S196493, S196852

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

JULIE VANDERMOST,

GEORGE RADANOVICH, ET AL.,

Petitioners,

v.

DEBRA BOWEN, SECRETARY OF STATE OF CALIFORNIA,

Respondent,

CITIZENS REDISTRICTING COMMISSION.

Real Party in Interest.

Filed Pursuant to Cal. Const., Art. XXI, § 3(b)(1)
and the Court's Order dated September 16, 2011

CONSOLIDATED PRELIMINARY OPPOSITION TO PETITIONS FOR WRIT OF MANDAMUS OR PROHIBITION

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CERTIFICATE OF INTERESTED ENTITIES AND PERSONS

The undersigned certifies that the Citizens Redistricting Commission knows of no person or entity that should be listed pursuant to rule 8.208(e) of the Rules of Court.

Respectfully submitted,

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"Appen." ..... Concurrently Filed Appendix of Exhibits

"Appen. Sec." ..... Concurrently Filed Appendix of Secondary Sources

"Quinn Dec. (R'vich)" ..... Quinn Declaration filed with Radanovich Petition

"Quinn Dec. (V'most)" ..... Quinn Declaration filed with Vandermost Petition

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INTRODUCTION

The State Senate and U.S. Congressional districts certified by the Citizens Redistricting Commission (the "Commission") are the result of an extraordinary, multi-month process mandated by the Voters First Act, which amended the California Constitution to vest redistricting authority in the Commission and required the Commission to "conduct an open and transparent process enabling full public consideration of and comment on the drawing of district lines." (Cal. Const., art. XXI, § 2, subd. (b).)

The public's participation in this redistricting process—and the Commission's careful consideration of input by citizens and groups throughout the state—is unprecedented. Pursuant to its constitutional mandate, the Commission held more than 100 public hearings in locations across California; heard from more than 2,700 speakers; reviewed thousands of written submissions; and considered proposed maps from dozens of citizens and groups as diverse as the State's citizenship. No person was excluded. All of the Commission's deliberations—and all public submissions to the Commission—are available for public review on the Commission's website.

The Commission is an independent, non-partisan constitutional body whose 14 members were selected by a rigorous process designed to create a fair and capable Commission. The Commission was aided by mapping consultants and legal counsel and had unfettered access to all data previously used in the Legislature's redistricting efforts. The Commission's resulting maps comply in every respect with the Constitution and its current redistricting criteria, and provide for fair and effective representation.

The Petitioners, by contrast, rely exclusively on the unsupported factual speculation and legal conclusions of a single, shared "expert"—a partisan

blogger whose preferences they would substitute for the Commission's public process, measured deliberations, and careful exercise of its constitutional mandate. In doing so, Petitioners urge application of the wrong standard of review—arguing that the Commission's application of the constitutional redistricting criteria and its line-drawing decisions are subject to de novo review, rather than the high level of deference this Court and the U.S. Supreme Court have always afforded redistricting plans by the Legislature *or other body* vested with redistricting authority and the complex balancing of multiple factors that it entails.

In identical language (apparently copied from the first-filed petition) the Petitions also suffer the common fatal flaw of misstating (and conflating) Article XXI's current redistricting criteria. (Cal. Const., art. XXI, § 2, subd. (d)(1)-(6).) Petitioners fail to recognize that Article XXI, as amended by Propositions 11 and 20, does not endorse entirely the "recommended criteria" used by special masters in this Court's prior decisions and instead establishes different criteria, in different order of priority, which the Commission applied correctly. Petitioners also ignore that, pursuant to current Article XXI, lower-level redistricting criteria—such as the relative "compactness" of districts—must be balanced with and sometimes subordinated to higher-level criteria, such as compliance with the strict equal population requirement and with the federal Voting Rights Act ("VRA").

Each of the claims in the Vandermost Petition, which challenges State Senate districts drawn by the Commission, is legally flawed and should be summarily rejected:

- Its First Cause of Action alleges violation of "geographic compactness" without acknowledging the demands of four higher-

level constitutional criteria and without supporting precedent of any kind. It also alleges that the Commission failed to properly divide the state into geographic regions, an approach followed by the 1991 court-appointed special masters, but in no way required by current Article XXI or any applicable law (nor necessary given advances in map-drawing technology during the last two decades).

- Its Second Cause of Action for "unnecessary division of counties" similarly ignores the demands of higher-level criteria, including the top-level priority of strict adherence to equal population, and ignores that the fourth-level criterion on which Vandermost relies requires that equal consideration be given to the integrity of other political divisions, including cities and local communities of interest. As with regard to her First Cause of Action, Vandermost presents no precedent supporting this claim.

- Its Third Cause of Action for violation of the VRA fails on its face to state a claim since it alleges (1) no retrogression from established benchmarks as required by VRA Section 5, and (2) no potential "majority-minority" district, which is a first pre-condition to a VRA Section 2 claim.

- And its Fourth Case of Action, based on "likely qualification" of a referendum fails on its face because (1) it alleges no facts showing that the referendum is likely to qualify, and (2) likely qualification is not a basis under Article XXI for staying the certified maps.

The Radanovich Petition makes two inconsistent claims with regard to Los Angeles County Congressional Districts: that the Commission

simultaneously failed to take race into account to the detriment of African Americans in violation of the VRA, and *did* take race into account to the benefit of African Americans in violation of the Fourteenth Amendment. Like Vandermost's claims, all claims in the Radanovich Petition are legally flawed and should be summarily denied:

- Its First Cause of Action for "racial gerrymandering" in violation of the Fourteenth Amendment fails to allege let alone demonstrate any facts showing that race was the predominant factor in drawing the challenged Los Angeles County districts under controlling Supreme Court precedent that requires a showing that the redistricting decision is unexplainable on grounds other than race. Indeed, the districts are the result of an extensive process that considered and correctly applied the race-neutral redistricting criteria in Article XXI.

- Its Second Cause of Action—for alleged failure to create a majority African American district under VRA Section 2—fails on its face for failure to show, as a necessary precondition, that majority voters in the Los Angeles County region at issue regularly vote as a bloc to defeat African American-preferred candidates. In fact, the Commission heard overwhelming evidence, including from leaders of the African American community, that African Americans in this region of Los Angeles have a long history of success in electing candidates of their choice.

- Its Third and Fourth Causes of Action for violation of "geographic compactness" and "unnecessary division of cities" are based on the identical flawed legal analysis used by Vandermost. Like the Vandermost claims, they fail to take into account the demands of

higher level criteria—including the need to create majority Latino Districts to comply with VRA Section 2—and allege no supporting facts or supporting legal precedent, relying only on the opinions and preference of their proffered expert.

As explained in detail herein, with regard to every challenged district, the Commission considered and applied faithfully the protections of the U.S. Constitution and the Voting Rights Act, and all other Article XXI redistricting criteria, in the order of priority mandated by the California Constitution. None of the Petitioners' challenges to the certified maps have merit, and each can and should be summarily rejected.

FACTUAL BACKGROUND

A. Proposition 11 (the Voters First Act)

In adopting Proposition 11 in 2008, the people of California amended the California Constitution and created a new constitutional body—the independent, 14-member Commission—tasked with responsibility for drawing Senate (and other) district lines following each U.S. Census.[1]

Proposition 11 responded to criticism of a legislative redistricting process that lacked transparency and favored incumbents. Its passage amended the Constitution to provide that the Commission shall, among other things,

> (1) conduct an open and transparent process enabling full public consideration of and comment on the

[1] The Voters First Act, enacted by passage of Proposition 11, is contained in Article XXI of the California Constitution and Government Code sections 8251 through 8253.6.

> drawing of district lines; (2) draw district lines according to the redistricting criteria specified in this article; and (3) conduct themselves with integrity and fairness.

(Cal. Const., art. XXI, § 2, subd. (b).)

Article XXI, as amended, establishes six criteria that the Commission must consider in drawing new district lines, and the order of priority in which these criteria are to be applied. (Cal. Const., art. XXI, § 2, subd. (d).) These criteria are identified and discussed in the Legal Argument, Section I, *post*.

B. Proposition 20

In November 2010, the voters approved Proposition 20, further amending Article XXI of the California Constitution to direct the Commission to also handle redistricting for U.S. Congressional districts.

Proposition 20 also defined the term "community of interest" in Article XXI, section 2, subdivision (d)(4); and it changed the date by which the Commission must submit certified maps to the Secretary of State from September 15 to August 15, 2011—and on August 15 in each year ending in the number one thereafter. (Cal. Const., art. XXI, § 2, subd. (g).)

C. The Selection of a Fair and Impartial Commission

The Voters First Act established a selection process for Commissioners that is rigorous, fair, and "designed to produce a commission that is independent from legislative influence and reasonably representative of this State's diversity." (Cal. Const., art. XXI, § 2, subd. (c)(1).)

The Voters First Act requires the State Auditor—a state officer independent of the executive and legislative branches—to select

Commissioners from a broad, diverse and qualified pool of applicants. (Gov. Code, §§ 8251 et seq.) The State Auditor undertook an extensive statewide outreach program to attract a large pool of qualified applicants, including through mainstream and foreign-language media, the Internet, and staff responsible for telephone and email communications. More than 36,000 applications were submitted. (Appen. 640.)

An independent Applicant Review Panel comprised of licensed independent auditors then screened applicants for the Commission. (Gov. Code, § 8252, subd. (b).) This panel reviewed thoroughly all applicants who satisfied statutory pre-screening criteria, including rigorous conflict-of-interest rules. (Gov. Code, § 8252, subd. (a)(2) & (d).) The Review Panel's meetings, interviews and deliberations were all open to the public—and broadcast live on the Internet and archived for later review.[2]

The Applicant Review Panel selected 60 qualified applicants as potential Commissioners: 20 registered Democrats; 20 registered Republicans; and 20 minority party, independent, or "decline to state" voters. (Gov. Code, § 8252, subd. (d).) Leaders of the Democratic and Republican parties in the Legislature then were permitted to review the qualified applicants and to strike a subset, to further minimize perceived or actual partisan leanings. (*Id.*, § 8252, subd. (e).) The remaining pool of qualified applicants consisted of 12 registered Democrats, 12 Republicans, and 12 voters unaffiliated with a major party. (*Ibid.*) From this remaining pool, the State Auditor randomly selected three Democrats, three Republicans, and two voters unaffiliated with a major party to serve as the first eight Commissioners. (Gov. Code, § 8252, subd. (f).)

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[2] <http://wedrawthelines.ca.gov/selection.html> (Oct. 10, 2011).

The extraordinary process for selecting a qualified and impartial Commission continued: The first eight Commissioners reviewed the remaining pool of qualified applicants and appointed an additional six. The applicants were "chosen based on relevant analytical skills and ability to be impartial" as well as "to ensure the commission reflects this state's diversity, including, but not limited to, racial, ethnic, geographic, and gender diversity." (Gov. Code, § 8252, subd. (g).)

The full Commission is comprised of five registered Republicans, five registered Democrats, and four registered voters unaffiliated with either major political party. (Cal. Const., art. XXI, § 2, subd. (c)(2).)[3] Approval of final redistricting maps requires a supermajority of at least nine affirmative votes, which must include at least three votes of the Republican members, three votes of the Democratic members, and three votes of the unaffiliated members of the Commission. (Cal. Const., art. XXI, § 2, subd. (b)(5).)

The Commissioners are sworn to serve in a manner that is "impartial and that reinforces public confidence in the integrity of the redistricting process." (Cal. Const., art. XXI, § 2, subd. (c)(6).) They are prohibited from holding elected office for ten years following their appointment on the Commission, and cannot hold appointed office or work as a lobbyist or political consultant for five years following appointment. (*Ibid.*)

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[3] The Commissioners' biographical information is contained in the concurrently filed Appendix of Exhibits at pages 631-636.

D. The Commission's Open and Extensive Public Hearing and Map-Drawing Process

In reaction to the backroom redistricting process previously conducted by the Legislature, the Constitution now requires "an open and transparent process enabling full public consideration of and comment on the drawing of district lines." (Cal. Const., art. XXI, § 2, subd. (b).)

