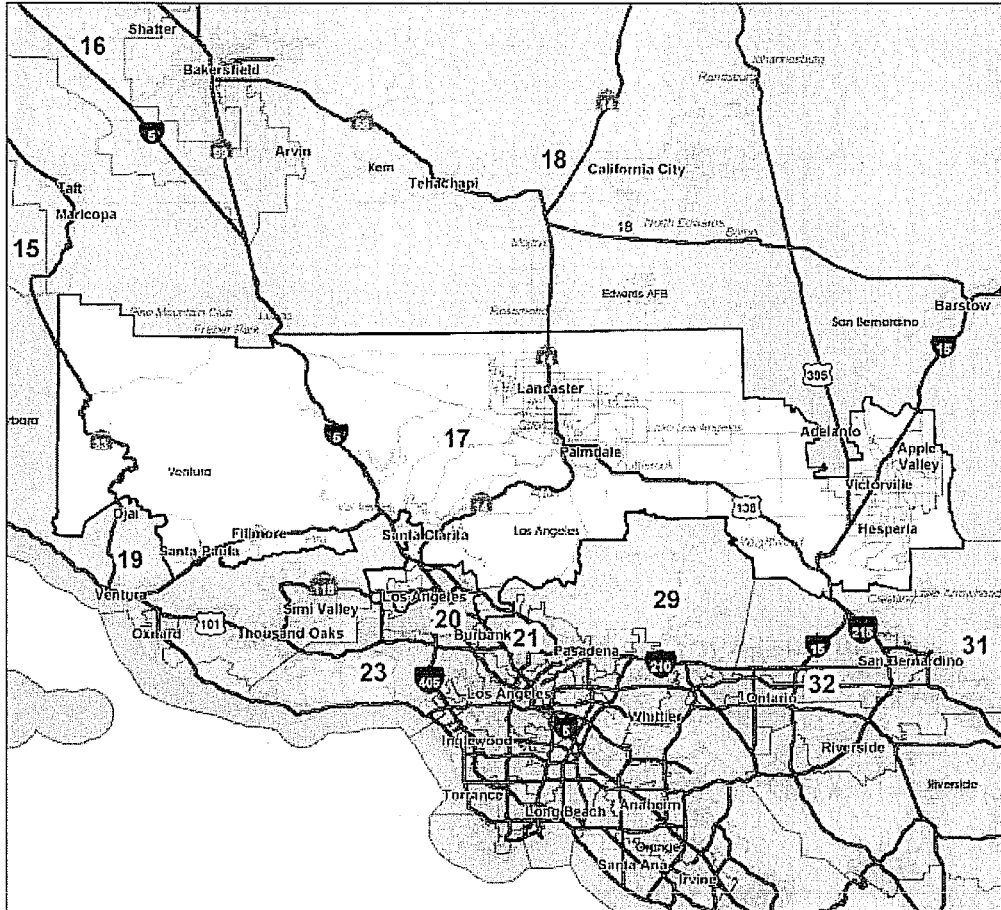


28. As is apparent, the entire cities of Suisun (2010 population 28,111) and Dixon (2010 population 18,351) in Solano County are within this district, and both cities are on the edge of the district. Either or both cities could be removed from the district for the purpose of the 2012 Senate election and the district would fall within the allowable deviation.

Senate District 17.

29. The current population for this district is 1,098,146 people. The district is overpopulated by 166,797, people, or 17.91%. Below is a map this district, taken from the California State Senate homepage, State Senate Districts.

Senate District 17



30. On the edge of this district is the city of Victorville (2010 population 115,903) in San Bernardino County. Removing the city of Victorville for the purpose of the 2012 Senate election would bring this district well within the allowable deviation.

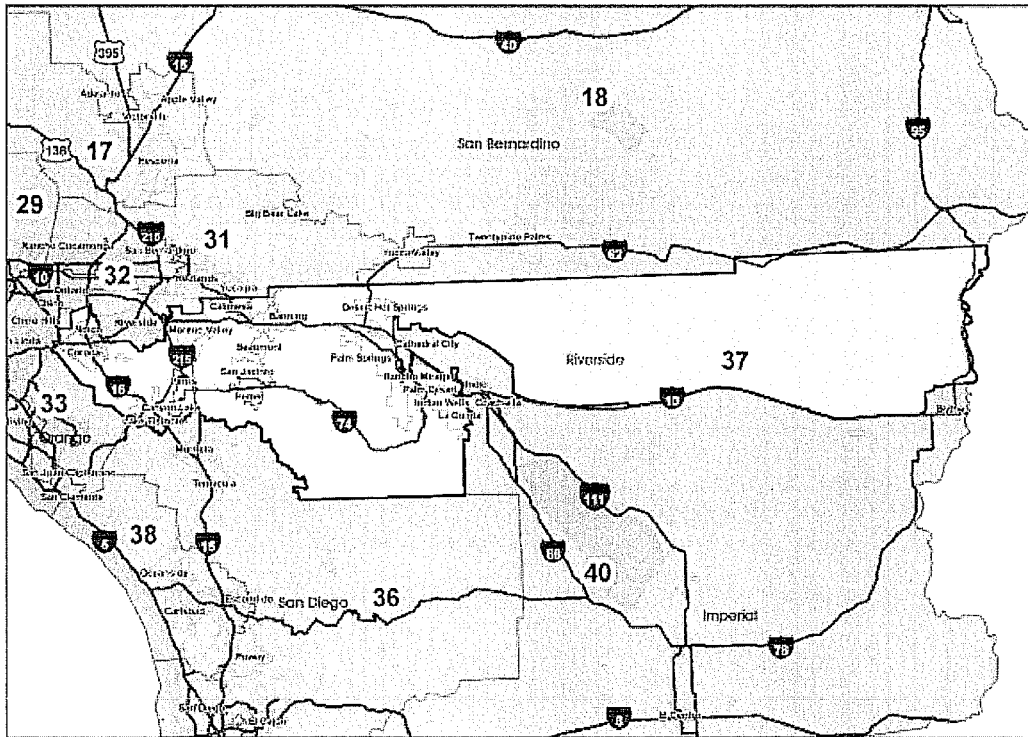
Senate District 37.

