PETITION SIGNATURE VERIFICATION GUIDELINES

(These are general guidelines for processing and verifying signatures for initiative, referendum, recall, nomination, and signature in lieu of filing fee petitions.)

1. Petition Format (F1 - F13) - Pages 1 - 2
2. Petition Signature (S1 - S28) - Pages 3 - 8
3. Declaration of Circulator (C1 - C17) - Pages 9 - 11
4. Signer Withdrawal (SW1 - SW7) - Page 12

PETITION FORMAT						
#	**TITLE**	**SITUATION**	**CURRENT PROCEDURE/ PRACTICE**		**NOTES**	**APPLIES TO: Initiative, Referendum, Recall, Nomination and Signature in Lieu of Filing Fee Petitions** ****Except as Noted***
			RAW COUNT?	**SIG VALID?**		
F1 1997	Address as registered	Petition form directs signers to include "address as registered" rather than "residence address."	N	N	See Exhibit A: Assembly v. Deukmejian (1982) 30 Cal, 3d 638 (EC 100, 9020)	All Petitions (Excludes recall which is pre-reviewed)
F2 1997	Title & Summary	One or any page of a multi-page section fails to include the title & summary while remaining pages of the same section are properly identified.	N	N	However, failure to include the title and summary on one page of a section does not invalidate other pages of the same section that are otherwise proper in form. (EC 9008, 9014, 9108)	Initiative and referendum petitions only
F3 1997	Space for jurisdiction name	Space for jurisdiction name is left blank. For example, the name of the county, city, or district in which the petition is circulated is missing.	Y	Y	The blank should be filled in; however, failure to do so does not invalidate otherwise valid signatures. (EC 9001, 9021)	All Petitions
F4 1997	Parts cut off section	Required text of measure, declaration of circulator, or title and summary have been cut off one page of a multi-page petition section.	N	N	Failure to include these items on one page of a section does not invalidate other pages of the same section that are otherwise proper in form. (EC 104, 9008, 9014, 9022, 9108, 9109)	All Petitions
F5 1997	Parts of an informal petition missing	Signature on loose-leaf or other paper informally identified as part of a petition, but not bearing proper caption, text, or in the case of initiative and referendum petitions, the official title and summary.	N	N	(EC 9008, 9010, 9014, 9108)	All Petitions (Excludes recall which is pre-reviewed)
F6 1997	Two-sided section with signatures on the back	Signatures appearing on the back of a printed petition. (Signatures must appear before the declaration of circulator.)	Y	Y	Each page bearing signatures must have the statutorily required text and declaration of circulator. (EC 9008 (a), 9014, 9108)	All Petitions (Excludes recall which is pre-reviewed)
F7 new	Attorney General (AG) number is missing	The AG number is missing on petition section.	N	N	(EC 9004, 9008)	State initiative and referendum petitions only

* Recall petitions - Election Officials pre-review

PETITION FORMAT

#	TITLE	SITUATION	CURRENT PROCEDURE/ PRACTICE		NOTES	APPLIES TO: Initiative, Referendum, Recall, Nomination and Signature in Lieu of Filing Fee Petitions *Except as Noted*
			RAW COUNT?	SIG VALID?		
F8 1997	Section belongs to another county/ signatures not in county of filing	Petition sections in which the entire face of the section indicates the petition sections were circulated among voters of counties other than the county where actually filed. Note: If detected <u>before</u> filing, the petition should be returned to the filer.	Y	Y	Validate any signature if the address is within the county of filing.	All Petitions
				N	If detected <u>after</u> filing: count signatures on these sections in the raw count; declare "not sufficient" or "invalid" any signatures of voters not registered in the county of filing. (EC 9021)	
F9 1997	Section belongs to two or more counties	Petition sections labeled as being circulated in counties other than the county of filing, but containing one or more signatures of voters registered in the county of filing.	Y	Y	Validate signatures of registered voters in county of filing. (EC 9021)	All Petitions
				N	Invalidate signatures of voters registered in another county. (EC 9021)	
F10 1997	Original signatures on photocopied sections	The petition is photocopied but it bears original signatures, printed names, and addresses.	Y	Y	All requisite elements of the original petition must be included on the photocopy. (EC 100, 9020)	All Petitions
F11 1997	Section handwritten	Entire petition reproduced in handwriting	Y	Y	As a general rule, signatures on documents that contain all the requisite statutory elements for an initiative petition section [proper title and summary, text of the measure, etc.] should not be invalidated solely by reason of appearing on a handwritten section. All statutory elements must be present, including the correct title and summary and text. (EC 100, 104, 9008, 9014, 9020, 9022, 9108, 9109)	All Petitions (Excludes recall which is pre-reviewed)
F12 1997	Section printed without one inch margins	Petition sections fail to include one-inch space at top of each page and after name of signer.	Y	Y	Lack of spaces does not invalidate petition signatures. (EC 100, 9011, 9013)	All Petitions (Excludes recall which is pre-reviewed)
F13 new	Proponent's information	Some cities require the name and signature of the proponent to appear on the petition.	Y	Y/Maybe	There is no requirement in the Elections Code for petitions to include the proponent's name and signature. However, the decision to count signatures on petitions which fail to include this information will be made by the city.	City initiative and referendum petitions only

* Recall petitions - Election Officials pre-review

PETITION SIGNATURE						
#	TITLE	SITUATION	CURRENT PROCEDURE/ PRACTICE		NOTES	APPLIES TO: Initiative, Referendum, Recall, Nomination and Signature in Lieu of Filing Fee Petitions *Except as Noted*
			RAW COUNT?	SIG VALID?		
S1 1997 - revised	Signature missing	Signer printed name and address but left signature space blank.	Y	N	Invalidate if the signature on the voter's registration is missing or does not match. (EC 2150 (b), 9020)	All Petitions
				Y	Validate if the signature on the voter's registration is printed and otherwise matches the signature on the petition. (EC 9020)	
S2 new	Different or missing apartment number	Signer lists same house number and street but a missing or different number/letter in the apartment field.	Y	Y	The transposition, change, or omission of an apartment number shall not invalidate. (EC 100, 9020)	All Petitions
S3 new	Different house number	Signer lists a house number that is different from their registered address.	Y	N	This is considered a move. The voter must have re-registered by the day petition is signed in order for signature to be valid. (EC 2102 (b)) See Exhibit B: Mapstead v. Anchundo (1998) 63 Cal. App. 4th 246	All Petitions
S4 new	Automatic updates to a voter's registration	Changes/updates via NCOA, DMV, 8-d-2, ACS, etc. made to voter records after the petition was circulated.	Y	Y	The voter's address on the petition is the **same** as the address provided through an automatic update such as NCOA, DMV, etc. The registration date in the system does not change and the update occurred **on or before** the date the voter signed the petition.	All Petitions
				N	The voter's address on the petition is the **same** as the address provided through automatic updates. The registration date in the system does not change and the update occurred **after** the date the voter signed the petition.	
				Y	The voter's address on the petition is **different** from the address provided through the automatic update; address was updated **after** voter signed the petition, consider the signature valid.	
				N	The voter's address on the petition is **different** from the address provided through the automatic update; address was updated **on or before** voter signed the petition, consider the signature invalid.	

* Recall petitions - Election Officials pre-review

PETITION SIGNATURE						
#	TITLE	SITUATION	CURRENT PROCEDURE/ PRACTICE		NOTES	APPLIES TO: Initiative, Referendum, Recall, Nomination and Signature in Lieu of Filing Fee Petitions **Except as Noted*
			RAW COUNT?	SIG VALID?		
S5 new	Abbreviated street name	Signer abbreviates street name (provided the house number is the same), or the signer uses another name for the street Example: **Address on petition** 1234 Hwy 49 (old street name) **Address on file** 1234 Coloma Road (new/current street name)	Y	Y	Validate if the house number is the same, the street name used is common knowledge, and the post office delivers.	All Petitions
S6 new	Fraction house number	Signer has a fraction as part of house number and the fraction is either missing or changed. Example: 1/2, 3/4	Y	Y	Treat this like an apartment number. The address is valid if the street name and house number are the same, even if the fraction changes or is missing.	All Petitions
S7 1997 - revised	Transposed house numbers	Signer transposed house number Example: Registered at house #123, but on petition listed #132	Y	N	The house number must match exactly with the information on the voter file. See Exhibit B: Mapstead v. Anchundo (1998) 63 Cal. App. 4th 246 See also Exhibit C: Hartmann v. Kenyon (EC 2102 (b))	All Petitions
				Y/N	If the signer signed the same petition twice, but transposed the house number on one of the two signatures, the signature with the correct information will be validated, while the other will be invalidated for not registered (if the number exists), or duplicate (if the number does not exist).	
S8 new	Two addresses in same signer box for one voter	Signer lists a PO Box and a street address in same box	Y	Y	Validate if the street address matches the voter file.	All Petitions
		Signer lists two addresses: previous address and current address **(moved during the circulation of petition).**		Y	Validate signature if the voter was properly registered at one of the addresses during circulation period.	

PETITION SIGNATURE						
#	TITLE	SITUATION	CURRENT PROCEDURE/ PRACTICE RAW COUNT?	 SIG VALID?	NOTES	APPLIES TO: Initiative, Referendum, Recall, Nomination and Signature in Lieu of Filing Fee Petitions *Except as Noted*
S9 new	Two signers and one address **in same signer box**	Two signers occupy the same signer box and list one address	Y (assign numbers to both signers)	Y (for one only)	**SIGNER'S OWN HANDWRITING** Validate the signature for the person who handwrote the address. (EC 100, 9020)	All Petitions
					TYPED REGISTRATION If handwriting cannot be determined because of typed registration (i.e. online form), use the first name in the box.	
S10 new	Social titles and name variations	Signer prints MR. AND MRS. SMITH and signs Mr. & Mrs. Smith or uses a nickname, initials, prefixes, maiden name, married name, spouse's name, or a misspelling.	Y	Y	Validate only the name with the matching signature. Validate if the address is correct and the signature appears to have been made by the same person. (EC 100, 9020)	All Petitions
S11 new	Signature and/or name and address information crossed off	A line appears through both name and address.	N	N	Do not count or give a stamp number if the signature, name or address is lined out.	All Petitions
		A line appears through name only or through address only.	Y	MAYBE	If other information (e.g., city or zip code) is lined out, it is a judgment call whether sufficient information is present to validate the signature. (EC 100, 9020)	
S12 new	White-out	White-out was used to cross out information and new information was written over it.	N	N	The use of white-out on a petition section automatically invalidates the signature.	All Petitions
S13 new	Address preprinted, (i.e. address label, stamp, etc.), disabled voter or not written by signer	Signer did not use their own handwriting to write their name, address or signature or is preprinted prior to circulation.	Y	N	(EC 100, 9020)	All Petitions
				Y	Validate the signature only if the signer is disabled and can't sign their name or address, or if the voter has a signature stamp and it is the same on the voter's registration on file. In both cases a witness must also sign. (EC 100.5, 354.5(e))	
S14 new	Signature in circulator's area only	No signatures or identifying information appear in the signer spaces, but one or more signatures appear in the completed declaration of circulator.	N	N	There are no signers in the spaces on the petition section. (EC 100, 104, 9020, 9022)	All Petitions
S15 new	Signatures appended to a section	Signatures appended to section so as to appear after the declaration of circulator.	N	N	Disqualify any signature appended **after** the declaration of circulator.	All Petitions
S16 1997	Name missing (only address listed)	Signer's written and printed names are missing.	Y	N	(EC 100, 9020)	All Petitions

S17 1997	PO Box only, or address missing	Signer includes post office box address without a residence address, or lists no address.	Y	N	If the signer has no residence address (homeless), they must print the orginal identifying information that placed them in a precinct. See Exhibit B: Mapstead v. Anchundo (1998) 63 Cal. App. 4th 246 (EC 100, 9020)	All Petitions

PETITION SIGNATURE						
#	TITLE	SITUATION	CURRENT PROCEDURE/ PRACTICE RAW COUNT?	 SIG VALID?	NOTES	APPLIES TO: Initiative, Referendum, Recall, Nomination and Signature in Lieu of Filing Fee Petitions ***Except as Noted***
S18 1997 - revised	Address with no city	Signer includes residence street and number, but not the city and zip code	Y	N	If no city and zip code, even if it's readily ascertained, do not validate. See Exhibit B: Mapstead v. Anchundo (1998) 63 Cal. App. 4th 246 (EC 2102(b))	All Petitions
		Signer includes residence street and number, and zip code, but not the city	Y	Y	If zip code is correct and it's a common mix up	
S19 new	City name change or abbreviation	Signer provides residence street and number, but abbreviates or uses another name for the city. Example 1: **CITY NAME CHANGE** **Address on petition** 123 Broadway Street Hollywood, CA 12345 **Address on file** 123 Broadway Street Los Angeles, CA 12345 Example 2: **CITY NAME ABBREVIATION** **Address on petition** 456 Main Street CV, CA 91910 **Address on file** 456 Main Street Chula Vista, CA 91910	Y	Y	Validate if the city name used is common knowledge, and the post office delivers.	All Petitions
S20 1997 - revised	Voter is a **confirmed canceled voter** due to - Request - Move outside county - Death - Felon	If the address on the voter's registration is different or the voter is no longer registered **but** they are at the correct address as a **confirmed canceled voter**	Y	Y	• If voter was canceled **after** the first date of circulation or • If placed in canceled file in error. Example: Signed - 10/10/11, Canceled - 10/12/11 = VALID (EC 2102)	All Petitions
				N	If the voter was canceled **before** the first date of circulation or at a **different** address. (EC 2201)	

PETITION SIGNATURE						
#	TITLE	SITUATION	CURRENT PROCEDURE/ PRACTICE		NOTES	APPLIES TO: Initiative, Referendum, Recall, Nomination and Signature in Lieu of Filing Fee Petitions *Except as Noted*
			RAW COUNT?	SIG VALID?		
S21 1997	Address is same - but found as an **unconfirmed inactive voter**	Voter is at the correct address as an **unconfirmed inactive voter**	Y	Y	If voter was inactivated and is still claiming they live at their old address, the unconfirmed inactive voter may have been placed there in error. Restore registration to original address. (e.g. VNC is returned undeliverable)	All Petitions
S22 1997	Address is different - voter re-registered	Voter's current address on file is different from petition due to re-registration.	Y	Y	Voter's current address on file is different due to re-registration, but was at address on petition at time of signing.	All Petitions
S23 1997	Moved within same precinct	Signer has different address but moved within the same precinct	Y	N	Voters who move within the same precinct may vote, but they must re-register in order to sign a petition. (EC 2035, 2116, 14311)	All Petitions
S24 1997	Name is not printed	Signer uses cursive writing in the space designated for printed name	Y	Y	If the signer can be identified and signature matches.	All Petitions
				N	If the signer cannot be identified, or the signature doesn't match.	
S25 1997	Name has suffix	A suffix such as Jr. or II is added or omitted from either the petition or the voter file.	Y	Y	Validate if the signer is at the correct address and the signature appears to have been made by the same person.	All Petitions
S26 1997	The voter's registration has no date of execution (signature date)	No date of execution on the voter's registration.	Y	Y	If the date the voter's registration was received in the elections office is on or before the last date of circulation of the petition section. (EC 2102(b))	All Petitions
				N	If the date the voter's registration was received in the elections office is after the last date of circulation of the petition section.	
S27 new	The voter's registration is signed after the voter signs the petition	The voter's registration is timely received but is signed after the voter signs the petition.	Y	N	The voter's registration must meet both requirements of EC 2102(b): it must be signed on or before the date the petition is signed and received on or before the date the petition is filed. (EC 2102)	All Petitions

PETITION SIGNATURE						
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			RAW COUNT?	SIG VALID?		
S28	Signer lists a "non-traditional" address	Signer has a non-traditional address (house/street) but moves within the same precinct (see examples below)				All Petitions
		NATIVE AMERICAN INDIAN RESERVATION	Y	Y	If the address is assigned by the tribe or a non-public agency and the move is within the reservation, treat as an apartment change.	
				N	If the address is assigned by a public agency and is listed in the Master Street File, any change would invalidate the address.	
		MARINA (boat slip)	Y	Y	If the address is within the same marina, treat as an apartment change.	
		UNIVERSITY	Y	Y	If the address is in same building/residence hall and has the same street number, treat as an apartment change.	
		MILITARY BASE	Y	Y	If it is a non-traditional address or equivalent, treat it as an apartment change.	
				N	If it is a traditional address and is listed in the Master Street File, any changes would invalidate the signature.	
new		**HOMELESS (cross streets, not PO Box)**	Y	N	A change in the cross streets would invalidate the signature.	
		MOBILE HOME PARK	Y	Y	If the address is within the same mobile home park and the same street number, treat as an apartment change.	
		FRACTION	Y	Y	If the street number is the same, treat as an apartment change.	

* Recall petitions - Election Officials pre-review

DECLARATION OF CIRCULATOR						
#	TITLE	SITUATION	CURRENT PROCEDURE/ PRACTICE		NOTES	APPLIES TO: Initiative, Referendum, Recall, Nomination and Signature in Lieu of Filing Fee Petitions *Except as Noted*
			RAW COUNT?	SIG VALID?		
C1 1997	Declaration of Circulator is blank but petition has one or more signatures	Signatures appear in signer's spaces but declaration of the circulator is left blank or unsigned.	Y	N	(EC 104, 9022)	All Petitions
C2 new	Circulator fails to sign using full name	Circulator fails to sign full name including middle name	Y	Y	(EC 104(c), 9022(b)) *SB1188 (Circulator's Signature)	All Petitions
C3 1997	Dates of circulation in different handwriting	Dates of circulation in the declaration of the circulator are in handwriting different from the circulator's handwriting.	Y	Y	If the difference in handwriting is subtle or not readily apparent, validate signatures on the petition.	All Petitions
				N	If it is **obvious** the handwriting is different, invalidate signatures on the petition. (EC 104(a))	
C4 1997 - revised	Dates of circulation preprinted	Dates of circulation on the declaration of the circulator are preprinted or stamped on the petition.	Y	Y	If year is preprinted but month and day are handwritten, validate signatures on the petition. See Exhibit D: Per Susan Lapsley of SOS in 2006.	All Petitions
				N	If month, day, and year are preprinted, invalidate signatures on the petition. (EC 104)	
C5 1997	Dates of circulation and execution missing	The declaration of the circulator has no date of execution and no dates of circulation.	Y	N	(EC 104(a) (3) and (c))	All Petitions
C6 new	Dates of circulation and execution missing	The declaration of the circulator has no date of execution and no dates of circulation, but the circulator has signed the petition and **provided a date of signing.**	Y	Y	The circulator must be a petition signer and must have provided a date of signing.	All Petitions

* Recall petitions - Election Officials pre-review

DECLARATION OF CIRCULATOR						
#	**TITLE**	**SITUATION**	**CURRENT PROCEDURE/ PRACTICE**		**NOTES**	**APPLIES TO: Initiative, Referendum, Recall, Nomination and Signature in Lieu of Filing Fee Petitions** ***Except as Noted**
			RAW COUNT?	**SIG VALID?**		
C7 1997 - revised	Generalized dates of circulation	Generalized dates other than the particular range of dates on which the petition section was circulated, (i.e., the date of circulation has only a month and year, but no day). Example 1: ***circulation date*** - April 2013 ***petition filed*** - May 28, 2013 ***last date of circulation deemed to be*** - April 30, 2013 (last day of the month)	Y	Y	If the signature date on the voter's registration was on or **before** the last day of the month of circulation for the petition section, validate signatures on the petition. (EC 9022, 2102)	All Petitions
		Example 2: ***circulation date*** - April 2013 ***petition filed*** - April 15, 2013 ***last date of circulation deemed to be*** - April 15, 2013		Y	If the signature date on the voter's registration was on or **before** the petition file date, validate signatures on the petition.	
		Example 3: ***circulation date*** - April 2013 ***petition filed*** - April 15, 2013 ***last date of circulation deemed to be*** - April 15, 2013 ***voter registration/sign date*** - April 18, 2013		N	In the event the signature date on the voter's registration was **after** the petition file date, invalidate signatures on the petition.	
C8 1997	One date of circulation	The declaration of the circulator on a petition contains a space for the beginning date of the circulation and a separate space for the ending date of circulation, and only one of the spaces is complete.	Y	Y	The date supplied by the circulator becomes the date by which the signer must be registered.	All Petitions
C9 1997	Section has either a date of circulation or a date of execution	The declaration of the circulator on a petition contains either a date of circulation or date of execution, but not both.	Y	Y	The date supplied by the circulator becomes the date by which the signer must be registered.	All Petitions
C10 1997	Date before circulation	The month, day, or year on the declaration of the circulator precedes the first date of circulation.	Y	N	It is possible the petition was circulated too early.	All Petitions (Excludes recall which is pre-reviewed)
C11 1997	Dates after filing	Dates on the declaration of the circulator are after the date the petition was filed.	Y	Y	This is an obvious error and may be disregarded. See Exhibit B: Mapstead v. Anchundo (1998) 63 Cal. App. 4th 246	All Petitions
C12 1997	Conflicting dates supplied by signers	Dates supplied voluntarily by signers of a petition conflict with dates on the declaration of the circulator.	Y	Y	The dates on the declaration of the circulator are presumed correct. Signers' dates may be disregarded.	All Petitions

* Recall petitions - Election Officials pre-review

DECLARATION OF CIRCULATOR						
#	TITLE	SITUATION	CURRENT PROCEDURE/ PRACTICE		NOTES	APPLIES TO: Initiative, Referendum, Recall, Nomination and Signature in Lieu of Filing Fee Petitions *Except as Noted*
			RAW COUNT?	SIG VALID?		
C13 1997 - revised	Circulator is not a registered voter	Circulator of a petition is not registered to vote, or is not registered in the jurisdiction in which the petition is circulated or filed.	Y	Y	In January 1999, the US Supreme Court in Buckley v. American Law Foundation declared unconstitutional the requirement for initiative circulators to be registered voters of the jurisdiction in which they circulate the petition. The Attorney General (Opinion No. 99-712) opined that EC section 9209, which requires circulators to declare they are voters of a city, was unconstitutional. In addition, circulators of a city petition need not declare they are city residents. See Exhibit E: Buckley v. American Law Foundation	All Petitions
C14 new	Circulator is not a resident	Circulator is not a resident of the state or polititial jurisdiction in which the petition is circulated.	Y	Y	(EC 102, 104, 8066, 8451, 9021, 9022, 11045, 11046) See Exhibit G: Nader v. Brewer	All Petitions (Excludes candidate petitions)
C15 1997	No address or only a PO Box	The declaration of the circulator lists no address or only a post office box address.	Y	Y	See C13 (Exhibit E: Buckley v. American Law Foundation)	All Petitions
C16 new	Photocopy	Information on the declaration of the circulator is photocopied	Y	N	Do not rely on photocopied information. (EC 104)	All Petitions
C17 new	No signature	Circulator fails to sign the declaration of circulator	Y	Y	Only if circulator is also a petition signer and provides his/her information (residence address and signature) on same petition section.	All Petitions
			Y	N	Circulator is not a petition signer and did not provide his/her information on same petition section.	

SIGNER WITHDRAWAL					
#	**TITLE**	**SITUATION**	**USE TO WITHDRAW?**	**NOTES**	**APPLIES TO: Initiative, Referendum, Recall, Nomination and Signature in Lieu of Filing Fee Petitions** ***Except as Noted**
SW1 new	Missing information	Any of the following information is omitted from the written request to withdraw: 1. Identification of the petition (either a name or number required) 2. Signature of voter 3. Address of voter (see note) 4. Statement that voter seeks to withdraw a signature after signing petition	N	EXCEPTION: If the address is omitted but voter can be readily identified, use to withdraw. See Exhibit F: SOS memo 92117 dated April 20, 1992 (Note EC 43 is now EC 103 and EC 5352 is now EC 9602).	All Petitions
SW2 new	Preprinted withdrawals	The request to withdraw is a preprinted form with only the signature in writing.	Y	(EC 103, 9602)	All Petitions
SW3 new	Signature in doubt	The signature on the request to withdraw is in doubt.	N	When the signature is in doubt, do not use to withdraw. See Exhibit F: SOS memo 92117 dated April 20, 1992 (Note EC 43 is now EC 103 and EC 5352 is now EC 9602).	All Petitions
SW4 new	Arrives on or after day petition is filed	The request to withdraw arrives on the day the petition is filed or after.	N	The request to withdraw must arrive prior to the date the petition is filed. (EC 103, 9602) See Exhibit F: SOS memo 92117 dated April 20, 1992 (Note EC 43 is now EC 103 and EC 5352 is now EC 9602).	All Petitions
SW5 new	Withdrawal dated day of or after petition filed	The request to withdraw is dated the day the petition is filed, or after, but is received prior to the day the petition is filed.	Y	The request to withdraw is not required to contain a date. (EC 103, 9602)	All Petitions
SW6 new	Withdrawal dated prior to petition filing	The request to withdraw is dated prior to the date the petition section is circulated containing petition signature.	Y	The request to withdraw is not required to contain a date. (EC 103, 9602)	All Petitions
SW7 new	Request to withdraw signature via fax or email	The request to withdraw is received by fax or email **prior** to the day petition is filed.	Y	Fax or email requests are accepted and can be used to withdraw signatures if the name or number of the petition, signer name, address, signature, and a request to withdraw are provided. (EC 103, 9602)	All Petitions

* Recall petitions - Election Officials pre-review

EXHIBIT

A

Assembly v. Deukmejian
(1982) 30 Cal, 3d 638

Assembly v. Deukmejian , 30 Cal.3d 638

[S.F. Nos. 24348, 24349.

Supreme Court of California.

January 28, 1982.]

ASSEMBLY OF THE STATE OF CALIFORNIA et al., Petitioners, v. GEORGE DEUKMEJIAN, as Attorney General, etc., et al., Respondents; TIRSO del JUNCO, as Chairman, etc., et al., Real Parties in Interest.

