

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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January 4, 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*
Supreme Court of California, Case No. S198387
Supplemental Letter Brief in response to the Court's December 29, 2011 Order

Dear Chief Justice and Associate Justices:

Respondent Debra Bowen, California Secretary of State (Secretary), respectfully submits this letter brief in response 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?

Elections officials use a random sampling process to make an initial determination whether an initiative or referendum petition clearly qualifies for the ballot, clearly fails to qualify for the ballot, or may qualify for the ballot after a full check of all petition signatures. The process is set out in Elections Code section 9030. In a nutshell, the process is this:

- County elections officials determine the total number of signatures attached to petitions and report that number to the Secretary. If the total number (the

raw count) is 100% or more of the required number, the Secretary immediately notifies elections officials of that fact. (§ 9030(b), (c).)¹

- Within the next 30 days, excluding weekends and holidays, elections officials determine the validity of a random sample of either 500 or 3% of the signatures, whichever is larger, and certify the result to the Secretary.² (§ 9030(d), (e).)
- The Secretary then tabulates the statewide results. If the results, projected to 100% of all raw signatures, establish an estimated number of valid signatures that is under 95% of the required number, the petition is deemed to have failed to qualify. If the results establish an estimated number of valid signatures that is over 110% of the required number, the petition is deemed to have qualified. (§ 9030(f), (g).)
- If the results establish that the estimated number of valid signatures is within 95% to 110% of the number needed, the Secretary orders that each signature be examined and verified. (§ 9031(a).)

There are four instances in the last five years where a statewide petition went through both random sampling and a full count:

MEASURE	RANDOM SAMPLE VALIDITY RATE	FULL COUNT VALIDITY RATE
#1226. Community colleges, 2009. ³	71.38%	71.08%
#1271. Children's hospital bond, 2009. ⁴	69.30%	70.84%

¹ Unless otherwise noted, all citations are to the Elections Code.

² The details of the random sampling process are set forth at California Code of Regulations, title 2, section 20540.

³ See final random sample and full check spreadsheets for "#1226. Community Colleges. Funding. Governance. Fees. Initiative Constitutional Amendment and Statute." (Decl. of Charles H. Bell, Jr. [12/2/11], at pp. 39-40.)

MEASURE	RANDOM SAMPLE VALIDITY RATE	FULL COUNT VALIDITY RATE
#1394, Limits on terms in office, 2011. ⁵	75.58%	74.36%
Americans Elect. Political body attempting to qualify for ballot. ⁶	69.81%	68.08%

To respond to the Court's question, respondent is confident that the random sampling process accurately does what it is supposed to do: It determines whether the number of valid signatures on petitions is within a broad range, 95% to 110%. However, the sampling technique is not designed to give reliable results at a greater level of precision. The chart in the preceding paragraph suggests that the sampling process is reasonably accurate within a margin of about 1.5%, but respondent is reluctant to draw firm conclusions from a sample that consists of only four examples.

Certainly respondent believes that, as a general statement, petitions that test at the high end of the spectrum are more likely to qualify than those that test at the low end of

(...continued)

⁴ See final random sample and full check spreadsheets for "#1271. Children's Hospital Bond Act. Grant Program. Statute." (Decl. of Charles H. Bell, Jr. [12/2/11], at pp. 48-49.)

⁵ See final random sample and full check spreadsheets for "#1394. Limits on Legislators' Terms in Office. Initiative Constitutional Amendment." (Decl. of Charles H. Bell, Jr. [12/2/11], at pp. 65-66.)

⁶ See final random sample and full check spreadsheets for "Americans Elect. Political Body Attempting to qualify for the June 5, 2012, Primary Election." (Attached as Exh. A to this letter. Also available online at the Secretary of State's website: <http://www.sos.ca.gov/elections/ccrov/pdf/2011/november/11105km.pdf> (random sample), <http://www.sos.ca.gov/elections/ballot-measures/pdf/americans-elect.pdf> (full check.)

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the spectrum. But to use the completed sampling process to determine at what point a petition becomes likely to qualify, or to determine whether a 101% random sample petition is more likely to qualify than a 100% random sample petition, is beyond the capacity of the process.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Waters', with a long horizontal flourish extending to the right.