The Commission took very seriously its mandate to "establish and implement an open hearing process for public input and deliberation" and to conduct an "outreach program to solicit broad public participation" in the redistricting process. (Gov. Code, § 8253, subd. (a)(7).) For example:

i. The Commission solicited testimony through extensive public outreach involving mainstream and foreign-language media, the Commission's website, social media, and through a long list of organizations, including, e.g., the Chamber of Commerce, Common Cause, the League of Women Voters, MALDEF, the NAACP, and the Asian Pacific American Legal Center (Appen. 643-644);[4]

ii. From the start of the redistricting process in January 2011 until August 2011, the Commission held 34 public input meetings in 32 locations across the state. Meetings were scheduled to be convenient for average citizens—typically during early evening hours at a government building or school—and many extended hours longer than scheduled to accommodate speakers. More than 2,700 people gave testimony or spoke at the public input hearings (Appen. 643);

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[4] Additional organizations that provided public outreach support are listed at <http://wedrawthelines.ca.gov/partners.html> (Oct. 10, 2011).

iii. In addition, the Commission held more than 70 business meetings, during which the Commission regularly solicited public comment. All public meetings were broadcast live on the Commission's website and archived for later public review (*ibid.*);

iv. The Commission received and considered more than 2,000 written submissions containing testimony or maps from groups and individuals, reflecting proposed statewide, regional or other districts. Alternative map submissions were posted on the Commission's website (*ibid.*);[5]

v. The Commission or its staff also reviewed more than 20,000 written comments addressing the shared interests, backgrounds and histories of California's communities, suggestions for district lines, and comments on the redistricting process generally (Appen. 644);

vi. The Commission received training and technical assistance from Q2 Data and Research, consultants with extensive experience with the computer programs used for line-drawing, to parse the U.S. Census data and use computer models and other programs needed for the complex, highly technical district line-drawing process. (*Ibid.*) The Commission also engaged Voting Rights Act legal counsel selected through an open bidding process;

vii. The Commission had full access to all demographic and other data that would have been available to the Legislature for use in redistricting, except they did not consider information about how the Commission's maps would affect incumbent politicians, an issue that cannot be considered following passage of Proposition 11 (see Cal. Const., art. XXI, § 2, subd. (e));

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[5] <http://wedrawthelines.ca.gov/map-submissions.html> (Oct. 10, 2011).

viii. On June 10, 2011, following 23 public input hearings and dozens of public business meetings in which comments also were received, the Commission issued its first set of draft maps. The maps were posted on the Commission's website and covered widely in the media.[6] The Commission received public comments on the draft maps during 11 more input hearings and in hundreds of additional written submissions, and revised and honed the maps over the next several weeks (Appen. 644);

ix. All of the Commission's public meetings and line-drawing sessions were broadcast live on the Commission's website, and video of those sessions is archived and available for public review. Transcripts of the Commission's meetings, its draft and final maps, and all documents presented to the Commission and suitable for posting also are available on the Commission's website for public review.[7]

E. Certification of the Final Maps and Issuance of the Commission's Final Report

On July 29, 2011, the Commission released its preliminary final maps, together with a narrative explaining for the public's benefit the California Constitution's criteria for drawing district lines and the Commission's public input process.[8] The maps were posted for further public comment. (*Ibid.*; see also V'most RJN 69.)

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[6] See, e.g., <http://wedrawthelines.ca.gov/maps-first-drafts.html> (Oct. 10, 2011).

[7] See, e.g., <http://wedrawthelines.ca.gov/transcripts.html> and <http://wedrawthelines.ca.gov/viewer.html> (Oct. 10, 2011).

[8] <http://wedrawthelines.ca.gov/maps-preliminary-final-drafts.html>. (Oct. 10, 2011).

On August 15, 2011, the Commission certified the final maps to the Secretary of State. (V'most RJN 69; see Cal. Const., art. XXI, § 2, subd. (g).) The maps were accompanied by the Commission's 67-page Final Report summarizing the Commission's work, the redistricting process, and the districts. (Appen. 637-803.)

The Secretary of State filed the maps the same day. (V'most RJN 69.)

F. The Vandermost Petition

On September 15, 2011, Vandermost filed her 124-page petition challenging Senate districts, with supporting declarations of T. Anthony Quinn and Brian T. Hildreth and a two-volume Request for Judicial Notice. The petition does not include a Certificate of Word Count and was not accompanied by an application to file an oversized petition. (Cal. Rules of Court, rules 8.204(c) & 8.486(a)(6).)

On September 16, the Court requested a preliminary opposition within ten days or, alternatively, by October 10.

Vandermost filed a 126-page "Amended Petition" on September 30.[9]

G. The Radanovich Petition

On September 29, 2011, Radanovich filed his petition, challenging U.S. Congressional districts. Significant portions of the petition appear to have been copied verbatim from Vandermost's petition, including the legal argument sections addressing deference owed to the maps and the scope of this Court's

[9] For convenience, all citations to the Vandermost and Radanovich Petitions are to the "Amended," later-filed Petitions.

review. Like the Vandermost petition, the Radanovich petition is supported by a declaration from Quinn and a voluminous Request for Judicial Notice.

On October 6, one week after the constitutionally imposed deadline for filing petitions (see Cal. Const., art. XXI, § 3, subd. (b)(2)), Radanovich filed an "Amended Petition" with several additional pages of argument, and a supplemental Quinn declaration.

LEGAL ARGUMENT

I. THE COMMISSION FOLLOWED ITS CONSTITUTIONAL MANDATE TO CONSIDER AND APPLY—IN ORDER OF PRIORITY—THE SIX CRITERIA IN ARTICLE XXI.

Article XXI of the California Constitution provides that "[t]he commission shall establish single-member districts for the Senate, Assembly, [and] Congress . . . in the following order of priority:"

> 1. "Districts shall comply with the United States Constitution. Congressional districts shall achieve population equality as nearly as is practicable, and Senatorial . . . districts shall have reasonably equal population with other districts for the same office, except where deviation is required to comply with the federal Voting Rights Act or allowable by law."
>
> 2. "Districts shall comply with the federal Voting Rights Act."
>
> 3. "Districts shall be geographically contiguous."
>
> 4. "The geographic integrity of any city, county, city and county, local neighborhood, or local community of interest shall be respected in a manner that *minimizes their*

division to the extent possible without violating the requirements of any of the preceding subdivisions."[10]

5. "*To the extent practicable, and where this does not conflict with the criteria above*, districts shall be drawn to *encourage geographical compactness* such that nearby areas of population are not bypassed for more distant population."

6. "*To the extent practicable, and where this does not conflict with the criteria above*, each Senate district shall be comprised of two whole, complete, and adjacent Assembly districts, and each Board of Equalization district shall be comprised of 10 whole, complete, and adjacent Senate districts."

(Cal. Const., art. XXI, § 2, subd. (d)(1)-(6); italics added.)

Article XXI required the Commission to consider all six criteria, weighted according to their prescribed priorities—an "extremely complex" and fact-intensive undertaking, "for innumerable plans could be adopted that would satisfy the one man, one vote requirement." (*Legislature of Cal. v. Reinecke* ("*Reinecke I*") (1972) 6 Cal.3d 595, 602.)

The six criteria served as the guideposts for all of the Commission's work in drawing district lines. The Final Report explains the Commission's

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[10] A "community of interest" is defined as "a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Examples of such shared interests are those common to an urban area, a rural area, an industrial area, or an agricultural area, and those common to areas in which the people share similar living standards, use the same transportation facilities, have similar work opportunities, or have access to the same media of communication relevant to the election process. Communities of interest shall not include relationships with political parties, incumbents, or political candidates." (Cal. Const., art. XXI, § 2, subd. (d)(4).)

reliance on the criteria during the drafting process, as it analyzed Census data, heard testimony, and considered a vast amount of input from voters and citizens' groups. (Appen. 637-701) The public record memorializing the Commission's meetings and line-drawing sessions underscores that the six criteria were carefully considered and followed throughout the Commission's deliberations; specific examples follow in Sections III and IV, *post*.[11]

II. STANDARD OF REVIEW: THE COMMISSION'S MAPS ARE ENTITLED TO A HIGH LEVEL OF DEFERENCE.

A. The Applicable, Highly Deferential Standard: Any Reasonable Application of the Redistricting Criteria Should Be Upheld.

The Commission's exercise of its constitutional authority to apply Article XXI's six criteria is entitled to the same, significant judicial deference that this Court has always afforded redistricting plans. The maps should not be disturbed where "they appear to reflect reasonable applications of the [applicable] criteria, even though alternatives urged upon [the Court] may appear equally reasonable." (*Legislature of Cal. v. Reinecke* ("*Reinecke II*") (1973) 10 Cal.3d 396, 403; see also *Wilson v. Eu* ("*Wilson IV*") (1992) 1 Cal.4th 707, 720 [holding that "[t]he recommended districts appear to reflect reasonable applications of the various applicable criteria."]; *Nadler v. Schwarzenegger* (2006) 137 Cal.App.4th 1327, 1340 [under *Reinecke II* and *Wilson IV*, "courts must approve a reapportionment plan if it appears to reflect a reasonable application of the standards, 'even though alternatives . . . may appear equally reasonable'"].)

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[11] As Sections III and IV explain, the petitions present no evidence that the Commission failed to consider the six criteria or that it did not deliberate as to how the criteria could most effectively be satisfied. Indeed, the record of the Commission's careful deliberations shows the opposite.

In a recent case reviewing the work of an independent redistricting commission, the Arizona Supreme Court stated the standard similarly, holding that the commission's plan should not be overturned unless "the party challenging the redistricting plan demonstrated that no reasonable redistricting commission could have adopted the redistricting plan at issue." (*Ariz. Minority Coalition for Fair Redistricting v. Ariz. Independent Redistricting Commission* (Ariz. 2009) 208 P.3d 676, 689.)

B. Reasons for Applying the Highly Deferential Standard of Review.

The Commission's certified maps are entitled to significant deference, first of all, because of the constitutional authority vested in the Commission. *Assembly v. Deukmejian* (1982) 30 Cal.3d 638 noted that the source of the Legislature's authority to draw district lines under former Article XXI—it had been "delegated responsibility for reapportionment both by federal precedent and by California's Constitution"—supported deference. (*Id.* at p. 669.) Similarly, *Nadler*, *supra*, 137 Cal.App.4th 1327, in applying *Reinecke II* and *Wilson II* (which had reviewed maps drawn by court-appointed special masters) and affording significant deference to maps drawn by the Legislature and approved by the Governor, explained that the policy of deference was "even stronger" because the plans were enacted pursuant to the Legislature's and Governor's constitutional authority for redistricting:

> The California Supreme Court has twice indicated a reasonable, comprehensive reapportionment plan should not be rejected simply because equally reasonable alternative plans may be suggested. (*Wilson v. Eu*, *supra*, 1 Cal.4th at p. 720; *Legislature v. Reinecke*, *supra*, 10 Cal.3d at p. 403.) On those occasions, the court was considering the adoption of plans prepared by special masters. The policy of deference to a comprehensive, overall plan—and

> against judicial tinkering with individual districts at the behest of particular persons or groups—is even stronger where, as here, the Legislature enacted and the Governor approved the plans under consideration.

(*Nadler*, *supra*, 137 Cal.App.4th at pp. 1341-1342.)

Under Article XXI as amended by Propositions 11 and 20, constitutional authority for redistricting is now vested in the Commission, which stands in the shoes previously filled by the Legislature. (Compare former Cal. Const., art. XXI, §§ 1-2 and Cal. Const., art. XXI, § 2.)

United States Supreme Court authority is in accord: Deference is owed to the "legislature *or other body*" that is authorized in the first instance to draw district lines. (*Chapman v. Meier* (1975) 420 U.S. 1, 27 [italics added; "We say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court."]; accord *Burns v. Richardson* (1966) 384 U.S. 73, 85 [recognizing that a redistricting body enjoys the "freedom of choice" within a range of permissible choices, with which courts should not interfere].)

The Commission's maps are also entitled to significant deference for the "intensely practical" reason that redistricting is a fact-intensive, "extremely complex matter" that requires that map drawers "afford all interested parties an opportunity to be heard." (*Reinecke I*, *supra*, 6 Cal.3d at pp. 601-602.) For example, *Reinecke II*, *supra*, considered objections to district lines drawn by special masters after the Legislature failed to pass reapportionment plans in 1972. (10 Cal.3d at pp. 399, 403.) The Court recognized that the map drawers (there, the masters, their staff and consultants) had "spent four months in the intensive study and consideration of the arguments and evidence presented to them and in drawing and redrawing district lines in an endeavor to prepare

reapportionment plans that adhered to the greatest extent possible to all of the recommended criteria." (*Id.* at p. 403.) *Reinecke II* noted that attempts "to redraw specific district lines to achieve possibly more reasonable results would run the serious risk of creating undesirable side effects which [the Court] could not foresee and which adversely affected parties could not call to [the Court's] attention in time for corrections to be made." (*Ibid.*) Applying a highly deferential standard, the Court reviewed all objections to the maps and concluded that "in every case the lines drawn represent[ed] reasonable applications of the recommended criteria." (*Id.* at p. 404.)

In *Wilson IV*, *supra*, 1 Cal.4th at p. 729, the Court cited *Reinecke II* with approval and afforded significant deference to district lines that were drawn after the Legislature and Governor had failed to agree upon maps in time for the 1992 elections. (*Id.* at pp. 711, 728-729.) The Court concluded that all "reasonable applications of the recommended criteria" by the map drawers must be accepted by the Court. (*Id.* at p. 729.)

The reasons for affording deference to the maps in *Reinecke II*, *Wilson IV*, *Deukmejian*, and *Nadler* apply with equal—or greater—force here. Pursuant to its Article XXI constitutional authority, the Commission completed an exhaustive, eight-month analysis and line-drawing process, during which the Commission heard from and weighed the input of an extraordinary number of community members and groups. And, unlike the Legislature, the Commission was selected and operated in accordance with the principles of independence and impartiality mandated by Article XXI as amended by Propositions 11 and 20.

The extensive public input process that Article XXI now requires—and that the Commission implemented pursuant to its constitutional mandate—

could not be approximated by the Court or special masters in the time available before the June 2012 elections. In addition, any redrawing of district lines to address lower-order criteria (e.g., "compactness," matching district lines to county lines, or "nesting" two assembly districts within each senate district) would "run the serious risk of creating undesirable, [unforeseen] effects" that the parties "could not call [to the Court's] attention in time for corrections to be made"—a risk that would "necessarily be magnified" because the Court is "not in as advantageous a position [as the Commission] to assess the impact of possible alternatives." (*Reinecke II, supra*, 10 Cal.3d at p. 403.)