[S.F. No. 24354. Supreme Court of California. January 28, 1982.]

PHILLIP BURTON, as United States Congressman et al., Petitioners, v. MARCH FONG EU, as Secretary of State, etc., et al., Respondents; TIRSO del JUNCO, as Chairman, etc., et al., Real Parties in Interest.

[S.F. No. 24356. Supreme Court of California. January 28, 1982.]

SENATE OF THE STATE OF CALIFORNIA et al., Petitioners, v. MARCH FONG EU, as Secretary of State, etc., et al., Respondents; TIRSO del JUNCO, as Chairman, etc., et al., Real Parties in Interest

(Opinion by Bird, C. J., with Newman and Broussard, JJ., and Tamura, J., concurring. Separate concurring and dissenting opinion by Richardson, J., with Mosk and Kaus, JJ., concurring. Separate concurring and dissenting opinion by Mosk, J. Separate concurring and dissenting opinion by Kaus, J.)

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Tuohey & Barton, Conrad G. Tuohey, Teresa M. Ferguson, Ervin, Cohen & Jessup and Allan Browne for Petitioners in No. 24356.

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OPINION

BIRD, C. J.

These consolidated mandate proceedings raise difficult questions concerning referenda challenges to the 1981 Congressional, Senate and Assembly reapportionment statutes passed by a majority of the Legislature and signed by the Governor. (Stats. 1981, chs. 535, 536, 537.)

(1) Are the referendum petitions defective because, in violation of Elections Code section 3516, subdivision (c), they required the signer to use his or her "address as registered to vote" rather than "residence address," thereby making it impossible for election officials to determine if the signers were qualified registered voters?

(2) Even if the petitions contain a substantial defect, should the court allow them to qualify so the referenda may be voted upon by the people of this state?

(3) Even if the petitions would otherwise technically qualify, may the referendum process be used to challenge reapportionment statutes? Does the stay provision of the referendum section of the state Constitution apply to the effective date of the reapportionment statutes? **[30 Cal.3d 644]**

(4) If the referenda stay the effect of the 1981 reapportionment statutes, how should the 1982 elections be conducted? Should the old, unconstitutional districts be adopted by this court and used in the 1982 elections? Should the court defer to the Legislature and adopt the newly drawn, equally apportioned districts enacted by the Legislature and signed into law by the Governor? If the court has no choice but to

mandate the use of the 1981 congressional reapportionment plan, is there a legally compelling reason why the court should not also use the 1981 Assembly and Senate reapportionment plans?

I.

Statement of Facts

In September 1981, the Legislature passed three reapportionment statutes revising the boundaries of the state's Congressional, Senate and Assembly districts respectively to conform to the results of the 1980 federal census. fn. 1 These statutes were signed by the Governor and enrolled into law by the Secretary of State on September 16, 1981.

That same day, real parties in interest, the chairman of the California Republican Party and the Republican National Committee, began a petition drive aimed at qualifying for the ballot a referendum on each of these reapportionment statutes. (See Cal. Const., art. II, §§ 9, 10.) fn. 2 **[30 Cal.3d 645]**

The Attorney General prepared titles and summaries to appear on the face of the referenda. (See Cal. Const., art. II, § 10, subd. (d); Elec. Code, § 3503.) fn. 3 The summaries stated that if signed by the requisite number of electors, the petitions would require the reapportionment statutes to be placed on the ballot for approval or rejection by the voters and would prevent the statutes from taking effect unless approved by a majority vote.

On November 18, 1981, real parties submitted their completed petitions to the Secretary of State. On December 15, the Secretary of State announced that the petitions contained the requisite number of signatures. (See Cal. Const., art. II, § 9, subd. (b) [petitions must contain signatures equalling 5 percent of the votes cast for all candidates for governor at the last gubernatorial election].) However, she also announced that she was refraining from directing the county clerks to place the referenda on the June ballot, pending this court's resolution of these mandate proceedings. (See §§ 3520-3523.) In the interim, she directed the county clerks and registrars to prepare to conduct the primary election under either the old election boundaries or the new districts approved by the Legislature. fn. 4

The instant mandate proceedings were filed by various members of the Assembly, Senate and House of Representatives and other interested parties. Petitioners attack defects in the referendum petitions which, they allege, render the petitions invalid. They also assert that even if the petitions are valid, the referenda do not operate to stay the implementation of the new reapportionment statutes. Petitioners seek writs of mandate compelling state and local officials to omit the referenda from **[30 Cal.3d 646]** the June ballot and to use the new districts in the 1982 elections. Mandate is an appropriate remedy under these circumstances. (See Gage v. Jordan (1944) 23 Cal.2d 794, 800 [147 P.2d 387] [mandate proper to compel Secretary of State to omit initiative measure from ballot]; Legislature v. Reinecke (Reinecke I) (1972) 6 Cal.3d 595 [99 Cal.Rptr. 481, 492 P.2d 385].)

This court issued alternative writs of mandate to resolve the impasse.

II.

Challenges to the Referendum Petitions

[1] Petitioners contend that the referendum petitions fail to comply with several requirements of the Elections Code and are, therefore, fatally defective. The most serious of these asserted flaws is the failure of the petitions to require a signer to affix his or her residence address, as mandated by section 3516, subdivision (c). fn. 5

The referendum petitions were circulated by two methods: direct mail and public distribution by hand. Neither version contained a "residence address" instruction. Instead, both versions provided a space for each signer to affix an address, with the words "Your Address as Registered to Vote" printed beneath. In addition, the cover of the direct mail version, which was sent to all Republican voters at their addresses as registered, bore the following directions: "Attention! ... When Signing Your Petition, Please Use the Name and Address Information Exactly as it Is Listed Here (Even if Incorrect) to Insure Your Petitions Qualify....." (Italics added.) fn. 6 **[30 Cal.3d 647]**

Nowhere do the referendum petitions specifically call upon signers to provide the "residence address" information required by section 3516, subdivision (c). The reason for this requirement is quite simple. With minor exceptions, an individual must continue to reside at the address stated in his or her affidavit of registration in order to be qualified to vote. (See generally, Elec. Code, div. 1, ch. 2, §§ 300-320.) It is the duty of the county clerk or registrar of voters to compare a signer's current residence address on the petition with that individual's address as registered to vote in the records of registration maintained by the county clerk. If the addresses match, the requirement of section 3516 that the signer be "a qualified registered voter at the time of signing the petition" has been satisfied. However, without the petition signer's current residence address on the petition, it is impossible for the clerk to determine whether the signer was a "qualified registered voter." fn. 7

In the case of the petitions circulated by real parties, if the signer dutifully followed the instructions on those petitions and provided his or her "address as registered to vote" or "address ... as it is listed here (even if incorrect)," the address on the petition and the address in the records of registration would automatically be the same. Thus the clerk, whose examination is limited to a comparison of the petition and the records of registration, fn. 8 can come to no other conclusion than that the signer was properly registered at the time he or she signed the petition. **[30 Cal.3d 648]** Accordingly, 100 percent of the signatures determined by the clerk to be genuine would also be determined to be those of qualified registered voters. All would be counted as valid signatures for purposes of qualifying the referendum petition for the ballot. (See §§ 3520, 3521.)

Of course, that determination may not be correct. The signer may have moved to a new residence subsequent to registering without having reregistered or executed an address change with the county clerk. (See §§ 305, 315.) In such a situation, the signer would not be a "qualified registered voter at the

time of signing the petition." Nevertheless, had he or she complied with the petition instructions regarding address, the clerk would be unable to discern that fact.

Far from being a mere technical shortcoming, real parties' failure to comply with the requirements of section 3516, subdivision (c), goes to the very heart of that section's purpose -- to enable the clerk to ensure that petitions have been signed by those entitled to do so -- and prevents that purpose from being effectuated.

The language of section 3516 is mandatory: "petition sections shall be designed so that each signer shall personally affix his or her ... [r]esidence address. ..." (Italics added.) In the past, when a petition's deficiencies have threatened the proper operation of the election procedures involved, this court has regularly upheld a refusal to file the petition. fn. 9 (See Muehleisen v. Forward (1935) 4 Cal.2d 17, 20 [46 P.2d 969]; Gerth v. Dominguez (1934) 1 Cal.2d 239 [34 P.2d 135]; Mayock v. Kerr (1932) 216 Cal. 171 [13 P.2d 717].) In Muehleisen, the court stated that "[t]he question is not [one] of strict or liberal construction, nor is the case one of immaterial or unsubstantial departure from formal requirements. The ... provision is clear and requires no interpretation; and the requirements which were not followed are among the **[30 Cal.3d 649]** most important elements of the ... system established by the statute." (Muehleisen, supra, 4 Cal.2d at p. 20.)

Real parties assert that they have substantially complied with the applicable Elections Code provisions regarding address. However, "[s]ubstantial compliance ... means actual compliance in respect to the substance essential to every reasonable objective of the statute." (Stasher v. Harger-Haldeman (1962) 58 Cal.2d 23, 29 [22 Cal.Rptr. 657, 372 P.2d 649].) The "reasonable objective" of section 3516, subdivision (c), is to enable the clerks to perform their duty to determine whether signers are "qualified registered voter[s] at the time of signing the petition" and thus "entitled to sign it." That objective is totally thwarted when signers are instructed to provide residences that may or may not reflect their current addresses. Under such circumstances, real parties' claim of substantial compliance cannot be sustained.

Real parties further contend that should their petitions be deemed deficient, the deficiency nevertheless should be excused as a form of harmless error, based on the fact that the total number of signatures collected was substantially in excess of the number of valid signatures needed to qualify the referenda for the ballot. Such a contention, however, begs the question -- how many of the total signatures collected are actually valid? That is a question that cannot be answered because of the failure to request the signers' current residence addresses.

Real parties urge that the standard set forth in section 20024, defining the circumstances under which illegal votes may undo an election, should apply to the cases before this court. That section provides that "[a]n election shall not be set aside on account of illegal votes" unless the number of illegal votes would be sufficient to alter the election results, were they deducted from the total votes of the person whose right to office is being contested. Real parties' attempt to utilize that same test here is unsound. No comparable statutory provision exists for referendum petitions. Moreover, the postelection context is significantly different from a preballot-qualification setting. An election is a completed act, a fait accompli.

In contrast, the circulation and qualification of referendum petitions are part of an ongoing process that portends, at most, the potential of an election.

Most importantly, even were a standard analogous to that of section 20024 applicable here, it would not be of assistance to real parties because of the very nature of the defect in their petitions. Without **[30 Cal.3d 650]** residence address information, the county clerk is unable to identify accurately how many signers are not properly registered. Without an accurate count of such invalid signatures, no determination can be made as to whether or not the requisite number of valid signatures has been obtained.

Finally, real parties seek to excuse their noncompliance with section 3516, subdivision (c) by asserting that they were given incorrect advice by the Secretary of State and the Attorney General. However, the record suggests that real parties may well have been aware of the "residence address" requirements.

Petitioners have directed this court's attention to a document dated July 22, 1981, entitled "Backstop -- Operational Plan to Qualify The Referendum On Reapportionment." In addition to the title and date, the cover page also lists the name of Real Party del Junco, in his capacity as chairman of the California Republican Party. In Addendum C to this document, under the heading "Legal Requirements," section 3516 is quoted in its entirety.

On September 17, 1981, three days before Real Party del Junco obtained from the Secretary of State's office the list of registered voters used in the mailings, the Secretary of State sent him a copy of referendum instructions provided to all the county clerks and registrars. Those instructions included a separate paragraph entitled "Note to Proponent," specifically directing his attention to sections 3516 and 41, inter alia. Further, in October 1981, while the petitions were circulating, the Secretary of State's office telephoned counsel for del Junco to inform him that the direct mail petition's cover instruction to "please use the ... address information exactly as it is listed here (even if incorrect)" was "questionable and could cause some problems." (Declaration of Richard B. Maness, staff counsel to the Secretary of State.)

Real parties' asserted reliance on the advice of a deputy attorney general in an informal letter to State Senator Kenneth Maddy is misplaced. The Attorney General is not the official charged with ensuring proper application of the state's elections laws. That is the role of the Secretary of State, California's chief elections officer. (Gov. Code, § 12172.5.) Such vicarious advice does not constitute "official" misinformation. Real parties also purport to rely on a 1980 handbook from the Secretary of State's office to excuse their failure to comply with section 3516, subdivision (c). However, that handbook correctly indicates **[30 Cal.3d 651]** that the signer of an initiative petition should enter his or her "residence address."

These circumstances would not, by themselves, justify sustaining real parties' claim of excuse. However, real parties do raise more troubling justifications for their failure to substantially comply with the provisions of section 3516.

Real parties note that several past, pending, and currently circulating initiative and referendum measures have contained similar instructions regarding "address as registered to vote" or "address as registered." fn. 10 Many of these petitions were subjected to vigorous legal challenge in the courts by competent counsel, and not once was the issue of the "residence address" defect raised by the challengers or addressed by the courts. (See, e.g., Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 208 [149 Cal.Rptr. 239, 583 P.2d 1281].)

Further, real parties emphasize that from 1977 until 1980 the Secretary of State's California Ballot Initiative Handbook incorrectly used the phrase "address as registered to vote" in a recommended sample format for initiative petitions. When the error was corrected in a 1980 edition of the handbook, the Secretary of State's office neither publicly announced the correction nor explained its significance. Apparently, neither the Secretary of State nor the county clerks have ever refused to accept a tendered referendum petition on the basis of this defect. Thus, real parties relied on a practice that not only had been accepted by the government entities charged with enforcing the referendum procedures but also had never been subjected to a challenge from any source. **[30 Cal.3d 652]**

Finally, "'it has long been our judicial policy to apply a liberal construction to [the] power [of initiative and referendum] wherever it is challenged in order that the right be not improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it. [Citations.]'" (Associated Home Builders etc., Inc. v. City of Livermore (1976) 18 Cal.3d 582, 591 [135 Cal.Rptr. 41, 557 P.2d 473, 92 A.L.R.3d 1038], quoting Mervynne v. Acker (1961) 189 Cal.App.2d 558, 563-564 [11 Cal.Rptr. 340].)

Under the unusual and unique circumstances of this case, real parties' failure to comply with the requirements of section 3516, subdivision (c) will not be deemed to render the referendum petitions invalid. The Secretary of State should proceed to perform her duties, including those set forth in section 3520. All other petitions which either have qualified for the ballot or are in the circulation process as of the date this decision becomes final shall be treated similarly. However, all petitions which have not yet been provided by the Attorney General to the Secretary of State following the preparation of title and summary (§ 3503) will be subject to the express requirements of section 3516, subdivision (c) and their failure to so comply will render them invalid per se.

Petitioners raise three additional challenges to the technical sufficiency of the referendum petitions. First, they claim that the use of preprinted dates on the declarations signed by the petition circulators violated the Elections Code requirement that the declarations contain "[t]he dates between which all signatures were obtained." (See § 3519, subd. (d).) Second, petitioners assert that the text of the reapportionment statutes reprinted in the petitions contained errors, in violation of the requirement that "a full and correct copy of the title and text of the proposed measure[s]" be printed in each section of the petition. (See § 3515.) Finally, they allege that the use of small type size and of interleaved pages in the petitions made them virtually unreadable.

[2] This court has stressed that technical deficiencies in referendum and initiative petitions will not invalidate the petitions if they are in "substantial compliance" with statutory and constitutional requirements. (California Teachers Assn. v. Collins (1934) 1 Cal.2d 202, 204 [34 P.2d 134].) A paramount concern in determining whether a petition is valid despite an alleged defect is whether the purpose of the technical requirement is frustrated by the defective form of the petition. "The requirements of both the Constitution and the statute are intended to and **[30 Cal.3d 653]** do give information to the electors who are asked to sign the ... petitions. If that be accomplished in any given case, little more can be asked than that a substantial compliance with the law and the Constitution be had, and that such compliance does no violence to a reasonable construction of the technical requirement of the law." (Ibid.) None of the three errors asserted here has interfered with the statutory purpose behind the technical regulations.

[3] First, the petitions contained the phrase, "All signatures to this document were obtained between __________ and __________." The blanks were filled in with printed dates, 9/22/81 and 12/13/81 on the street petitions, and 9/17/81 and 12/15/81 on the direct mail petitions. Petitioners point out that the signatures were apparently obtained in a much shorter time range, between mid-October and mid-November.

Petitioners claim that the preprinted, longer time period impeded the ability of the clerks to determine whether those who signed the petitions were actually registered to vote at the time that they signed. However, the declarations literally complied with the Elections Code requirement that they contain "[t]he dates between which all signatures were obtained." (§ 3519, subd. (d).) The range of dates was sufficient to enable the clerks to make the important determination that all of the signatures were obtained within the proper time limits. Further, although the precise dates might have been useful to the clerks in determining the number of qualified voters who had signed the petitions, no showing has been made that the more general information provided prevented the clerks from carrying out that function. Nevertheless, the objectives of section 3519 will be better served in the future by requiring circulators personally to enter on their declarations the actual dates between which all the signatures on the petition were obtained. Preprinted dates are not a desirable substitute for such personal entries.

[4] Second, the alleged errors in the text of the petitions concern only typographical errors in the listing of census tract numbers. The errors were so minor as to pose no danger of misleading the signers of the petitions. They, therefore, do not affect the validity of the petitions.

Finally, the petitions were fully readable, despite the size of the type. The color-coded referenda packets were sufficiently labeled and differentiated to meet the requirements of the substantial compliance test. Neither of these defects frustrated the signer's ability to understand **[30 Cal.3d 654]** what he or she was being asked to sign. Accordingly, neither of them renders the petitions invalid.

III.

The Referendum Stay Provision

Next, the court must decide whether the referendum provisions of the state Constitution apply to reapportionment statutes passed by both houses of the Legislature and signed by the Governor. Article II, section 9, subdivision (a) provides: "The referendum is the power of the electors to approve or reject statutes or parts of statutes except urgency statutes, statutes calling elections, and statutes providing for tax levies or appropriations for usual current expenses of the State."

Subdivision (b) sets forth the manner in which a referendum may be proposed. "A referendum measure may be proposed by presenting to the Secretary of State, within 90 days after the enactment date of the statute, a petition certified to have been signed by electors equal in number to 5 percent of the votes for all candidates for Governor at the last gubernatorial election, asking that the statute or part of it be submitted to the electors."

Subdivision (c) sets forth the procedure to be followed by the Secretary of State on receipt of a referendum measure which has been duly qualified. "The Secretary of State shall then submit the measure at the next general election held at least 31 days after it qualifies or at a special statewide election held prior to that general election ..." if the Governor calls such a special election.

Petitioners do not seriously contend that reapportionment statutes are exempt from the referendum power. In passing, they observe that reapportionment statutes might be deemed "statutes calling elections" and, therefore, exempted from the referendum process under article II, section 9, subdivision (a). While it is obvious that a reapportionment statute relates to elections, it is equally clear that such statutes do not call elections. (Boggs v. Jordan (1928) 204 Cal. 207, 220 [267 P. 696]; Ortiz v. Board of Supervisors (1980) 107 Cal.App.3d 866, 872 [166 Cal.Rptr. 100].)

[5] Petitioners do, however, seriously contend that the filing of a referendum against a reapportionment or any other statute does not stay **[30 Cal.3d 655]** the effective date of the statute. The focus of the controversy thus centers initially on the interpretation of article II, section 10, subdivision (a) of the Constitution.

Subdivision (a) provides: "An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise. If a referendum petition is filed against a part of a statute the remainder shall not be delayed from going into effect." (Italics added.)

Petitioners acknowledge that the negative implication of the italicized language is that a referendum filed against the entirety of a statute stays that statute pending voter approval. An explicit stay provision was set forth in a predecessor to article II, section 10. Former article IV, section 1, which was repealed in 1966, read in pertinent part, "Upon presentation to the Secretary of State within 90 days after the final adjournment of the Legislature of a [qualified and certified referendum] asking that any act or section or part of any act of the Legislature be submitted to the electors for their approval or rejection, the Secretary of State shall submit to the electors for their approval or rejection, such act [or part thereof] ... and no such act [or part thereof] shall go into effect until and unless approved by a majority of the qualified

electors voting thereon; but if a referendum petition is filed against any section or part of any act the remainder of such act shall not be delayed from going into effect." (Italics added.)

Petitioners concede that while this predecessor article was in effect, this court assumed that the filing of a properly qualified referendum asking that a reapportionment statute be put to a popular vote stayed the effective date of such a statute. (See Silver v. Brown (1965) 63 Cal.2d 270, 277-278 [46 Cal.Rptr. 308, 405 P.2d 132] [dictum]; Boggs v. Jordan, supra, 204 Cal. 207, 211.)

Petitioners point out, however, that the referendum provisions of article IV of the California Constitution were revised in 1966, and in 1976 were placed in sections 9 and 10 of article II. One result of the 1966 revision was the elimination of the express stay provision of former article IV. Petitioners attach substantive significance to this omission. They argue that the filing of a referendum no longer stays the challenged statute, despite the clear negative implication to the contrary which remains in the current constitutional provision. **[30 Cal.3d 656]**

Petitioners ask too much of this court. The 1966 revision of article IV was intended "to shorten and simplify the Constitution, deleting unnecessary provisions. ..." (Associated Home Builders etc., Inc. v. City of Livermore, supra, 18 Cal.3d 582, 595, fn. 12.) In commenting on the referendum provisions of former article IV, section 1, the Constitution Revision Commission declared that the proposed revision would effect only one substantive change -- the effective date of a statute challenged by a referendum but subsequently approved by the voters. fn. 11 "Otherwise," the commission declared, "no change in meaning has been effected" by the proposed revision. (Cal. Const. Revision Com., Proposed Revision (1966) at pp. 46-47.) There remains in the current provision, article II, section 10, subdivision (a), a clear negative implication that a statute challenged in its entirety by a duly qualified referendum is stayed from taking effect until it has been approved by the voters at the required election.

This interpretation is consistent with the nature of a referendum. "The referendum is the power of the electors to approve or reject statutes. ..." (Cal. Const., art. II, § 9, subd. (a).) As the Secretary of State has pointed out, "In a Referendum, Voters are asked to Approve the Bill which the Legislature has enacted ('Yes' Vote) or to Disapprove ('No' Vote). ... The question which is put to the voters is 'Shall (the bill) Become Law? (Yes or No).'" (Memo. from Sect. of State's office to county clerks and registrars of voters (Sept. 24, 1981).) Approval of the referendum is approval of the bill.

Thus, to declare, as does the first sentence of subdivision (a) of article II, section 10, that a "referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise ..." is to say that the challenged bill takes effect the day after the election. Obviously, there would be no need to define the date on which the challenged law becomes effective if it were already in effect. (Compare, Walters v. Cease (Alaska 1964) 388 P.2d 263.)

Therefore, under the mandate of article II of the state Constitution, the filing of a valid referendum challenging a statute normally stays the implementation of that statute until after the vote of the electorate. The **[30 Cal.3d 657]** statute takes effect only if approved by the voters. No express provision

in article II excludes reapportionment statutes from the reach of the referendum process or from application of the stay. fn. 12

IV.

Alternatives Available to the Court for 1982 Elections

There remains the problem as to what districts are to be used for the 1982 primary and general elections. Absent the filing of referenda challenging the 1981 reapportionment statutes, each of those laws would have gone into effect on January 1, 1982. (See Cal. Const., art. IV, § 8, subd. (c).) But referenda have been filed, and this court has concluded that they are valid and that their filing stays the date upon which the challenged statutes become law unless and until they are approved by the voters. As a result, the new districts, although presumptively valid, are not now in effect.

The old districting scheme, in effect since its establishment by this court in 1973 (see Legislature v. Reinecke (Reinecke IV) (1973) 10 Cal.3d 396 [110 Cal.Rptr. 718, 516 P.2d 6]), no longer meets the one-person, one-vote requirement embodied in the equal protection clauses of our state and federal Constitutions. (U.S. Const., 14th Amend.; Cal. Const., art. I, § 7.) All parties agree that the population changes revealed by the 1980 census demonstrate that the old districts contain population disparities that are clear violations of the state and federal Constitutions' one-person, one-vote mandate. fn. 13 The old districts are, therefore, no longer valid. Moreover, the old congressional district boundaries have been repealed. (Stats. 1981, ch. 535, § 1.) fn. 14

With no valid districts in effect, the state's election machinery cannot operate. In order for the 1982 elections to proceed, some temporary districting **[30 Cal.3d 658]** scheme must be established. The impasse now confronting the state must be resolved.

Courts have repeatedly affirmed that reapportionment is a task best performed by the state legislatures. "[T]he institution that is by far the best situated to identify and then reconcile traditional state policies within the constitutionally mandated framework of substantial population equality ..." is the Legislature. (Connor v. Finch (1977) 431 U.S. 407, 414-415 [52 L.Ed.2d 465, 473-474, 97 S.Ct. 1828].) Since that is not a viable alternative prior to the June primary, this court is forced to assume the "unwelcome obligation" (id., at p. 415 [52 L.Ed.2d at p. 474]) of stepping into the reapportionment fray.

The options available to the court are limited. Were time constraints less pressing, the court might consider requesting the Legislature to develop an interim plan. However, the June primary is less than five months away. Respondents Eu, the Secretary of State, and Panish, the Registrar of Voters of Los Angeles County, report that it is too late to use any districts except those in either the out-dated plan or the Legislature's plans. Computer programming requiring two to four months of work has already been performed for both of those plans. There is no time to do similar preliminary programming for any other plan. Further, no new districts could be put into effect in time to inform the electorate and the candidates of their districts before the primary election. fn. 15

Real parties argue that the 1981 reapportionment measures are not among the options this court may consider. However, decisions of the Supreme Court are to the contrary. Those decisions demonstrate that any practical alternative available to this court may be given consideration, including reapportionment plans which are not yet in effect and which are scheduled to be submitted to the electorate. **[30 Cal.3d 659]**

The Supreme Court has repeatedly declared that regardless of the requirements of state constitutions, "the delay inherent in following [a] state constitutional prescription for approval of [reapportionment measures] cannot be allowed to result in an impermissible deprivation of [the citizens'] right to an adequate voice in the election of legislators to represent them." (Roman v. Sincock (1964) 377 U.S. 695, 711 [12 L.Ed.2d 620, 630, 84 S.Ct. 1449]; Reynolds v. Sims (1964) 377 U.S. 533, 584 [12 L.Ed.2d 506, 540, 84 S.Ct. 1362].)