GEORGE WATERS
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

GW:

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EXHIBIT A



DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS

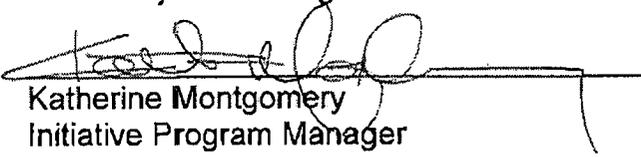
1500 11th Street, 5th Floor | Sacramento, CA 95814 | Tel (916) 657-2166 | Fax (916) 653-3214 | www.sos.ca.gov

November 2, 2011

County Clerk/Registrar of Voters (CC/ROV) Memorandum #11105

TO: All County Clerks/Registrar of Voters

FROM:


Katherine Montgomery
Initiative Program Manager

RE: Political Party: Full Check of Americans Elect Petitions

Based on the random sample verification results from the 58 counties, the above-named political body attempting to qualify by petition will not qualify by random sample as the number of signatures falls between 95% and 110% of the number of signatures required.

Therefore, pursuant to Elections Code section 9031, you are required to verify all of the signatures by December 19, 2011 (30 working days from the date of this notice). This notice does not apply to those counties that received 500 or less signatures and verified all of the signatures during the random sample verification.

If you have any questions, please do not hesitate to contact me at (916) 657-2423. Thank you.

Americans Elect
Political Body Attempting to Qualify for the June 5, 2012, Primary Election