Affording the Commission's work the deference afforded the Legislature (and also given to the work of masters when they have been asked to fill a void left by the Legislature) is also consistent with the people's will in adopting Proposition 11. In adopting Proposition 11, the people amended the Constitution to vest power over redistricting with the Commission rather than the Legislature. (Cal. Const., art. IV, § 1; see *Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 247 [explaining that Article IV, section 1, "divides the entire legislative power of the state between the Legislature and the people's reserved right of initiative and referendum"].) Where, as here, the people have exercised their lawmaking power, the Court's role "is to simply ascertain and give effect to the electorate's intent guided by the same well-settled principles [the Court] employs to give effect to the Legislature's intent when [it] reviews enactments by that body." (*Professional Engineers in Cal. Government v. Kempton* (2007) 40 Cal.4th 1016, 1042-1043.)

Other states whose constitutions vest authority for redistricting in independent commissions afford substantial deference to the line-drawing judgments by those commissions. In Arizona, for example, voters passed an

initiative in 2000 that amended their constitution by reassigning congressional and state legislative district line-drawing authority from the legislature to a newly created, independent commission. (*Ariz. Minority Coalition for Fair Redistricting, supra*, 208 P.3d at p. 680.) The Arizona Supreme Court concluded that, because the commission performs a legislative function, its redistricting plans are entitled to the same deference afforded other legislation. (*Id.* at pp. 683-685.) The court stated that it could not base its review on whether "the courts or another entity could offer a 'better' redistricting plan; doing so would impermissibly enlarge [the court's] role." (*Id.* at p. 685; citing authorities.) Decisions from the highest courts of Colorado and Idaho are in accord.[12]

In analogous situations involving the review of decisions by an agency delegated authority through legislation, this Court has applied a highly deferential standard of review. For example, in *Fullerton Joint Union High School District v. State Board of Education* ("*Fullerton*") (1982) 32 Cal.3d 779, the plaintiff challenged the State Board of Education's approval of a plan to create a new school district. (*Id.* at p. 784.) Before approving the plan, the board was required to find substantial compliance with the statutory criteria set

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[12] (*In re Colo. Gen. Assem.* (Colo. 1992) 828 P.2d 185, 189 ["Our role in this proceeding is a narrow one: to measure the present reapportionment plan [submitted by the Colorado Reapportionment Commission] against the constitutional standards. The choice among alternative plans, each consistent with constitutional requirements, is for the Commission and not the Court."]; *Idaho Legis. Reapportionment Plan of 2002 v. Ysursa* (Idaho 2005) 129 P.3d 1213, 1221 ["We simply cannot micromanage all the difficult steps the Commission must take in performing the high-wire act that is legislative district drawing. Rather, we must constrain our focus to determining whether the split was done to effectuate an improper purpose or whether it dilutes the right to vote."].)

forth in Education Code section 4200.[13] (*Id.* at p. 785.) In finding that the plan substantially complied with section 4200's criteria, the Court applied the following standard: "In reviewing such quasi-legislative decisions, the trial court does not inquire whether, if it had power to act in the first instance, it would have taken the action taken by the administrative agency. The authority of the court is limited to determining whether the decision of the agency was arbitrary, capricious, entirely lacking in evidentiary support, or unlawfully or procedurally unfair." (*Fullerton*, *supra*, 32 Cal.3d at p. 786, citing *Pitts v. Perluss* (1962) 58 Cal.2d 824, 833; *Brock v. Superior Court* (1952) 109 Cal.App.2d 594, 605-607.)[14]

In a variety of other contexts, this Court has recognized the importance of deferring to the fact-finder when reviewing a fact-bound issue. (See, e.g., *In re Price* (2011) 51 Cal.4th 547, 559 ["Because the referee observes the demeanor of testifying witnesses, and thus has an advantage in assessing their credibility, this court ordinarily gives great weight to the referee's findings on factual questions."].) Given the intensely factual and complex judgment calls

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[13] Education Code section 4200 sets forth criteria that school organization plans must satisfy to deliver adequate educational services. (*Fullerton*, *supra*, 32 Cal.3d at p. 785.)

[14] As *Pitts* explained, where a decision involves "'highly technical matters requiring . . . experts and economists and the gathering and study of large amounts of statistical data, . . . 'courts should let administrative boards and officers work out their problems with as little judicial interference as possible.' . . . The substitution of the judgment of a court for that of the administrator in quasi-legislative matters would effectuate neither the legislative mandate nor sound social policy." (*Pitts*, *supra*, 58 Cal.2d at p. 835; citation omitted.)

involved in redistricting, the Court should apply a similarly deferential standard of review here.[15]

C. The Burden of Proof Is on Petitioners.

A corollary of the established deference standard is that Petitioners have the burden of proving that the Commission's maps are an unreasonable application of the Constitutional criteria—i.e., that no reasonable commission could have adopted those maps. As *Nadler* explained in applying this Court's decisions in *Reinecke II* and *Wilson IV* to a redistricting plan: "In the final analysis, plaintiffs bore the burden of demonstrating that the reapportionment plan adopted by the Legislature and approved by the Governor inevitably poses a total and fatal conflict with applicable constitutional provisions." (*Nadler*, *supra*, 137 Cal.App.4th at p. 1344.)

Just as the Commission's exercise of its constitutional authority is entitled to the same deference as the prior exercise of that authority by the Legislature (and the masters), the same burden is on Petitioners in challenging the Commission's plan. As the Arizona Supreme Court stated the burden in directly parallel circumstances: "[W]e ask if the party challenging the redistricting plan demonstrated that no reasonable redistricting commission

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[15] In reviewing an agency's quasi-legislative decisions, this Court has noted: "The precise formulation of the standard may be less important than what courts actually do in exercising deferential but not perfunctory review: 'What matters is that . . . judges generally understand that they may not properly substitute their judgment for administrative judgment except on questions of law on which they are the experts, but that something like reasonableness, rational basis, substantial evidence, or clearly erroneous guides what they do on other questions, and that in most cases other factors have a much stronger influence than the words of the formula that is supposed to apply." (*Cal. Hotel & Motel Assn. v. Indus. Welfare Com.* (1979) 25 Cal.3d 200, 213, fn. 28.)

could have adopted the redistricting plan at issue." (*Ariz. Minority Coalition for Fair Redistricting*, *supra*, 208 P.3d at p. 689.)

D. Petitioners' Arguments for Applying De Novo Review Are All Wrong.

Vandermost's and Radanovich's (identical) arguments for applying de novo review do not hold water.[16] First, the decisions Petitioners cite (*Reinecke I*, *Wilson v. Eu* ("*Wilson I*") (1991) 54 Cal.3d 471, and *Deukmejian*) do not support their argument that deference is owed the Legislature's maps but not the Commission's maps because the Legislature unlike the Commission is a "co-equal" branch of government. (V'most Pet. 83; R'vich Pet. 43.) *Reinecke I* and *Wilson I* did not even involve maps drawn by the Legislature; those cases arose because the Legislature and Governor failed to agree upon new district lines. (*Reinecke I*, *supra*, 6 Cal.3d at p. 598; *Wilson I*, *supra*, 54 Cal.3d at p. 472.) Masters then were appointed to fill the void left by the Legislature, and the Court in subsequent opinions afforded significant deference to the masters' maps *based on practical considerations*—including the fact-intensive nature of the line-drawing process—even though this was not work by the Legislature. (*Reinecke II*, *supra*, 10 Cal.3d at p. 403; *Wilson IV*, *supra*, 1 Cal.4th at p. 720.)[17]

In *Deukmejian*, new district lines had been enacted pursuant to former Article XXI, but the maps were stayed by the qualification of a referendum. (30 Cal.3d at pp. 643, 656-657.) The Court was left with "no choice but to resolve the pressing problem of what districts should be used in the upcoming primary

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[16] Radanovich's arguments for de novo review appear to be copied verbatim from Vandermost's first-filed brief.

[17] *Reinecke I* rejected the argument raised by Petitioners here—that "the doctrine of separation of powers" formed the basis for the discretion afforded the Legislature's maps. (*Reinecke I*, *supra*, 6 Cal.3d at p. 601.)

and general elections." (*Id.* at p. 661.) As in *Reinecke II* and *Wilson IV*, this Court found that "practical considerations . . . render[ed] infeasible any attempt by this court to draft reapportionment plans of its own . . . and obviate[d] any possibility of giving consideration to alternative plans . . . ." (*Id.* at p. 658 n.15, citing *Reinecke I*, *supra*, 6 Cal.3d at pp. 601-602.) Moreover, the deference afforded the maps drawn by the Legislature was premised on the Legislature's constitutional authority for redistricting. (*Id.* at p. 669 [Legislature had been "delegated responsibility for reapportionment both by federal precedent and by California's Constitution"].)[18] The same reasoning supports deference to the Commission, which is now the constitutional body vested with authority to draw district lines.

Ignoring the Commission's comprehensive efforts, Petitioners argue no deference should be given because the Commission has "no expertise or technical knowledge of the redistricting process." (V'most Pet. 86; R'vich Pet. 46.) Petitioners ignore that the Commission's members were "chosen based on relevant analytical skills and ability to be impartial" and were supported by consultants and lawyers with specific expertise in this area. (Gov. Code, § 8252, subd. (g).) Moreover, like the special masters in *Wilson IV*, *supra*, 54 Cal.3d at p. 729, the Commission "developed an expertise in the art of apportionment" through its intensive, eight-month redistricting process.

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[18] The federal precedent cited in *Deukmejian* recognizes that courts "should follow the policies and preferences of the State, *as expressed in statutory and constitutional provisions*." (*White v. Weiser* (1973) 412 U.S. 783, 795 [italics added]; see also *Reynolds v. Sims* (1964) 377 U.S. 533, 588-589 [agreeing the Court should "afford the State of Alabama full opportunity, consistent with the requirements of the Federal Constitution, to devise its own system of legislative apportionment" (conc. opn. of Stewart, J.)].) Our state's Constitution and Voters First Act mandates that the Commission has authority in the first instance for line-drawing.

(Appen. 637-803.) Applying no deference, as Petitioners urge, would be to disregard entirely the Commission's efforts and the will of the people in creating the Commission.

Vandermost also argues that Article XXI, section 3's grant of "original and exclusive jurisdiction" in this Court (Cal. Const., art. XXI, § 3 (b)(1)), and its provision that the Court shall fashion appropriate relief *if* it finds a violation (*id.*, § 3 (b)(3)), somehow supports the conclusion that the Court may conduct its review "independently, without deference to the Commission's conclusions of law or factual findings in support of the maps drawn by the Commission." (V'most Pet. 82; see also R'vich Pet. 42 [same].) That argument is contrary to the plain language of Article XXI. *First*, it confuses a jurisdictional rule (a right to direct review in this Court) with a substantive one (the standard that is to be applied during review). *Second*, it ignores that Article XXI, read as a whole, commits the task of redistricting to the Commission, not the Court.

"In construing constitutional provisions, the intent of the enacting body is the paramount consideration. . . . To determine that intent, courts look first to the language of the constitutional text, giving the words their ordinary meaning." (*Powers v. City of Richmond* (1995) 10 Cal.4th 85, 91; citations omitted.)

Article XXI, section 3 provides: "*If* the court determines that a final certified map violates this Constitution, the United States Constitution, or any federal or state statute, the court shall fashion the relief that it deems

appropriate, including, but not limited to, the relief set forth in subdivision (j) of Section 2." (Cal. Const., art. XXI, § 3, subd. (b)(3); italics added.)[19]

Nothing in the text of this article suggests that the Court should review the Commission's certified maps "independently" or "without deference," as Petitioners contend. To read these words into Article XXI would "violate the cardinal rule that [t]he Constitution is to be interpreted by the language in which it is written, and courts are no more at liberty to add provisions to what is therein declared in definite language than they are to disregard any of its express provisions." (*Powers*, *supra*, 10 Cal.4th at p. 93 [citations and quotations omitted].)

Nor do the ballot pamphlets for Propositions 11 and 20 support Petitioners' interpretation of Article XXI. (*Powers*, *supra*, 10 Cal.4th at pp. 94-95 [considering arguments in ballot pamphlet in determining voters' intent].) The ballot materials contain no mention of independent review by this Court or a lack of deference to the Commission's findings. Instead, the arguments both for and against Proposition 11 state that it "puts voters back in charge" and gives the "final say" *to the Commission*, not a court.[20] (V'most RJN 56.) Indeed, opponents of Proposition 20 argued it would give the Commission

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[19] Subdivision (j) of section 2 provides: "*If* the commission does not approve a final map by at least the requisite votes or *if voters disapprove a certified final map in a referendum*, the Secretary of State shall immediately petition the California Supreme Court for an order directing the appointment of special masters to adjust the boundary lines of that map in accordance with the redistricting criteria and requirements set forth in subdivisions (d), (e), and (f)." (Cal. Const., art. XXI, § 2, subd. (j); italics added.)

[20] Proposition 11, unlike prior failed initiatives, explicitly created a *Citizens* Redistricting Commission, not a process similar to the Court's past use of masters when the Legislature failed to produce a redistricting plan.

"even more power over the people" and "absolute power over our legislative districts." (V'most RJN 63.) Nothing in the ballot pamphlets or Article XXI supports Petitioners' contention that voters "adopted close supervision by this Court" in amending Article XXI. (V'most Pet. 83; R'vich Pet. 43.)

Article XXI's instruction that the Court should give "priority to ruling" on petitions filed by "[a]ny registered voter" (Cal. Const., art. XXI, § 3, subd. (b)(3)) also does not support Vandermost's argument. (V'most Pet. 80-81.) Proposition 11's grant of "priority" in this Court was intended to permit challenges to be resolved expeditiously; it could not have been meant to render the Commission's work merely advisory, as Vandermost suggests. The grant of automatic priority to *all* challenges filed by registered voters—no matter how frivolous—underscores that the drafters' goal was to resolve challenges before the next election, not that the Court should afford the Commission no deference.