When the delay caused by such state constitutional prescriptions conflicts with a citizen's federal constitutional right to cast an equally weighted vote, a court has the power to set aside the state constitutional provision. "Acting under general equitable principles," the court must determine whether circumstances require the immediate effectuation of the federal constitutional right. (Roman v. Sincock, supra, 377 U.S. at pp. 711-712 [12 L.Ed.2d at pp. 630-631].)

[6] From these principles, it follows that a court, in the exercise of its equitable powers, may not only consider but also adopt reapportionment plans which are not yet final within the framework of a state constitution. This is precisely the action affirmed by the Supreme Court in Reynolds v. Sims, supra, 377 U.S. 533. In 1962, during the pendency of a federal suit challenging the apportionment of the Alabama Legislature, that body adopted two reapportionment plans. Neither was to take effect until the 1966 election. One of the plans was a proposed constitutional amendment which was scheduled to be submitted to the voters for ratification at the November 1962 general election. The other plan was statutory. It was enacted as a standby measure and was to take effect only if the voters rejected the constitutional amendment, or, should the amendment pass, if a court subsequently declared the amendment unconstitutional. (Id., at pp. 537, 542-544 [12 L.Ed.2d at pp. 513, 515-517].)

After trial, the district court declared the existing apportionment of the Legislature unconstitutional. (Id., at p. 545 [12 L.Ed.2d at p. 517].) The court fashioned a temporary remedy comprised of certain aspects of the two proposed plans for use in the 1962 election only. (Id., at p. 552 [12 L.Ed.2d at p. 521].)

The Supreme Court held that "the District Court acted properly in considering [the] proposed plans, although neither was to become effective until the 1966 election and the proposed constitutional amendment **[30 Cal.3d 660]** was scheduled to be submitted to the State's voters in November 1962." (Id., at p. 570 [12 L.Ed.2d at p. 532].) Why? Because "[c]onsideration by the court below of the two proposed plans was clearly necessary ... in ascertaining what sort of judicial relief, if any, should be afforded ..." for the 1962 elections. fn. 16 (Id., at p. 571 [12 L.Ed.2d at p. 532]; see also, Reinecke I, supra, 6 Cal.3d at p. 602.)

Given the breadth of a court's equitable powers in reapportionment cases under federal law, it is clear that this court may give consideration to the Legislature's 1981 reapportionment plans, even though those plans are not yet in effect and are now scheduled to be submitted to a popular vote. In ascertaining the remedy to be applied in a given case, a court may give consideration to any practical alternative which is available.

In addition, a ruling that the stay provision of article II, section 10, subdivision (a) precludes consideration of the Legislature's reapportionment plans would create serious conflicts with other provisions of our state Constitution.

Article XXI, adopted in 1980, requires that the Legislature reapportion the Senate, Assembly, and Congressional districts "[i]n the year following the year in which the national census is taken under the direction of Congress at the beginning of each decade. ..." It also requires that all members of the Legislature and Congress be elected from single-member districts. (Art. XXI, § 1, subd. (a).) Further, article I, section 7, the state equal protection clause, adopted in 1974, mandates a recognition of the one-person, one-vote principle.

To construe the referendum stay provision so as to prohibit consideration of the 1981 reapportionment plan would frustrate the requirements of both of these newly reaffirmed constitutional provisions. It would substantially delay redistricting of the state, despite the constitutional requirement that reapportionment occur immediately after the federal census. This court would be left with no practical alternative but to impose the old, now seriously malapportioned districts on the state, in violation of the equal protection clause. (See discussion, ante, at **[30 Cal.3d 661]** p. 658.) Further, the Legislature's reapportionment plan is the only available option that provides for 45 congressional districts, rather than the 43 formerly allotted to California. If that plan were eliminated from consideration, there would be no way to implement the constitutional requirement that all members of Congress be elected from single-member districts. (See discussion, post, at pp. 661-664.)

Nothing in our state Constitution dictates that the stay provision of article II should have more force and effect than the commands of article XXI or the equal protection clause of article I, section 7. Rather than promoting any particular constitutional provision at the expense of other, equally important provisions, this court must harmonize the various articles of our Constitution so as to minimize any potential conflicts. The conclusion that the referendum stay provision of article II does not remove the 1981 reapportionment statutes from this court's consideration saves that constitutional provision from a potential conflict with the mandates of article XXI and the state equal protection clause.

Petitioners' claim that the referendum provisions of the Constitution do not apply to reapportionment statutes seems unfounded. Similarly without merit is real parties' assertion that the qualification of the referenda prohibits this court from considering the Legislature's plans. The federal Constitution, federal precedent, and our own Constitution all require that the court weigh all the options currently available, including those challenged by the referenda.

V.

Constitutional Mandates

The impasse facing the state as a result of the qualification of the referenda challenging the Legislature's reapportionment statutes leaves this court no choice but to resolve the pressing problem of what districts should be used in the upcoming primary and general elections. The only alternatives available are either the new plan approved by the Legislature and the Governor or the old districts used in the last decade.

From a practical point of view, which of these plans is available to this court for congressional reapportionment? California is now entitled to 45 representatives instead of 43. Real parties argue that this court should use the 43 old districts and fill the 2 new seats by statewide **[30 Cal.3d 662]** elections. Every member of this court agrees that this is not a viable alternative.

As this court pointed out in Reinecke I, supra, 6 Cal.3d at page 603, federal law forbids the use of statewide elections to fill congressional seats. Section 2c of title 2 of the United States Code provides that, "In each State entitled ... to more than one Representative under an apportionment made [by the President of the total number of Representatives among the several States], there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected only from districts so established. ..."

[7] Real parties assert that Reinecke I was wrong in holding that section 2c commands the election of congressional representatives from single-member districts. They contend that section 2a(c), of title 2 commands at-large elections. The flaw in their argument is that the legislative history of section 2c reveals, as does its plain language, that Congress intended 2c to supersede the provisions of section 2a(c). fn. 17

During the Senate debate on section 2c, proposed by Senator Howard Baker, the following colloquy occurred. After observing that by its terms section 2c would require that each state establish "by law" single-member districts for the election of its representatives, Senator Birch Bayh posed this question to Senator Baker: "I would interpret 'by law' to mean if the reapportionment is done either by the State legislatures or by the court. I should like to know whether the Senator from Tennessee [Senator Baker] agrees with that interpretation." (Debate before the Senate, 113 Cong. Rec. 31719 (1967), italics added.)

Senator Baker responded that it was, of course, in the first instance the province of the legislatures to establish congressional districts and that a court should only intervene if the legislature failed to do so. (Ibid.)

Senator Bayh, stating that perhaps the Senator had misunderstood his question, went on to observe: "[I]f it is bad government for the legislature to say that Congressmen should run at large, then it is bad government for the court to have an entire group of Congressmen running at large in a State." (Ibid.) **[30 Cal.3d 663]**

Senator Baker responded: "... I agree. ..." (Ibid.)

Senator Bayh then returned to his original question. "When we say '... there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected only from districts so established, no district to elect more than one Representative,' we are talking about either of two situations -- whether the legislature reapportions or whether the court reapportions." (Id., at p. 31720.)

Senator Baker replied, "The Senator is correct." (Ibid.) During the floor debate, Senator Bayh again asked: "This will make it mandatory for all Congressmen to be elected by single-Member districts, whether the reapportionment is done by State legislatures or by a Federal court." Senator Baker responded: "That is my understanding." Thereafter, section 2c was adopted by the Senate by voice vote. (Ibid.)

The bill then went to the House for its consideration. An amendment was proposed to allow those states which had been conducting congressional elections at large (i.e., Hawaii and New Mexico) to do so for the 91st or next congressional election as well. (See Debate before the House, 113 Cong. Rec. 34032 (1967).) Most of the debate focused on the desirability of this proposed amendment. Little was said about the merits of the provision itself. However, one remark is instructive. "The language ... will prohibit any State from running [its representatives] at large in any future elections." (Remarks of Representative Smith, id., at p. 34035.)

The measure passed the House, as amended, and was returned to the Senate. (See Debate before the Senate, 113 Cong. Rec. 34364 (1967).) There, the debate focused on whether the House amendment allowing Hawaii and New Mexico to elect their representatives at large in 1968 should be accepted. (See id., at pp. 34364-34370.) In the course of that debate, it was observed that, "Beginning with the 1970 elections, and for every congressional election thereafter, every state of the Union, with no exception, must elect its Congressman [sic] from single-member districts." (Remarks of Sen. Fong, id., at p. 34364, italics added.) At the close of debate, the Senate passed the bill as amended by the House. (Id., at pp. 34369-34370.)

Given the legislative history of section 2c and this court's observations in Reinecke I, supra, 6 Cal.3d at page 603, it is clear that the use **[30 Cal.3d 664]** of the 43 old district and an at-large election of the 2 new representatives would contravene the congressional mandate set forth in section 2c. This interpretation is consistent with the decisions of other state and federal courts. fn. 18

As this court stated in Reinecke I, supra, 6 Cal.3d at page 603, the mandate of Congress to elect all representatives from single-member districts is one with which this court fully agrees. "[T]o conduct statewide elections to fill [the new] congressional seats in a state of California's geographical size and large population would not only tremendously increase the burdens and expenses of effective campaigning but, by increasing the choices confronting the electorate ..., would seriously impede the casting of informed ballots." (Ibid.) Further, an at-large election would allow the voters of California to

select three representatives instead of the one that they are entitled to under law. fn. 19 The only practical and constitutional alternative available for use as a temporary court plan for this election year is the 1981 congressional reapportionment law. (Stats. 1981, ch. 535.)

If this court must adopt the 1981 congressional reapportionment plan so that the 1982 House elections can go forward, is there any reason this court should not also adopt the 1981 Assembly and Senate plans? **[30 Cal.3d 665]** Although few definitive rules guide the choice of an interim election plan, decisions of the United States Supreme Court do provide standards.

[8] The primary federal concern is equal protection -- here, the principle of one-person, one-vote. Further, equitable considerations such as the potential disruption of the state's election process must also be considered. (Reynolds v. Sims, supra, 377 U.S. at p. 585 [12 L.Ed.2d 506, 541].) Thus, this court must adopt the plan that best ensures equal protection of the law while minimizing any disruptive impact on the election process. In addition, any decision by this court should recognize the basic rule that reapportionment is primarily a legislative task, undertaken by this court only when circumstances permit no alternative. (Id., at p. 586 [12 L.Ed.2d at p. 541].)

[9a] A weighing of the diverse and at times conflicting factors involved in this case leads to the conclusion that the election plans developed by the Legislature in 1981 must be used, as a temporary measure, in the 1982 legislative elections.

[10] The equal protection clauses of both the federal and state Constitutions (U.S. Const., 14th Amend.; Cal. Const., art. I, § 7) mandate that this court adopt the reapportionment plan that most nearly meets the constitutional ideal, absent extraordinary circumstances. (Cosner v. Dalton (E.D.Va. 1981) 522 F.Supp. 350, 363-364; Cummings v. Meskill (D.Conn. 1972) 347 F.Supp. 1176, 1177; Klahr v. Williams (D.Ariz. 1970) 313 F.Supp. 148, 153; Jones v. Falcey (1966) 48 N.J. 25 [222 A.2d 101, 109-110]; see also Reynolds v. Sims, supra, 377 U.S. at p. 585 [12 L.Ed.2d at p. 541].) fn. 20

[9b] Given the imminence of the 1982 primary election, only two options are available. This court must choose between the two districting plans currently available, selecting that plan which more nearly **[30 Cal.3d 666]** comports with the requirements of the federal and state equal protection clauses and is least disruptive of the electoral process.

The old districts contain enormous population variances. The population of the largest old Assembly district is more than 200 percent that of the smallest. The populations of the new districts appear to be within 4 to 7 percent of equality. fn. 21 Clearly, the new districts are far closer to the constitutional goal than the old. fn. 22

According to figures supplied by real parties, the current population of the old 76th Assembly District (530,643) is 236 percent of the population of the old 16th Assembly District (224,488). The vote of a resident of the former 16th District would, therefore, be worth more than twice that of a resident of the former 76th District. Compared to the current ideal district size, the old 76th District is 79.4 percent

greater than the ideal, while the old 16th District is 24.1 percent less than the ideal. The total deviation between the two districts is 103.5 percent.

Overall, 2 of the old Assembly districts vary by more than 50 percent from the ideal population size of 295,857; 2 vary by 30 to 50 percent from the ideal size; and 48 of the 80 districts vary by 10 to 30 percent from the ideal. Only 28 of the districts are within 10 percent of the ideal district size.

In the Senate, old Senate District 5 now contains 458,587 people, 22.5 percent less than the ideal number, while old Senate District 38 contains 904,725 people, 52.9 percent more than the ideal. Thus, the vote of a resident of former District 5 would be worth almost twice that of a resident of former District 38. The total deviation between the two districts is 75.4 percent. Real parties' figures show that the population **[30 Cal.3d 667]** of one old Senate district is more than 50 percent greater than the ideal; another is 41 percent greater than the ideal; 19 vary by 10 to 30 percent from the ideal; and 19 are within 10 percent of the ideal population size.

The Supreme Court has not established a rigid numerical limit for legislative districts. However, the high court has developed guidelines for permissible deviations. As summarized by one federal district court, a maximum deviation of less than 10 percent between the largest and smallest districts is permissible and need not be justified by the state. However, a maximum deviation of 10 to 16.4 percent is permissible only if the state can demonstrate that the deviation is the result of a rational state policy. A maximum deviation greater than 16.4 percent is intolerable under the equal protection clause. (Sims v. Amos (M.D.Ala. 1973) 365 F.Supp. 215, 222, affd. sub nom. Wallace v. Sims (1974) 415 U.S. 902 [39 L.Ed.2d 460, 94 S.Ct. 1394]; Cosner v. Dalton, supra, 522 F.Supp. at pp. 357-358; see also White v. Regester (1973) 412 U.S. 755 [37 L.Ed.2d 314, 93 S.Ct. 2332]; Mahan v. Howell (1973) 410 U.S. 315 [35 L.Ed.2d 320, 93 S.Ct. 979]; see 1 Dorsen et al., Political and Civil Rights in the United States (4th ed. 1976) pp. 1107-1108.) Under this standard, the old districting plan -- with maximum deviations of 103.5 percent (Assembly) and 75.4 percent (Senate) -- is a per se violation of the United States Constitution.

As the Supreme Court stated in Reynolds v. Sims, supra, 377 U.S. at page 585 [12 L.Ed.2d at page 541], "once a State's legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan." (Italics added.) Further, the high court has held that a court-ordered plan, such as that which established California's old districts, must be held to higher standards than a state legislature's plan. (Chapman v. Meier (1975) 420 U.S. 1, 26 [42 L.Ed.2d 766, 784, 95 S.Ct. 1988].)

California's Constitution provides a further reason to prefer adoption of the Legislature's 1981 reapportionment plans rather than to perpetuate the out-dated, malapportioned districts followed in the past decade. Article XXI of the state Constitution, adopted in 1980, requires the Legislature to reapportion the state in the year following the federal **[30 Cal.3d 668]** census. This constitutional provision expresses a clear mandate that properly apportioned districts be in effect by the time of the first election following the decennial census.

Use of the Legislature's 1981 plans will also minimize the potential disruption of the electoral and political processes of the state. At the primary, the new reapportionment plans will be either affirmed or rejected. The court cannot and should not attempt to predict the outcome of the referenda. The will of the people, except as already expressed through their chosen representatives, is as yet unspoken. The referenda may be voted up or down. Both possibilities must be considered in fashioning a temporary remedy that will do least violence to the orderly conduct of the 1982 elections, regardless of the ultimate result of the referenda.

California faces a unique situation in which the plan by which the elections should be conducted is the subject of a vote at those same elections. Use of the Legislature's 1981 plan for the 1982 elections minimizes any disruption of the electoral process. If the reapportionment statutes are ratified by the voters at the primary, use of them now will cause no disruption at all. The 1982 elections will proceed according to the new plan -- a statute approved by the Legislature, the Governor, and the people of the state.

Real parties argue that use of the old legislative districts would cause less disruption. That conclusion, however, rests on an implicit and impermissible assumption -- that the referenda will result in the rejection of the Legislature's reapportionment statutes. That is an assumption this court cannot legally make. To do so would thrust the court into the political realm, prejudging an issue which is exclusively for the voters of the state to decide.

If the court orders the use of the old districts in 1982 and the reapportionment statutes then are affirmed, the state will be faced with the anomalous situation of an election run under seriously malapportioned, unconstitutional districts, despite the fact that the Legislature, the Governor and the people of the state all have concurred in adopting a new reapportionment statute. The legislators elected in those malapportioned, unconstitutional districts would serve terms of two and four years before the districts chosen by the people and their elected representatives could be given effect. **[30 Cal.3d 669]**

If the reapportionment statutes are rejected at the primary election, some disruption of the election process will occur no matter which plan is adopted now. The Legislature will be faced with the task of formulating new districts in time for the 1984 elections. That new plan will be subject to possible challenge in the courts and by referendum. At least, however, if the new plans are adopted temporarily in June and November, the 1982 elections will be run under a districting plan that is far closer to federal and state constitutional mandates than the out-dated plan of the last decade.

In sum, then, giving equal weight to the possibilities that the referenda may succeed or fail, use of the 1981 reapportionment statutes minimizes the potential disruption of the electoral process. It eliminates the danger of the worst possible scenario -- use of the old, unconstitutional plans in June and November despite approval of the new plans at the primary election. Further, the use of the 1981 reapportionment plans maximizes the likelihood that there will be no disruption at all.

Adoption of the Legislature's reapportionment plans for temporary use in 1982 also furthers the related goals of judicial restraint and deference to the Legislature. This court passes no judgment on the wisdom

of the Legislature's 1981 plans or on the likelihood that the people will affirm or reject those statutes at the primary election. However, in choosing whether to use an out-of-date plan that no longer conforms to equal protection requirements or a new statute passed by the Legislature, the court cannot be blind to the fact that the Legislature and the Governor have given their assent to the latter plan. Although stayed by the referenda, these statutes were the product of the political give and take of the legislative branch of government, the branch delegated responsibility for reapportionment both by federal precedent and by California's Constitution. fn. 23 **[30 Cal.3d 670]**

Use of the old plan would also perpetrate a potentially grave injustice on the majority of the people of this state. The effect of reverting to the old plan would be to allow 5 percent of the voters, by signing referendum petitions, to delay implementation of a constitutionally required reapportionment plan for two to four years. fn. 24 Not until 1986 would the voters in some Senate districts electing representatives this year have the opportunity to vote in properly apportioned districts. Although the Constitution of our state grants the power to initiate a referendum to 5 percent of the voters, it does not require that the effect of that referendum be articulated in a manner that does such serious injury to conflicting and equally compelling constitutional mandates. (See discussion, ante, at pp. 660-661.)

Any decision by this court requires a balancing of competing constitutional considerations. In light of the strong factors weighing in favor of the use of a revised, up-to-date reapportionment plan, it is simply untenable to argue that the constitutional provision on stays must be followed blindly, no matter what the cost to the equal protection clauses of the state and federal Constitutions and article XXI of the state Constitution.

Maintaining the old election districts for the upcoming election would raise troubling questions about the future of reapportionment in our state. It would create a serious risk that every reapportionment plan would be delayed at least two years before it could be implemented. Each decade, the losers in the reapportionment battle could obtain a two-year grace period on the strength of the signatures of 5 percent of the voters, thereby delaying implementation of the new plan until years after the referendum election. Cognizant of the seemingly interminable reapportionment lawsuits of the last two decades, this court should take care to avoid creating a system whereby delay becomes the rule and constitutionally required reapportionment may never be achieved within constitutionally imposed deadlines.

The decision to implement the 1981 reapportionment statutes for the 1982 elections will not circumvent the people's right to vote on those plans at the primary. The outcome of that vote will determine the future **[30 Cal.3d 671]** of reapportionment for the rest of the decade. This court's decision affects only the districts to be used temporarily for the 1982 elections. It is an unfortunate but unavoidable consequence of the timing of the referenda that the results of those referenda must necessarily be one step behind the reality of the 1982 elections. For this one year only, the elections must be conducted in ignorance of the preference of a majority of the voters. This is the unhappy result of the unique situation now confronting the state. Further, use of the unconstitutional, out-dated plan would increase the likelihood that the will of the people, as expressed in the primary vote, might be thwarted.

It is important to remember that the Legislature's plans have not been rejected by the voters. The statutes have been placed on the ballot, based on the signatures of 5 percent or more of the actual number of votes cast for all candidates for Governor in the last gubernatorial election. The ultimate disposition of the plans, although put to a vote by the referendum petitions, is as yet undecided. Thus, this case is substantially different from Reinecke I, supra, 6 Cal.3d at page 595. There this court held that it would not order use of the results of a "truncated" legislative process absent "the most compelling considerations." (Id., at p. 602.) The reapportionment bill in Reinecke I had been vetoed by the Governor. By way of contrast, the statutes here have never been rejected by any governmental entity. They were signed by the Governor and will be put to a vote of the people.

To use the adjective "truncated" to describe both of these situations would seriously stretch the descriptive power and distort the definition of the word. The legislative process in Reinecke I was "truncated" by a sharp, final veto by the Governor. The legislative process here has been lengthened but not terminated. A small percentage of the voters has exercised its right to put the question to a vote of the whole. Pending that vote, the legislative process here has been stalled but not derailed, slowed but not "truncated."

The situation facing this court today is distinguishable from Reinecke I in another crucial respect: the applicable law has changed in the intervening 10 years. First, the voters of the state amended the state Constitution in 1980 to provide, "In the year following the year in which the national census is taken under the direction of Congress at the beginning of each decade, the Legislature shall adjust the boundary lines of the Senatorial, Assembly, Congressional, and Board of Equalization districts. ..." (Cal. Const., art. XXI, § 1, italics added.) This **[30 Cal.3d 672]** provision replaced former provisions that had been declared unconstitutional on other grounds in 1965. (Silver v. Jordan (S.D.Cal. 1964) 241 F.Supp. 576, affd. per curiam, Jordan v. Silver (1965) 381 U.S. 415 [14 L.Ed.2d 689, 85 S.Ct. 1572].) The voters of the state have thus recently reaffirmed their commitment to the constitutional requirement that the Legislature adopt new apportionment lines immediately after the new census figures are available.

Since Reinecke I, this court has also held that our state's equal protection clause (see art. I, § 7), adopted in 1974, has "independent vitality" which at times may require greater protection than that afforded by the federal Constitution (Serrano v. Priest (1976) 18 Cal.3d 728, 764 [135 Cal.Rptr. 345, 557 P.2d 929]).

Finally, the years since Reinecke I have taught us that the courts cannot tolerate endless delays in the implementation of a constitutional reapportionment plan. Reinecke itself required four opinions before this court imposed a court-designed reapportionment plan on the state. (See Legislature v. Reinecke, supra, 6 Cal.3d 595; Legislature v. Reinecke (1972) 7 Cal.3d 92 [101 Cal.Rptr. 552, 496 P.2d 464]; Legislature v. Reinecke (1973) 9 Cal.3d 166 [107 Cal.Rptr. 18, 507 P.2d 626]; Legislature v. Reinecke, supra, 10 Cal.3d 396.) Court battles over reapportionment have frequently stretched far into the decade that the reapportionment plans were intended to serve. The courts must now seek remedies that will encourage prompt resolution of reapportionment disputes.

The calculus confronting this court as it determines the proper remedy for the 1982 elections is thus substantially different from that which faced the court 10 years ago in Reinecke I. The new plan carries with it the assent of both the Legislature and the Governor. Although it faces the possibility of rejection by the people, that is as yet only a possibility. On the other hand, the factors militating against use of the old districting plans are far stronger than they were in 1972. The equal protection clauses of both the state and federal Constitutions are less open to delay and stricter in their requirement of one-person, one-vote. fn. 25 Further, **[30 Cal.3d 673]** an amendment to the California Constitution has specifically reaffirmed the requirement of legislative reapportionment in the year following the federal census.

The Reinecke I solution -- use of the old districts for legislative elections and the new districts for Congressional elections -- is not helpful here. The suggestion that it be used today leads ineluctably to a logical conflict. If the court has the power to order use of the new plans for congressional races, a fact agreed to by every member of this court, it must be able to do the same for the state legislative districts. In 1982 the allure of the Reinecke I solution lies more in its value as a compromise than its theoretical neatness. And compromise between competing **[30 Cal.3d 674]** political parties is a political solution, one that is inappropriate for a body whose members are sworn to uphold the constitutional right of the citizens of this state to vote in districts which respect the requirement that each person's vote has equal value.

VI.

Conclusion

It is with great reluctance that this court enters a dispute more properly resolved in the political environs of the state Legislature and at the ballot box. However, this court has been given no choice in the matter. The court must act to protect the right of the citizens of this state to vote in an orderly and constitutional fashion. A good faith effort has been made to meet the constitutional imperative of one-person, one-vote, while minimizing any disruption of the electoral or political processes and without intruding into the proper spheres of the coordinate branches of government.

Operating from a neutral judicial stance and postulating no predictions as to the probable outcome of the referenda on the proposed reapportionment plans, the court has ordered a temporary districting plan that best ensures equal protection of the law to the citizens of this state while doing the least violence to the election process this year.