COUNTY	PETITION	SOS	SOS	RANDOM			VALID			VALID OR	%
	FILED	REC'D	REC'D	RAW	SAMPLE/	VALID	INVALID	DUP.	PROJ. VALID		
	W/COUNTY	RAW	RANDOM	COUNT	FULL CHECK	SIGS.					
1. ALAMEDA	08/23/11	09/23/11	09/23/11	61,159	1,835	1,333	502	2	38,306	69.5%	
2. ALPINE	09/26/11	09/26/11		0					0	0.0%	
3. AMADOR	07/29/11	08/03/11	08/18/11	787	500	398	102	10	617	78.5%	
4. BUTTE	08/26/11	09/07/11	09/21/11	17,018	511	409	102	0	13,621	80.0%	
5. CALAVERAS	07/29/11	08/04/11	08/08/11	1,275	500	385	115	8	950	74.5%	
6. COLUSA	07/29/11	07/29/11	08/18/11	183	183	139	44	4	139	78.0%	
7. CONTRA COSTA	09/09/11	09/15/11	10/07/11	55,135	1,654	1,219	435	3	37,401	67.8%	
8. DEL NORTE	08/12/11	08/24/11	10/17/11	12	12	7	5	0	7	58.3%	
9. EL DORADO	08/12/11	08/18/11	10/06/11	2,513	500	411	89	4	1,985	79.0%	
10. FRESNO	08/25/11	09/01/11	10/21/11	51,023	1,531	1,129	402	3	34,394	67.4%	
11. GLENN	08/01/11	08/22/11	08/22/11	409	409	311	98	11	311	76.0%	
12. HUMBOLDT	08/12/11	08/18/11	09/26/11	845	845	675	170	4	675	79.9%	
13. IMPERIAL	08/11/11	08/12/11	10/05/11	944	500	326	174	13	594	62.9%	
14. INYO	08/12/11	08/15/11	08/24/11	78	78	61	17	0	61	78.2%	
15. KERN	08/15/11	08/25/11	09/29/11	34,379	1,031	720	311	1	22,930	66.7%	
16. KINGS	08/12/11	08/18/11	10/17/11	1,459	500	330	170	3	948	64.8%	
17. LAKE	07/29/11	08/04/11	10/03/11	1,177	500	384	116	2	898	76.3%	
18. LASSEN	08/12/11	08/18/11	10/06/11	1,644	500	375	125	2	1,218	74.1%	
19. LOS ANGELES	09/09/11	09/20/11	11/02/11	519,143	15,574	11,409	4,165	28	352,284	67.9%	
20. MADERA	08/12/11	08/17/11	10/03/11	4,584	500	405	95	3	3,488	76.1%	
21. MARIN	08/15/11	08/18/11	10/07/11	9,070	500	422	78	3	6,722	74.1%	
22. MARIPOSA	07/29/11	08/04/11	09/28/11	210	210	148	82	4	148	70.5%	
23. MENDOCINO	07/29/11	07/29/11	09/26/11	555	555	476	79	9	476	85.8%	
24. MERCED	08/15/11	08/22/11	09/21/11	2,231	500	376	124	4	1,616	72.4%	
25. MODOC	07/29/11	08/04/11	08/04/11	25	25	17	8	0	17	68.0%	
26. MONO	08/01/11	08/08/11	08/08/11	30	30	23	7	0	23	78.7%	
27. MONTEREY	08/12/11	08/15/11	10/18/11	3,930	500	375	125	1	2,894	73.6%	
28. NAPA	08/29/11	09/01/11	09/29/11	3,851	500	352	148	1	2,524	69.1%	
29. NEVADA	08/12/11	08/12/11	10/18/11	4,934	500	373	127	4	3,331	67.5%	
30. ORANGE	09/09/11	09/21/11	11/01/11	119,500	3,585	2,662	923	2	86,578	72.5%	
31. PLACER	08/12/11	08/16/11	08/22/11	10,029	500	395	105	2	7,158	71.4%	
32. PLUMAS	07/29/11	08/03/11	08/03/11	192	192	154	38	5	154	80.2%	
33. RIVERSIDE	09/09/11	09/19/11	09/29/11	93,456	2,804	2,026	778	1	66,448	71.1%	
34. SACRAMENTO	08/23/11	09/01/11	09/27/11	78,427	2,353	1,841	712	2	52,540	67.0%	
35. SAN BENITO	07/29/11	08/03/11	10/06/11	437	437	352	85	0	352	80.5%	
36. SAN BERNARDINO	09/09/11	09/21/11	10/20/11	105,697	3,171	2,336	835	4	73,554	69.6%	
37. SAN DIEGO	09/09/11	09/19/11	10/11/11	160,930	4,828	3,851	977	9	118,664	73.7%	
38. SAN FRANCISCO	08/23/11	08/29/11	09/28/11	56,436	1,893	1,193	500	1	38,691	68.8%	
39. SAN JOAQUIN	09/09/11	09/20/11	10/10/11	30,582	917	632	285	0	21,077	68.9%	
40. SAN LUIS OBISPO	07/29/11	08/02/11	10/20/11	5,024	500	367	133	1	3,597	71.6%	
41. SAN MATEO	08/15/11	08/18/11	10/24/11	7,689	500	369	131	0	5,660	73.8%	
42. SANTA BARBARA	08/15/11	08/17/11	10/26/11	3,882	500	370	130	0	2,873	74.0%	
43. SANTA CLARA	09/09/11	09/20/11	10/04/11	34,594	1,038	755	283	0	25,162	72.7%	
44. SANTA CRUZ	08/15/11	08/16/11	09/26/11	5,572	500	330	170	3	3,338	59.9%	
45. SHASTA	08/12/11	08/22/11	10/04/11	5,935	500	401	99	3	4,373	73.7%	
46. SIERRA	08/12/11	09/02/11	09/02/11	48	48	39	9	1	39	81.3%	
47. SISKIYOU	08/12/11	08/16/11	08/16/11	470	470	367	103	0	367	78.1%	
48. SOLANO	08/23/11	08/26/11	10/04/11	24,822	745	496	249	1	15,449	62.2%	
49. SONOMA	08/29/11	09/07/11	09/08/11	16,258	500	401	99	0	13,039	80.2%	
50. STANISLAUS	08/25/11	08/29/11	10/06/11	18,793	564	424	140	0	14,128	75.2%	
51. SUTTER	08/12/11	08/18/11	09/23/11	4,310	500	389	111	1	3,287	76.3%	
52. TEHAMA	07/29/11	08/02/11	10/04/11	1,149	500	414	86	1	948	82.5%	
53. TRINITY	08/01/11	08/04/11	11/02/11	99	99	72	27	0	72	72.7%	
54. TULARE	08/12/11	08/18/11	10/04/11	15,284	500	344	156	1	9,612	82.9%	
55. TUOLUMNE	07/29/11	08/22/11	11/01/11	2,494	2,494	1,724	770	161	1,724	69.1%	
56. VENTURA	09/09/11	09/20/11	09/29/11	34,148	1,024	766	258	0	25,544	74.8%	
57. YOLO	08/26/11	08/31/11	09/23/11	3,281	500	355	145	3	2,220	67.7%	
58. YUBA	08/26/11	08/30/11	10/03/11	3,397	500	372	128	3	2,408	70.9%	
TOTAL:				1,621,318	63,445	46,985	16,460	330	1,127,634	69.81%	