In sum, Article XXI, section 3, contemplates the same role for the Court that it has always served when confronted with objections to redistricting maps, not to "supervise decennial redistricting," as Petitioners contend. (See, e.g., V'most Pet. 81.) Under established precedent, undisturbed by Propositions 11 and 20, this Court should not substitute its judgment for that of the Commission. The certified maps should be approved where, as here, "they appear to reflect reasonable applications of the [constitutional] criteria, even though alternatives urged upon [the Court] may appear equally reasonable." (*Reinecke II*, *supra*, 10 Cal.3d at p. 403.)

III. THE VANDERMOST PETITION DOES NOT MEET ITS BURDEN OF DEMONSTRATING A VIOLATION OF THE CALIFORNIA CONSTITUTION.

A. Overview: Vandermost Misconstrues and Misapplies the California Constitution.

Vandermost's Petition urges this Court to disregard months of work by a careful Commission composed of individuals with diverse backgrounds and experiences, carefully selected according to a constitutionally mandated process, in favor of her proffered expert's personal preferences and opinions. The Petition fails to cite any valid legal or factual basis to disregard the Commission's efforts. Vandermost's sole proffered "evidence" consists of the bald, error-prone speculation and assertions of a known, partisan Internet blogger. Quinn suggests that the Commission should have ignored the effect of two constitutional amendments approved by the people of California in favor of reverting to nostalgic views of how the state should be divided. Failing to account for demographic changes in the state's voting-age population and advances in computer mapping technology, as well as amendments to Article XXI of the California Constitution, Vandermost raises no legitimate challenge to the Commission's reasonable application of the constitutional criteria.

Drawing California's political districts is no simple assignment. Redistricting a state of 37,253,956 citizens and more than 155,000 square miles might be a straightforward task if the population were homogeneous and evenly spaced across the state's geography. But the complications of ethnic, socioeconomic, and geographic density and diversity make it an enormously complex undertaking.

To address this task, the Commission undertook extensive efforts to ensure it was well-informed about the competing preferences that would make

line-drawing according to the constitutional criteria complex and difficult. It held many weeks of public comment hearings,[21] accepted thousands of written submissions,[22] consulted retained advisors, and deliberated at length just to put out a first draft. After those initial draft maps came more public hearings, comments, and advice, and more deliberation. (Factual Background section, *supra.*) The Commissioners who drew California's new political boundaries are reasonable people, who engaged in an extensive deliberative process, as envisioned by the Voters First Act adopted by California voters, and made thoughtful, sensible determinations regarding how lines should be drawn. (Appen. 640-644.) The combination of a robust selection process to promote a politically balanced and diverse Commission and an extensive public process for collecting public input and deliberating the merits of various proposals can lead only to one conclusion: The resulting Senate maps reflect the Commission's reasonable application of the constitutional criteria and should be upheld. Vandermost utterly fails to meet her burden to demonstrate that no reasonable commission could have adopted those maps.

Contrary to Vandermost's argument, the Constitutional amendments enacted by Propositions 11 and 20 do not wholesale adopt prior case precedent,

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[21] The Commission held more than 70 business meetings, including 22 line drawing meetings, and 34 public input hearings. (See Appen. 642-644; see also <http://wedrawthelines.ca.gov/hearings.html>.)

[22] Indeed, at least 46 different groups submitted proposed maps. (See <http://wedrawthelines.ca.gov/map-submissions.html>.) Quinn, by contrast, waited until well after the conclusion of the process (the last day to file suit) to submit proposed maps to the Commission. His failure to subject his assertions to the rigorous debate and scrutiny of the public process results in erroneous assumptions regarding: (i) the relevant legal criteria for drawing maps; (ii) the appropriate standard by which the Commission's efforts must be judged; (iii) the interests, concerns and identity of the various communities; and (iv) the complexity of balancing all constitutional criteria in the required order.

let alone Vandermost's interpretation of that precedent. (Cal. Const., art. XXI, § 2, subd. (d)(1)-(6).) Rather, the Commission was constrained by the hierarchy in the Constitution as passed by the voters. A brief comparison of the Constitution to the framework Vandermost proposes illustrates the differences in the two approaches:

The California Constitution	**Quinn's Criteria**[23]
The U.S. Constitution (including population equality)	Agrees
The Federal Voting Rights Act	Agrees
Contiguity	Integrity of California's Basic Geographical Regions
Respect the Geographic Integrity of Cities, Counties, Cities and Counties, Local Neighborhoods and Local Communities of Interest	Contiguity and Compactness
Encourage Compactness	Keep Counties Whole
Nesting	Nesting

In addition to the obviously different ordering, Vandermost, supported by nothing more than Quinn's own *ipse dixit*, and contrary to the case law she cites, insists that "[t]he first step in meeting the state constitutional criteria is to divide the state into its geographic regions." (V'most Pet. ¶ 44.) This concept appears nowhere in the California Constitution. (Cal. Const., art. XXI, § 2, subd. (d)(1)-(6).)[24] Indeed, introducing a requirement not recognized by and

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[23] (See Quinn Dec. (V'most) ¶¶ 1, 4; see also V'most Pet. ¶ 14.)

[24] Prior to the passage of Proposition 11, Article XXI contained language referencing the state's geographic regions, and requiring that the redistricting process respect their integrity. Proposition 11 struck that language out, with the

(Footnote continues on next page.)

inconsistent with the Article XXI criteria would violate the Constitution. Decades ago, Quinn's proffered first step may have been a practical necessity due to technological limitations. But today's computers and mapping software (used by the Commission) are well-suited to handle the mapping challenges without resort to such artificial divisions. Consequently, an arbitrary division of the State using Quinn's criteria would not have benefitted the mapping process—and certainly was not required—and would have prevented the Commission from fulfilling its constitutional mandate to balance the interests of cities, counties, neighborhoods, and communities of interest, based on the constitutional criteria established by passage of Propositions 11 and 20.

Pursuant to Article XXI, section 2, population equality is the highest criterion that the Commission must consider, and each district must conform to the U.S. and California constitutional limitations on deviation from the ideal population size. Next, the Commission must ensure compliance with the federal Voting Rights Act. Complying with each of these criteria takes precedence over the further criteria stated by Article XXI.

The Constitution recognizes that satisfying these higher-priority criteria may render it impractical to satisfy the lower criteria of geographic integrity, compactness and nesting. (Cal. Const., art. XXI, § 2, subd. (d)(4)-(6).) The Constitution specifically states that "geographic integrity" "shall be respected in

(Footnote continued from previous page.)

excision clearly noted in strikethrough language in the text of the proposition listed in the ballot pamphlet. The Appendix of Secondary Sources p. 74 contains this ballot language, with the stricken constitutional clause: "~~(e) The geographical integrity of any city, county, or city and county, or of any geographical region shall be respected to the extent possible without violating the requirements of any other subdivision of this section.~~" No reference to geographic regions was inserted elsewhere into the Constitution by Proposition 11 or by Proposition 20.

a manner that *minimizes*" division of geographical units "to the extent possible without violating the requirements of any preceding subdivision." (*Id.*, art. XXI, § 2, subd. (4).) The Constitution mandates compliance with the subsequent criteria of compactness and nesting to the extent "*practicable* and where this does not conflict with the criteria above."[25] (*Ibid.*)

Rather than recognizing that higher criteria control, Vandermost misinterprets the law and botches the order, attempting to elevate compactness and minimization of county splits over higher-order criteria. But it is the Constitution's mandated criteria, not Quinn's or Vandermost's preferences or fond remembrance of how districts used to be, that control this Court's determination of whether the Commission's maps are reasonable.

Vandermost's primary argument is that certain districts are not compact.[26] First, she is just wrong. None of the districts violate the compactness criterion. Vandermost claims that the Commission is required to create districts that contain "local" and "nearby" population, but never explains how that concept is to be applied in districts containing nearly one million people over sparsely populated regions. No basis exists in the Constitution or case law for Vandermost's overbroad, subjective proposed standard for compactness. Second, if the Commission made a district less compact to satisfy

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[25] Vandermost and Quinn fail to recognize the reasonableness and flexibility built into Article XXI section 2. By approving terms like "minimize" and "practicable" the people of California appreciated that maps could only be achieved by balancing these criteria in their proper order and not by isolating—and then dogmatically interpreting them—as the Petition urges.

[26] Vandermost also bases her First Cause of Action on "contiguity." Whether this is a typographical error or just another misstatement of the law is not clear, but there can be no real disagreement that each district is contiguous. (See Appen. 702-715; see also Section III(A)(3), *post.*)

a higher priority criterion, such as population equality or the Voting Rights Act, that decision comports with the constitutional criteria. Third, the record demonstrates that the Commission's application of the constitutional criteria was reasonable in each of the Senate districts.

Vandermost's Second Cause of Action for "unnecessary division of counties" is also deeply flawed. First, the Constitution does not *require* that the Commission not split counties. The Constitution requires that the Commission "*to the extent possible*" minimize the division "of any city, county, city and county, local neighborhood, or local community of interest." (Cal. Const., art. XXI, § 2, subd. (d)(4); emphasis supplied.) Second, population equality and the Voting Rights Act control. Where a county is reasonably divided to satisfy those higher priorities, the Commission has fulfilled its constitutional mandate. Third, there is no constitutional basis for elevating counties over cities, local neighborhoods or local communities of interest.[27] The Commission was charged with equally respecting each type of community, and Vandermost's argument once again demonstrates the fundamental difference between maps drawn by a single partisan and those created after months of public input and deliberation by a 14-member Constitutional body. Fourth, it is Vandermost's burden to provide evidence that the Commission's line-drawing decisions were unreasonable, and her Petition falls far short by (i) failing to present any

[27] In addition, Quinn's speculation that "Californians tend to relate to county governments" (V'most Pet. ¶ 91), provides no basis for giving higher priority to counties than to cities, neighborhoods, or communities of interest, the other geographic divisions given equal weight in Article XXI, section 2, subdivision (d)(4). While counties certainly provide vital services, so do cities, and, depending on a resident's preferences and where she lives, she might feel a greater allegiance to a neighborhood, city, or community of interest. The Commission pursued a reasonable strategy in seeking broad public input rather than speculating or asserting that counties are king.

evidence that the Commission failed reasonably to apply the relevant constitutional criteria in the required order, and (ii) challenging the maps with inapposite standards and unsupported assertions about the underlying communities that comprise the districts. For example, Vandermost fails to acknowledge that both Sacramento and San Bernardino Counties must be divided to comply with population-equality requirements, because each of these counties is substantially larger than a single Senate district.[28]

Vandermost's claims lack substance or support, and her Petition should therefore be denied.[29]

1. Vandermost Ignores the Fundamental Requirement of Population Equality.

Vandermost does not contest the standard the Commission employed in achieving population equality or dispute that each Senate district has reasonably equal population with other districts. And yet, she urges that this Court reject the Commission's maps in favor of Quinn's, which were achieved by ignoring the impact of the highest criterion factor in drawing each Senate district.

Compliance with the U.S. Constitution is, of course, paramount. (Cal. Const., art. XXI, § 2, subd. (d)(1); see also U.S. Const., art. VI, § 2 [Supremacy

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[28] Sacramento County has a total population of 1,417,788. San Bernardino has a total population of 2,035,210. An ideal Senate District has a population of 931,349. (Appen. 650.)

[29] Vandermost also claims or implies that the districts were drawn to support incumbents, but she offers no data or evidence to support that contention. (V'most Pet. ¶ 51.) The public record of the Commission's proceedings demonstrates that the Commission scrupulously adhered to its constitutional charge and gave no consideration to any impact that its redistricting decisions would have on incumbents or political parties. (Cal. Const. art. XXI, § 2, subd. (e).)

Clause].) This criterion specifically obliges the Commission to comply with population-equality requirements. Following the constitutional mandate required districts of equal population within a small range of deviation from the ideal district size. (Cal. Const., art. XXI, § 2, subd. (d)(1); see also *Reinecke II*, *supra*, 10 Cal.3d 396; *Wilson IV*, *supra*, 1 Cal.4th at p. 753 ["the population of all districts of a particular type shall be *reasonably equal*"].)

As noted in *Reinecke II*, 10 Cal.3d at p. 411, some uncertainty exists with respect to California's standard for population equality, and the Commission conservatively decided that its Senate maps should strive for a total population deviation of 0%, but could deviate up to 2% from the ideal when necessary to maintain consistency with the Commission's instructions, including minimizing the fragmentation of counties, cities, local neighborhoods, and local communities of interest. (Appen. 58-59, 649-650.) The certified maps successfully maintain the population size of each Senate district within 1% of the ideal. (Appen. 650.)

The California Constitution requires forty State Senate districts, and allocating population for each district was at times difficult. California has 37,253,956 citizens. (See <http://quickfacts.census.gov/qfd/states/06000.html>.) Thus, the ideal size of each State Senate districts is 931,349 people. (Appen. 650.) Reducing deviation to less than one percent is challenging, particularly in rural areas where density can dip to two people per square mile. (Appen. 666.) In sparsely populated areas, districts can be enormous, potentially hundreds of miles long, and counties, cities and other community units may need to be split to meet this criterion. (See, e.g., Appen. 683.)

Compliance with the population-equality requirement takes priority over lower priority criteria, such as dividing a county or including a dissimilar or remote population. The Vandermost Petition fails to grasp what the

Commission did to achieve population equality or even to acknowledge that it is a particularly difficult exercise in sparsely populated regions. Vandermost rails against the division of two counties without regard for the population equality standard that the Commission was required to meet in drawing its boundaries. Instead of addressing the Commission's analysis or the record of its proceedings, Vandermost simply invokes the 1991 masters' maps.[30] Petitioner has utterly failed to demonstrate that the *Commission's* determinations were unreasonable.