Every member of this court agrees, and most parties concede, that the old, out-dated district plan of 1973 is unconstitutional and may not be used for the congressional elections. The only alternative open to the court is the reapportioned districts adopted by the Legislature and approved by the Governor. If the 1981 congressional reapportionment plan must of necessity be used in the 1982 elections, it is clear that there are no compelling reasons why the 1981 reapportionment statutes governing the Assembly and Senate should be discarded for the old, unconstitutional districts of 1973. This temporary plan allows the primary and general elections to be held in districts that more nearly comply with the constitutional mandate of one-person, one-vote.

By law, the court must adopt the plan which is most constitutional and least disruptive. If the court were to adopt the old district plan, it would not only do violence to our state and federal Constitutions, but **[30 Cal.3d 675]** the action might be construed as an impermissible judicial statement about the success of the referenda.

The only way in which the adoption of the unconstitutional, old districts could be justified would be if this court were to pronounce a political conclusion that the reapportionment statutes will be rejected. However, this court is forbidden from making such political assumptions. Instead, this court is constrained to take a neutral look at the results under both the old and new districts should the referenda either pass or fail, in order to determine what alternative is least disruptive. When these different "scenarios" are laid out side by side, it becomes evident that use of the new districts is the less disruptive alternative.

If the old districts were adopted by this court now, but the 1981 reapportionment statutes were affirmed by the voters of this state at the primary, the old, unconstitutional districts would still have to be used in November. This would be the most disruptive remedy this court could fashion. The right of the people of this state to equally weighted votes would be denied at both the primary and general elections.

Thus, not only would the will of the people have been thwarted for two years in the case of the Assembly and four years in the case of the Senate, but the November election process would be totally disrupted, since the 1981 reapportionment approved by the Legislature, signed by the Governor, and adopted by the people could not go into effect. Why? Simply because of this court's ukase.

Under no circumstances could the use of the old districts be less disruptive than the use of the new districts. If the referenda fail, a new legislative reapportionment plan will have to be developed, regardless of which districts this court adopts for the 1982 elections.

Justice Richardson's opinion assumes that the "worst possible scenario" is the prospect that the state will have to vote in an additional set of districts if this court adopts the new districts and the referenda fail. However, in labeling this the worst scenario, the dissenting justices overlook the fact that it is only through the use of the new districts that the voters' rights to equal protection and to prompt implementation of the one-person, one-vote mandate will be honored. The worst scenario is one in which this crucial right is needlessly violated. **[30 Cal.3d 676]**

If the new districts are adopted and the referenda pass, there will be no disruption whatsoever. The dissenting opinions are understandably silent on this point. The Legislature will have no need to take any further reapportionment action for the remainder of the decade. The will of the people, as expressed in their referenda votes, will be given immediate effect in the November election.

There is an additional problem. If a referendum signed by 5 percent of the voters can stop a legislatively enacted reapportionment plan for a period of two or four years, even if it is subsequently adopted by the citizens at a statewide election, then a small minority could thwart the will of a majority of the citizens simply by obtaining a small number of signatures on a petition. Signing a petition would then become not

only a request that a reapportionment statute be put to a vote of the people, but a sure-fire method by which to block the implementation of a crucial statute approved by the Assembly, the Senate, the Governor, and the people.

Thus, the adoption of the old districts by this court would have the detrimental effect in the future of encouraging anyone who does not like a legislative reapportionment plan, for whatever reason, to look immediately to the courts to undo it. It cannot be overlooked that if this court were to endorse that view, it would be encouraging a small, dissatisfied minority to force this court to reapportion the state at least once every 10 years. A more disasterous prospect for this court and the electoral process is difficult to imagine. It is neither wise nor just to place the burden of reapportionment, a basically political responsibility, on the courts of a state.

Certainly, the courts should continue to serve as a forum for resolving legal issues concerning reapportionment. However, the courts should not permit themselves to become a surrogate for the Legislature in this political area, which is properly the province of the legislative and executive branches.

As a court, this body takes no position on the political merits of the legislative reapportionment plan or on the outcome of the referenda. Those decisions now rest with the people. This court is concerned with the requirements of the state and federal Constitutions and the impact on the electoral process of a decision by this court. Our goal is to adopt a temporary plan that will not be disruptive of the electoral process and does the least amount of violence to the political process. **[30 Cal.3d 677]**

The only alternative open to the court which meets these criteria is the 1981 reapportionment plan. fn. 26 Even if the referenda result in the rejection of the reapportionment statutes, the election process will undergo no greater disruption than if the out-dated districting plan had been used. However, if the old, unconstitutional plan is adopted, disruption of the election process is assured. Further, constitutional protections of the right to vote and the right to a prompt reapportionment are best served by the adoption of a plan based on the most recent census data.

The referendum power, expressly reserved to the people by the Constitution, is the right to put a statute to a vote by all of the electors. This right must be protected. The outcome of the vote on these referenda may determine the redistricting scheme used for the rest of the decade. Pending the outcome of that vote, this court must follow the mandates of the state and federal Constitutions. Equal protection requires that election districts conform as nearly as is practically possible to the principle of one-person, one-vote. Article XXI of the state Constitution requires that the state be reapportioned each decade. These provisions impel the conclusion that, as a temporary measure, use of the newly fashioned districts is preferable to the imposition of the seriously and unconstitutionally malapportioned districts of the old plan and, therefore, the only alternative.

The Reinecke I solution may seem an alluring compromise. However, it requires this court to make the impermissible political judgment that the referenda will fail and places this court in the shortsighted

position of ignoring constitutional mandates and encouraging a pattern of court-ordered reapportionment at least once a decade.

This court has repeatedly noted its reluctance to enter into the complex arena of legislative reapportionment. It should by now be clear to the voters and the elected leaders of this state that under the current method of reapportionment, the constitutional requirement of a legislative reapportionment in the year following the federal census could rarely, if ever, be met. Reapportionment by the courts every decade is not only an inadequate solution, but an intolerable one as well. The Legislature should address this problem and fashion a procedure that **[30 Cal.3d 678]** will eliminate the delay and wasted resources caused by the current process.

The 1981 reapportionment statutes governing the Congressional, Senate and Assembly Districts are hereby adopted as a temporary reapportionment plan for the 1982 primary and general elections only. Guided by a proper reluctance to enter into an area of public policy reserved for the people and their elected representatives, this court acts today within the most restricted boundaries consistent with its constitutional duties. The old plans are rejected solely because their grossly malapportioned districts are manifestly unconstitutional. The new plans are temporarily adopted solely because they represent the only alternative available to this court that both maximizes adherence to equal protection principles and minimizes disruption to the election process.

This court's decision is strictly judicial in nature. It does not represent, nor should it be used by anyone as, an endorsement or nonendorsement of the views of either the proponents or opponents of the referenda measures. The people are the proper judges of those matters, as to which this court expresses no opinion whatsoever. It is of paramount importance that acts of judicial necessity not be misused as levers of political expediency.

Since its inception, the right of the people to express their collective will through the power of the referendum has been vigilantly protected by the courts. Thus, it has been held that legislative bodies cannot nullify this power by voting to enact a law identical to a recently rejected referendum measure. (See Gilbert v. Ashley (1949) 93 Cal.App.2d 414, 415-416 [209 P.2d 50]; In re Stratham (1920) 45 Cal.App. 436, 439-440 [187 P. 986].) Unless the new measure is "essentially different" from the rejected provision and is enacted "not in bad faith, and not with intent to evade the effect of the referendum petition," it is invalid. (Id., at p. 440; see also Reagan v. City of Sausalito (1962) 210 Cal.App.2d 618, 629-631 [26 Cal.Rptr. 775]; Martin v. Smith (1959) 176 Cal.App.2d 115, 118-119 [1 Cal.Rptr. 307].) Should the referenda here be rejected in the primary election, the Legislature will be governed by these rules in fashioning new reapportionment plans for the remainder of this decade.

The Secretary of State informs this court that she has directed the county clerks and registrars of voters not to provide candidates with petitions **[30 Cal.3d 679]** in lieu of paying filing fees (§ 6494.1) until these consolidated mandate proceedings have been resolved. Pursuant to section 6555, subdivision (b), these petitions otherwise would have been made available as of January 4, 1982. In order to ensure that all candidates who choose to do so may make use of these procedures, the court directs that the last date

on which such petitions may be filed be extended by 24 days. To the extent that the deadlines set for filing declarations of intention to become a candidate (§ 25500) and for filing nomination documents (§ 6490) may impinge upon the implementation of this extension, they should be extended administratively in commensurate fashion for the benefit of those candidates choosing to file in lieu petitions. However, in no event should such extensions be permitted to delay the primary election.

Since there is no reason to believe that the parties to these proceedings will not accede to the holdings of this court, no purpose would be served by issuing writs of mandate. (Reinecke IV, supra, 10 Cal.3d at p. 407.)

The alternative writs of mandate heretofore issued are discharged, and the petitions for writs of mandate are denied. Each party shall bear its own costs in the proceedings herein.

The judgment is final forthwith.

Newman, J., Broussard, J., and Tamura, J., concurred.

RICHARDSON, J.,

Concurring and Dissenting.

I concur in the majority's conclusion that the referendum petitions are valid and fully qualify for the 1982 primary ballot, that the qualification of the referenda stays the operation of the state Legislature's 1981 reapportionment statutes, and that because of the constraints of federal law and the allocation of two new congressional seats, as a matter of both practical and legal necessity, we should adopt, temporarily, the 1981 legislative enactment of congressional boundaries. I respectfully, but vigorously, dissent, however, from the majority's acceptance of the 1981 legislative enactment of Senate and Assembly district boundaries. In my view, this is most unnecessary, unwise and improper. **[30 Cal.3d 680]**

Today, and by the thinnest of margins, the majority accepts as its own and in its entirety, a legislative package, the validity of which is under very serious referendum challenge. It does so in the face of a pending election in which the people of this state will, in just over four months, make a final and definitive judgment on the propriety of this very legislation. The majority is not compelled to do so. It acknowledges, as it must, that the qualification of the referenda for the June 1982 ballot has the effect of fully staying the operation of the 1981 legislation. Nonetheless, the majority completely disregards this stay and imposes upon the people of California a state legislative reapportionment plan which has been stopped dead in its tracks by operation of law and which is heavily veiled in a cloud of political uncertainty. The majority's adoption of this plan prejudges the result and its action can only be perceived as an official alignment of the court with one side in a partisan dispute as to which we should remain scrupulously neutral.

Only 10 years ago we unanimously agreed, under circumstances wholly analogous to those presented here, that we would retain the existing legislative district boundaries for the 1972 elections despite their

noncompliance with federal one person, one vote principles. (Legislature v. Reinecke (Reinecke I) (1972) 6 Cal.3d 595 [99 Cal.Rptr. 481, 492 P.2d 385].) Reinecke I controls the disposition of the present case, and in my view affords the only satisfactory and practical solution consistent with the people's constitutional right of referendum.

Certain general principles must govern our inquiry. First, the referendum and initiative are very special and favored rights. As we recently observed, "The amendment of the California Constitution in 1911 to provide for the initiative and referendum signifies one of the outstanding achievements of the progressive movement of the early 1900's. Drafted in light of the theory that all power of government ultimately resides in the people, the amendment speaks of the initiative and referendum, not as a right granted the people, but as a power reserved by them. Declaring it 'the duty of the courts to jealously guard this right of the people' [citation], the courts have described the initiative and referendum as articulating 'one of the most precious rights of our democratic process' [citation]. '[I]t has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right be not improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it.' [Citations.]" (Associated Home Builders etc., Inc. v. City of Livermore (1976) 18 Cal.3d 582, 591 [135 Cal.Rptr. 41, 557 P.2d **[30 Cal.3d 681]** 473, 92 A.L.R.3d 1038]; accord, Fair Political Practices Com. v. Superior Court (1979) 25 Cal.3d 33, 41 [157 Cal.Rptr. 855, 599 P.2d 46], cert. den. (1980) 444 U.S. 1049 [62 L.Ed.2d 736, 100 S.Ct. 740].) We are "jealously [to] guard" this "precious" right. As mandated in section 1, article IV, of the state Constitution, "The legislative power of this State is vested in the California Legislature, ... but the people reserve to themselves the powers of initiative and referendum." (Italics added.)

Second, as the majority is forced to concede, article II, section 10, subdivision (a), of the California Constitution mandates a stay of legislation challenged, as here, by a qualified referendum. This subdivision recites: "If a referendum petition is filed against a part of a statute the remainder shall not be delayed from going into effect." By negative implication, if the referendum petition as here is directed to the entire statute, the statute is stayed.

Third, again as conceded by the majority, reapportionment statutes are subject to the referendum process. (Silver v. Brown (1965) 63 Cal.2d 270, 277-278 [46 Cal.Rptr. 308, 405 P.2d 132]; Yorty v. Anderson (1963) 60 Cal.2d 312, 316-317 [33 Cal.Rptr. 97, 384 P.2d 417]; Boggs v. Jordan (1928) 204 Cal. 207, 211 [267 P. 696]; Ortiz v. Board of Supervisors (1980) 107 Cal.App.3d 866, 872 [166 Cal.Rptr. 100].)

Despite the mandatory nature of the foregoing principles of law, however, the majority refuses to stay any of the three challenged reapportionment statutes, for purposes of the 1982 elections, relying instead upon what the majority conceives to be overriding federal principles. As I develop below, while a federal statute may require our temporary adoption of the 1981 congressional redistricting statute, neither any statute nor overriding principle justifies the majority's complete disregard of the constitutionally ordained stay or the immediate imposition of the stayed legislation upon state legislative districts. In ordering the use of

these latter districts for the 1982 elections, the majority at the same time both ignores article II, section 10, subdivision (a), of the Constitution, and deliberately thwarts the will of those hundreds of thousands of California voters whose signatures have already qualified the referendum petitions for election to approve or disapprove the reapportionment statutes. The Constitution requires that there be a stay, but the majority refuses to honor it.

The majority finds it anomalous that a "mere" 5 percent of the voters can effectively postpone the Legislature's reapportionment plan. The **[30 Cal.3d 682]** answer, of course, is that this was the people's own decision to fix the qualification at 5 percent. In actuality the signatures were in excess of 12 percent and these were speedily obtained. Moreover, this feature of the referendum is no more anomalous than permitting a single vote (that of the Governor) to accomplish the same result. (See Reinecke I, supra, 6 Cal.3d, at p. 601, wherein we rejected the argument that the Legislature's reapportionment statutes are exempt from the Governor's veto.) The majority's quarrel on this score is more appropriately directed to the framers of the state Constitution and to the people themselves who, in adopting the provision, authored the dual protections of gubernatorial veto and referendum stay as safeguards against legislative abuses.

The majority argues that a stay coupled with the continued use of voting district boundaries created by us in 1973, would violate federal "one person, one vote" principles incorporated in article XXI of the state Constitution. This conclusion is incorrect for reasons which I now develop with reference to the election, respectively, of members of the Assembly, Senate and House of Representatives.

A. The Assembly

The present boundaries of Assembly districts were drawn by masters appointed by us in 1973 in Legislature v. Reinecke (Reinecke IV) (1973) 10 Cal.3d 396 [110 Cal.Rptr. 718, 516 P.2d 6]. We adopted as our plan these boundaries following a gubernatorial veto of one plan and the failure of the Legislature to adopt another. The present Assembly districts are based on 1970 census figures and, accordingly, do not accurately reflect recent population trends as disclosed by the 1980 census.

While the majority accepts the contestants' view that the referendum stay cannot properly override "one person, one vote" principles, there is no irreconcilable conflict between those principles and the constitutionally mandated stay.

First, nothing contained in article XXI (adopted in 1980) purports to immunize the Legislature's reapportionment statutes from the usual constitutional checks and balances upon the legislative process, including both the Governor's veto and a referendum challenge accompanied by the immediate stay of the operation of such statutes pending the voters' decision. Article XXI simply requires the Legislature to adopt a **[30 Cal.3d 683]** plan readjusting voting district boundaries in the year following each national census. Moreover, application of the people's review by the referendum process will not frustrate the purpose of article XXI so long as we retain, as we do, the authority to provide an interim, temporary plan pending that review as discussed below.

Nor are federal one person, one vote principles irreconcilable with the people's right of referendum. As will be seen, the application of these principles need not be instant, immediate and absolute. Rather, of necessity, states are permitted reasonable flexibility in adopting and implementing their reapportionment plans, thus permitting reasonable delays attributable to referendum challenges. We have so held before under very similar circumstances in Reinecke I, supra, wherein we formulated a temporary reapportionment plan for the 1972 elections in which we specifically employed then existing legislative district boundaries despite their failure to comply with the constraints of one person, one vote principles. No different result is required in this case.

In Reinecke I, the Legislature had adopted a current reapportionment plan, but the Governor had vetoed it, thereby creating the immediate need for some plan for the forthcoming elections. We expressly acknowledged that population shifts had occurred and that "the present legislative and congressional apportionments no longer meet the one man, one vote requirement ...." (6 Cal.3d, at p. 601.) Nonetheless, rather than temporarily use a vetoed, although current plan, or hastily attempt to prepare an entirely new one of our own without public participation, we specifically permitted the preexisting legislative boundaries to remain in effect for purposes of the 1972 elections. Speaking through then Chief Justice Wright, we said: "We believe that it will be far less destructive of the integrity of the electoral process to allow the existing legislative districts, imperfect as they may be, to survive for an additional two years than for this court to accept, even temporarily, plans that are at best truncated products of the legislative process. [Citations.]" (P. 602, italics added.) Our reasoning was clear and unmistakable. It should control the result in the case before us. Despite our express acknowledgment of one person, one vote principles, we held that a temporary relaxation of those goals as to legislative districts would be consistent with preserving the integrity of the electoral process.

It is interesting that real parties have asserted, without contradiction, that the population variances in the present districts are less than those **[30 Cal.3d 684]** which we perpetuated in Reinecke I. It is equally clear that, in terms of the "integrity of the electoral process," a reapportionment plan which is now subject to a referendum challenge qualified for the June 1982 Primary Election, is comparable to one which, although legislatively authored, has failed to receive the Governor's approval. In each instance the plan is inoperable and stayed. Because the ultimate sovereignty rests in the people, no reason appears for elevating analytically the Governor's veto power above the people's reserved referendum authority, given the independent constitutional foundation of each.

Moreover, Reinecke I was fully consistent with federal cases which have held that the application of one person, one vote principles may be temporarily postponed while a state is proceeding in a good faith effort toward reapportionment. (See Ely v. Klahr (1971) 403 U.S. 108, 114-115 [29 L.Ed.2d 352, 356-357, 91 S.Ct. 1803]; Lucas v. Colorado Gen. Assembly (1964) 377 U.S. 713, 737 [12 L.Ed.2d 632, 647, 84 S.Ct. 1472]; Reynolds v. Sims (1964) 377 U.S. 533, 583-585 [12 L.Ed.2d 506, 539-541, 84 S.Ct. 1449]; Skolnick v. Illinois State Electoral Board (N.D.Ill. 1969) 307 F.Supp. 691, 697.) In Reynolds, the high court carefully explained that although decennial reapportionment would satisfy equal protection standards, the governing principle is that the states should adopt "a reasonably conceived plan for periodic readjustment

of legislative representation. While we do not intend to indicate that decennial reapportionment is a constitutional requisite, compliance with such an approach would clearly meet the minimal requirements for maintaining a reasonably current scheme of legislative representation." (Pp. 583-584 [12 L.Ed.2d pp. 539-540], italics added.) The precise language of the high court which has direct relevancy to the problems before us is as follows: "... under certain circumstances, such as where an impending election is imminent and a State's election machinery is already in progress, equitable considerations might justify a court in withholding the granting of immediately effective relief, in a legislative apportionment case, even though the existing apportionment scheme was found invalid. In awarding or withholding immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles." (P. 585 [12 L.Ed.2d p. 541].)

In similar fashion, in the matters before us the pendency of a speedily qualified referendum challenge to a reapportionment plan which will be resolved by the people in just over four months likewise amply justifies **[30 Cal.3d 685]** temporary use of the existing legislative districts for the forthcoming elections. Here, "an impending election is imminent" and "the state's election machinery is already in progress." Indeed, certain preelection filing deadlines have already been passed, and the Secretary of State and county clerks implore us to act speedily so as not further to disrupt the statutory election machinery. The matters before us are cases to which the foregoing Supreme Court language has precise and unique application.

Those cases which are relied upon by contestants in support of the proposition that one person, one vote principles override the people's referendum right are plainly distinguishable. (See, e.g., Lucas v. Colorado Gen. Assembly, supra, 377 U.S. 713, 734-737 [12 L.Ed.2d 632, 645-647]; Silver v. Jordan (S.D.Cal. 1964) 241 F.Supp. 576, 580-583, affd. sub nom. Jordan v. Silver (1965) 381 U.S. 415, 419-420 [14 L.Ed.2d 689, 691-692, 85 S.Ct. 1572].) These cases quite properly hold that the people's approval (through an initiative or referendum) of a reapportionment plan which is violative of Baker v. Carr (1962) 369 U.S. 186 [7 L.Ed.2d 663, 82 S.Ct. 691], is constitutionally irrelevant and cannot itself sustain such a plan. Here, an entirely different question is presented, namely, are one person, one vote principles to be so strictly applied as to deny the people themselves their own right to approve or disapprove reapportionment legislation before such legislation takes effect? As we have seen on the highest authority, reasonable leeway is permitted in such a case to protect the people's exercise of their precious referendum right. Such a procedure is as soundly established in precedent as it is in principle.

It is urged by the majority that it would be less "disruptive" of, and more "deferential" to, the legislative process were we to purport to acknowledge the vitality of the referendum process on the one hand, while at the same time adopting the very 1981 reapportionment statutes which are challenged and stayed as part of a court-ordered temporary plan for the 1982 elections. The referendum process, however, is necessarily a disruptive, undeferential procedure by which the people halt in their tracks the operation of duly enacted statutes. Nonetheless, the Constitution guarantees that the people's voice shall be both heard and obeyed. It clearly mandates the stay to preserve the effect of the people's will. Any attempt to circumvent such a stay in order to preserve the "orderly" conduct of elections in deference to the

Legislature or the Governor, necessarily frustrates and defies the sovereign people. We should be ever mindful that those same democratic values which sustained **[30 Cal.3d 686]** the high court pronouncement of "one person, one vote" principles in Baker v. Carr, supra, also form the very foundation for the constitutionally authorized referendum and initiative.

Nor should we under the guise of "judicial restraint" adopt the 1981 reapportionment statutes in the face of a qualified referendum challenge which has stayed those very statutes.

In terms of judicial restraint, the choice before us in this case is similar to the choice we confronted in Reinecke I. As here, the choice in Reinecke I was between old, malapportioned districts and a new reapportionment plan that had been adopted by a majority of the state's elected legislative representatives. In Reinecke I, of course, the new districts were not effective because the Governor had vetoed the plan, while here the new districts are not effective because the referendum process has stayed the plan; in both instances, however, the legislative process contemplated by the California Constitution did not result in an effective reapportionment plan.

In Reinecke I we did not view the adoption of the "truncated" legislative plan as a choice properly dictated by any considerations of "judicial restraint" even though the plan had been passed by a majority of the state's elected representatives and was closer to one person, one vote principles than the old districts. On the contrary, we emphasized: "Only the most compelling considerations would impel us to disregard the solemn vetoes of the Governor and to adopt the plans passed by the Legislature as court plans, at least in the absence of a complete hearing, ... which would allow us to exercise a fully informed and independent judgment with respect to those plans. Insofar as reapportionment of the Legislature is concerned, we find no such compelling considerations." (6 Cal.3d, at p. 602.) Should we now accord less "solemn" weight to the people's proscription of the statutes than a Governor's veto? Not under any system in which the people are sovereign.

In reaching our conclusion in Reinecke I, we implicitly recognized that our court's automatic adoption of a "truncated" or incomplete legislative proposal would not represent appropriate judicial deference to a product of the state's constitutionally contemplated legislative process which, as of then, was incomplete. Similarly, in the cases before us our adoption of the 1981 plans amounts to judicial intervention into that process, thereby undermining the checks and balances which our state Constitution has consciously built into the legislative scheme to guard **[30 Cal.3d 687]** against a tyranny of a temporary representative majority. In each instance, these checks and balances on the actions of the Legislature -- the gubernatorial veto in Reinecke I, the reserved referendum power here -- serve the important purpose of moderating the actions of a current majority of lawmakers, helping to ensure that the interests of a broad range of affected individuals are considered in the enactment of legislation. (See generally, The Federalist, No. LXXIII (Hamilton) (1942 ed.) Book II, pp. 72-74.) Moreover, it seems clear that these checks and balances are at least as significant with respect to reapportionment statutes as with respect to other legislation, for in the reapportionment context there is a particularly serious danger that narrow partisan considerations may be given undue weight by a current legislative majority at the expense of the

general citizenry's broader interest in competitive districts and electorally responsive representatives. (See Reinecke IV, supra, 10 Cal.3d 396, 402-403, 416-417.)

When a court accords automatic "deference" to a legislative plan that has been "checked" by one of the constitutionally designed checks and balances, it inevitably diminishes the salutary tempering effect served by the constitutional safeguard. Thus, for example, if we had automatically adopted the vetoed state legislative reapportionment in Reinecke I as an interim plan, we would have lessened the incentive or need of the majority party to take into account the interests of minority party or independent voters so as to secure the signature of the "minority party" Governor. Similarly, when in the present case we adopt the incomplete legislative plan despite the operation of the referendum stay provision, we inevitably reduce this check on self-serving political action that is provided by the referendum power. On the other hand, if we respect and give effect to the referendum provision, and if the Legislature recognizes that this power may be utilized by the people to prevent a narrowly partisan plan from taking effect, legislators in the future are more likely to attempt to ensure that the fairness of the plan they adopt is generally apparent to the public at large. That is one important purpose of the reserved referendum power.

In sum, contrary to the majority's analysis, we do not exercise proper "judicial restraint" or appropriate "deference to the legislative process" when we ignore the constitutionally mandated stay and adopt the 1981 legislative redistricting plans.