Americans Elect
Political Body Attempting to Qualify for the June 5, 2012, Primary Election

COUNTY	PETITION SOS		SOS		RAW		VALID			VALID	%
	FILED W/ COUNTY	REC'D RAW	REC'D FULL CHECK		COUNT	FULL CHECK	SIGS.	INVALID	DUP.		
1. ALAMEDA	08/23/11	09/23/11	12/16/11	Full Check	61,159	61,159	41,399	19,760	2,156	41,399	75.1%
2. ALPINE	09/26/11	09/26/11		Notice:	0	0	0	0	0	0	0.0%
3. AMADOR	07/29/11	08/03/11	11/10/11	11/02/2011	787	787	616	171	24	616	78.3%
4. BUTTE	08/26/11	09/07/11	11/28/11	Full Check	17,017	17,017	11,981	5,036	1,044	11,981	70.4%
5. CALAVERAS	07/29/11	08/04/11		Due:	1,275	0	0	0	0	0	0.0%
6. COLUSA	07/29/11	07/29/11	08/18/11	12/19/2011	183	183	139	44	4	139	76.0%
7. CONTRA COSTA	09/09/11	09/15/11	12/13/11		55,129	55,129	36,332	18,797	1,932	36,332	65.9%
8. DEL NORTE	08/12/11	08/24/11	10/17/11		12	12	7	5	0	7	58.3%
9. EL DORADO	08/12/11	08/18/11			2,513	0	0	0	0	0	0.0%
10. FRESNO	08/25/11	09/01/11	12/12/11		51,023	51,023	35,510	15,513	1,950	35,510	69.6%
11. GLENN	08/01/11	08/22/11	08/22/11		409	409	311	98	11	311	76.0%
12. HUMBOLDT	08/12/11	08/18/11	09/26/11		845	845	675	170	4	675	79.9%
13. IMPERIAL	08/11/11	08/12/11	11/14/11		944	944	581	363	31	581	61.5%
14. INYO	08/12/11	08/15/11	08/24/11		78	78	61	17	0	61	78.2%
15. KERN	08/15/11	08/25/11	12/07/11		34,379	34,379	22,725	11,654	1,836	22,725	66.1%
16. KINGS	08/12/11	08/18/11	11/07/11		1,459	1,459	943	516	31	943	64.6%
17. LAKE	07/29/11	08/04/11	11/17/11		1,177	1,177	916	261	15	916	77.8%
18. LASSEN	08/12/11	08/18/11	11/29/11		1,644	1,644	1,268	376	22	1,268	77.1%
19. LOS ANGELES	09/09/11	09/20/11	12/13/11		519,143	519,143	343,077	176,066	30,512	343,077	66.1%
20. MADERA	08/12/11	08/17/11	11/17/11		4,584	4,584	3,374	1,210	266	3,374	73.6%
21. MARIN	08/15/11	08/16/11	12/19/11		9,070	9,070	7,132	1,938	380	7,132	78.6%
22. MARIPOSA	07/29/11	08/04/11	09/28/11		210	210	148	62	4	148	70.5%
23. MENDOCINO	07/29/11	07/29/11	09/26/11		555	555	476	79	9	476	85.8%
24. MERCED	08/15/11	08/22/11	11/21/11		2,231	2,231	1,594	637	41	1,594	71.4%
25. MODOC	07/29/11	08/04/11	08/04/11		25	25	17	8	0	17	68.0%
26. MONO	08/01/11	08/08/11	08/08/11		30	30	23	7	0	23	76.7%
27. MONTEREY	08/12/11	08/15/11	11/29/11		3,930	3,930	2,816	1,114	55	2,816	71.7%
28. NAPA	08/29/11	09/01/11	11/15/11		3,649	3,649	2,589	1,060	68	2,589	71.0%
29. NEVADA	08/12/11	08/12/11			4,934	0	0	0	0	0	0.0%
30. ORANGE	09/09/11	09/21/11	12/19/11		119,500	119,500	80,413	39,087	2,778	80,413	67.3%
31. PLACER	08/12/11	08/16/11	12/01/11		10,029	10,029	7,507	2,522	500	7,507	74.9%
32. PLUMAS	07/29/11	08/03/11	08/03/11		192	192	154	38	5	154	80.2%