2. Compliance with the Voting Rights Act Preempted Lower-Ranked Criteria.

Vandermost's Petition also ignores the many ways in which the Commission's compliance with the VRA influenced the line-drawing process and affected lower-ranked criteria. Four counties in California (Kings, Monterey, Merced, and Yuba) are covered by VRA Section 5. For those counties, Section 5 requires California to obtain preclearance from the U.S.

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[30] Contrary to Quinn's historical account, a review of public reactions at the time, observations of the mainstream press, and research published in a peer-reviewed journal, demonstrate that the 1991 masters process is not universally viewed as a "gold standard." For instance, MALDEF filed suit to block the congressional plan, alleging that it violated the Voting Right Act and one-person, one-vote guidelines. (Appen. Sec. 49-50.) Further, in a criticism that is echoed in the Petition's frequent claim that the Commission in 2011 combined areas that "don't belong in the same district" (V'most Pet. ¶ 63), a 1992 Los Angeles Times article entitled "Redistricting Redefines Campaigns," began, "Artsy, urban Santa Monica and bucolic Hidden Hills, communities seldom spoken of in the same breath, will share a legislator in the state Assembly for the next decade." (Appen. Sec. 51-52.) A statistical analysis comparing the state's congressional district lines drawn by the 1991 special masters with the plans proposed by Republicans and those proposed by Democrats shows that, in their predicted partisan consequences, the masters' plan "was nearly as biased in favor of the Republicans as the proposal of the Republican party." (Appen. Sec. 53.)

Attorney General or the U.S. District Court for the District of Columbia before making certain changes that affect the right to vote. (42 U.S.C. § 1973c.) Accordingly, the boundaries of various districts required adjustment to meet certain levels of minority voting age population ("VAP").

A redistricting plan violates Section 5 if it has the "effect" of diminishing the ability of racial or language minority groups to elect their preferred candidate. (42 U.S.C. § 1973c, subd. (b).) A redistricting plan "has the 'effect' of denying or abridging the right to vote if it leads to a retrogression in the position of racial or language minorities with respect to their effective exercise of the electoral franchise." (*Riley v. Kennedy* (2008) 553 U.S. 406, 412 [internal quotations and alterations omitted].) Under U.S. Supreme Court precedent, a redistricting plan that results in the maintenance or improvement of the minority voting strength is not retrogressive and fully complies with Section 5 of the VRA. (*Beer v. United States* (1976) 425 U.S. 130, 141; *Georgia v. Ashcroft* (2003) 539 U.S. 461, 477.) Accordingly, the Commission was required to—and did—ensure that minority voting age populations in each covered county did not retrogress the benchmark. (Appen. 661-662.)

In addition, the Commission complied with VRA Section 2, which prohibits minority vote dilution and provides that no "standard, practice, or procedure shall be imposed or applied … in a manner which results in a denial or abridgement of the right . . . to vote on account of race or color" or membership in a language minority group. (42 U.S.C. §§ 1973, subd. (a), 1973b, subd. (f)(2).)

Vandermost inaccurately portrays the VRA's requirements and its impact on the available options for drawing district boundaries. For example, she avoids mentioning the ripple effect that drawing district boundaries in

compliance with the VRA has on surrounding districts. The districts Vandermost complains about in Central California, Senate Districts 12 and 17, were drawn to meet the Section 5 benchmark requirements for Kings, Merced, and Monterey Counties. (See Section III(B), *post*.) Ignoring the record of that decision, Vandermost proposes that for "compactness" and "county split" reasons, lesser constitutional criteria, the maps should have been drawn in a way that would require Kings County to run afoul of its Section 5 benchmark.[31] The Commissioners' reasonable efforts to comply with the VRA trump Vandermost's flawed compactness argument.[32]

3. Each Senate District Is Contiguous.

Vandermost styles her First Cause of Action as for "Violation of California Constitution, Art. XXI, section 2(d)(3): Violation of Geographic Compactness and Contiguity Requirements." Article XXI, section 2(d)(3), however, says nothing about "geographic compactness." It says only that "[d]istricts shall be geographically contiguous."

A district is contiguous if its boundaries would "permit[] any candidate, map in hand, to visit every residence in her district without leaving it." (*Bush v. Vera* (1996) 517 U.S. 952, 1017 fn.16 [Stevens, J. dissenting].) Indeed, "common sense . . . mandates that some intervening features should not be considered as destroying contiguity, such as roadways or rural rights of way, utilities easements, natural divisions (rivers, narrow gullies, mountain peaks),

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[31] Vandermost also ignores the impact of the Commission's compliance with VRA Section 2. (See, e.g., Section III(C)(2), *post*.)

[32] These districts do not violate compactness standards, as discussed more fully in Section III(B), *post*.

and any land which will never be improved." (*Honey Springs Homeowners Assn. v. Board of Supervisors* (1984) 157 Cal.App.3d 1122, 1145, fn. 20.)

Each Senate District certified by the Commission is "geographically contiguous," because each part of each district is connected through an unbroken sequence. (Appen. 702-715.) In other words, a candidate could, map in hand, visit every residence in her district without leaving it. (*Vera, supra*, 517 U.S. at p. 1017 n.16.) Vandermost cites no authority for the proposition that contiguity requires anything more.

Vandermost conflates the requirement that the "[d]istricts shall be geographically contiguous" (Cal. Const., art. XXI, § 2, subd. (d)(3)), with the lower criterion that "[t]o the extent practicable, and where this does not conflict with the criteria above, districts shall be drawn to encourage geographical compactness..." (Cal. Const., art. XXI, § 2, subd. (d)(5).) (See, e.g., V'most Pet. ¶ 89.) The concepts are distinct and must be considered separately.

This is one of many instances in which the Vandermost Petition's reliance on the 1991 special masters is erroneous.[33] While the 1991 masters may have reasonably applied then-applicable law that called for contiguity and compactness to be considered together (see, e.g., *Wilson IV*, *supra*, 1 Cal.4th at

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[33] Quinn also criticizes the Commission for making decisions about the state's overall geographic divisions or specific district lines that differed from those made by the special masters in 1991. But old geographic divisions and district lines no longer fit the state, and the Commission engaged in a thorough process of analyzing data, traveling the state, and interacting with thousands of residents to make reasonable decisions about district lines. Indeed, ever since the one-person, one-vote decisions of the Warren Court, the charge of state redistricting authorities has been to alter lines to respond to population growth and demographic shifts. Rather than locking in old approaches that no longer fit, the Commission's *job was to draw lines that fit the State's new realities.*

pp. 714, 761-62 [the recommended criteria at that time included "contiguity and compactness of districts"]), the Constitution has since been amended, and application of compactness at the same level of priority as contiguity would violate Article XXI's plain language.[34] (Cal. Const., art. XXI, § 2, subd. (d)(5).)

Vandermost has presented no evidence that any district lacks contiguity.

4. Vandermost's Challenge to County Splits Misstates the Law and Provides No Basis to Find an Unreasonable Application of the Fourth Constitutional Criterion.

Vandermost's Second Cause of Action for "unnecessary division of counties" misstates the constitutional requirements regarding maintenance of geographic integrity and should be rejected outright.

After the higher order criteria are satisfied, the Commission must "*to the extent possible*" reduce subdivisions "of any city, county, city and county, local neighborhood, or local community of interest." (Cal. Const., art. XXI, § 2, subd. (d)(4); italics added.) The challenge in applying this criterion is not simply avoiding splitting counties, as Vandermost asserts, but rather in balancing how to assemble a district that keeps intact as many *cities, counties, cities and counties, local neighborhoods, or local communities of interest as possible*, while fulfilling higher constitutional criteria.[35] Speaking in a vacuum and without regard to the other four community units in Article XXI, § 2,

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[34] To determine the intent of a constitutional provision, "courts first look to the language of the constitutional text, giving their words their ordinary meaning." (*Powers v. City of Richmond* (1995) 10 Cal.4th 85, 91.)

[35] A summary of splits in the final maps is available at Final Report, Appendix 4. (Appen. 738-796.)

Vandermost suggests that the Commission should have avoided splitting counties. This misconstrues the law.

The Commission undertook to satisfy this requirement by soliciting extensive input at meetings held around the state to ensure it understood all of the factors to be taken into consideration, including communities of interest whose boundaries are not easily identified on a map. (Appen. 662-663.) The Commission fulfilled its constitutional mandate by minimizing the division of all community boundaries through careful deliberation and an iterative process that allowed the public to give input on draft maps. (*Ibid.*) To achieve population equality and satisfy the Voting Rights Act, the Commission was sometimes required to divide counties and cities. As discussed more fully below, the Commission's determinations were reasonable applications of Article XXI, section 2; that is all that the Constitution requires.

Vandermost claims that Sacramento and San Bernardino Counties should not have been split. (V'most Pet. ¶¶ 117-118.) For population-equality purposes, Sacramento County must be split at least two ways, and San Bernardino must be split at least three ways, because their populations exceed that of a single Senate district. In both areas, the Commission determined it needed to split counties to achieve population equality in the adjacent districts. (Appen. 612-615, 617.) Understanding that the counties would be split, the Commission applied sound judgment, as informed by its review of the record, to determine how best to satisfy constitutional criterion four and balance the interests of affected cities, counties, cities and counties, neighborhoods and

communities of interest.[36] The Commission's decisions were eminently reasonable, and nothing in Vandermost's Petition demonstrates otherwise.[37]

5. Vandermost Alleges No Facts Supporting a Conclusion that the Commission Did Not Reasonably Apply the Fifth Level Criterion of "Encourag[ing] Geographical Compactness."

Although Vandermost relies heavily on "compactness," the Constitution's fifth criterion, as her primary basis for challenging the maps, she does not purport to measure the Senate Districts against any discernible standard. The Senate Districts at issue all reflect reasonable Commission decisions and are well within the bounds of compactness standards applied by this Court.

The California Constitution currently requires districts to be drawn to "encourage" compactness. For the fifth criterion, the Commission was required to draw districts "*to the extent practicable, and where this does not conflict with the criteria above* ... to *encourage* geographical compactness such that nearby areas of population are not bypassed for more distant population." (Cal. Const.,

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[36] In the Senate map, only 19% of counties and 4.2% of cities were split. (Appen. 739.)

[37] Vandermost also notes that Sacramento and San Bernardino counties do not have a single Senate district contained entirely within their boundaries. The Petition deems this "a situation worse than obtained prior to 1961 when the federal courts invalidated California's old, county-based Senate districting system." (V'most Pet. ¶ 77.) Each county has at least one Senate district in which it is dominant. Senate District 6 contains 887,557 residents of Sacramento County and 48,744 residents of Yolo County. Senate District 20 contains 786,333 residents of San Bernardino County and 149,602 from Los Angeles County; San Bernardino County residents also make up a majority of Senate District 23. (Appen. 761.) Accordingly, neither county will lack a senator who is responsive to county interests.

art. XXI, § 2, subd. (d)(5); emphasis supplied).[38] The Constitution offers no further requirements for compactness.[39]

Vandermost offers no objective standard to measure whether a nearby population was "bypassed." She argues, in effect, that any district whose boundaries are different than those advocated by Quinn violates compactness because it "bypasses" population in an adjacent district that could have been included. But *any* district drawn in *any* manner will necessarily bypass the adjacent district's populations. This Court has never reduced compactness to the subjective and conclusory analysis Quinn offers.

Vandermost seeks to buttress her assertions by mischaracterizing *Wilson IV*, *supra*, 1 Cal.4th 707, and *Reinecke II*, *supra*, 10 Cal.3d 396, as supporting the proposition that "districts must contain 'local' and 'nearby' populations" and that "this rule is . . . mandatory." (V'most Pet. ¶ 21.) *Reinecke II* did not define compactness such that districts must contain "local" and "nearby" populations. Rather, the special masters' report appended to the opinion stated that "territory included within a district should be contiguous and compact, taking into account the availability and facility of transportation and communication between the people in the proposed district, between the people

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[38] The relaxed language of Article XXI regarding compactness—"encourage geographical compactness"—indicates that the districts are not required to satisfy any precise mathematical calculation or per se rule.

[39] No court has yet interpreted the goal that "nearby areas of population [not be] bypassed for more distant population." (Cal. Const., art. XXI, § 2, subd. (d)(5).) And Vandermost herself supplies evidence indicating that no standard has been established. (See, e.g., MALDEF California State Redistricting Plans for State Assembly, State Senate, and U.S. House of Representatives [submitted as V'most RJN Ex. G] at 11 ["MALDEF also acknowledges that there is no standard measure of compactness."].)

and candidates in the district, and between the people and their elected representatives." (10 Cal. 3d at p. 411). Nor did *Wilson IV* hold that districts must be composed entirely of "local" populations that are "nearby" each other. (V'most Pet. ¶ 21.) Indeed, *Wilson IV* explicitly rejected a purely geometric conception of compactness. (1 Cal.4th at p. 719 ["Compactness does not refer to geometric shapes but to the ability of citizens to relate to each other and their representatives and to the ability of representatives to relate effectively to their constituency."].) These authorities inform us that a district encompassing distant communities *is nonetheless compact so long as the citizens can relate to each other and to their representatives*. As evidenced by the record, the Commission went to great lengths to understand the shared interests of the various communities within each district. (See, e.g., Appen. 662-663; <http://wedrawthelines.ca.gov/viewer.html>.)