For all of the foregoing reasons, I conclude that the state Assembly boundaries which were adopted by us and based on our masters' plan, **[30 Cal.3d 688]** rather than the new challenged and stayed ones, should govern the 1982 elections. I emphasize, however, that I would not foreclose the Legislature, if it deems it practical, from adopting in good faith a reapportionment plan substantially different from that adopted in 1981, for purposes of the 1982 and subsequent elections. (See Reinecke I, supra, 6 Cal.3d, at pp. 602-604; Martin v. Smith (1959) 176 Cal.App.2d 115, 118-119 [1 Cal.Rptr. 307].)

B. The Senate

The Senate petition (S.F. 24356) recites that the Senate was elected from 40 districts drawn by us in 1973 in Reinecke IV, and that because of population growth and shifts these districts no longer assure compliance with one person, one vote principles.

Although all 40 senatorial districts were redrawn by a statute challenged by the Senate referendum petition (Stats. 1981, ch. 536), a subsequent amendment thereto (ch. 538) purported to redraw further 12 of these districts. This later amendment was not included in the referendum attack. The Senate contestants argue that the referendum cannot preserve the existing Senate district boundaries, because some of these boundaries are irreconcilable with the 12 new, unchallenged district boundaries.

It is conceded, however, that these 12 new districts interlock with the boundaries drawn in challenged chapter 536 and, accordingly, are wholly dependent upon the validity of those remodeled boundaries. If the referendum successfully abrogates chapter 536, then chapter 538 must, of necessity, likewise fail. An

examination of the two statutes discloses that chapter 538 readopts almost all of the boundaries previously adopted by chapter 536, making only very minor changes in the 12 districts affected. In fact, chapter 538 evidently was introduced only as a "trailer" or "clean-up" bill designed to correct minor typographical errors in chapter 536 rather than to achieve a substantive revision thereof. Because the alterations made by chapter 538 were minor, and because the boundaries drawn in that chapter were dependent upon the boundaries drawn in the original statute, real parties are correct in assuming that chapter 538 should stand or fall with chapter 536. The referendum process should not be rendered ineffective by the mere reenactment of a challenged plan coupled with inconsequential amendments thereto. The correct test within this context is well established. It is "whether the second legislative enactment is essentially the same as the first," although **[30 Cal.3d 689]** the legislative body may "'deal further with the subject matter of the suspended ordinance, by enacting an ordinance essentially different from the ordinance protested against ....'" (Martin v. Smith, supra, 176 Cal.App.2d 115, 118-119, italics added; see Reagan v. City of Sausalito (1962) 210 Cal.App.2d 618, 629-630 [26 Cal.Rptr. 775]; In re Stratham (1920) 45 Cal.App. 436, 439-440 [187 P. 986]; Annot. (1954) 33 A.L.R.2d 1118, 1131-1134; Comment (1949) 49 Colum. L.Rev. 705, 706-707.) Martin also requires legislative "good faith" and "'no intent to evade the effect of the referendum petition. ...'" (P. 119.) The foregoing principles are sound and should apply in assessing the effect of chapter 538 under the circumstances of this case.

Based upon the same reasons which support the foregoing analysis of the Assembly petitions, I conclude that the newly adopted senatorial boundaries are similarly stayed by the qualification of the referendum petition which directly challenges them. The masters' boundaries previously adopted by us should be used temporarily for the purposes of conducting the 1982 senatorial elections.

C. The House of Representatives

Although agreeing with the majority's conclusion to use the 1981 legislative plan for congressional districts, I explain the reasons which distinguish congressional from state legislative elections. The House petition (S.F. 24354) alleges that according to the 1980 census, California is entitled to 45 House members, 2 more than those authorized by the 1970 census figures. The 1981 House reapportionment law (Stats. 1981, ch. 535) divides the state into 45 new districts reapportioned in accordance with changes in population reflected by the new census. According to the House contestants, continued use of the forty-three old voting district boundaries would not only violate one person, one vote principles, but also would deprive California of two new House seats. However, a serious challenge is directed both to the underlying fairness of the 1981 congressional boundaries as drawn by the Legislature and to their compliance with article XXI, section 1, subdivisions (c) and (e).

In Reinecke I, supra, 6 Cal.3d 595, facing a very similar problem, we adopted a temporary plan for the 1972 elections which retained the pre-existing boundaries for the legislative districts but used the new, although vetoed, congressional boundaries. We observed in that case that California was entitled to five new House seats which, in the absence of a valid legislative reapportionment, "will either have to be left **[30 Cal.3d 690]** unfilled or filled by statewide elections." (6 Cal.3d, at p. 603.) We rejected the latter

option, reasoning that "to conduct statewide elections to fill five congressional seats in a state of California's geographical size and large population would not only tremendously increase the burdens and expenses of effective campaigning but, by increasing the choices confronting the electorate from the candidates for one to the candidates for six congressional seats, would seriously impede the casting of informed ballots." (Ibid.) We further stressed that although the Legislature's congressional reapportionment plan had been vetoed by the Governor, it had bipartisan support from all members of the House. (Ibid.)

Real parties distinguish Reinecke I from the present case on two grounds: (1) Only two, not five, additional House seats are involved, very substantially reducing the burdens, expense and confusion of a statewide election, and (2) the plan involved here enjoys no visible bipartisan support. (I note, however, that both the Republican and Democratic members of the California congressional delegation are united in their opposition to the continued use of old congressional boundaries.)

I believe, however, that aside from the practical considerations disfavoring at large elections of new congressional representatives, and contrary to the case of state legislative elections, federal law expressly forbids at large congressional elections. Thus, in Reinecke I we noted that "Congress has expressly provided that California shall elect [its representatives] from ... single member districts." (6 Cal.3d, at p. 603, fn. omitted.) We relied in this regard on section 2c of title 2 of the United States Code, which provides that "In each State entitled in the Ninety-first Congress or in any subsequent Congress thereafter to more than one Representative under an apportionment made pursuant to section 2a(b) of this title, there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected only from districts so established ...." (Italics added.)

Real parties rely, however, upon 2 United States Code, section 2a(c), which mandates that "Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: ... (2) if there is an increase in the **[30 Cal.3d 691]** number of Representatives, [they] shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of each State; ...." (Italics added.) Real parties urge that this section supports the temporary use of the former House district boundaries, coupled with statewide election of two additional members serving at large. Under this analysis, section 2a(c), is invoked before a redistricting plan has been adopted, while section 2c applies only after such adoption.

Although the question is close, I am persuaded that section 2c, enacted in 1967, was intended to replace, and has implicitly repealed, section 2a(c). By its very terms section 2c adopted a new procedure governing the 91st and subsequent congressional sessions whereby any additional representatives to which a state became entitled under its reapportionment plan were to be elected only from single member districts. In the present case, although the Legislature's own redistricting has been stayed by operation of

law, this court, in fashioning our own interim plan for the 1982 elections, must abide by the apparent federal mandate reflected in section 2c.

Considerably less flexibility is permitted in applying one person, one vote principles to congressional voting boundaries. (See White v. Weiser (1973) 412 U.S. 783, 790-793 [37 L.Ed.2d 335, 343-345, 93 S.Ct. 2348]; Kirkpatrick v. Preisler (1969) 394 U.S. 526, 531, 533-536 [22 L.Ed.2d 519, 524, 526-528, 89 S.Ct. 1225].) Although a reasonable delay in implementing an updated plan for state legislative boundaries is expressly allowed by the high court in appropriate cases (Reynolds v. Sims, supra, 377 U.S. 533, 583-584 [12 L.Ed.2d 506, 539-541]), it is much less clear that such a delay is permissible in establishing new congressional districts. There is thus a clear distinction between congressional elections, on the one hand, and state legislative districts, on the other.

In Reinecke I, we acknowledged that "We regret, of course, that the only readily available congressional reapportionment plan is one that has been vetoed by the Governor." (6 Cal.3d, at p. 603.) In similar fashion, in the present case I regret that the only readily available congressional plan is one which is clouded by a pending, qualified referendum challenge. Yet, under federal supremacy principles, we must abide by the mandate of applicable federal law in controlling federal elections. **[30 Cal.3d 692]**

D. Conclusion

Thus, I conclude that although the 1981 congressional reapportionment plan must govern the 1982 elections, we should not use the 1981 legislative boundaries for that purpose.

Two more practical consequences make the majority's rejection of our previous Reinecke I solution most unwise. The majority seriously errs in assuming (ante, p. 668) that utilizing the challenged and stayed 1981 reapportionment plans somehow "minimizes the potential disruption of the electoral process." By following our Reinecke I precedent, we do not invite "the worst possible scenario" as asserted by the majority. (Ante, p. 669.) To the contrary, that dubious distinction belongs to the majority, for it would switch from our old Reinecke IV masters' districts to the 1981 legislative plans, and if the people reject those plans in their referenda vote, we would switch to a third plan for the 1984 elections. Thus, each voter will have voted, and candidates will have run, in three differently constituted districts in the space of four years and one day. That is real disruption. That is the "worst possible scenario."

Moreover, the majority creates an absolutely intolerable anomaly if the voters reject the 1981 redistricting laws. The new districts that will be effective for the remainder of the decade will almost certainly be drawn by a Legislature which has been elected on the basis of a reapportionment scheme which the voters have just rejected. This factor would make it even less likely that the next reapportionment plan will be the result of compromise or that the Legislature will recognize the general electorate's interest in competitive districts and electorally responsive representatives. As a direct consequence, repeated referenda are a near certainty. Moreover, by imposing the stayed 1981 legislatively created boundaries, candidates for both the 1982 Primary and General Elections will then be running in districts, the boundaries of which are

nonexistent because they have been rejected by the people. The districts then would draw life only from our fiat issued in defiance of the people's recently expressed will.

Believing that we cannot improve upon it, I would follow the path carefully defined by us in Reinecke I and order that, for purposes of the 1982 elections, the existing legislative boundaries and the new congressional boundaries should be used. The majority's ruling, which requires the use of all three challenged reapportionment plans for the forthcoming **[30 Cal.3d 693]** elections, totally defeats the reserved referendum power of the people and the constitutional mandate requiring an immediate and continuing stay of the legislation. It also frustrates the self-evident intent of hundreds of thousands of our citizens who in good faith and pursuant to law signed the referendum petitions to permit a review and a public vote upon these plans before they take effect. These plans, like those in Reinecke I, are merely incomplete products of the legislative process; they will become final and effective only if, as, and when the people have expressed their sovereign will. We should not interrupt that process by a judicial device. The legislative districts should remain exactly as they were until the people have spoken.

Mosk, J.; and Kaus, J., concurred.

MOSK, J.,

Concurring and Dissenting.

I join Justice Richardson's concurring and dissenting opinion. His position is irrefutable. Nevertheless, a bare majority of this court have become entangled in the "political thicket" by ignoring their obligation of neutrality on a partisan issue, a neutrality that can be observed only by maintenance of the status quo in legislative districting until the people speak at the forthcoming election. Legislature v. Reinecke (1972) 6 Cal.3d 595 [99 Cal.Rptr. 481, 492 P.2d 385], written by Chief Justice Wright and concurred in by a unanimous court, charts the course we should follow.

An additional observation on the problem is appropriate. One need not be a cynic to detect the hypocrisy in the political gamesmanship known as reapportionment. Whichever party is in power immediately following the decennial census inevitably undertakes the task with a view to its self-preservation, and the opposition cries foul. The reality is that neither party has a monopoly on virtue. As a result, every 10 years hereafter we may be compelled to endure a gubernatorial veto or a referendum sponsored by the party out of power -- perhaps successive referenda after further reapportioning efforts -- and to that extent the legislative and political processes of this state will become periodically impotent.

At present the courts can do little to prevent this decennial debacle. Justice Frankfurter clearly saw the issue and the restricted role of the judiciary nearly four decades ago. In Colegrove v. Green (1946) 328 U.S. 549, 554 [90 L.Ed. 1432, 1435, 66 S.Ct. 1198], he observed that "The one stark fact that emerges from a study of the history of ... apportionment is its embroilment in politics, in the sense of party contests **[30 Cal.3d 694]** and party interests." He concluded (328 U.S. at p. 556 [90 L.Ed. at p. 1436]) that "Courts ought not to enter this political thicket. The remedy for unfairness in districting is to secure State

legislatures that will apportion properly .... The Constitution has left the performance of many duties in our governmental scheme to depend on the fidelity of the executive and legislative action and, ultimately, on the vigilance of the people in exercising their political rights." (Italics added.)

Although it is not the responsibility of the judiciary to solve this essentially political problem, I cannot resist suggesting that a better solution to achieving equitable reapportionment must be found if the people of California are to be served effectively. What that solution should be is beyond my ken. But the wrenching experiences of 1971 and 1981 indicate the people and their representatives should tarry no longer in seeking an answer.

KAUS, J.,

Concurring and Dissenting.

Obviously much is to be said on each side of the only issue that divides the majority and Justice Richardson's dissent which I have signed. The two considerations which, in my view, tip the scale in favor of the dissent are these: First, simple adherence to precedent should make us follow Reinecke I. fn. 1 Second, it seems clear to me that the course chosen by the majority involves greater judicial intrusion into the legislative process laid out by the California Constitution. Absent compulsion by Baker v. Carr -- and I see none -- we should let that process play itself out without any judicial intervention.

FN 1. Article XXI of the California Constitution requires that the Legislature reapportion Assembly, Senate and Congressional districts "[i]n the year following the year in which the national census is taken under the direction of Congress at the beginning of each decade. ..."

FN 2. Sections 9 and 10 of article II provide as follows: "Sec. 9. (a) The referendum is the power of the electors to approve or reject statutes or parts of statutes except urgency statutes, statutes calling elections, and statutes providing for tax levies or appropriations for usual current expenses of the state.

"(b) A referendum measure may be proposed by presenting to the Secretary of State, within 90 days after the enactment date of the statute, a petition certified to have been signed by electors equal in number to 5 percent of the votes for all candidates for Governor at the last gubernatorial election, asking that the statute or part of it be submitted to the electors.

"(c) The Secretary of State shall then submit the measure at the next general election held at least 31 days after it qualifies or at a special statewide election held prior to that general election. The Governor may call a special statewide election for the measure.

"Sec. 10. (a) An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise. If a referendum petition is filed against a part of a statute the remainder shall not be delayed from going into effect.

"(b) If provisions of 2 or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail.

"(c) The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval.

"(d) Prior to circulation of an initiative or referendum petition for signatures, a copy shall be submitted to the Attorney General who shall prepare a title and summary of the measure as provided by law.

"(e) The Legislature shall provide the manner in which petitions shall be circulated, presented, and certified, and measures submitted to the electors."

FN 3. All statutory references are to the Elections Code, unless otherwise noted.

FN 4. Two statewide elections are scheduled for 1982 -- a primary election on June 8 and a general election on November 2. All parties agree that the election districts used in the primary must also be used in the general election. If the referendum petitions qualify, the referenda will appear on the ballot in June.

FN 5. Section 3516 provides, in pertinent part: "The petition sections shall be designed so that each signer shall personally affix his or her: ... (c) Residence address, giving street and number, or if no street or number exists, adequate designation of residence so that the location may be readily ascertained; ... [¶] Only a person who is a qualified registered voter at the time of signing the petition is entitled to sign it. ..." (Italics added.)

Section 41 contains similar provisions: "Wherever, by the Constitution or laws of this state, any ... referendum ... petition or paper, ... is required to be signed by voters, only a person who is a registered qualified voter at the time he signs the petition or paper is entitled to sign it. Each signer shall at the time of signing the petition or paper include ... his place of residence, giving street and number, and if no street or number exists, then a designation of his place of residence which will enable the location to be readily ascertained. ..." (Italics added.)

FN 6. At oral argument, counsel for real parties stated that "about half" or "slightly more than half" of the total signatures collected were gathered as a result of this direct mail effort.

FN 7. As the Secretary of State has informed this court, the elections laws of California have "long required voter registration as a prerequisite to signing initiative and referendum petitions. If it were otherwise, no reliable method could be devised to determine whether the measure had enough popular support to qualify to appear on the ballot."

FN 8. Section 3520, subdivision (d), provides that "the clerk or registrar of voters shall determine the number of qualified voters who have signed the petition ... from the records of registration. ..."

This limitation, which prohibits the clerk or registrar from examining any extrinsic evidence, has long been recognized by this state's appellate courts. (See Wheelwright v. County of Marin (1970) 2 Cal.3d 448, 456 [85 Cal.Rptr. 809, 467 P.2d 537]; Ley v. Dominguez (1931) 212 Cal. 587, 596 [299 P. 713]; Schaaf v. Beattie (1968) 265 Cal. App.2d 904, 910 [72 Cal.Rptr. 79]; Ratto v. Board of Trustees (1925) 75 Cal. App. 724, 726 [243 P. 466].)

The Secretary of State, in a November 16, 1981, advisory memorandum to county clerks and registrars on the subject of "Signature Verification on Elections Petitions," makes reference to this well-settled principle and notes that newly enacted section 45 "codifies existing case law." (Stats. 1981, ch. 589.) That section provides, in pertinent part: "For purposes of verifying signatures on any ... referendum ... petition ..., the clerk shall determine that the residence address on the petition ... is the same as the residence address on the affidavit of registration. ... [I]n the case of [a] ... referendum petition, if the information specified in Section 3516 is not contained in the petition, the affected signature shall not be counted as valid. ..."

FN 9. Contrary to the Assembly petitioners' assertion, the basis for a clerk's refusal to file petitions that do not meet the requirements of section 3516 is not found in the provisions of section 3511. Section 3511 provides: "Officers required by law to receive or file in their offices any initiative or referendum petition shall not receive or file any initiative or referendum petition which does not conform with the provisions of this article." (Italics added.)

Section 3511 does not apply to section 3516, since section 3511 and section 3516 are not in the same article of chapter 1 of division 5 of the Elections Code. Section 3511 is in article 1, which encompasses matters such as title and summary (§ 3502), petition headings (§ 3509), short titles (§ 3510), and full and correct copies of the title and text of proposed measures (§ 3515). Section 3516 is the first section of article 2.

FN 10. For example, from 1978 through 1980, the following constitutional and statutory initiative measures appeared on the ballot:

Property Tax Limitations and Exemptions -- Initiative Constitutional Amendment (Prop. 13);

Murder -- Penalty -- Initiative Statute (1978 death penalty initiative);

School Employees -- Homosexuality -- Initiative Statute;

Limitation of Government Appropriations -- Initiative Constitutional Amendment;

Taxation -- Initiative Statute (energy business tax);

Rent control -- Initiative Constitutional Amendment;

Taxation -- Initiative Constitutional Amendment (limitations on personal income tax).

The following are measures which will appear on the ballot in 1982:

Water Facilities -- Referendum Statute (Peripheral Canal);

Gift and Inheritance Taxes -- Initiative Statute.

FN 11. Under the former provision, such a statute became effective "five days after the date of the official declaration of the vote by the Secretary of State." As revised by the commission in 1966, the new provision declared that such statute would take effect "5 days after the date of the official declaration of the vote ... unless the [statute] provides otherwise." (See former art. IV, § 24; compare, art. II, § 10, subd. (a).)

FN 12. In the alternative, petitioners argue that reapportionment statutes are not "normal" statutes, since they represent the only practicable means by which a citizen's constitutional right to cast an equally weighted vote may be effectuated. Therefore, petitioners contend that the stay effected by the filing of the referenda in this case cannot be construed to prohibit absolutely the implementation of the 1981 reapportionment statutes. This question is addressed in the next section of this opinion, post, at pages 658-661.

FN 13. See discussion of the unconstitutional and impermissible population disparities in the old Assembly, Senate, and Congressional districts, post, at footnote 19 and at pages 665-667.

FN 14. No referendum was filed against that portion of chapter 535 which repealed the old congressional boundaries.

FN 15. Such practical considerations also render infeasible any attempt by this court to draft reapportionment plans of its own (see generally Reinecke I, supra, 6 Cal.3d at pp. 601-602) and obviate any possibility of giving consideration to alternative plans, such as that drawn up by the Rose Institute and submitted to this court by real parties.

It was suggested at oral argument that the court split the primary election into two parts. The court is reluctant to step in and make such sweeping changes in the electoral process. The consequences of such a proposal are far-reaching and belong more properly before the Legislature. A split primary could have a serious impact on the state treasury, voter turnout, the deadlines for the general election, the timing of other ballot measures, and the lead time for adequate computer programming, to name just a few examples.

FN 16. In his concurrence, Justice Stewart declared that "it was proper for the District Court, in framing a remedy, to adhere as closely as practicable to the apportionments approved by the representatives of the people of Alabama. ..." (Id., at pp. 588-589 [12 L.Ed.2d at pp. 542-543].)

FN 17. Section 2c of title 2 was enacted in 1967 as an amendment to House Bill No. 2275, a private immigration bill. (See 81 Stat. 581.)

FN 18. There appear to be three pertinent cases: (1) Whitcomb v. Chavis (1971) 403 U.S. 124, 158, footnote 39 [29 L.Ed.2d 363, 384, 91 S.Ct. 1858] (observing that § 2c reinstated the single-member district requirement in effect prior to § 2a(c)); (2) Preisler v. Secretary of State of Missouri (Preisler III) (W.D.Mo. 1967) 279 F.Supp. 952, 968-969 (observing that when § 2c became law, the court "was relieved of the prior existing Congressional command [under § 2a(c)] to order that the 1968 ... congressional elections in Missouri be held at large ..." were the Missouri Legislature to fail to enact a valid reapportionment statute in time), affirmed 394 U.S. 526 [22 L.Ed.2d 519, 89 S.Ct. 1225]; and (3) Simpson v. Mahan (1971) 212 Va. 416 [185 S.E.2d 47, 48] (holding that the court could not order the state board of elections to certify congressional candidates for election at large).

FN 19. In addition, the old congressional districts are now seriously malapportioned. According to the figures presented to this court, old Congressional District 43 has a population of 866,687, 64.8 percent above the ideal population size, while old Congressional District 8 has a population of 439,310, 16.5 percent below the ideal. The vote of a member of former District 8 would, therefore, be worth almost twice that of a member of former District 43. Six of the old districts contain populations that vary by more than 20 percent from the ideal, 20 vary by 10 to 20 percent from the ideal, and 17 vary by less than 10 percent from the ideal population size.

United States Supreme Court standards for congressional districts are very strict. The court has declared unconstitutional a congressional districting plan containing disparities which ranged to 3.13 percent above and 2.84 percent below numerical equality. (Kirkpatrick v. Preisler (1969) 394 U.S. 526 [22 L.Ed.2d 519, 89 S.Ct. 1225].)

FN 20. This principle of law has been interpreted to mandate the use of a new reapportionment plan, developed through the legislative process, where it is less unconstitutional than the alternative. (See, e.g., Cosner, supra; Cummings, supra.) It has also been applied where the constitutionality of a reapportionment plan is undecided, but the disputed plan was constitutionally preferable to the old plan and time was too short to permit development of an alternative. (Jones v. Falcey, supra, 222 A.2d at p. 109 [although "the litigation ha[d] not run its course," the new plan would be used; the old statute was "far more distant from the constitutional goal" than the statute before the court].)

FN 21. Petitioners claim that the maximum population deviations are less than 4 percent. Real parties contend that according to the uncorrected district plans one Assembly district deviates by as much as 15 percent, but concede that the corrected districts are probably within 7 percent of absolute equality.

FN 22. This court passes no judgment on the constitutionality of the new districts. For the purposes of this decision, suffice it to say that the population disparities of the districts are admitted by all parties to be in the range of 4 to 7 percent. This opinion also does not reach the issue of "political gerrymandering" of the election district boundaries. However, it is noted in passing that a federal court has adopted as a

temporary measure a redistricting plan with districts that "come closer to [population] equality," despite "the bizarre shapes and irregular boundaries of some of the districts created by the plan. ..." (Cummings v. Meskill, supra, 347 F.Supp. at p. 1177.)

FN 23. The Supreme Court and the federal district courts have expressed a preference for redistricting plans that resemble the plans adopted by a state legislature. "Just as a federal district court, in the context of legislative reapportionment, should follow the policies and preferences of the State, as expressed in statutory and constitutional provisions or in the reapportionment plans proposed by the state legislature, whenever adherence to state policy does not detract from the requirements of the Federal Constitution, we hold that a district court should similarly honor state policies in the context of congressional reapportionment. In fashioning a reapportionment plan or in choosing among plans, a district court should not pre-empt the legislative task nor 'intrude upon state policy any more than necessary.'" (White v. Weiser (1973) 412 U.S. 783, 795 [37 L.Ed.2d 335, 346, 93 S.Ct. 2348], quoting Whitcomb v. Chavis, supra, 403 U.S. at p. 160 [29 L.Ed.2d 363, 385]; see also Reynolds v. Sims, supra, 377 U.S. at pp. 588-589 [12 L.Ed.2d 506, 542-543] [conc. opn. of Stewart, J.].

FN 24. Indeed, language contained in a document entitled, "Backstop -- Operational Plan To Qualify the Referendum on Reapportionment," indicates that the circulators may have intended just such a result. "There are basically two alternatives available to us which could postpone the effective date of reapportionment until after the November 1982 elections. ..." (See, ante, at p. 650.)

FN 25. Prior to 1962, the United States Supreme Court consistently refused to consider claims that the malapportionment of legislative congressional districts deprived voters of a constitutionally protected right to fair representation. (See, e.g., Colegrove v. Green (1946) 328 U.S. 549 [90 L.Ed. 1432, 66 S.Ct. 1198]; MacDougall v. Green (1948) 335 U.S. 281 [93 L.Ed.2d 3, 69 S.Ct. 1]; South v. Peters (1950) 339 U.S. 276 [94 L.Ed.2d 834, 70 S.Ct. 641].) The court's decision in Baker v. Carr (1962) 369 U.S. 186 [7 L.Ed.2d 663, 82 S.Ct. 691] signaled a dramatic shift in constitutional interpretation, holding that the federal Constitution requires adherence to the one-person, one-vote principle.