33. RIVERSIDE	09/09/11	09/19/11	12/16/11		93,456	93,456	67,103	26,353	0	67,103	71.8%
34. SACRAMENTO	08/23/11	09/01/11	12/14/11		78,427	78,427	51,816	26,611	2,365	51,816	66.1%
35. SAN BENITO	07/29/11	08/03/11	10/06/11		437	437	352	85	0	352	80.5%
36. SAN BERNARDINO	09/09/11	09/21/11	12/14/11		105,697	105,697	70,710	34,987	2,376	70,710	66.9%
37. SAN DIEGO	09/9/11	09/19/11	12/12/11		160,926	160,926	120,713	40,213	7,571	120,713	75.0%
38. SAN FRANCISCO	08/23/11	08/29/11	12/07/11		56,436	56,436	34,555	21,881	3,218	34,555	61.2%
39. SAN JOAQUIN	09/09/11	09/20/11	12/15/11		30,582	30,582	21,344	9,238	1	21,344	69.8%
40. SAN LUIS OBISPO	07/29/11	08/02/11	12/15/11		5,024	5,024	3,736	1,288	57	3,736	74.4%
41. SAN MATEO	08/15/11	08/18/11	12/12/11		7,669	7,669	5,309	2,360	245	5,309	69.2%
42. SANTA BARBARA	08/15/11	08/17/11	12/01/11		3,882	3,882	2,743	1,139	63	2,743	70.7%
43. SANTA CLARA	09/09/11	09/20/11	12/06/11		34,594	34,594	22,142	12,452	379	22,142	64.0%
44. SANTA CRUZ	08/15/11	08/16/11	11/21/11		5,572	5,572	3,615	1,957	0	3,615	64.9%
45. SHASTA	08/12/11	08/22/11			5,935	0	0	0	0	0	0.0%
46. SIERRA	08/12/11	09/02/11	09/02/11		48	48	39	9	1	39	81.3%
47. SISKIYOU	08/12/11	08/16/11	08/16/11		470	470	367	103	0	367	78.1%
48. SOLANO	08/23/11	08/26/11	11/30/11		24,822	24,822	15,497	9,325	992	15,497	62.4%
49. SONOMA	08/29/11	09/07/11	12/13/11		16,258	16,258	12,068	4,190	850	12,068	74.2%
50. STANISLAUS	08/25/11	08/29/11	12/14/11		18,793	18,793	13,866	4,927	2	13,866	73.8%
51. SUTTER	08/12/11	08/18/11	11/16/11		4,310	4,310	3,013	1,297	281	3,013	69.9%
52. TEHAMA	07/29/11	08/02/11	11/14/11		1,149	1,149	937	212	10	937	81.5%
53. TRINITY	08/01/11	08/04/11	11/02/11		99	99	72	27	0	72	72.7%
54. TULARE	08/12/11	08/18/11	12/12/11		15,284	15,284	10,428	4,856	804	10,428	68.2%
55. TUOLUMNE	07/29/11	08/22/11	11/01/11	RANGE:	2,494	2,494	1,724	770	161	1,724	69.1%
56. VENTURA	09/09/11	09/20/11	12/19/11		34,148	34,148	24,440	9,708	2,172	24,440	71.6%
57. YOLO	08/26/11	08/31/11	11/21/11	100% =	3,281	3,281	2,106	1,175	4	2,106	64.2%
58. YUBA	08/26/11	08/30/11	11/18/11	1,030,040	3,410	3,410	2,364	1,046	112	2,364	69.3%
TOTAL:					1,621,318	1,606,661	1,093,843	512,818	65,342	1,093,843	68.08%

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 4, 2012, I served the attached

Supplemental 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:

SEE ATTACHED SERVICE LIST

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 4, 2012, at Sacramento, California.

Brenda Apodaca

Declarant

Brenda Apodaca

Signature

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