31. This district is entirely within Riverside County. The current population of this district is 1,215,876 people. The district is overpopulated by 284,527 people, or 30.55%. It is the most overpopulated district in the state. The Commission says that to bring this district within the allowable deviation “District 37 would need to shed 267,764 people.”

32. In redrawing Riverside County, the Commission shifted much of the population of old SD 37 to an even numbered district, new SD 28,

meaning that population would not elect a Senate under any circumstances until 2014. Generally this is the eastern Riverside County portion of the district.

Senate District 37



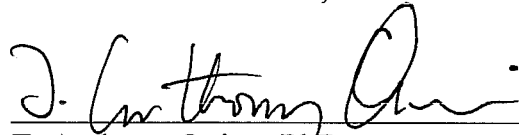
33. The cities making up the eastern portion, Palm Springs, Desert Hot Springs, Rancho Mirage, Indian Wells, Palm Desert and La Quinta have a combined population of 178,578 people. All these cities are shifted to the Commission’s new SD 28, so will not elect in 2012 under any circumstances. They can be removed from current SD 37. Adding the cities of Beaumont and Banning brings the population to 245,058 people. Adjoining unincorporated population could also be removed to bring the total “shed population” to 267,764, as the Commission says would be required.

34. Revising these three districts is simply a suggestion if the Court wishes to strictly apply the *Assembly v. Deukmejian* standard. But it need not do so. The current Senate district deviations are less than cited by

the Court in *Assembly v. Deukmejian* (a deviation of 75.4 percent between largest and smallest Senate districts). They are also less than the deviations in the Wyoming districts in *Brown v Thomson, supra*, (1983), a United States Supreme Court ruling after *Assembly v. Deukmejian*. Here a deviation of more than 80 percent for one district was found constitutional; applying that case to California, the Court could find SDs 5, 17 and 37 as currently constituted to be constitutional. And the deviations are less than the deviations for legislative districts in 1971 when the Court allowed all the old districts to remain in place for one more cycle. This is because the state grew at a far slower pace in this decade than it did in the decade of the 1960s.

The foregoing is true and correct and of my personal knowledge, or if stated on information and belief, I believe it is true and correct. If called as a witness, I could and would testify competently thereto.

Executed under penalty of perjury under the laws of the State of California this 19th day of December 2011 at Sacramento, California.


T. Anthony Quinn, Ph.D.

ATTACHMENT "A"

NESTING OF ASSEMBLY DISTRICTS
TO FORM SENATE DISTRICTS

In 2012, the odd-numbered Senate districts will be up for election. This nesting plan provides 40 Senate districts by nesting the 80 Commission-drawn Assembly districts, but care is taken to assign odd numbers to areas where the majority of the population is in currently odd-numbered districts. The numbering generally follows the Commission's numbering except where districts must be made odd or even. The even-numbered districts will not elect until 2014 and thus are not affected by the interim plan for 2012. Only the odd-numbered districts are affected.

Senate Districts 1 through 28, 30 through 33, and 35 through 40 are unaffected by this revision.

Nested Senate Districts 29 and 34 are changed from the earlier submission by switching the Assembly districts that would be nested. This corrects a numbering and deferral problem cited by the Commission in its return filing.

Senate District 29: Assembly Districts 55 and 68. Comment: This district covers parts of Los Angeles, Orange and San Bernardino Counties in the "Four Corners" area. (Elects in 2012).

Senate District 34: Assembly Districts 65 and 69. Comment: This district includes Santa Ana and other central Orange County communities. (Elects in 2014)

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 19, 2011, I served the following document(s) described as:

- **SECOND SUPPLEMENTAL DECLARATION OF DR. T. ANTHONY QUINN, PhD 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**

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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.

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 19, 2011 at Sacramento, California.


SHANNON DIAZ