

S198387

NO. S _____

IN THE SUPREME COURT OF CALIFORNIA

SUPREME COURT

FILED

DEC - 2 2011

Frederick K. Ohirich Clerk

Deputy

JULIE VANDERMOST

Petitioner,

vs.

DEBRA BOWEN, SECRETARY OF STATE
OF CALIFORNIA

Respondent.

**DECLARATION OF CHARLES H. BELL, JR. IN SUPPORT OF
VERIFIED PETITION FOR WRIT OF MANDATE OR WRIT OF
PROHIBITION**

Charles H. Bell, Jr., SBN 060553
Thomas W. Hiltachk, SBN 131215
Colleen C. McAndrews, SBN 128064
Paul T. Gough, SBN 077502
Brian T. Hildreth, SBN 214131
Ashlee N. Titus, SBN 227144
BELL, McANDREWS & HILTACHK, LLP
455 Capitol Mall, Suite 600
Sacramento, CA 95814
(916) 442-7757
(916) 442-7759
cbell@bmhlaw.com

Attorneys for Petitioner

RECEIVED

DEC - 2 2011

CLERK SUPREME COURT

NO. S _____

IN THE SUPREME COURT OF CALIFORNIA

JULIE VANDERMOST

Petitioner,

vs.

DEBRA BOWEN, SECRETARY OF STATE
OF CALIFORNIA

Respondent.

**DECLARATION OF CHARLES H. BELL, JR. IN SUPPORT OF
VERIFIED PETITION FOR WRIT OF MANDATE OR WRIT OF
PROHIBITION**

Charles H. Bell, Jr., SBN 060553
Thomas W. Hiltachk, SBN 131215
Colleen C. McAndrews, SBN 128064
Paul T. Gough, SBN 077502
Brian T. Hildreth, SBN 214131
Ashlee N. Titus, SBN 227144
BELL, McANDREWS & HILTACHK, LLP
455 Capitol Mall, Suite 600
Sacramento, CA 95814
(916) 442-7757
(916) 442-7759
cbell@bmhlaw.com

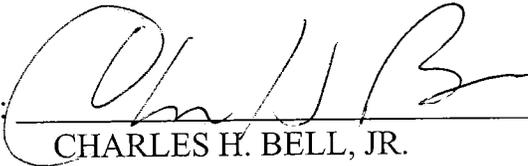
Attorneys for Petitioner

I, Charles H. Bell, Jr., declare as follows:

1. I am a licensed member of the State Bar of California and I am an attorney with the law firm of Bell, McAndrews & Hiltachk, LLP, attorneys for Petitioner Julie Vandermost in this action.
2. A true and correct copy of a letter from George Brown, Esq. and James Brosnahan, Esq. to George Waters, Deputy Attorney General, dated August 29, 2011 is attached hereto as **Exhibit A**.
3. A true and correct copy of a letter from George Waters, Deputy Attorney General to George Brown, Esq. and James Brosnahan, Esq. dated August 30, 2011 is attached hereto as **Exhibit B**.

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

Executed at Sacramento, CA this 25th day of November 2011

By: 
CHARLES H. BELL, JR.

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 2,** 2011, I served the following document(s) described as:

- **DECLARATION OF CHARLES H. BELL, JR. IN SUPPORT OF VERIFIED PETITION FOR WRIT OF MANDATE OR WRIT OF PROHIBITION**

on the following party(ies) in said action:

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

Attorney General's office
(Email & Hand Delivery)

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

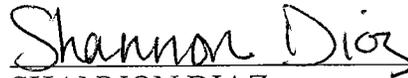
Attorney for Respondent
SECRETARY OF STATE
(Email & Hand Delivery)

X **BY U.S. MAIL:** By placing said document(s) in a sealed envelope and depositing said envelope, with postage thereon fully prepaid, in the United States Postal Service mailbox in Sacramento, California, addressed to said party(ies), in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal

cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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 December 2, 2011 at Sacramento, California.


SHANNON DIAZ

August 29, 2011

VIA E-MAIL AND HAND DELIVERY

George Waters, Esq.
Deputy Attorney General
California Department of Justice
1300 I Street
Sacramento, California 95814

Dear Mr. Waters:

On behalf of the California Citizens Redistricting Commission (the "Commission"), we write concerning the summary of the State Senate Districts Referendum, Summary No. 1499 (11-0028), prepared by your office and issued on August 26, 2011 (the "Summary"). The Summary reflects a misunderstanding of Article XXI of the California Constitution. In order to avoid misleading and confusing the voters during the referendum process, and to avert the inevitable inefficiencies and needless costs that would result if the referendum summary is later found to be invalid, we respectfully request that your office revise and reissue the Summary to accurately reflect California law.