Subsequent reapportionment cases of the 1960's involved the at times painstaking initial application of this principle. (See, e.g., Wesberry v. Sanders (1964) 376 U.S. 1 [11 L.Ed.2d 481, 84 S.Ct. 526] [congressional districts]; Reynolds v. Sims, supra, 377 U.S. 533 [both houses of the legislatures].) The decisions of the early 1960's reflected a willingness to delay immediate implementation of this new constitutional mandate in order to give state governments an opportunity to revamp their electoral systems in an orderly manner. (See, e.g., Reynolds, supra, at pp. 585-586 [12 L.Ed.2d at pp. 541-542]; WMCA, Inc., v. Lomenzo (1964) 377 U.S. 633, 654-655 [12 L.Ed.2d 568, 580-581]; Roman v. Sincock, supra, 377 U.S. at pp. 711-712 [12 L.Ed.2d at pp. 630-631].)

The reapportionment cases of the 1970's refined the standards applicable to redistricting plans, developing more precise guidelines defining the degree of uniformity required by the Constitution. (See, e.g., Mahan v. Howell, supra, 410 U.S. 315; Gaffney v. Cummings (1973) 412 U.S. 735 [37 L.Ed.2d 298, 93 S.Ct. 2321]; White v. Regester, supra, 412 U.S. 755; Sims v. Amos, supra, 365 F.Supp. at p. 222

[standards for legislative reapportionment]; White v. Weiser (1973) 412 U.S. 783 [37 L.Ed.2d 335, 93 S.Ct. 2348] [congressional district standards].)

In the 1960's and 1970's, the standards applicable to reapportionment changed frequently as the United States Supreme Court articulated the constitutional imperatives with increasing precision. In the 1980's these standards are no longer in flux. The constitutional requirements are now clearly set forth for the guidance of both legislatures and courts. The uncertainties which required delay in the past two decades have been resolved.

The only published decision cited to this court that considers a legislative attempt to reapportion in light of the 1980 federal census, Cosner v. Dalton, supra, 522 F.Supp. at pages 363-364, reflects an unwillingness to perpetuate out-dated districts for even one more election. The Cosner court simply noted that the use in the 1982 elections of a districting plan based on the 1970 census "would effect great harm to the principle of one-person, one-vote." (Id., at p. 363.) The court opted instead for a recent legislative plan, based on 1980 census data, that came far closer to population equality than the old districts. (Id., at p. 364.)

The decision in Cosner is indicative of the rigor with which the constitutional standards must now be applied. In the 1980's there is no longer any justification for delay in the implementation of the one-person, one-vote mandate of our Constitutions.

FN 26. It is conceded by all sides that there is not sufficient time before the primary to have the court or the Legislature fashion alternative reapportionment plans.

FN 1. I pity the 1992 Supreme Court which will have to break the tie between Reinecke I and Assembly v. Deukmejian.

EXHIBIT

B

Mapstead v. Anchundo (1998)
63 Cal. App. 4th 246

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May 19, 1998

TO: COUNTY ELECTIONS OFFICERS

FROM: NIELSEN, MERKSAMER, PARRINELLO, MUELLER & NAYLOR
James R. Parrinello
Attorneys for CALIFORNIANS FOR AFFORDABLE AND RELIABLE ELECTRIC SERVICE, A COALITION OF CALIFORNIA BUSINESS ORGANIZATIONS AND UTILITIES

RE: IMPORTANT COURT OF APPEAL DECISION CONCERNING SIGNATURE VERIFICATION

The purpose of this memorandum is to advise you of an important, published California Court of Appeal opinion (copy attached) concerning the verification of initiative and referendum petition signatures. The case is entitled Mapstead v. Anchundo (1998) 98 D.A.R. 3967. The appellate court opinion was filed April 17, 1998 and a Petition for Rehearing was denied without comment on May 12, 1998.

The appeals court upheld the Monterey County Registrar of Voters' determination not to verify certain signatures and reversed a trial judge's order compelling him to verify those signatures. This decision is instructive in determining whether or not to verify particular signatures.

The Court of Appeal's opinion confirmed that elections officials should:

1. Not verify petition signatures accompanied only by the signer's mailing address or post office box.

2. Not verify petition signatures where the signer's residence address on the petition is different from the residence address on the signer's affidavit of voter registration. This is true even if the addresses are within the same precinct.

3. Not verify petition signatures accompanied by incomplete residence addresses, when compared to the signer's affidavit of voter registration.

4. Not verify petition signatures where the name and/or address on the referendum petition appear to have been filled in by someone other than the signer.

In each of the above instances, the Court of Appeal rejected the proponents' argument that the so-called doctrine of "substantial compliance" was applicable to "save" the signatures in question.

Thank you for your attention to this memorandum.

JRP/sfr

Attachment

cc: Secretary of State, Elections Division

GOVERNMENT

Election moots controversy concerning sufficiency of referendum petition.

Cite as 98 Daily Journal D.A.R. 3967

NOEL MAPSTEAD,
Plaintiff/Respondent,
v.
TONY ANCHUNDO as Registrar,
etc., et al.,
Defendant/Appellant;

HOLLY KEIFER,
Intervenor/Respondent;

RANCHO SAN CARLOS PARTNERSHIP,
Intervenor/Appellant.

No. H016459
(Monterey County
Super. Ct. No. M34796)
California Court of Appeal
Sixth Appellate District
Filed April 17, 1998

In this case we determine that appellant Tony Anchundo, the Monterey County Registrar of Voters (Registrar), correctly certified that a referendum petition contained insufficient signatures for placement on the ballot. Under the particular circumstances of this case, however, we hold that the controversy has become moot by virtue of the intervening election, and deny the request of Rancho San Carlos Partnership (RSC) to treat the election as a nullity. The appeal from the judgment is therefore dismissed. We reverse the trial court's order awarding attorneys' fees.

I. FACTUAL AND PROCEDURAL BACKGROUND

The facts of this case are essentially undisputed. On February 6, 1996, the Monterey County Board of Supervisors (Board of Supervisors) adopted Ordinance No. 03857, entitled "An Ordinance Amending Title 21 of the Monterey County Code to Reclassify Certain Properties in the County of Monterey" (Ordinance). The Ordinance adopts certain rezoning for portions of the property commonly known as Rancho San Carlos.[1] In response to the Board of Supervisors' action, a referendum petition was circulated in Monterey County protesting the adoption of the Ordinance.

The referendum petition, which contained 1,581 sections and 11,873 signatures, was presented to the Clerk to the Monterey County Board of Supervisors (hereafter Clerk). The Clerk delivered the petition to the Registrar for the purpose of determining whether the petition had been signed by the statutorily required number of registered voters. After the deadline for turning in the referendum petition, additional sections containing 163 signatures were presented to the Clerk.

The Registrar and his staff examined the signatures on the petition sections which had been timely presented to the Clerk and determined that the petition contained 8,884 valid signatures and 2,989 invalid signatures. On April 18, 1996, the Registrar issued a certificate stating, in part: (1) that "[p]ursuant to California Elections Code section 9144, in order to be sufficient, the petition must have been signed by 9,197 qualified registered voters of Monterey County, that number being equal to ten percent of the total vote cast for Governor in this county at the last gubernatorial election"; and (2) that the referendum petition (with 8,884 valid signatures) was insufficient by 313 signatures. This litigation followed.

On April 19, 1996, respondent Noel Mapstead, one of the proponents of the referendum petition, filed a verified petition for writ of mandate alleging that the Registrar had acted arbitrarily and capriciously, had abused his discretion, and had failed to perform his ministerial duty by refusing to count as valid eight categories[2] of signatures on the referendum petition, totaling 631 signatures. In a verified answer, the Registrar admitted that he had not counted the signatures as valid, but denied that he had acted arbitrarily or capriciously, abused his discretion, or failed to perform his ministerial duty.

On May 29, 1996, RSC, the owner of certain property being rezoned by the Ordinance, filed a motion to intervene in the action. RSC later sought access to the referendum petition subject to protective orders. The trial court deferred these motions.

On July 18, 1996, the Registrar filed a notice of motion to deny the writ of mandate requested by Mapstead. The motion was accompanied by a memorandum of points and authorities, the Registrar's certification that the petition lacked sufficient valid signatures, the Registrar's declaration, and accompanying evidentiary exhibits. The Registrar's declaration was later supplemented and additional evidentiary exhibits were included.

On July 26, 1996, the trial court granted Mapstead's motion to relieve Alexander T. Henson as his counsel, and permitted Mapstead to represent himself. On July 29, 1996, the court granted the motion of Holly Keifer, another proponent of the referendum petition represented by Alexander T. Henson, to intervene. The court also granted RSC's motion to intervene, which had earlier been deferred, but continued to bar RSC from access to the referendum petition.

Keifer filed a verified complaint in intervention against the Registrar. Keifer's petition paralleled Mapstead's earlier petition, but challenged additional categories of signatures. Mapstead amended his petition to challenge, among other things, the Registrar's refusal to count the 163 signatures which had been presented to the Clerk after the deadline for submitting the referendum petition. Keifer's intervention and Mapstead's amendment increased the total number of signatures alleged to have been improperly invalidated by the Registrar from 631 to 919.

On August 8, 20, and 21, 1996, the case was heard by the trial court without a jury on the basis of written declarations, briefs, and extensive oral argument. During the course of the trial, Mapstead and Keifer were allowed to amend their petitions to challenge the Registrar's determination with respect to an additional 2,004 signatures, raising the total number of signatures at issue

1 According to RSC, Rancho San Carlos is a "20,000 acre property slated for development with approximately 350 houses." RSC describes the Ordinance as "a zoning amendment to allow a small resident-serving commercial center at Rancho San Carlos."

2 The Registrar had assigned an exception code to each category of signature which had been disqualified or invalidated during the Registrar's examination process.

from 919 to 2,923. Both the Registrar and RSC requested a written statement of decision.

During the course of the hearing, the Registrar determined that he had improperly invalidated 58 signatures which should have been counted as valid. This had the effect of raising the total number of valid signatures on the referendum petition from 8,884 to 8,942 signatures, and making the petition insufficient by 255 valid signatures.

At the conclusion of the hearing on August 21, 1996, the court determined that the Registrar should have counted 367 additional signatures as valid (in addition to the 58 signatures the Registrar had determined to be valid during the hearing). These 425 signatures caused the referendum petition (with 9,309 signatures) to be sufficient by 112 signatures. The court directed counsel for Keifer to prepare the statement of decision. The court then ordered that the referendum be placed on the ballot for the election on November 5, 1996.

On or about August 22, 1996, RSC, joined by the Registrar, filed a petition for writ of mandate and request for stay as to the trial court's order issued orally at the conclusion of the proceedings on August 21, 1996. On August 30, 1996, this court denied the petition for writ of mandate and the request for stay.

On August 27, 1996, Mapstead filed an ex parte motion to reconsider placing the referendum on the November 5 ballot. The motion was denied, subject to being granted if the case were remanded by this court to the trial court. On August 29, 1996, Mapstead also filed a motion to vacate the judgment and enter a different judgment, which was denied as premature. Mapstead also filed a "notice of appeal of portion of judgment & other nonappealable orders," which was subsequently abandoned.

On or about August 30, 1996, Mapstead filed a petition in this court for writ of supersedeas or other appropriate stay order. On September 6, 1996, this court denied, without opinion, the petition for writ of supersedeas and the request for stay.

On September 6, 1996, the Monterey County Board of Supervisors adopted a resolution not to repeal the Ordinance, and determined that the Ordinance should be submitted to the voters at the general election to be held on November 5, 1996.[3]

The referendum election was conducted on November 5, 1996. In the election, the Ordinance was rejected by the electorate by a vote of 55.1 percent to 44.9 percent.

Despite objections by the Registrar and RSC, the trial court signed an "Amended Revised Statement of Decision" on November 22, 1996. The judgment was entered on December 4, 1996. On the same date, the court awarded attorney's fees against the Registrar and RSC pursuant to section 1021.5 of the Code of Civil Procedure. On December 18, 1996, the judgment was amended to specify the correct amount of attorney's fees awarded to Henson ($80,937.50), paralegal fees awarded to Keifer ($7,948) and costs ($2,518.88). The order provides that the Registrar in his official capacity and RSC are jointly and severally liable for the award of costs and attorney's fees.

Following notice of entry of judgment, the Registrar and RSC appealed.

3 This court has taken judicial notice of the Board of Supervisors' resolution, dated September 6, 1996. The Registrar submitted this information to this court in response to questions during oral argument.

II. DISCUSSION

A. Summary of Appellants' Contentions

At the outset, it is helpful to outline the positions of the two appellants, the Registrar and RSC. The Registrar appeals the trial court's determination that the Registrar should have counted as valid 360 signatures in various categories.[4] The Registrar also appeals the award of costs and attorney's fees. The Registrar does not appeal the trial court's order placing the referendum petition on the November 5, 1996, ballot, and does not seek to nullify the results of the election which rejected the Ordinance.[5]

RSC, which owns property affected by the Ordinance, appeals the trial court's determination that the Registrar should have counted as valid 217 signatures. (These 217 signatures are all included in the larger group of 360 signatures challenged by the Registrar.) RSC argues that these signatures should not have been counted as valid, and as a result, there were insufficient valid signatures to qualify the referendum for the ballot.

RSC also contends that because the referendum was not entitled to be placed on the ballot, and because only a referendum with sufficient signatures could suspend the Ordinance, the election had no effect on the Ordinance, which went into effect in March 1996. Regarding attorney's fees, RSC contends that (1) Keifer was not entitled to attorney's fees because the underlying judgment was erroneous, and (2) even if the fee award was proper, the trial court erred in imposing liability for such fees on intervenor RSC.

B. Verification of Signatures

We first examine whether the trial court erred in directing the Registrar of Voters to count certain signatures as valid. We begin with a brief description of the legal basis for this procedure.

1. Statutory Framework

California Constitution, article II, section 11, empowers the Legislature to establish procedures which govern county referenda. In accord with this constitutional authority, the Legislature has provided procedures in the Elections Code[6] by which referendum rights may be exercised at the county level. The Legislature has imposed certain duties upon elections officials, and has also determined that certain requirements must be satisfied by petition signers, circulators and proponents in order for petitions to qualify for the ballot. These requirements serve to safeguard the integrity of the electoral process, and to provide elections officials with orderly and clear procedures for determining whether a measure is qualified for the local ballot.

Courts have regularly upheld and given effect to legislation establishing procedures for the exercise of initiative and referendum rights and facilitating the performance of duties of elections officials. (See, e.g., Assembly v. Deukmejian (1982) 30 Cal.3d 638, 647 [residence address requirement] [hereafter Assembly];

4 As noted earlier, the trial court determined that the Registrar should have counted 367 signatures that the Registrar had considered invalid. Seven of those 367 signatures are not at issue in this appeal.

5 Although the Registrar does not seek to nullify the results of the election, he argues that the issues regarding the proper counting of signatures on referendum petitions should be addressed because they are certain to occur again and are matters of substantial public importance.

6 All further statutory references are to the Elections Code unless otherwise specified.

Hartman v. Kenyon (1991) 227 Cal.App.3d 413, 419-421 [residence address requirement and circulation dates in circulator's affidavit].)

After a petition is submitted, elections officials have 30 business days to review the petition and determine whether it contains the necessary number of signatures of persons who were qualified registered voters at the time they signed the petition. (See §§ 9114,[7] 100.) To accomplish this, elections officials are required to compare information on the petition with information on the voter's affidavit of registration. (See §§ 105, 9114.) Section 9114 provides that the "elections official shall examine the petition, and from the records of registration ascertain whether or not the petition is signed by the requisite number of voters. . . ." This limitation prohibits elections officials from examining extrinsic evidence or going beyond the petitions and affidavits of registration. (Assembly, supra, 30 Cal.3d at p. 647, fn. 8.)

The parties agree that the referendum petition in this case, to be qualified for the ballot, was required to be signed by at least 9,197 voters of Monterey County. (See Elec. Code, § 9144 [petition "shall be signed by voters of the county equal in number to at least 10 percent of the entire vote cast within the county for all candidates for Governor at the last gubernatorial election"].) As noted earlier, the Registrar determined that the petition did not contain the required number of signatures, and the trial court (ordering additional signatures to be counted as valid) determined that it did.

On appeal, the Registrar and RSC challenge the trial court's order with regard to numerous signatures. The signatures challenged by the Registrar fall within six general categories: (1) 144 signatures where affidavits of circulators stated that the referendum petition had been circulated prior to the circulation period; (2) 111 signatures which were accompanied only by the signer's mailing address or post office box and not by the signer's residence address; (3) 54 signatures where the signer's residence address on the referendum petition was different from the residence address on the signer's affidavit of voter registration; (4) 34 signatures which were accompanied by incomplete residence addresses when compared to the signer's affidavit of voter registration; (5) eight signatures where the name and/or address on the referendum petition appeared to have been filled in by someone other than the signer; and (6) nine signatures where part of the information on the referendum petition had been typed. RSC's appeal also focuses on these categories of signatures, with the exception of category (1).[8]

2. Challenged Signatures

(a) Circulator Affidavits Showed Petition Circulated Prior to Circulation Period (144 Signatures)

The registrar invalidated 270 signatures on the ground that the circulator's affidavits showed that the petition had been circulated before the ordinance had been adopted. Of these 270 signatures, the trial court found that 144 should have been validated because the circulator's affidavits contained clerical errors that were obvious on the face of the petition sections. On appeal, the Registrar argues that the trial court erred in directing him to count these 144 signatures as valid.

The referendum petition here was required to be circulated during the 30 days following the passage of the Ordinance. Most county ordinances become effective 30 days after final passage by the board of supervisors. (§ 9141, subd. (b).) Section 9144 requires that a referendum petition be presented to the board of supervisors prior to the effective date of the ordinance. In construing former section 3751 (a predecessor to § 9141) the court in Kuhs v. Superior Court (1988) 201 Cal.App.3d 966, referred to the period during which referendum petitions may be circulated as "a full 30 days" following passage of the legislative act being protested. (Id. at p. 974.) Here, the Ordinance was passed on February 6, 1996, and the 30-day qualifying period was from February 7 through March 7, 1996.

Section 104 requires that each section of the petition have a declaration signed by the circulator, setting forth certain information in the circulator's own hand, including "[t]he dates between which all the signatures on the petition or paper were obtained" and "[t]hat the circulator circulated that section and witnessed the appended signatures being written." (§ 104, subds. (a)(3), (b)(1).) The circulator must certify the content of the declaration as to its truth and correctness under penalty of perjury. (§ 104, subd. (c).)

For the 144 signatures at issue here, the circulator declarations attested that the signatures were obtained before the permissible period. For example, several of the circulator's affidavits at issue stated that "[a]ll signatures on this document were obtained between the dates of 2/2 and 2/6 . . . [¶] Executed on 2/6, 1996 . . . ." Other affidavits involving the same circulator stated that "[a]ll signatures on this document were obtained between the dates of 2/5 and 2/5 . . . [¶] Executed on 2/5, 1996 . . . ."

Although respondents submitted declarations of Mapstead (concerning the dates the referendum petition was available for signature) and the circulator (regarding corrected circulation dates), the Registrar was without authority to accept such supplemental declarations. (See Hartman v. Kenyon, supra, 227 Cal.App.3d 413, 420 [elections official was without statutory authority to accept the recall proponent's amendments to the circulator's declaration to cure defects which had caused signatures to be invalidated].) The Registrar was also without authority to examine extrinsic evidence. (See Assembly, supra, 30 Cal.3d at p. 647, fn. 8; Wheelright v. County of Marin (1970) 2 Cal.3d 448, 456.)

Respondents argue that "while it is true the Registrar may not examine extrinsic evidence, it is also true he may not disregard common sense." They argue that common sense required the Registrar to correct these dates, because the dates listed by the circulator contained an "obvious clerical error." The referendum petition states that it

7 Section 9114 provides: "Except as provided in Section 9115, within 30 days from the date of filing of the petition, excluding Saturdays, Sundays, and holidays, the elections official shall examine the petition, and from the records of registration ascertain whether or not the petition is signed by the requisite number of voters. A certificate showing the results of this examination shall be attached to the petition. [¶] In determining the number of valid signatures, the elections official may use the duplicate file of affidavits maintained, or may check the signatures against facsimiles of voters' signatures, provided that the method of preparing and displaying the facsimiles complies with law. [¶] The elections official shall notify the proponents of the petition as to the sufficiency or insufficiency of the petition. [¶] If the petition is found insufficient, no further action shall be taken. However, the failure to secure sufficient signatures, shall not preclude the filing of a new petition on the same subject, at a later date. [¶] If the petition is found sufficient, the elections official shall certify the results of the examination to the board of supervisors at the next regular meeting of the board."

8 With regard to category (1), RSC states that it supports the Registrar's position and defers to his argument on that issue. In category (5), RSC refers to nine signatures while the Registrar refers to eight. The trial court's findings provide for eight.

relates to Ordinance No. 03857 adopted on "this 6 day of February 1996, upon motion of Supervisor Karas, seconded by Supervisor Perkins, by the following vote . . ." and then sets forth each supervisor's vote regarding the Ordinance. Based on this petition language, respondents argue that it is "self-evident the signatures could not have been obtained prior to the vote on February 6, 1996. Thus it is self-evident the circulator meant to put a '3' instead of the '2' on the declaration . . . ."

Under the particular circumstances of this case, in which the petition contained the February 6, 1996, date of the passage of the Ordinance, the names of the supervisors who moved and seconded the Ordinance, and each supervisor's vote for or against the Ordinance (all information that was not available until February 6, 1996), we are persuaded that the petition sections must have been circulated after February 6, 1996. Accordingly, the dates given by the circulator (e.g., 2/2) were obviously incorrect. Because the actual circulation dates could not be before February 6 (when the information on the face of the petition became available) or after March 7 (when the petition had been turned in) it is easy to determine that the correct dates were the corresponding dates in March 1996 (e.g., 3/2).

The Registrar argues that the dates given by the circulator should not be changed, citing Hartman v. Kenyon, supra, 227 Cal.App.3d 413. In Hartman, the elections official faced numerous problems reviewing a recall petition, including "circulators' failure to include dates, failure to sign declarations, and inclusion of circulation dates prior to approval of the form of the petitions by the Clerk." (Id. at p. 416.) Regarding the dates given in the circulators' affidavits, we stated: "[W]here, as here, the declarations affirmatively demonstrate they were circulated outside the 120-day period set by the Legislature within which all signatures must be obtained, or where they fail to state they were circulated within the statutory period, then these 'irregularities' affect the validity of the petition itself. If the signatures were not obtained within the 120-day window period, they may not be counted." (Id. at p. 419.)

The referendum petition sections here are not similar to the recall petition declarations in Hartman, which affirmatively demonstrated that they were circulated outside the statutory period. In this case the petition sections themselves (through the language of the petition itself regarding events on February 6, 1996, and the fact that they were turned in by the required deadline in March 1996) demonstrated that the signatures at issue were collected within the required time period. Accordingly, the trial court did not err in finding that the petition sections here contained obvious clerical errors, and that the 144 signatures on these sections should have been counted by the Registrar.

(b) Address on Petition Was a Mailing Address or Post Office Box (111 signatures)

Certain signatures were considered invalid by the Registrar because they were accompanied only by the signer's mailing address or post office box, and not by the signer's residence address or other description of the place of residence. The trial court found that 111 such signatures should have been considered valid. On appeal, the Registrar and RSC argue that the trial court's order regarding these signatures was inconsistent with the Elections Code.

Section 100, which establishes signer requirements, provides in part: " . . . only a person who is an eligible registered voter at the time of signing the petition or paper is entitled to sign it. Each signer shall at the time of signing the petition or paper personally affix his or her signature, printed name, and place of residence, giving street and number, and if no street or number exists, then a designation of the place of residence which will enable the location to be readily ascertained." (Emphasis added.)

Section 105 directs elections officials regarding how to determine whether the "residence address" requirement has been satisfied: "[T]he elections official shall determine that the residence address on the petition . . . is the same as the residence address on the affidavit of registration. If the addresses are different, or if the petition or paper does not specify the residence address, . . . the affected signature shall not be counted as valid. . . ." (Emphasis added.) This court has upheld section 105 (formerly § 45) as constitutional. (Hartman v. Kenyon, supra, 227 Cal.App.3d at pp. 421-424.)

In sections 100 and 105, the Legislature could not have been more clear: if the petition does not specify the residence address, the signature shall not be counted as valid. "Words used in a statute or constitutional provision should be given the meaning they bear in ordinary use. If the language is clear and unambiguous there is no need for construction . . . ." (Lungren v. Deukmejian (1988) 45 Cal.3d 727, 735, citations omitted.) We are persuaded that the plain meaning of sections 100 and 105 compelled the Registrar's decision regarding the 111 signatures at issue here.

The reasons behind the requirement that signers designate a place of residence, rather than a mailing address, are practical ones. A post office box, unlike a residence address, provides no indication as to the actual physical location of a person's residence. A person may move to a new residence (and no longer be eligible to vote) but keep the same post office box. With only a post office box on the petition, the petition signer has made no statement regarding the physical location of his or her residence.[9] The petition thus does not show (and the Registrar has no way of knowing) whether the signer was a qualified registered voter at the time of signing.

Our interpretation of the mandatory residence address requirement in sections 100 and 105 is supported by the relevant legislative history, by the Secretary of State's guidelines for elections officials, and by applicable case law. The legislative history of section 105 (formerly § 45)[10] specifically addresses the question of mailing addresses or post office boxes. The Assembly Bill Analysis dated May 22, 1981, states in part: "AB 2150 would also clarify the law in that only a residence address will be compared against the affidavit of registration. This would mean that signers of a petition or paper may not use any other address, such as a mailing address or post office box number." (Emphasis added.) The bill analysis as amended on May 28, 1981, includes the same statement. Bill analyses have been recognized and used by the courts

9 For elections purposes, the definition of "residence" is set forth in Section 349 of the Elections Code, as follows: "(a) 'Residence' for voting purposes means a person's domicile. [¶](b) The domicile of a person is that place in which his or her habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning. At a given time, a person may have only one domicile. [¶](c) The residence of a person is that place in which the person's habitation is fixed for some period of time, but wherein he or she does not have the intention of remaining. At a given time, a person may have more than one residence."

