GIBSON DUNN

Gibson, Dunn & Crutcher LLP

1881 Page Mill Road
Palo Alto, CA 94304-1211
Tel 650.849.5300
www.gibsondunn.com

George H. Brown
Direct: +1 650.849.5339
Fax: +1 650.849.5039
GBrown@gibsondunn.com

Client: 20470-00002

August 29, 2011

VIA E-MAIL AND HAND DELIVERY

Charles H. Bell, Jr., Esq.
Bell, McAndrews & Hiltachk, LLP
455 Capitol Mall, Suite 600
Sacramento, California 95814

Dear Mr. Bell:

On behalf of the California Citizens Redistricting Commission (the "Commission"), we write concerning the summary of the State Senate Districts Referendum, Summary No. 1499 (11-0028), prepared by the Attorney General and issued on August 26, 2011 (the "Summary"). The Summary reflects a misunderstanding of Article XXI of the California Constitution. In order to avoid misleading and confusing the voters during the referendum process, and to avert the inevitable inefficiencies and needless costs that would result if the referendum summary is later found to be invalid, we have respectfully requested that the Attorney General's office revise and reissue the Summary to accurately reflect California law. Accordingly, we believe it would be in the best interests of the proponents of the referendum to hold off on gathering any signatures under the flawed Summary language, and to await the Attorney General's corrected language, which we presume will be issued shortly.

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

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

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

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

Allowing signatures to be gathered using the Summary provided by the Attorney General on August 26, 2011 risks confusing the voters and brings needless uncertainty to the referendum process. Courts have repeatedly explained that the Attorney General's summary "cannot be misleading," *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 243, and must "reasonably inform the voter of the character and real purpose of the proposed measure." (*Boyd v. Jordan* (1934) 1 Cal.2d 468, 472.) Accordingly, the Commission has respectfully requested that the Attorney General rewrite the Summary to conform to California law. Likewise, the Commission believes it would be in the best interests of the proponents of the referendum to hold off on gathering any signatures under the flawed Summary language, and to await the Attorney General's corrected language, which we presume will be issued shortly.

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

Very truly yours,

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

/s/ James Brosnahan
James Brosnahan
Morrison & Foerster LLP

cc: Debra Bowen, California Secretary of State
George Waters, Esq.
Kirk Miller

101140790.1