First, the Summary states that the referendum petition itself, "if signed by the required number of voters," will "[p]lace the revised State Senate boundaries on the ballot and prevent them from taking effect unless approved by the voters at the next statewide election." However, Article XXI of the Constitution limits any subsequent remedy following a successful referendum to adjusting the Commission's maps to conform to the redistricting criteria in the Constitution: "[T]he California Supreme Court [shall issue an] order directing the appointment of special masters to *adjust* the boundary lines of that map *in accordance with the redistricting criteria requirements* set forth in subdivisions (d), (e) and (f)." (Cal. Const., art. XXI, § 2, subd. (j), italics added.) Thus, even if the Commission's maps were not approved by the voters, many if not all of the Senate Districts could remain in effect to the extent they are in compliance with the constitutional redistricting criteria (which the Commission strongly believes to be the case).

August 29, 2011
Page 2

Second, the Summary states that a referendum petition successfully filed with the Secretary of State will “[r]equire court-appointed officials to set interim boundaries for use in the next statewide election.” This is wrong, and seriously misleading.

Pursuant to Article XXI, section 3, subdivision (b)(2) of the Constitution, “[a]ny registered voter in this state may also file a petition for a writ of mandate or writ of prohibition to seek relief where a certified final map is subject to a referendum measure that is likely to qualify and stay the timely implementation of the map.” The California Supreme Court plainly has discretion to hear a petition for writ of mandamus concerning interim boundaries for the next election; the Court is not required to do so. (See *Wheelright v. County of Marin* (1970) 2 Cal.3d 448, 457 [“The exercise of jurisdiction in mandamus rests to a considerable extent in the wise discretion of the court.”].)

Moreover, even assuming the Court agreed to entertain a mandamus proceeding, there is nothing in Article XXI or anywhere else in the Constitution suggesting that the Court’s potential remedies would include “appoint[ing] officials to set interim boundaries for use in the next statewide election.” To the contrary, as discussed above, even if the referendum qualified and the majority of voters ultimately rejected the Commission’s maps, the remedy would be appointing special masters to “adjust” those maps, but only to the extent necessary to comply with the constitutional criteria. (Cal. Const., art. XXI, § 2, subd. (j).) As to an *interim* remedy—after a referendum qualifies but before the next statewide election—there is clear historical precedent for the Court allowing the election to go forward using the newly drawn maps. (See *Assembly v. Deukmejian* (1982) 30 Cal.3d 638, 657-679.)

Allowing signatures to be gathered using the Summary provided by the Attorney General on August 26, 2011 risks confusing the voters and brings needless uncertainty to the referendum process. Courts have repeatedly explained that the Attorney General’s summary “cannot be misleading,” *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 243, and must “reasonably inform the voter of the character and real purpose of the proposed measure.” (*Boyd v. Jordan* (1934) 1 Cal.2d 468, 472.) Accordingly, the Commission respectfully requests that the Attorney General rewrite the Summary to conform to California law.

August 29, 2011
Page 3

We look forward to discussing this matter with you at the earliest opportunity.

Very truly yours,

/s/ George H. Brown
George H. Brown
Gibson, Dunn & Crutcher LLP

/s/ James Brosnahan
James Brosnahan
Morrison & Foerster LLP

cc: Debra Bowen, California Secretary of State
Charles H. Bell, Jr., Esq.
Kirk Miller

I01140785.2

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 323-8050
Facsimile: (916) 324-8835
E-Mail: George.Waters@doj.ca.gov

August 30, 2011

George H. Brown
Gibson, Dunn & Crutcher LLP
1881 Page Mill Road
Palo Alto, CA 94304-1211

James J. Brosnahan
Morrison Foerster
425 Market Street
San Francisco, CA 94105-2482

RE: Referendum of State Senate Redistricting Plan, No. 11-0028

Gentlemen:

Thank you for your August 29, 2011 letter regarding the circulating title and summary of the State Senate Redistricting Plan referendum (No. 11-0028).

As you know, upon receipt of a proposed referendum, the Attorney General must, within 10 days, prepare a circulating title and summary of the chief purpose and points of the proposed measure and provide a copy of the circulating title and summary to the Secretary of State. *See Cal. Elec. Code § 9006*. The title and summary "must be true and impartial, and not argumentative or likely to create prejudice for or against the measure." *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal. 3d 208, 243 (citations omitted). However, it "need not contain a complete catalogue or index of all of the measure's provisions and 'if reasonable minds may differ as to the sufficiency of the title, the title should be held sufficient.'" *Id.* (citations omitted).

We have carefully reviewed your letter, and, while we appreciate that reasonable minds can differ as to what should go into the referenced title and summary, we believe that it is true and impartial and is unlikely to create prejudice for or against the referendum. We therefore respectfully deny your request that we withdraw the circulating title and summary and issue a new and different one. Thank you.

Sincerely,

/s/ George Waters
GEORGE WATERS
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

GW:jt

cc: Debra Bowen, California Secretary of State
Charles H. Bell, Jr., Esq.
Kirk Miller

SA2011102161