10 Section 105 was originally enacted in 1981 as section 45. It was renumbered effective January 1, 1994, as Section 105, and the substance remained unchanged.

to ascertain legislative intent. (See, e.g., City of San Jose v. Superior Court (1993) 5 Cal.4th 47, 56; City of Santa Cruz v. Municipal Court (1989) 49 Cal.3d 74, 92.)

The Supreme Court's decision in Assembly, supra, 30 Cal.3d 638 confirms that petition signers must provide their residence addresses on the petition. In Assembly, petitions to support a referendum challenging the 1981 congressional, Senate and Assembly reapportionment statutes asked signers to give "'Your Address as Registered to Vote'" (id. at p. 646) rather than requesting a current residence address. This thwarted efforts to verify that each voter met the statutory requirement of being a qualified registered voter at the time of signing.

While acknowledging that this mistake went to the very heart of the voter qualification requirement, the Supreme Court permitted the referendum to take place. The court based its decision upon evidence that the same mistake had taken place in numerous important statewide initiative measures presented to the voters from 1978 through 1980, had been accepted by the government entities charged with enforcing the referendum procedures, and had never been challenged. (Assembly, supra, 30 Cal.3d at p. 651.) The court concluded that "[u]nder the unusual and unique circumstances" of that case, failure to comply with the statutory requirements would not render the referendum petitions invalid. (Id. at p. 652.)

Although the referendum in Assembly was allowed to take place, the Supreme Court stressed the importance of the residence address requirement: "[W]ithout the petition signer's current residence address on the petition, it is impossible for the clerk to determine whether the signer was a 'qualified registered voter.'" (30 Cal.3d at p. 647; emphasis in original.) The court also stated that the defect in the petitions was not a mere technical shortcoming, but actually prevented elections officials from ensuring that petitions had been signed by those entitled to do so, the "very heart" (id. at p. 648) of the statute's purpose. The court concluded that future petitions must comply with the statute ("'petition sections shall be designed so that each signer shall personally affix his or her . . . [r]esidence address . . .") (ibid.) and that failure to do so would render them "invalid per se." (Id. at p. 652.)

The Secretary of State's "Guidelines for Verifying Election Petitions" also support the Registrar's decision. Those guidelines, submitted at trial in this case, state that where "[s]igner includes post office address without a residence address," the signature should not be verified. This court has previously cited the guidelines with approval in Hartman v. Kenyon, supra, 227 Cal.App.3d at p. 419. In this case, the record also includes a declaration by an attorney with the Elections Division of the Secretary of State, affirming the Secretary of State's position that signatures accompanied on the referendum petition only by a post office box or mailing address should not be counted. The Secretary of State also confirmed this position in an amicus curiae brief filed in this appeal.

We are persuaded that sections 100 and 105, as consistently interpreted by relevant legislative history, case law, and the Secretary of State, compelled the Registrar's decision not to verify the 111 signatures that were accompanied only by the signer's mailing address or post office box, and not by the signer's residence address or other description of the place of residence.

Respondents' arguments to the contrary are unconvincing. First, respondents argue that by signing the petitions with their post office box or mailing addresses, the signers have "affirmed that they are still at their addresses as set out on the voter registration affidavit. There has thus been substantial compliance by all 111 signers." This is factually incorrect. Even assuming that these signers affirmed their post office boxes or mailing addresses, they did nothing on the petition to indicate where they actually lived at the time of signing. Contrary to respondents' contention, they did not indicate whether or not they still lived at the addresses listed on their voter registration affidavits. As a result, they have not "substantially complied" with the residence address requirement. As the Supreme Court noted in Assembly, supra, 30 Cal.3d at p. 649, "'[s]ubstantial compliance . . . means actual compliance in respect to the substance essential to every reasonable objective of the statute.'" (Emphasis in original.) A mailing address or post office box simply does not fulfill the statutory purpose of the residence address requirement (to allow the election officials to determine whether the signer was a qualified registered voter at the time of signing).

Respondents state that of the 111 signers who gave post office boxes and mailing addresses on the petition, 24 gave the same mailing address on their voter registration affidavits in the box designated for "residence address." The trial court found, however, that in addition to the mailing address, each of these 24 signers "had also put a residence address or physical location of their residence on the voter registration affidavit." The remaining 87 signers gave their residence address on the voter registration affidavit in the space provided for it, but only put a mailing address on the petition. In summary, all 111 signers had residence addresses somewhere on their voter registration affidavits, but not on the referendum petition. Whatever the exact arrangement of the information on their voter registration affidavits, the affidavits contained residence addresses, whereas the petition did not. We are not persuaded that any of these 111 signers fulfilled the statutory requirement of a residence address on the referendum petition.

Finally, there is no unfairness in requiring compliance with the long-standing statutory requirements in this case. The petitions in this case instructed signers to write their "RESIDENCE ADDRESS ONLY." The record includes instructions to petition circulators which stated, "Post office boxes are not valid addresses. Signers must use their physical address for residence."

The action of the Registrar invalidating these signatures for which the petition contained only a mailing address or post office box was correct, and the trial court's order to the contrary is erroneous as a matter of law.

(c) Residence on Petition Differed from Registered Address (54 Signatures)

The trial court ordered the Registrar to count as valid 54 signatures even though the signer's residence address on the referendum petition differed from the residence address on the signer's affidavit of voter registration. In these 54 cases, the signer's address on the petition was within the same voting precinct as the signer's address shown on the affidavit of voter registration.

Section 105 specifies: "For purposes of verifying signatures on any . . . referendum . . . petition . . ., the elections official shall determine that the residence address on the petition or paper is the same as the residence address on the affidavit of registration. If the addresses are different, or if the petition . . . does not specify the residence address, . . . the affected signature shall not be counted as valid. . . ." (Emphasis added.)

Once again, we find this statutory language to be clear and controlling. Section 105 compelled the Registrar's decision not to count these 54 signatures as valid.

The Registrar's decision not to count these 54 signatures as valid is also consistent with the legislative history of section 105.[11] In addition, the Registrar's decision was consistent with Hartman v. Kenyon, supra, 227 Cal.App.3d 413, in which this court upheld an elections official's refusal to count as valid signatures where the signer's residence address on the petition did not match the residence address on his or her voter registration affidavit: "The Clerk did not err in following the mandate of section 45 [now section 105] and disqualifying the signatures of signers who listed a different residence address on the petition from the address they listed on their voter registration affidavit." (Id. at p. 423.)

Respondents concede that the addresses for the 54 signers were different, but argue that the "question is [whether] the 54 signers [were] 'eligible registered voters at the time of signing the petition.'" This, however, is not the only issue. The 54 signers here, even assuming they were registered voters, were still required to comply with the signer requirements of section 100, and were subject to the verification requirements of section 105.

Respondents emphasize that the 54 signers' voter registration affidavits were not automatically canceled by moving to new addresses in the same precincts. (See § 2204.)[12] As a result, according to respondents, these voters who moved within the precinct can vote, are "eligible registered voters," and should be allowed to sign referendum petitions using the new address. This argument (that the Registrar should allow non-matching addresses within the same precinct) conflicts with the clear language of section 105, which requires the addresses (not simply the precincts) to match.

Respondents also argue that for voters who moved within the precinct, section 100 (allowing eligible registered voters to sign a petition) conflicts with section 105 (requiring an address match). According to respondents, this conflict may be resolved if section 105 is "read broadly to mean that a match occurs when the address on the petition is in the same precinct as the voter's residence address on his registration affidavit."

The language of section 105 is not subject to this reformation. Sections 100 and 105 contain separate requirements, but they do not conflict. No eligible registered voter is disenfranchised (or prevented from signing a petition) by their combined requirements. A registered voter who remains at the same address listed on his or her voter registration affidavit may sign a referendum petition without re-registering. A registered voter who moves within the same voting precinct (or between voting precincts) must re-register in order to sign a referendum petition. As authorized by section 2102, subdivision (b), the voter may immediately execute and submit to the Registrar a new voter registration affidavit showing the voter's new residence.[13] In either case, the eligible registered voter may sign the petition. Other persons, who are not eligible registered voters, may not.

In light of section 105's clear requirement that the signer's residence address shown on the petition be the same as the residence address shown on the signer's voter registration affidavit, the Registrar had no duty to count the 54 signatures as valid. The trial court exceeded its authority in compelling him to do so.

(d) Incomplete Addresses (34 signatures)

The Registrar originally invalidated 56 signatures because the address of the signer as shown on the referendum petition was incomplete when compared to the signer's affidavit of voter registration. The Registrar subsequently found one of these signatures to be valid. The trial court found that 34 additional signatures had "substantially complied" with the requirements of the Elections Code and should have been validated. Of these 34 signatures, 10 showed a street name and city, but no house number; 11 showed a house number and street name, but no city; and 13 showed only a city, but no house number or street.

The Registrar's decision not to count these 34 signatures as valid was consistent with the applicable provisions of the Elections Code. Sections 100 and 9020 require signers to personally affix their "place of residence, giving street and number" and, if no street or number exists, then a designation of place of residence that will enable the location to be readily ascertained. As noted earlier, section 105 requires that if the residence address on the petition does not match the residence address on the affidavit of registration, the affected signature shall not be counted. The incomplete addresses at issue here both failed to enable the residence locations to be ascertained, and failed to match the addresses on the voter registration affidavit.

The statutory purposes behind the residence address requirement also support the Registrar's decision. As the court noted in Assembly, supra, 30 Cal.3d 638, obtaining the signer's residence address at the time of signing is critical to the elections official's duty to "ensure that petitions have been signed by those entitled to do so . . . ." (Id. at p. 648.) Even if the portions of the address given on the petition matched the address on the voter registration affidavit, the Registrar could not verify the residence address of the signer.

Moreover, the Registrar may not investigate or find additional information to supplement incomplete addresses listed on the petition. Section 9114 requires that elections officials "examine the petition, and, from the records of registration ascertain whether or not the petition is signed by the requisite number of voters." The Registrar is thus prohibited from examining any extrinsic evidence. (Assembly, supra, 30 Cal.3d at 647 fn. 8; Wheelright v. County of Marin, supra, 2 Cal.3d at p. 456; [Registrar "is limited in his comparison of the signatures and may not go outside the registration affidavit to determine this"].)

11 The 1981 Assembly Bill analysis of section 105 (formerly § 45) states: "The current practice of all county clerks when verifying signatures on a petition or nomination paper is to declare those signatures 'not sufficient' when the residence address on the petition or paper is not the same residence address that appears on the affidavit of registration. This practice, though not expressly stated in the Elections Code, is supported by case law which provides a clerk may reject the signature of a person whose address appearing on the petition differs from the address shown on his affidavit of registration. Schaaf v. Beattie (1968) 265 C.A.2nd 904. [¶] AB 2150 would codify this long-standing court decision and provide that a clerk shall not count a signature as valid when the residence address on the petition or paper is different from that of the affidavit of registration."

12 Section 2204 provides: "Notwithstanding any other provision of law, whenever a voter changes his or her residence within the same precinct, the voter's affidavit of registration shall not be canceled. Whenever notified by the voter, the elections official shall change the voter's affidavit of registration to reflect the new residence address within the same precinct."

13 Section 2102, subdivision (b) provides: "For purposes of verifying signatures on a recall, initiative, or referendum petition . . . a properly executed affidavit of registration shall be deemed effective for verification purposes if both (a) the affidavit is signed on the same date or a date prior to the signing of the petition or paper, and (b) the affidavit is received by the county elections official on or before the date on which the petition or paper is filed."

Finally, the Registrar has only 30 working days within which to use a random sampling technique to verify petition signatures (§ 9115) and to conduct a complete examination and verification of each signature filed if the random sampling technique does not produce a clear result. (§ 9114.) These time constraints are not consistent with an administrative burden to investigate or speculate about addresses that signers have left incomplete.

Respondents suggest that "the failure to put a different address down on the petition is dispositive proof [that the signers] have not moved." This is incorrect. The problem is that from the address given, the Registrar cannot determine whether or not the signer has moved from the address given on the voter registration affidavit. We agree with the Registrar that the relevant statutes do not permit him to assume or guess that the signer's residence has remained the same.

Here, for the 13 petition signers who gave only their city of residence, without street name or house number, it would be pure speculation to assume that these signers continued to reside at the addresses listed on their voter registration affidavits. The same is true for the 10 signers who gave a city and street name but no house number. A street may run throughout the city, and persons may certainly move to addresses elsewhere on the same street.

For the 11 signers who gave their house number and street name but did not identify the city, the question is somewhat closer, but the result is the same. Section 105 requires the residence address on the petition to match the residence address on the affidavit of registration for the signature to be counted. Where the petition failed to include a city, the addresses did not match. As a practical matter, although some street addresses may be specific to certain cities or locations, others (such as Main or First Street) are not. In addition, as noted earlier, the Registrar had only 30 business days to verify the signatures and was precluded from considering extrinsic evidence. In light of the statutory requirement, the practical possibilities and the administrative burden on the Registrar, we hold that the responsibility for providing a complete residence address (including city) rests with the signers, not with the Registrar.

In summary, consistent with the statutes, the statutory purposes for the residence address requirement and the time constraints upon elections officials, the Registrar simply should not investigate or speculate about the location of a residence. The Registrar's action invalidating these 34 signatures was consistent with statutory requirements and was not arbitrary, capricious, or an abuse of discretion. Accordingly, the trial court erred in requiring these 34 signatures to be counted as valid.

(e) Signer's Name and/or Address on the Petition Appeared to Have Been Filled In By Someone Else (Eight Signatures)

The Registrar invalidated a number of signatures because it appeared that the signer's name and/or address on the referendum petition had been filled in by someone other than the signer. After examining the signatures on the petition and the related voter registration affidavits, the trial court found that eight of these "substantially complied" with the requirements of the Elections Code because the signatures matched, and ordered the additional eight signatures validated.[14]

The signer's requirement at issue is set forth in section 100, which provides in part: "Each signer shall at the time of signing the petition or paper personally affix his or her signature, printed name, and place of residence, giving street and number . . . ." (Emphasis added.) Consistent with this requirement, section 9020 provides: "The petition sections shall be designed so that each signer shall personally affix all of the following: [¶](a) His or her signature. [¶](b) His or her printed name. [¶](c) His or her residence address . . . . [¶](d) The name of his or her incorporated city or unincorporated community." (Emphasis added.)

First, we note that whether the signer "personally affixed" his or her printed name and residence address is essentially a factual question. The question before the trial court was thus whether the Registrar acted reasonably. (See Wheelright v. County of Marin, supra, 2 Cal.3d at p. 456.)[15]

Here, the Registrar concluded that the information had not been filled in by the petition signer. Consistent with the statutory requirements set forth above that the signers "personally affix" the information and the Secretary of State's guidelines,[16] the Registrar did not count the signatures as valid.

At trial, the evidence concerning who affixed the names and addresses in question included the Registrar's declaration describing the examination of these signatures, and his conclusion that the printed names and addresses "appeared to have been filled in by someone else other than the signer . . . ." The petition sections themselves were also available, and were examined by the trial court. In one case, the petition itself indicated that the circulator (rather than the signer) had written the address. There was no contrary evidence that the signers had personally affixed the printed names and addresses. On appeal, respondents state that "[m]any of the addresses and printed names were provided by the spouse of the signer."

The trial court, after determining that the signatures appeared to match, held that the signers had "substantially complied" with the requirements of the Elections Code because the signatures matched.[17] Rather than rejecting

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14 The Registrar refers to eight signers in this category while RSC refers to nine. According to Keifer, the discrepancy is the result of a stipulation that one signature was valid. In any event, we review the trial court's findings, which provide for eight.

15 With regard to the review of petition signatures, the Supreme Court set forth the standard of review for such factual determinations in Wheelright v. County of Marin, supra, 2 Cal.3d at p. 456: "Where the signature on the petition is obviously spurious and is not that of the voter as shown by the registration affidavit, the clerk may and must reject it. He has no discretion to certify a spurious signature. Where there are dissimilarities which are so minor as to make the clerk's rejection of the signature an unreasonable or arbitrary act, the court may not accept the clerk's determination. Where, as here, the dissimilarities are not so minor and the similarities are not so great that only one conclusion can be made as to the validity or invalidity of the signature, and where the court finds that in acting upon these dissimilarities and other indicia the clerk was not acting unreasonably or arbitrarily in finding them spurious, the court must accept the clerk's determination. . . . The court in mandamus proceedings may review his certification. Where it finds that the clerk has acted reasonably and has not acted arbitrarily or fraudulently, it must accept his determination." (Ibid.) Although the court in Wheelright specifically considered the election official's review of signatures, this standard of review also applies to other factual determinations made by the Registrar.

16 The Secretary of State's guidelines provide that if the address of a signer is written in by someone other than the signer, the signature should not be verified.

17 In its amended statement of decision, the trial court found that 8 signatures "all substantially complied because their signatures matched and there were extraneous circumstances such as advanced age or physical disability which made it difficult for some of these persons to affix their own address to the petition themselves."

the Registrar's factual finding (that the printed names and addresses had been filled in by someone other than the signers), it appears that the trial court believed that the requirement was unimportant as long as the signatures matched.

Under the standard of review set forth in Wheelright v. County of Marin, supra, 2 Cal.3d 448, however, the question for the trial court was whether the Registrar acted reasonably. Under the circumstances here, with no evidence that the signers in question did "personally affix" their printed names and/or addresses as required by the statute, the trial court erred in rejecting the Registrar's factual determination.

Considering the requirement that signers "personally affix" printed names and addresses, respondents suggest that "how this requirement furthers a legitimate concern cannot be specified." The requirement, however, is neither redundant nor insignificant. Both the additional attention of the signer (who must "personally affix" the information) and the result (the additional ability to verify that the signer was actually involved in the process) aid in preventing forgery and other potential abuse. (Cf. Browne v. Russell (1994) 27 Cal.App.4th 1116, 1125; Dodge v. Free (1973) 32 Cal.App.3d 436, 444.) In addition, the requirement that the signer "personally affix" the information ensures that the signer, at the time of signing, has actually affirmed the residence address placed on the petition. This affirmation goes to the very heart of the process -- the Registrar's ability to verify whether those who signed the petition were entitled to do so. (See Assembly, supra, 30 Cal.3d at p. 648.)

In view of the statutory requirement that the signer "personally affix" the required information, the statutory purpose, and the lack of evidence that the signers here did personally affix the required information, the Registrar did not act arbitrarily or unreasonably. His determination regarding these eight signatures should have been sustained.

(f) Part of the Information on the Referendum Petition was Typed (Nine Signatures)

The Registrar originally invalidated nine signatures because part of the information on the referendum petition (such as the residence address) had been typed, and the Registrar was unable to determine whether the information had been "personally affixed" by the signer. The trial court ordered these signatures validated.

As discussed above, sections 100 and 9020 both require the signer's "printed name" and residence address to be "personally affixed" by the signer. The Secretary of State's guidelines provide that the signature should not be verified if the address of the signer is "typed or written in by someone other than the signer."

As the trial court acknowledged, there was no evidence identifying the person who typed the information. During the hearing, the trial court stated that if there are two equally reasonable interpretations, the decision must be in favor of the "support of the referendum." The court's statement of decision provides that "someone typed the information upon the petition and there is no reason to assume it was not the party who signed the petition." Accordingly, the court ordered the nine signatures counted as valid.

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Text continued from page 3974

We have examined the typed information invalidated by the Registrar. For many of these nine cases, the signer was also the circulator, and had also signed the circulator's declaration. We question, as did the trial court, the Registrar's conclusion that these persons did not "personally affix" their own printed name and residence address.

Under the standards discussed above in Wheelright v. County of Marin, supra, 2 Cal.3d at 456, however, the court should defer to the factual determination of the elections official where he or she has acted reasonably and not acted arbitrarily or fraudulently. Although we are not sure that the Registrar's conclusion is correct (or that we would have made the same factual findings as the Registrar regarding these documents), the evidence does not support a determination that the Registrar acted unreasonably, arbitrarily or fraudulently in disallowing these signatures. Accordingly, the Registrar's factual determinations should have been sustained, and the trial court erred in ordering these nine signatures to be counted as valid.

(g) Summary

The trial court found that the referendum petition contained 9,309 signatures, and was sufficient to be placed on the ballot (which required 9,197 signatures) by a margin of 112 signatures. Of those 9,309 signatures found valid by the trial court, the Registrar and RSC have contested 360 signatures in this appeal. As set forth above, we conclude that the trial court erred in directing the Registrar to count 216 of the contested 360 signatures. The trial court's finding of 9,309 signatures was thus incorrect by 216 signatures, and the correct number of valid signatures was 9,093. This number is insufficient for placement on the ballot by 104 signatures. The Registrar thus correctly certified that the petition contained insufficient signatures for placement on the ballot.

C. Effect of the Election

1. Contentions of the Parties

As noted earlier, the election took place on November 5, 1996, and the Ordinance challenged by the referendum was rejected by the voters.

The parties differ regarding the effect of the election. RSC contends that the referendum should not have been on the ballot, and that the results of the referendum election should therefore have no effect on the Ordinance, which took effect by statute on March 8, 1996. The Registrar, despite his contention that the petition contained insufficient signatures to qualify for the ballot, does not appeal the trial court's order placing the referendum on the ballot, and does not seek to nullify the results of the election which rejected the Ordinance. The Registrar argues that "[o]nce the election has been held and the electorate has spoken, the election result should not be overturned." Respondents contend that the appeal is moot (except as to issues regarding attorneys' fees) because the referendum election has already been held, and that RSC should not be permitted to "destroy an otherwise valid election after it lost the referendum at the ballot box."

2. Statutory Provisions

We begin our analysis with the statutes governing ordinances challenged by referendum petitions. First, section 9114 provides that "[i]f the petition is found insufficient, no further action shall be taken." (See also §§ 9115, 9146.) Had the trial court properly applied the law, the Registrar's certification of insufficiency would have been upheld, and the referendum would not have been placed on the ballot. The Ordinance would have become effective, like most county ordinances, "30 days from and after the date of final passage." (§ 9141, subd. (b).)

A referendum petition may, however, suspend an ordinance. Section 9144 provides: "If a petition protesting the adoption of an ordinance is presented to the board of supervisors prior to the effective date of the ordinance, the ordinance shall be suspended and the supervisors shall reconsider the ordinance. The petition shall be signed by voters of the county equal in number to at least 10 percent of the entire vote cast within the county for all candidates for Governor at the last gubernatorial election." (Emphasis added.)

Section 9145 provides: "If the board of supervisors does not entirely repeal the ordinance against which a petition is filed, the board shall submit the ordinance to the voters either at the next regularly scheduled county election occurring not less than 88 days after the date of the order, or at a special election called for that purpose not less than 88 days after the date of the order. The ordinance shall not become effective unless and until a majority of the voters voting on the ordinance vote in favor of it."

The question presented here is how these statutes should be applied where a referendum petition contained insufficient signatures, but was nevertheless submitted to the voters, and the resulting election defeated the ordinance protested by the referendum. The parties have not discussed any case involving this precise situation.

3. Mootness

The Registrar and respondents argue that once the election has been held, the issue is moot, relying primarily on the case of Chase v. Brooks (1986) 187 Cal.App.3d 657. In Chase, a city council enacted a zoning ordinance reclassifying property described in an attached exhibit. A referendum petition protesting the ordinance was circulated, but the petition did not include the exhibit describing the property affected by the ordinance, as required by section 4052. The city clerk accepted the petition. Chase filed suit to enjoin the city from placing the referendum on the ballot. (Id. at p. 660.)

The trial court concluded that the referendum petition substantially complied with the statutory requirements, and therefore granted summary judgment for the city and denied Chase's motions requesting injunctive relief. (Chase v. Brooks, supra, 187 Cal.App.3d at pp. 660-661.) The measure was placed on the ballot, an election was held, and the referendum measure to which Chase objected "carried overwhelmingly." (Id. at p. 659.)

The appellate court determined that the petitions were fatally defective because they failed to include the complete text of the ordinance on which the referendum was sought. (Chase v. Brooks, supra, 187 Cal.App.3d at p. 664.) Nevertheless, the court held that the controversy had become moot by virtue of the election, and denied Chase's request that the election be treated as a nullity. (Id. at p. 660.)

The Chase court found two analogous cases, Lenahan v. City of Los Angeles (1939) 14 Cal.2d 128, and Long v. Hultberg (1972) 27 Cal.App.3d 606, both of which held challenges to recall petitions moot after the elections had taken place. The court found these cases, which are discussed in more detail below, persuasive. The Chase court stated that "' . . . [t]he nature of the action was such that when the injunctive relief sought was rendered inappropriate and ineffective, any further consideration of

the cause as an action in injunction would be unavailing.'" (187 Cal.App.3d at p. 662.) The court also noted that although the referendum petition in Chase had not provided full information to prospective signers of the petition, "[t]he ballot measure and accompanying material adequately informed the electorate of the breadth and complete contents of the challenged ordinance . . . ." (Ibid.)

In Lenahan v. City of Los Angeles, supra, 14 Cal.2d 128, relied upon by the court in Chase, recall petitions were circulated, and certified by the city clerk as sufficient. A recall election was conducted at which the mayor was recalled and his successor was elected. Before the election, an action was filed to enjoin the city from conducting the recall election. The moving party alleged that the petitions were insufficient because of various problems (e.g., sections with insufficient information, signatures obtained by persons other than the ones making affidavits, false statements made by those obtaining signatures, forged signatures, paid circulators, and arbitrary rulings on questioned signatures). (14 Cal.2d at p. 131.) Upon motion of the city, the complaint was stricken, and service of summons was quashed. (Id. at pp. 131-132.)