The U.S. Supreme Court has held similarly that districts with shared interests and communities are compact. (See, e.g., *Abrams v. Johnson* (1997) 521 U.S. 74, 92 ["[T]he § 2 compactness inquiry should take into account traditional districting principles such as maintaining communities of interest and traditional boundaries." (quotations and citations omitted)].) To the extent that distant populations have shared interests or a reasonable basis for being linked, a district containing these populations is "compact." In evaluating a Section 2 challenge to a Congressional District in Texas, the Court concluded that a district was not compact, because two Latino communities combined in the district were not only separated by nearly 300 miles but also had dramatically "different characteristics, needs, and interests...." (*LULAC, supra*, 548 U.S. at p. 434.) Rather than holding that large districts are *per se* not compact, the Court explained that "it is the enormous geographical distance separating the Austin and Mexican-border communities, *coupled with the disparate needs and interests of these populations—not either factor alone*—that renders District 25

noncompact." (*LULAC*, *supra*, 548 U.S. at p. 435; emphasis added.) The Court "accept[ed] that in some cases members of a racial group in different areas—for example, rural and urban communities—could share similar interests and therefore form a compact district if the areas are in reasonably close proximity."[40] (*Ibid.*) Given the Court's conclusion that the prior version of the district at issue was compact, despite stretching over 500 miles, the Court takes a broad view on what constitutes a "reasonably close proximity." (*Ibid.*)

Moreover, courts have found the compactness concept easily satisfied except in extreme situations. (See, e.g., *Shaw v. Reno* (1993) 509 U.S. 630, 644, [quoting *Arlington Heights v. Metro. Housing Dev. Corp.* (1977) 429 U.S. 252, 266] [holding that strict scrutiny applies only when a district "is so bizarre on its face that it is 'unexplainable on grounds other than race.'"]; see also *Vera*, *supra*, 517 U.S. at pp. 965-966, 971, 973-974 & Appen. A-C; *LULAC*, *supra*, 548 U.S. at p. 433 [noting that "no precise rule has emerged governing § 2 compactness"]; *Dillard v. Baldwin County Bd. of Educ.* (M.D.Ala. 1988) 686 F.Supp. 1459, 1465 [*Gingles* "does not mean that a proposed district must meet, or attempt to achieve, some aesthetic absolute, such as symmetry or attractiveness."]; *DeWitt v. Wilson* (E.D.Cal. 1994) 856 F.Supp. 1409, 1414 [rejecting 14th Amendment challenge to California's 1991 redistricting plan because the "Masters refused to create districts that wound in snake-like fashion

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[40] Indeed while *LULAC* was a 5-4 decision, two of the dissenting justices found the district in question compact, and the majority held that it would be compact if groups shared similar interests or were relatively close geographically. (*Id.* at p. 435.) The two remaining justices (Scalia and Thomas) do not believe vote dilution claims are cognizable under section 2. (*Id.* at p. 512.) As noted above, the district at issue was irregularly shaped, stretched hundreds of miles, and combined communities that were not immediately adjacent to each other. (*Id.* at p. 435.) The U.S. Supreme Court clearly does not share Vandermost's rigid view of compactness.

or resembled a Rorschach inkblot test found objectionable in Shaw"; internal quotation omitted].

Districts can be hundreds of miles in length and unusual shapes and still comply with compactness, so long as the mappers had a valid reason to draw them that way. In *Dillard, supra*, the court found that a proposed minority district was sufficiently compact for Section 2 purposes even though it was "elongated and curvaceous," because it "allow[ed] for effective representation." (686 F.Supp. at pp. 1465-1466.)

Only when geographical distances and diversion of interests reach absurd levels have courts been willing to label a proposed district non-compact. In *Wilson IV*, *supra*, Asian voters alleged that the 1991 districting plan denied them the "opportunity to elect a legislative representative." (1 Cal.4th at pp. 722-723.) This Court, however, approved of the line-drawers' decision not to "extend a long arm a block or so wide for the several miles between the Richmond district and 'Chinatown' . . . in order to bring these two areas into the same district." (*Id.* at pp. 722-723.) The Court explained that "such a misshapen district seemingly would violate the 'compactness' criterion, and is not required by the Voting Rights Act." (*Ibid.*) It is the type of district discussed in *Wilson IV*, where two communities are linked by a minimum-width connection and share nothing in common with that connecting area, where a court could objectively determine that a district was not compact because "nearby populations [were] bypassed for more distant population." (Cal. Const., art. XXI, § 2, subd. (d)(4).) None of the certified Senate districts resembles such a district.

The foregoing authorities reveal that Vandermost's framework, which would make inclusion of *any nearby population center* a prerequisite for

compactness, is neither constitutionally required nor workable in the face of higher criteria such as population equality. The Commission's districts meet the compactness criterion, particularly when viewed in the context of California's geography, population density, and the size of a Senate district. (Cal. Const., art. XXI, § 2, subd. (d)(5).)

Two independent quantitative studies of compactness have shown that the Commission's maps represent a significant improvement in compactness over 2001. A study by UCLA's Jeffrey B. Lewis and Iris Hui, which used the Roeck measure of compactness, found that the 2011 Senate lines were consistently and significantly more compact than the 2001 Senate districts.[41] A study by Kogan and McGhee uses another standard measure of compactness, the Polsby-Popper Index, and also finds that the 2011 Senate districts are significantly more compact than the 2001 districts.[42]

It is also possible to use this approach to compare the 2011 districts to the 1991 districts that Vandermost and Quinn hold out as models of compactness, as well as the 2001 districts drawn by the Legislature. In this analysis, the larger the index the more compact the district. Figure 1 shows the distribution of Senate district compactness from each decade, illustrating how

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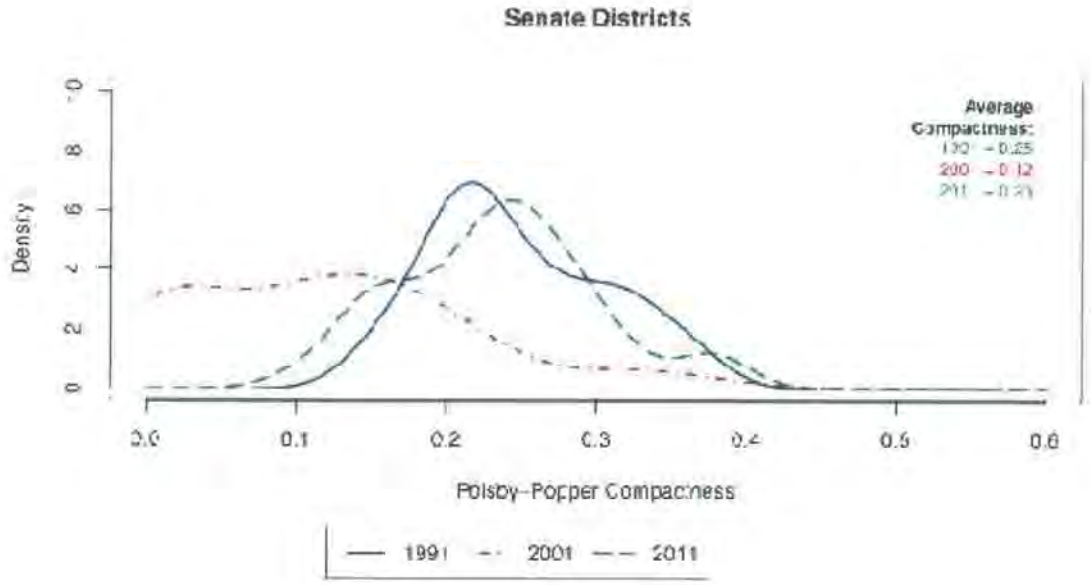
[41] The Roeck measure compares the areas of the smallest circle that can encapsulate a district with the area of the district itself. (Conference, A Brave New World: California's Redistricting Experiment, Panel 2, audio file available at: <http://igs.berkeley.edu/events/redistricting/>.)

[42] See Kogan and McGhee at p. 18 (Appen. Sec. 94) for California results. This measure is explained in Daniel D. Polsby and Robert D. Popper, 1991, "The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering," *Yale Law & Policy Review* 9(2): 301-353 (Appen. Sec. 20-24). The Polsby-Popper score for each political district is equal to the ratio of the area of the district to the area of a circle that has the same perimeter length as the district. It punishes (by recording as non-compact) sprawling districts and those with tentacles that reach out.

closely the Commission's plan (in the emdashed line) resembled the masters' 1991 plan (in the solid line), and how far each diverged from the Legislature's 2001 plan (in the dashed and dotted line). Averaging compactness scores across all districts shows that the 1991 special masters plan was indeed quite compact (with a Polsby-Popper index of 0.25), that the legislature's 2001 plan was much less compact (an index 0.12), and that the Commission's plan in 2011 was nearly as compact as the 1991 special masters plan (an index of 0.23). (See Appen. Sec. 94.)

Figure 1. Comparing the Compactness of the 1991, 2001, and 2011 Senate Plans



As documented in the Final Report and below, all of the Commission's districts are reasonable in size, shape, and the ability of their constituents to relate to each other. (Appen. 681-691.)

B. The Challenged Districts Are a Reasonable Application of the Constitutional Criteria.

Vandermost purports to challenge eleven districts. She does not allege facts showing that no reasonable Commission could have reached the Commission's determinations regarding any of the challenged Senate districts, and her request for relief should therefore be denied.

Vandermost's district-by-district challenge demonstrates a misconception regarding the feasibility of altering a subset of districts. The nature of drawing political boundaries is zero sum—moving a line for one district necessarily affects every bordering district, and the ripple effect often moves across the entire state. The changes suggested by Vandermost and Quinn would result in numerous unforeseen and unwanted consequences. The Commission, by contrast, considered the districts together in drafting its maps and the result complies with Article XXI.

1. The Central California Senate Districts Are Constitutional.

Vandermost challenges Senate Districts 12 and 17 as unconstitutionally non-compact (First Cause of Action) and as violating Section 2 and Section 5 of the VRA (Third Cause of Action). As discussed in section III(B), *post*, the VRA claims are facially deficient. Indeed, the primary driver (after population equality) for these districts (and neighboring Senate District 14) was proper compliance with the VRA, and that compliance dictated the districts' shape. In addition to misapprehending the VRA requirements, Vandermost does not demonstrate that the Commission violated the compactness criterion or that these districts were not drawn with a reasonable application of the redistricting criteria.

As with all the districts, drawing each of the Central California Senate Districts involved a complex and intricate analysis of numerous issues and facts. This region of California is bounded to the west by the Pacific Ocean,

covers much of the Coastal Range, and has the population centers of Los Angeles to the south and the Bay Area to the north.

Adding to the complexity, three of the counties (Merced, Monterey and Kings) must comply with Section 5 of the VRA, which placed a floor on their Latino VAP. (Appen. 661-662.) The Commission's reasonable effort to comply with Section 5 began with understanding the 2001 benchmarks that were required to be matched to meet the Section 5 non-retrogression standards. For Senate District 12 (which contains Merced and a portion of Monterey County), the benchmark for Latino VAP is 53.48%.[43] (Appen. 184-185.) For Senate District 14 (which contains Kings County), the benchmark number for Latino VAP is 66.19%, and for Senate District 17 (which contains Monterey), the benchmark number for Latino VAP is 26.22%. (*Ibid.*)

Ultimately, the Commission drew maps that complied with the Section 5 Latino VAP benchmark for each county because no county retrogressed in its percentage Latino VAP in the new districts as contrasted with the prior districts. (*Beer*, *supra*, 425 U.S. at p. 141.) In King's County, Latino VAP rose from 66.19% to 66.27%. (Appen. 184-185, 734-735.) In Merced, Latino VAP rose from 53.48% to 59.14%. (*Ibid.*) And in Monterey County, the Latino VAP rose from 26.22% to 26.28%. (*Ibid.*)

The Commission instructed its mapmakers to try various iterations of the maps, taking public comment into account. There were, however, very few ways to divide the population to meet the benchmark Latino VAP in each district, particularly in Senate District 14, which contains Kings County with its

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[43] The benchmark is based on the 2010 population within the districts established in 2001. (*Georgia v. Ashcroft* (2003) 539 U.S. 461, 468-471; see also Appen. 173.)

very high 66.19% benchmark.[44] (Appen. 208-209.) Vandermost ignores the reality that meeting the Kings County benchmark was a difficult challenge, and importantly, could not be accomplished by following her expert's suggestion of combining the Latino populations in Merced and Kings. (Quinn Supp. (V'most) Dec. at 5.)

Because Merced County could not reasonably be combined with Kings County and meet Section 5 requirements, the Commission had to address Merced County separately. Very few options remained for how to meet the Merced Latino VAP benchmark of 53.48%. (Appen. 183-185.) The Commission reasonably concluded that including Salinas and portions of the Highway 101 corridor was the most reasonable way to comply with Section 5 in Merced. In turn, this narrowed the remaining choices for the district to be drawn in Monterey County. Vandermost has not pled facts demonstrating that no reasonable commission could have made these choices. Moreover, these reasonable steps taken to comply with the VRA superseded any claim that Senate Districts 12 and 17 somehow violate the compactness requirements.

The Commission also considered geographic features and worked to keep communities together. (Appen. 662-663.) To the north, the Bay Area imposed limitations, including the Commission's decision that a Senate District should not cross the Golden Gate Bridge.[45] To the south, population-dense Los

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[44] Notably, Quinn's proposed maps fail to meet this benchmark for King's County, retrogressing Latino voting power in that region. (Quinn Supp. Dec. (V'most) 5.) This is just one of many illustrations of where Quinn—unencumbered by the record of public input and actual constitutional criteria—offers nothing more than his personal views of how maps should be drawn.

[45] There are approximately 800,000 people in San Francisco. There was substantial public input objecting to the inclusion of only 100,000 Marin residents in that district. (See, e.g., May 20, 2011 Public Hearing, available at

(Footnote continues on next page.)

Angeles imposed similar restraints. Putting in a hard line at the San Luis Obispo/Monterey County line, as Vandermost now urges, would have caused undesirable splits in Ventura County. (See, e.g., June 22, 2011 Public Hearing, speaker no. 84, available at <http://wedrawthelines.ca.gov/video-archive-june-22-2011-oxnard.html>; see also Appen. 103.) And those lines would have had a ripple effect into Los Angeles County. Again, Vandermost has pled no facts to show that no reasonable commission could have reached these decisions.

Vandermost offers no basis to supplant the Commission's well-informed and long-considered determinations that reasonably applied the relevant legal criteria. (See Standard of Review Section II, *supra*.) The following is a more detailed discussion of the relevant districts that illustrates these points.

(Footnote continued from previous page.)

<http://wedrawthelines.ca.gov/video-archive-may-20-2011-santa-rosa.html>; see also, e.g., Appen. 85, 91, 92, 95, 109-110, 195-196, 202, 391.)

Senate District 12

Vandermost alleges that District 12 violates the Constitution on the ground that it is not "compact," because it crosses the Monterey County line and includes the Salinas and Highway 101 Corridor areas of Monterey County. (V'most Pet. ¶¶ 76, 83.) Her claim is based on a misunderstanding of Section 5 and should be rejected.

Senate District 12 is a Central Valley district including the Section 5 county of Merced. To meet its benchmark of 53.48% (Appen. 184-185, 317), Senate District 12 pulled population from Salinas and the Highway 101 corridor of Northeastern Monterey. (Appen. 152-154.) The Commission chose this

population in consideration of its Latino VAP, as well as its agricultural economy. (Appen. 154; see also May 22, 2011 Public Comment Hearing available at <http://wedrawthelines.ca.gov/video-archive-may-22-2011-salinas.html>.) Consistent with the public testimony supporting combining Salinas with the Central Valley, this combination resulted in the district crossing the Coastal range. (Appen. 314-316.) The Commission determined that Salinas is not considered "coastal" (Appen. 154); inclusion of that area with the Central Valley was a reasonable decision reached by the Commission.

Even a cursory review of this district's shape indicates that it does not suffer from compactness issues. This district does not exhibit the barbell shape in *Wilson IV*. (1 Cal.4th at pp. 722-723 [rejecting a district that would "extend a long arm a block or so wide for the several miles between the Richmond district and 'Chinatown'"].) Nor does it resemble the districts in *Vera* that drew strict scrutiny because of their bizarre shapes. (517 U.S. at p. 965 [applying strict scrutiny to bizarrely shaped districts that looked like a "jigsaw puzzle" or "sacred Mayan bird" or that had "many narrow corridors, wings, or fingers"].) Nor can it be said that residents of Salinas are unable "to relate to each other and their representatives." (*DeWitt*, *supra*, 856 F.Supp. at p. 1414.)

Moreover the decision to split Monterey County to meet the VRA benchmark cannot be faulted. Indeed, there was no obvious alternative that would satisfy the constitutional criteria. Vandermost's suggestion that Merced County be joined with Kings County is a non-starter. As Petitioner's proposed map demonstrates, the combined district would not have met the Kings County Latino VAP benchmark in excess of 66%. (Supp. Quinn Dec. (V'most) 5.) The Commission declined to draw districts that would have retrogressed from the

Section 5 benchmark, thus risking rejection by the U.S. Department of Justice.[46] (Appen. 288-301.)

Accordingly, Vandermost's challenge to Senate District 12 on compactness grounds fails.

Senate District 17

[46] Moreover, as discussed in Section III(C), *post*, the Latino-influence district proposed by Professor Joaquin Avila that Vandermost's expert now suggests, was not required under Section 2.

Vandermost alleges that District 17 is not "compact," because it extends from southern Santa Cruz and Santa Clara Counties in the north to San Luis Obispo County in the south. (V'most Pet. ¶¶ 76, 83.) Her claims misstate the law and should be rejected.

Senate District 17 is comprised of the Central Coast of California, running from Santa Cruz and Southern Santa Clara Counties in the north to San Luis Obispo County in the south. Based on substantial public comment, the Commission reasonably determined that these coastal areas had significant common interests. (See, e.g., Appen. 11-13, 71-72.) The inclusion of southern, agricultural portions of Santa Clara County allowed the district to meet its VRA Section 5 benchmark, and the grouping of the cities of Morgan Hill, Gilroy and San Martin was supported by substantial public input. (See, e.g., Appen. 67-68, 116.) No assertion by Vandermost demonstrates that a reasonable commission could not have reached these conclusions.[47]

Although Petitioner argues that the length of this district violates the compactness criterion (V'most Pet. ¶ 84), it is not unreasonable for a coastal district to follow the coastline, as similar issues will affect many coastal areas,

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[47] Vandermost's Petition contains gratuitous and irrelevant allegations concerning Commissioner Aguirre's volunteer service on an advisory board for the Central Coast Alliance for a Sustainable Economy ("CAUSE"). (V'most Pet. ¶¶ 90-92.) Commissioner Aguirre's application for the Commission described his ability to serve impartially—and identified his political affiliations and long history of public service—including by disclosing a $250 contribution in 2008 to CAUSE. No basis exists for Vandermost's *ad hominem* attack on the Commissioner's impartiality. Moreover, all redistricting decisions, including those regarding Senate Districts 17 and 27, were made by the 14-member Commission, not by a single Commissioner. And the baseless allegations regarding Commissioner Aguirre were publicly aired before the Commission issued its preliminary final maps on July 29 and final maps on August 15, 2011.

and the Commission's determination to create a coastal district was well-supported in the public record. (See, e.g., Appen. 11-13, 71-72.) Moreover, drawing a district of nearly one million people in a sparsely populated region necessarily requires a district that covers a large geographic region; there is nothing unreasonable about that choice. Senate District 17 covers a long expanse of coastline, but it is not the bizarre shape disapproved by *Vera*. (517 U.S. at p. 965.) Nor does the population have such disparate needs and interests so as to render its residents unable to relate to each other or their representative. (*LULAC*, *supra*, 548 U.S. at p. 435; *Dillard*, *supra*, 686 F.Supp. at pp. 1465–1466.) This is evidenced by the significant public input requesting the combination of San Luis Obispo and Monterey Counties (see, e.g., Appen. 93-94, 96-101, 104, 107, 111-112), as well as the inclusion of the entire Monterey Bay (see, e.g., *id.* at 11-13, 71-72).[48] Petitioner has presented no evidence that Senate District 17 was not created based on a reasonable application of the constitutional criteria.

Vandermost also complains that Monterey County should not have been split, although she does not allege a cause of action related to the county-split, but rather rests on compactness grounds. (V'most Pet. ¶¶ 84-92.) Monterey County was split by an east/west divide to include Salinas and the Highway 101 Corridor in Senate District 12. This split allowed Senate District 12 to meet Merced County's Section 5 benchmark, and testimony supported the conclusion that the Salinas area of Monterey County has more in common with its agricultural neighbors in the Central Valley than with the Coast. (Appen. 314-316.) The split also allowed Merced and Monterey to meet their VRA

[48] Notably, this district is more compact than the 2001 district. (Appen. 1.) The prior district included areas as far North as Santa Cruz and Santa Clara Counties and extended South to Santa Maria in Santa Barbara County. (*Ibid.*)

benchmarks, a higher criterion than compactness.[49] (See, e.g., Appen. 102, 154, 175.) Vandermost's Petition wholly fails to demonstrate that the Commission's determination to split Monterey County was unreasonable, and Vandermost's compactness challenge therefore fails.

2. The Northeastern Senate Districts Are Constitutional.

[49] The record here further demonstrates that the Commission included areas in Santa Clara County to meet population equality and VRA benchmark requirements, a higher criterion than compactness. Because compliance with the VRA trumps compactness concerns, that alone was a sufficient basis for upholding Senate District 17 as drawn. In addition, the lines, as drawn, allowed other communities both in the Bay Area and in Ventura County to remain intact. (Appen. 762-763.)

Vandermost alleges that Senate Districts 1, 3, 4, and 8 are not compact and unnecessarily split Sacramento County. (V'most Pet. ¶¶ 52-75, 120-144.) Her arguments suffer several fatal flaws, and nothing she has submitted shows the Commission's choices are an unreasonable application of the criteria.

First, the northern and eastern portions of California have scarce, mostly rural population and ample landmass. For example, Alpine County contains just over 1,000 people, Sierra County contains just over 3,000 people, and Modoc County contains around 9,000 people. (Appen. 756.) By contrast, the closest urban population, Sacramento County, has population of 1,417,788—about 500,000 more people than an ideal Senate District. (*Ibid.*) The Commission was therefore required to divide Sacramento County among at least two districts to comply with the first constitutional criterion, the population-equality requirement. (Cal. Const., art. XXI, § 2, subd. (d)(1).) The Commission's decision to include some more populated areas in districts containing more sparsely populated areas is a reasonable method of meeting that requirement.

Second, the VRA played a role in the mapping of northern and eastern California. Yuba County, a Section 5 county, is in the middle of this North Central Coast region. Its benchmark of a 13.41% Latino Voting Age Population in Senate District 4 required that the Commission include sufficient Latino population, which required inclusion of some Latino areas from Sacramento County. (Appen. 183-185, 220.) In addition, Senate District 8 borders on Senate Districts 12 and 14, which contain Section 5 counties with Latino VAP benchmarks of 53.48% and 66.19%, respectively. (Appen. 183-185.) Because, as discussed above, those districts needed to be drawn to meet their respective Latino VAP benchmarks, options for the borders of the surrounding districts were necessarily limited.

Keeping these priority considerations in mind, the Commission worked hard to create districts that minimized splits of "cities, counties, cities and counties, local neighborhoods and local communities of interest." (Cal. Const., art. XXI, § 2, subd. (d)(4).) Vandermost, conversely, elevates the division of Sacramento County above all else without regard for other factors.

The Commission ultimately divided Sacramento County among six Senate districts (districts 1, 3, 4, 5, 6, and 8). (Appen. 756-758.) However the vast majority of Sacramento County (62.6%, or 887,557 people) is located in Senate District 6, which includes the entire City of Sacramento. (*Ibid.*) Another 21% of Sacramento County (or 308,952 people) is located in Senate District 4. (*Ibid.*) In other words, more than 83% of Sacramento County is contained in two Senate districts. (*Ibid.*) And because Senate District 1 includes 10.2% of Sacramento County (or 145,070 people), this means that three Senate districts contain approximately 94.5% of Sacramento County. (*Ibid.*) The remaining 5.5% of Sacramento County is divided among Senate District 3 (0.6%, or 8,585 people), Senate District 5 (1.9%, or 26,370 people), and Senate District 8 (3.0%, or 41,981 people). (*Ibid.*)

Accordingly, Vandermost's alarmist tone about dividing a county six ways is unwarranted. This county, which under the narrowest case would be divided into two districts, has 94.5% of its population in three districts. On its face, this is insufficient for this Court to conclude that there has been an unreasonable application of the criteria. In any event, the need to achieve population equality in the surrounding districts supersedes any claim that Sacramento County was unreasonably divided.

Senate Districts 1 and 8 cover large, rural areas with little population.[50] These districts therefore needed to add population from Sacramento County to meet the population-equality requirements of the U.S. and California Constitutions. (Appen. 402, 613-615.) Because the northern 30% of California (geographically) contains approximately 5% of California's population, the resulting districts will necessarily be very large in terms of area (Appen. 400, 612), particularly given the population requirements for California's Senate Districts (which are twice the size of Assembly Districts and much larger than Congressional Districts). Vandermost's argument that these districts unconstitutionally split Sacramento County therefore fails.

Vandermost's arguments as to compactness also fail, as discussed in more detail below, because she presents no evidence rendering unreasonable the Commission's rationale for drawing the districts as it did, and the districts are not constitutionally non-compact, as discussed below. Instead, she asks the Court to allow her to substitute Quinn's preferred maps, which rely heavily on the 1991 special masters' decisions. But those maps are not relevant to a determination of whether the Commission drew reasonable maps in 2011 under Article XXI, section 2, as amended.

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[50] For example, Senate District 1 includes the entire Counties of El Dorado (population 181,058), Shasta (population 177,223), Nevada (population 98,764), Siskiyou (population 44,900), Lassen (population 34,895), Plumas (population 20,007), Modoc (population 9,686), Sierra (population 3,240), and Alpine (population 1,175). (Appen. 756.) Senate District 8 covers the entire Counties of Tuolumne (population 55,365), Calaveras (population 45,578), Amador (population 38,091), Inyo (18,546), Mariposa (population 18,251), and Mono (population 14,202). (Appen. 756-757, 611-615.)

Senate District 1

Vandermost claims that Senate District 1 is not compact and unnecessarily divides Sacramento County. The district does not violate the compactness criterion, and the Sacramento County split was done to achieve population equality, a higher criterion than compactness. Vandermost's claim therefore fails.

Senate District 1 is a mountainous district along the border with Oregon and Nevada. Counties in that region are very large with very low population. The Commission added population from Sacramento County to meet the population equality criterion. (Appen. 323, 611.) The Commission received a substantial amount of public testimony (during public input meetings in Redding, Auburn, Marysville, and Merced) for keeping the northeastern-most

section of California district separate from the northern Central Valley because of the distinct interests of this region—including timber and recreation—in contrast to the production agriculture such as rice, tomatoes, and tree crops of the northern Central Valley. (See, e.g., Appen. 15, 149-150, 174, 319, 324.)

Vandermost's primary complaint is that the Commission included 10.2% of Sacramento County in Senate District 1 for population-equality reasons. The Commission chose this particular portion of Sacramento County because it allowed them to keep the Folsom Lake area intact in a single Senate District, as well as Orangevale and Fair Oaks—all consistent with public testimony. (See, e.g., Appen. 130-131, 261.) As noted above, population equality considerations trump the goal of keeping counties (and other geographical units). (See Section III(A)(1), *supra*.)

Vandermost also challenges this district on compactness grounds, but simply reviewing the depiction of the district demonstrates that Petitioner is wrong. The district does not have the "bizarre" shape that might subject it to greater scrutiny. (*Vera*, *supra*, 517 U.S. at p. 965.)

The public record demonstrates that the Commission had a reasonable basis for drawing the district as it did. The Commission received substantial public testimony advocating keeping the northern interior region of California separate from the coastal region. (See, e.g., Appen. 53-54, 83-84, 86-89, 318-319, 399.) However, without including the coastal populations from Del Norte County to Marin County, the entire population of the other northern counties—excluding Placer and Sacramento—is around 888,000 people, or almost 50,000 people short of the ideal population for a California Senate District. (Appen. 402.) By including portions of Placer County in Senate District 1, the Commission also was able to keep the Lake Tahoe area whole within Senate District 1. (Appen. 79-82, 341-347.) These are all reasonable choices that the

Commission made as part of its deliberations. Vandermost provides no facts that would allow this Court to conclude that the configuration of Senate District 1 was not a reasonable application of the redistricting criteria.

Vandermost suggests that the Commission should have drawn a district by taking the entire northeast portion of the State, excluding Sacramento Counties. (V'most Pet. ¶ 56.) She also contends that the Commission "bypassed" hundreds of thousands of people when drawing Senate District 1. (*Id.* ¶ 52.) To the extent that she suggests that Senate District 1 should have been combined with the northern Central Valley region (including counties such as Sutter, Butte, and Yuba in what is now Senate District 4), this is contrary to substantial public testimony. (See, e.g., Appen. 15, 60-62, 150, 174, 319, 324, 611.) For instance, Yuba and Sutter in the Central Valley grow crops such as rice, tomatoes, and almonds—none of which are grown in the mountain counties such as Siskiyou and Modoc, which are more focused on timber, fires, and grazing. (See, e.g., Appen. 54, 324.) Consequently, Vandermost's configuration for this district would have combined communities that are not linked by shared interests, as confirmed by the public testimony and inconsistent with the fourth criterion under Article XXI, section 2(d). (Quinn Supp. (V'most) Dec. at p. 3.)

To the extent Vandermost is suggesting that the Commission "bypassed" the northern coastal populations when drawing Senate District 1, this ignores the overwhelming testimony supporting keeping the coast separate from the interior northern region of the State. (See, e.g., Appen. 53-54, 83-84, 86-89, 318-319, 399.)

Vandermost's Petition also contends that the Commission should not have included the City of Redding in the same Senate District as the northern suburbs of Sacramento County. There was scant public comment to suggest

that including Sacramento in the same district as Redding might be problematic. To address any concern that rural voices would be overshadowed by urban Sacramento voters, the Commission included only around 145,000 residents from Sacramento in Senate District 1 (less than 1/5 of the entire district). Again, Vandermost's different, *post hoc* notion of what should have been done is irrelevant to whether a reasonable commission could have made the decisions made by the Commission based on the public record before it.

Vandermost also contends that Senate District 1 separates the "northernmost counties, Shasta and Siskiyou, from the rest of the region." (V'most Pet. ¶ 53.) To the extent she is referring to the "region" of Del Norte and Humboldt Counties, she ignores the substantial public testimony supporting keeping those counties separate from Shasta and Siskiyou. (See, e.g., Appen. 69-70, 305-306, 318, 399.) In fact, the Commission's initial draft maps had split Siskiyou so that the western half was joined with the coastal region, but there was overwhelming objection to that split. (See draft map, June 10, 2011, available at <http://wedrawthelines.ca.gov/maps-senate-1st-draft.html>.)

There simply is no basis in the record or in law for a determination that this Senate district was not compact or unnecessarily split Sacramento County. Therefore, Vandermost's First and Second Causes of Action as to Senate District 1 should be dismissed.

Senate District 3

Vandermost contests Senate District 3 on compactness grounds and for splitting Sacramento County. As the map depicts, the district does not violate the compactness criterion, and the portion of Sacramento County included in this district included the Sacramento River Delta, an area that fit well within Senate District 3. Vandermost fails to demonstrate that the drawing of this district was not a reasonable application of the redistricting criteria.

Senate District 3 is a wine-making region including Napa and much of Yolo County.[51] To achieve population equality, the Commission combined the

[51] Significant public input urged the Commission to keep Yolo County together. (See, e.g., Appen. 229-230, 278-279; Appen. Sec. 74.)

cities of Sonoma, Petaluma, and Rohnert Park from Sonoma County.[52] Those cities fit well within Senate District 3 because of their focus on agricultural (particularly grape-growing) industries. (See, e.g., Appen. 90.) The Commission also included Solano County and added population from Contra Costa County, including Martinez and Pleasant Hill across the Benicia-Martinez Bridge, to achieve population equality. (Appen. 179, 622-628, 682.) This area of northern Contra Costa County was a better fit with the other areas of Senate District 3 than other available population centers. (See, e.g., Appen. 404.)

Senate District 3 also contains 0.6% of Sacramento County (8,858 people). The portion of Sacramento County included in Senate District 3 is made up entirely of the Sacramento River Delta. There was significant public testimony in favor of keeping the entire Delta region in one Senate District. (See, e.g., Appen. 105; see also May 19, 2011 Public Input Meeting, speaker no. 51, available at <http://wedrawthelines.ca.gov/video-archive-may-19-2011-auburn.html>; June 28, 2011 Meeting, speaker nos. 38, 74, 84, 99, available at <http://wedrawthelines.ca.gov/video-archive-june-28-2011-sacramento-2.html>.) This area has significant and unique concerns, including flooding and diversion of water to Southern California, so the Commission decided it was important to keep the Delta in a single Senate district. (*Ibid.*) In addition, public input supported combining the Delta with other areas of Senate District 3. (See, e.g., Appen. 105.) There simply is no basis for an argument that it was unreasonable to split off this small portion of Sacramento County. And it is perfectly consistent with Article XXI section 2, subdivision (d)(4) to maintain a

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[52] Sonoma and Petaluma are a natural fit with Napa County and the largely agricultural Yolo County. The Commission received public testimony urging that these wine-growing regions be placed together. (Appen. 179, 215.)

community of interest that crosses a county line. The resulting division of Sacramento County is a reasonable application of constitutional criteria.

Vandermost also challenges this same district on compactness grounds, but again, a review of the map demonstrates this district is not within the realm of "bizarre" districts that could genuinely be contested as not compact. (*Vera, supra*, 517 U.S. at p. 965.)

Vandermost's main argument is that the Commission should not have crossed the Benicia-Martinez Bridge to include Martinez and Pleasant Hill.[53] But this has nothing to do with splitting Sacramento County or compactness. Vandermost argues that the Commission should instead have crossed the Golden Gate Bridge when drawing Senate Districts. (V'most Pet. ¶ 130.) This argument ignores overwhelming public testimony against crossing the Golden Gate Bridge. (See, e.g., Appen. 85, 91, 92, 95, 109, 195-196, 202, 391; see also Public Hearing, May 20, 2011, available at <http://wedrawthelines.ca.gov/video-archive-may-20-2011-santa-rosa.html>.) Residents were concerned that the approximately 800,000 residents in San Francisco would overwhelm and overshadow the 100,000 residents in Marin if both were swept into the district. (See, e.g., Appen. 2-4.) Vandermost offers no evidence (other than 20-year-old maps) that it is more reasonable to cross the Golden Gate Bridge than the Carquinez or Benicia-Martinez bridges. (V'most Pet. ¶ 64.) Again, Vandermost's different approach to the Commission's work says nothing about

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[53] Quinn takes issue with the Final Report's statement "[t]he District also includes a portion of Contra Costa County, including the cities of Martinez and Pleasant Hill, which were included to achieve population equality and are connected through the Benicia-Martinez Bridge." (Appen. 682.) He argues this sentence is inaccurate because Martinez and Pleasant Hill are both in Contra Costa County and not connected by the Benicia-Martinez Bridge (V'most Pet. ¶ 132.) Fairly read, the Final Report is merely stating that the cities are connected to the rest of the district by the Benicia-Martinez Bridge. (Appen. 682.)

whether a reasonable commission could have drawn Senate District 3 in its current form. The Commission acted reasonably in drawing Senate District 3.

Vandermost also claims that Senate District 3 should not have included the working-class communities of Northern Contra Costa County (Martinez and Pleasant Hill) together with the wine country in Napa and Sonoma. However, this fails to recognize that some of the population of Contra Costa County needed to go with Napa County in Senate District 4 for population equality reasons. This particular portion of Contra Costa County was the best fit with Senate District 3, because Martinez and Pleasant Hill have shared interests with Benicia and Vallejo. (Appen. 320-321, 404.)

None of Vandermost's arguments suggest, much less demonstrate, that this Senate district was not compact or unnecessarily split Sacramento County. Vandermost's challenges to Senate District 3 should be rejected.

Senate District 4

Vandermost claims that District 4 is not compact and unnecessarily divides Sacramento County. The district is compact and the Sacramento County split was done to achieve population equality, a higher criterion than compactness. Vandermost's arguments are wrong.

Senate District 4 is a northern Central Valley region and includes Yuba County, which is covered by Section 5. Yuba's Latino VAP benchmark was 13.41%. (Appen. 183-185, 220, 728.) The certified district has a Latino VAP of 16.37%. (*Ibid.*) The Commission added portions of Placer County (including Roseville) and Sacramento County to meet the Section 5 benchmark and to achieve sufficient population. (See, e.g., Appen. 351, 614, 682.)

Again, Vandermost contests the split in Sacramento County, but it was necessary to include this portion of Sacramento County for population equality reasons and to avoid retrogression of Latino voting strength for purposes of VRA Section 5. (Appen. 351, 614, 682.) The Commission chose this specific portion of Sacramento County because areas further west would have required splitting the City of Sacramento. (Appen. 306, 325.) Balancing the splitting of cities and counties is part and parcel of the Commission's application of the fourth highest constitutional criterion, and contrary to Vandermost's argument, the Constitution does not prefer counties over cities. (Cal. Const., art. XXI, § 2, subd. (d)(4).)

Vandermost also challenges this district on compactness grounds, but its shape is not "bizarre." (*Vera*, *supra*, 517 U.S. at p. 965.) The map depiction above shows that the district is compact. Nor has Vandermost presented any evidence that the district reduces "the ability of citizens to relate to each other and their representatives, and of the representatives to relate effectively to their constituency." (*Wilson IV*, *supra*, 1 Cal. 4th at p. 719.) The argument that Red Bluff and Redding have never been combined is no basis for a conclusion that it would be unconstitutional to do so. (V'most Pet. ¶ 58.) Nor is it unreasonable to meet population requirements by including some suburban population with more sparsely populated areas.

For all the reasons discussed above, Vandermost's challenges to Senate District 4 must be rejected.

Senate District 8

Vandermost claims that Senate District 8 violates the California Constitution because it is not compact and unnecessarily divides Sacramento County. She is again wrong.

Senate District 8 is a large geographic area bounded to the east by California's border with Nevada. To the west, its neighbors include Senate Districts 12 and 14, which are covered by Section 5. It also includes Inyo and Mono counties, which have very low population density.

Once again, Vandermost contests the split of Sacramento County, which was done for population reasons that overcome the lesser goal of minimizing community splits. (Appen. 615; Cal. Const., art. XXI, § 2, subd. (d)(1).) The area covered by much of Senate District 8 is geographically expansive and yet

contains little population. (*Ibid.*) For instance, Inyo and Mono Counties together contain about 32,000 people, yet these two counties make up a significant portion of California's eastern border. Accordingly, to meet the population-equality requirement for Senate District 8—the Commission's highest criterion—it became necessary to include population from the valley floor to the west (Fresno, Turlock and Clovis) as well as Sacramento County to the north. (*Ibid.*)

Nor is Senate District 8 unconstitutionally non-compact. It is not a "bizarre" district (*Vera*, *supra*, 517 U.S. at p. 965), and its shape is dictated by population equality issues (as discussed above) and VRA requirements for neighboring districts.

While Senate District 8 does not itself contain any county that is subject to the requirements of VRA Section 5, it lies directly to the east of two such districts—Senate Districts 12 (Merced County) and 14 (Kings County). The location of these two Section 5 counties imposed significant constraints on the possible configurations for a foothills district. (Appen. 683.) Vandermost contends that Senate District 8 should not have included any portion of the city of Fresno. (V'most Pet. ¶ 75.) It was necessary, however, to adjust and split portions of Fresno from Senate Districts 12 and 14, so that they could meet their Latino VAP benchmarks. (Appen. 182A-182F.)

Substantial public testimony advocating for separating valley portions of Central California from the foothills region. (See, e.g., Appen. 23, 155, 156, 182, 182A-182F, 330-331, 348, 500.) The Commission chose the configuration that best complied with Article XXI and provided for effective and fair representation, while achieving population equality.

No support exists for Vandermost's challenges based on compactness or the "unnecessary" split of Sacramento County.