On appeal, the Supreme Court held that the injunctive action was moot after the election: "It appears beyond question that every act sought to be enjoined has actually taken place. The election has been held and it is not even intimated that any of the alleged deficiencies or irregularities in the presentation and certification of the recall petition prevented a full and fair vote at the recall election. The result of the election was duly canvassed and declared. The elected mayor assumed his office and has since been functioning as such. A reversal of the order would vest the trial court with no justiciable controversy in this action for the reason that what was sought to be enjoined has already been done. The nature of the action was such that when the injunctive relief therein sought was rendered inappropriate and ineffective, any further consideration of the cause as an action in injunction would be unavailing. In other words, when the event which it was sought to enjoin, that is, the election, had taken place, the remedies of the plaintiffs were removed from the field of injunctive relief and were relegated to such remedies, if any, as they might have and avail themselves of subsequent to the election. Certainly they may not, after the election has been held, still urge a court to stop it." (Lenahan v. City of Los Angeles, supra, 14 Cal.2d at p. 132.)

The Supreme Court in Lenahan also noted that its conclusions were supported by the provisions of the Los Angeles city charter. The charter provided: "'After an election based on any initiative petition, the sufficiency of such petition in any respect shall not be subject to judicial review or be otherwise questioned.'" (14 Cal.2d at p. 133.). The court held that the law generally supported application of the same rule to a recall election. (Id. at p. 133.) Noting that the trial court had not considered the merits of the plaintiffs' claims that the recall petitions were defective, the Supreme Court declined to consider those issues. (Id. at p. 134.)

In Long v. Hultberg, supra, 27 Cal.App.3d at pp. 608-609, recall petitions regarding three city council members were circulated and found sufficient by the city clerk. The council members sought injunctive relief or writ of mandate barring further proceedings on the recall petitions, and the trial court denied this relief. A recall election was then held at which two of the council members were recalled and their successors were elected. (Id. at p. 608.)

On appeal, the court emphasized that there had been no challenge to the fairness of the election itself in affording to the electorate a full and free opportunity to express its will, and dismissed plaintiffs' appeal as moot. (Long v. Hultberg, supra, 27 Cal.App.3d at pp. 608-609.) The court stated that the "purpose" of plaintiffs' action "was but to forestall the election." (Id. at p. 609.) The court in Long did not identify the petition deficiencies that were the subject of plaintiffs' challenge.

After careful consideration of Chase v. Brooks, supra, 187 Cal.App.3d 657, and the authorities upon which the Chase court relied, we are persuaded that the issue raised in this case is also moot. Chase resembles this case in many respects. The trial court found the referendum petition sufficient, the referendum election was held, the referendum measure passed in the election (defeating the ordinance in question), and the appellate court held the referendum petition to be fatally defective. As in this case, had the trial court properly applied the law, the measure would not have appeared on the ballot.[18]

The issue presented in this case (regarding insufficient signatures for placement of the measure on the ballot) is somewhat different from the issues presented in Chase and its predecessors. The defect in Chase, concerning the information received by petition signers, was "cured" to some extent by the ballot measure and accompanying material which contained full and adequate information about the ordinance. The defect here, in contrast, was not cured by ballot information. This case is also unlike Lenahan in that it does not involve any provision explicitly precluding judicial review of the sufficiency of the petition.

Despite these underlying differences, however, this case was brought to obtain a writ of mandate directing the Registrar to verify certain signatures, and to certify that a sufficient number of voters had signed the petition. These issues, the primary questions in this case, simply did not survive after the election was held on November 5, 1996. Accordingly, we are not persuaded by RSC's argument that notwithstanding nearly two years of litigation, the trial court's decisions, and the November 1996 court-ordered election, the Ordinance became effective in March 1996 "by operation of law."

In support of its contention, RSC cites numerous cases which arose in procedural circumstances different from those in this case. In Board of Supervisors v. Superior Court (1983) 147 Cal.App.3d 206, the question was whether the appellate court would affirm the trial court's issuance of a writ to reopen the time period for gathering petition signatures. The case did not involve an election, like the one here, that had already occurred. In Marblehead v. City of San Clemente (1991) 226 Cal.App.3d 1504, the court invalidated an initiative election because the measure was "not within the electorate's initiative power." (Id. at p. 1510.) The court thus ruled upon the construction and validity of the initiative measure itself, and not the process by which it got on the ballot. In Daniels v. Tergeson (1989) 211 Cal.App.3d 1204, Tergeson was elected as a county supervisor. The election was contested on the ground that Tergeson was not eligible for the office because he did not meet the 30-day advance registration requirement. The

18 RSC argues that the defects in the petition in Chase were merely "technical," but the defects in this case are "jurisdictional." We do not find this distinction helpful. In both cases the defects, if properly analyzed by the trial court, would have prevented the referendum measure from being on the ballot.

trial court refused to invalidate the election, but the appellate court reversed the judgment and nullified the election. (Id. at p. 1213.) The Daniels case, however, involved an election contest pursuant to a statute specifically authorizing voters to contest a previously held election. In contrast, Chase, Lenahan, Long and this case do not involve election contests.

RSC also relies upon People's Advocate, Inc. v. Superior Court (1986) 181 Cal.App.3d 316. In that case, the trial court had held a statewide initiative measure invalid. The appellate court held that portions of the initiative were unconstitutional, severed those portions from the rest of the initiative, and directed the trial court to set aside portions of its judgment. (Id. at p. 334.) The initiative election was not set aside because of procedural errors in getting the measure placed on the ballot or because parts of the measure were declared unconstitutional. In Whitmore v. Carr (1934) 2 Cal.App.2d 590, although an ordinance had been approved by voters at a referendum election, the ordinance had never been enacted by the city council. The court held that in the absence of prior enactment of the statute by the city council, there could be neither rejection nor adoption by the voters. "It never became an enactment by the council or the people, and as an ordinance of the City of Oakland it stands invalid and ineffectual for any purpose." (Id. at p. 594.) Whitmore thus turned on whether the ordinance had ever been enacted in the first place, not whether it was properly placed on the ballot.

The authorities cited by RSC do not persuade us that the election in this case must be set aside. Although these cases establish that after an election courts will still interpret measures adopted by the electorate and consider appropriate issues raised in an election contest, RSC has cited no case in which the court has invalidated a previously held election (in the absence of an election contest) on the basis of the process by which a measure was placed on the ballot.

After considering the particular facts of this case and the arguments and authorities presented by the parties, we conclude that the election held approximately 17 months ago has rendered moot the issues presented to the trial court in this case. Because we hold that the appeal should be dismissed as moot, the election results stand and the Ordinance is without effect.[19] Our holding is limited to the facts of this case. Nothing in this opinion should be construed to hold that a referendum election will always moot underlying issues involving the sufficiency of the referendum petition.

D. Attorneys' Fees

On October 30, 1996, counsel for Keifer moved for an award of attorneys' fees (including paralegal fees) pursuant to section 1021.5 of the Code of Civil Procedure. That section provides that upon motion, a court "may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons .... " (Emphasis added.)

After trial and judgment, the court awarded fees to Keifer, and on December 18, 1996, entered an "Amended Revised Order Amending Judgment To Specify Costs and Attorneys Fees." This order awarded attorney's fees of $80,937.50 to counsel for Keifer by and through Keifer, paralegal fees of $7,948 to Keifer, and costs of $2,518.88 to Keifer. It also states that "[the Registrar] in his official capacity and [RSC] are jointly and severally liable for the award of costs and attorneys fees."

The award was made on the basis that the referendum proponents had prevailed at trial in challenging the Registrar's certification of insufficiency. Because we hold that the Registrar's certification of insufficiency should have been upheld by the trial court, the award of attorneys' fees and costs to counsel for Keifer is inappropriate. (See Save our Residential Environment v. City of West Hollywood (1992) 9 Cal.App.4th 1745, 1750-1751; Bowman v. City of Petaluma (1986) 185 Cal.App.3d 1065, 1085.)

Respondents contend that even if this court determines that the referendum petition did not contain sufficient signatures for placement on the ballot, they are still the successful parties because their litigation resulted in the election, the Ordinance was defeated, and they obtained the results they sought. We reject this argument. The fact that a court-ordered election occurred before these issues could be adjudicated on appeal does not alter this court's authority to reverse a fee award which was improvidently granted.

Because the Registrar's initial certification was correct, no respondent should have been a "successful party" at trial eligible for attorneys' fees. Respondents cite numerous cases, including Folsom v. Butte County Assn. of Governments (1982) 32 Cal.3d 668, 685; In re Head (1986) 42 Cal.3d 223, and Westside Community for Independent Living, Inc. v. Obledo (1983) 33 Cal.3d 348, 352. Although these cases establish that fees may be awarded to a successful party who obtains results other than through final judgment (such as by obtaining interim relief, reaching a settlement, or inducing a "voluntary" change in defendant's conduct), they do not support the proposition that a party who should have lost on the merits at trial becomes the "successful party" when the issues become moot on appeal.

In light of our reversal of the trial court's award of attorneys' fees, we need not address the parties' arguments regarding whether the award should have been made against the Registrar and RSC jointly and severally.

III. DISPOSITION

The appeal from the judgment on the merits is dismissed as moot. The trial court's "Amended Revised Order Amending Judgment To Specify Costs and Attorneys Fees," filed December 18, 1996, is reversed. Each party shall bear its own costs on appeal.

COTTLE, P.J.

WE CONCUR:
BAMATTRE-MANOUKIAN, J.
MIHARA, J.

Trial Court:
Monterey County Superior Court

Trial Judge:
The Honorable Harkjoon Paik

Attorneys for Defendant and Appellant Tony Anchundo et al:
Douglas C. Holland

19 Because the Ordinance is without effect, we need not consider RSC's argument regarding the effective date of the Ordinance.

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EXHIBIT

C

Hartmann v. Kenyon

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Hartman v. Kenyon (1991) 227 Cal. App. 3d 413 [277 Cal.Rptr. 765]

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[No. H006600. Sixth Dist. Jan 30, 1991.]

STEVE HARTMAN, Plaintiff and Appellant, v. PATRICIA M. KENYON, as City Clerk, etc., Defendant and Respondent;

MARDI WORMHOUDT et al., Real Parties in Interest.

(Supreme Court of Santa Cruz County, No. 111594, Samuel S. Stevens, Judge.)

(Opinion by Cottle, J., with Agliano, P. J., and Premo, J., concurring.)

COUNSEL

Timothy J. Morgan for Plaintiff and Appellant.

Atchison & Anderson and John G. Barisone for Defendant and Respondent.

No appearance for Real Parties in Interest.

OPINION

COTTLE, J.

Recall proponent Steve Hartman sought a writ of mandate to compel Patricia Kenyon, City Clerk of the City of Santa Cruz (hereafter Clerk), to certify that three recall petitions he submitted contained the requisite number of signatures of eligible registered voters. When Hartman filed his petitions with the Clerk for examination, each contained more than the number of signatures required. However, after the Clerk completed her examination of the petitions, she determined that they were short of the

required number by approximately 50 signatures. Because the Clerk had rejected approximately 120 signatures on each petition for irregularities in circulator declarations, Hartman sought leave of the Clerk to file amended circulator declarations. When the Clerk refused to accept them, Hartman filed a petition for writ of mandate. The trial court denied the petition, finding that the Clerk had no statutory authority to accept amended circulator declarations and that other signatures had been properly rejected. We affirm.

Facts

All relevant dates are in 1989.

On February 13 and 14, Steve Hartman commenced recall proceedings by serving notices of intention to circulate a recall petition on three sitting **[227 Cal. App. 3d 416]** members of the Santa Cruz City Council, real parties in interest Mardi Wormhoudt, Jane Yokoyama and Don Lane. Hartman's statement of the reasons for the proposed recalls cited the council members' "recent vote to 'NOT' invite the United States Navy to join us in celebration of Independence Day, ... a willful violation of [their] 'Oath[s] of Office'." Copies of the notices of intention, along with the requisite proofs of service, were filed with the Clerk's office on February 14 and 15.

On March 7, the Clerk advised Hartman that his proposed petitions contained a minor technical defect which would have to be corrected before he could circulate them. Hartman made the changes and submitted revised petitions the following day. On March 14, the Clerk notified him that the form and wording of the revised petitions met statutory requirements and that he could commence circulation of the recall petitions.

Hartman then had 120 days in which to submit his petitions with the requisite number of registered signatures. (Elec. Code,fn. 1 Â§ 27210, subd. (d).) That number was determined to be 6,541 for each petition, which represented 20 percent of the city's registered voters. (See Â§ 27211, subd. (a)(3).) On the 120th day, July 12, Hartman submitted the 3 signed petitions to the Clerk's office. Because each contained prima facie more than the number of signatures required, the Clerk accepted the petitions for filing.

The Clerk then had 30 days in which to examine the petitions and from the records of registration ascertain whether or not they were signed by at least 6,541 eligible voters. There were over 7,000 signatures on each petition to be examined.

On August 8, the Clerk certified all three petitions as insufficient. On Yokoyama's recall petition, 6,485 of 7,201 signatures were found to be valid, on Lane's, 6,483 of 7,167,

and on Wormhoudt's, 6,492 of 7,214. Thus, each recall petition was short of the 6,541 valid signatures required by about 50 signatures.

The Clerk disqualified approximately 200 signatures on each petition on the ground the signer's address on the petition differed from that shown on his voter registration affidavit. The Clerk also disqualified more than 120 signatures on each petition on grounds of circulator declaration problems, including circulators' failure to include dates, failure to sign declarations, and inclusion of circulation dates prior to approval of the form of the petitions by the Clerk. **[227 Cal. App. 3d 417]**

Hartman requested and was granted leave to examine the three petitions to determine which signatures were disqualified and for what reasons. (See Â§ 27302.) Eighteen days later, he wrote to the Clerk requesting leave to file a number of amended circulator's declarations. Hartman hoped to cure technical defects which had caused the signatures in the accompanying petition sections to be invalidated. On September 1, the Clerk responded to Hartman's letter, stating she had no statutory authority to amend her earlier findings.

Hartman filed his writ petition on September 27 seeking to compel the Clerk to validate certain previously invalidated signatures and to certify the three petitions as sufficient. After a hearing, the court rendered its decision denying the petition.

Statutory Scheme

Section 706 of the Santa Cruz City Charter provides that "the provisions of the Elections Code of the State of California ... governing the ... recall of municipal officers, shall apply in the City ...."

Under the Elections Code, the recall of a city council member is commenced by the service, filing and publication or posting of a notice of intention to circulate a recall petition. The notice of intention must: (1) identify the council member whose recall is sought and the proponent of the recall election (Â§ 27020); (2) be served on the council member; and (3) be filed in the city clerk's office within seven days, along with a proof of service (Â§ 27021). The council member may, at his option, file an answer (Â§ 27023).

The recall petition must expressly request that an election be called to determine whether the council member shall be removed from office and, if so, whether the subsequent vacancy on the council shall be filled by appointment or special election. (Â§ 27031.)

Where the council member does not file an answer, the proponent of the recall has only 17 days from the notice of intention to file two blank recall petitions with the city clerk. The clerk must then, within 10 days, ascertain whether the wording of the blank petitions meets statutory requirements. If corrections are required, the proponent has 10 days in which to make them. No signature may be affixed to a recall petition until the clerk notifies the proponent that the petition meets statutory requirements. (Â§ 27031.5)

Only registered voters may sign or circulate recall petitions. (Â§ 27035.) Signers must affix their signatures and print their name, residence address and city of residence on the petition (Â§ 27032), and circulators must sign a **[227 Cal. App. 3d 418]** declaration attesting to the fact the circulator actually circulated a particular section of the petition, that he saw the signers sign the petition, that to the best of his information and belief each signature is the genuine signature of the person whose name it purports to be, and that the signatures were collected between the dates the circulator set forth in the declaration. (Â§ 44.)

The signed recall petitions must be presented for filing in cities the size of Santa Cruz within 120 days of the clerk's notification that the petition's wording was proper. (Â§ 27210.) Only if the petitions prima facie contain the number of signatures required will the clerk accept the petitions for filing. (Â§ 27212.) The clerk then has 30 days to ascertain from the records of voter registration whether the petition was in fact signed by the requisite number of eligible registered voters. (Â§ 27214.) If the clerk determines that the petition is insufficient, the proponent of the petition may examine it in order to determine which signatures were disqualified and the reasons for disqualification. (Â§ 27302.)

Discussion

This appeal presents two questions: first, whether a clerk must accept amended circulator declarations to correct technical defects in recall petitions and, second, whether the Supreme Court's opinion in Walters v. Weed (1988) 45 Cal. 3d 1 [246 Cal.Rptr. 5, 752 P.2d 443] renders section 45 unconstitutional. An affirmative answer to either question would have the effect of validating previously invalidated signatures such that the recall petitions in this case would have attached to them the requisite number of signatures of eligible registered voters. We shall analyze each question, both issues of first impression, separately.

A. Was the Clerk Required to Accept the Proffered Amended Circulator Declarations?

[1a] Hartman contends that the Clerk was required to accept the declarations based on a 1960 Attorney General's opinion which states, in pertinent part: "It is our opinion it would be an abuse of the authority apparently given him under section 1272 for the county superintendent to determine that recall petitions are insufficient on the basis of minor defects or irregularities in the affidavits of the circulator. See Reites v. Wilkerson, 95 Cal. App. 2d 827, 829, 213 P.2d 773, 774 (1950) .... [Â¶] The proper procedure under the circumstances is to permit the circulator of the petition to amend his affidavit so that it complies with the law. Reites v. Wilkerson, 95 Cal. App. 2d 827, 213 P.2d 773 (1950). When so amended the affidavit dates back to the time of the filing of the original. Hinkley v. Wells, 57 Cal.App. **[227 Cal. App. 3d 419]** 206, 209, 206 Pac. 1023, 1025 (1922)." (36 Ops.Cal.Atty.Gen. 68, 69-70 (1960).)

We do not believe that either the Attorney General's opinion or the 1922 and 1950 cases upon which it relies can be read so broadly as to compel the Clerk to accept Hartman's proffered amended circulator declarations. The specific conclusion of the Attorney General opinion is that an irregularity in the affidavit of a petition circulator, "especially where [it] consists merely of the omission of an address which does not affect the validity of the petition itself and can easily be corrected" (36 Ops.Cal.Atty.Gen., supra, at pp. 68-69) will not invalidate the entire petition.

This conclusion was incorporated into the Secretary of State's Guidelines for Verifying Elections Petitions. Therein, the Secretary of State notes: "As a general rule, defects in the circulator's affidavit will not invalidate the signatures on the petition; however, see Item 15(b) [dealing with dates of execution or failure to give dates] for an exception to the general rule." The Secretary of State points out that the Clerk may verify signatures where the "Circulator's affidavit lists no address or only a post office box address." Thus, the guidelines distinguish between irregularities relating to dates on which the petition was circulated and other circulator affidavits irregularities.

We believe that this distinction is significant. The Attorney General opined that petitions should not be invalidated because of irregularities "not affect[ing] the validity of the petition itself." But where, as here, the declarations affirmatively demonstrate they were circulated outside the 120-day period set by the Legislature within which all signatures must be obtained, or where they fail to state they were circulated within the statutory period, then these "irregularities" affect the validity of the petition itself. If the signatures were not obtained within the 120-day window period, they may not be counted.

Hartman relies on language in the Attorney General's opinion to the effect that "the proper procedure [where the circulator failed to list his address] is to permit [him] to amend his affidavit so that it complies with the law." This language is based on Reites v. Wilkerson (1950) 95 Cal. App. 2d 827 [213 P.2d 773], a case concerning the failure of petition circulators to certify the petitions in accordance with the provisions of the Los Angeles City Charter. The court pointed out that under the Los Angeles City Charter, a petition for recall found to be insufficient by the city clerk " 'may be amended by filing a supplemental petition or petitions within ten days from the date of such certificate.' " (Id., at p. 829.) **[227 Cal. App. 3d 420]**

In this case, in contrast, there is no provision allowing for the filing of supplemental petitions after a recall petition is found to be insufficient. The Santa Cruz City Charter does not contain such a provision; nor does the California Elections Code, which the City of Santa Cruz has adopted. At one time, the Elections Code allowed a recall proponent to "supplement [] [a petition found insufficient] within 10 days of the date of certificate by filing additional petition sections ...." (Former Â§ 27214, amended by Stats. 1982, ch. 109, Â§ 7 p. 328,.) However, in 1982, the Legislature made substantial changes to the Elections Code relating to recall elections and deleted all provisions affording a recall proponent the right to supplement an insufficient petition. (See generally, Stats. 1982, ch. 109, Â§Â§ 1-12 p. 325-329.)

[2] "It is fundamental in statutory construction that courts should ascertain the intent of the Legislature so as to effectuate the purpose of the law. [Citations.] Moreover, they should construe every statute with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness." (Clean Air Constituency v. California State Air Resources Bd. (1974) 11 Cal. 3d 801, 813-814 [114 Cal.Rptr. 577, 523 P.2d 617].)

[1b] We view the Legislature's decision to eliminate supplemental petitions as an indication of their intent to bring finality, certainty and uniformity into the recall process. Either a recall proponent submits the requisite number of valid signatures within the statutory period-in which case the petition must be certified as sufficient-or he doesn't-in which case it must be certified as insufficient. [3] While we recognize that recall statutes should be construed liberally to enable citizens to exercise their rights of recall (Moore v. City Council (1966) 244 Cal. App. 2d 892, 901 [53 Cal.Rptr. 603]), recognition of this policy "does not allow the courts to enlarge the scope of a procedural statute where the statutory provisions are clear." (Wilcox v. Enstad (1981) 122 Cal. App. 3d 641, 651 [176 Cal.Rptr. 560].)

[1c] We conclude that the Clerk was without statutory authority to accept Hartman's proffered amended circulator declarations. Because of this conclusion, we need not address Hartman's further contention that once the Clerk accepted the declarations, her tasks would have been ministerial, without any right to adjudicate the truth or falsity of statements in the amended declarations. Finally, we find no merit in Hartman's contention that section 27302, affording a recall proponent the right to examine the petitions after a certification of insufficiency, confers on him a right to file amended petitions. The statute unambiguously states its purpose: to allow inspection "in order to determine which signatures were disqualified and the reasons therefor." **[227 Cal. App. 3d 421]** B. Did the Clerk Violate the Supreme Court's Decision in Walters v. Weed When She Disqualified Signatures of Voters Whose Residence Addresses Were Different From Their Respective Addresses on Their Voter Registrations Affidavits?

[4] Hartman concedes that prior case law as well as section 45fn. 2 and the Secretary of State's guidelines all call for the disqualification of signatures of voters who list a different address on a recall petition from the address they listed on their voter registration affidavits. However, Hartman contends that the Supreme Court's decision in Walters v. Weed makes application of these rules unconstitutional. He states, "There seems no question but that in view of the holding in Walters v. Weed, supra, each person whose signature was rejected by the city clerk on the basis of a discrepancy between the current residence address shown on the petition and the residence address shown on that person's voter registration affidavit would be entitled to vote from the address and precinct shown in the voter's respective affidavit of registration."

As we shall explain, we believe Hartman reads the Walters v. Weed opinion much too broadly. "[E]ach person whose signature was rejected by the City Clerk on the basis of a discrepancy between the current residence address shown on the petition and the residence address shown on that person's voter registration affidavit" would not be entitled "to vote from the address and precinct shown in the voter's respective affidavit of registration." The narrow opinion holds only that a person may vote in the precinct of his or her former domicile until a new domicile has been acquired.

Walters was an action by citizens to set aside a municipal election on the ground that certain University of California Santa Cruz students had voted illegally. The students had lived and registered to vote on the university campus. When they returned to school in the fall of 1983, however, "many were unable or chose not to live on campus. However, by the time voter registration closed, not all of these students had obtained off- campus housing where they intended to remain." (45 Cal. 3d at p. 4.) The question the court was called upon to resolve was, " 'Where were these students' " who were

living, for example, "in the off-campus homes or apartments of friends, in cars parked in remote campus parking lots, or in tents pitched **[227 Cal. App. 3d 422]** under the campus redwoods" " 'domiciled for voting purposes when they resided at their temporary locations during the autumn of 1983?' " (Id., at p. 11.)

At trial, some 292 student voters testified. Of these, 193 did not physically reside in the on-campus precincts. Of the 193 no longer residing on campus, the trial court found that most of them, 113, had acquired a new domicile as of one month before the election and had therefore voted illegally. (Because it would have taken 182 illegal votes to change the outcome of the election, however, the election results were upheld.) The remaining 80 students were residing in temporary quarters where they did not intend to remain. It was only with respect to these students that the court ruled as follows: "Our holding in this case is narrow in its scope. We hold that when a person leaves his or her domicile with the intention to abandon it, and when that person currently resides in a place in which he or she does not intend to remain, that person may vote in the precinct of his or her former domicile until a new domicile has been acquired." (45 Cal. 3d at p. 14.)

Hartman contends that Walters stands for the proposition that a voter who has moved is always entitled to vote at his former precinct (unless a challenger proves by clear and convincing evidence that the voter abandoned his former domicile) and that since the right to vote is coextensive with the right to sign a recall petition, the Clerk erred in disqualifying signatures where the residence address differed from the address of the voter's registration affidavit. While we agree that legislation affording citizens a right to recall public officials is to be given the same liberal construction as that extended to election statutes generally (Wilcox v. Enstad, supra, 122 Cal. App. 3d at p. 651), we disagree with Hartman's first premise: that a voter who has moved may automatically vote at his former precinct.

In Walters, there can be no doubt that the student voters announced that they resided on campus. Under section 14211, every person desiring to vote must announce his name and address in an audible tone of voice, and when one of the precinct officers finds the name in the index, the officer must, in like manner, repeat the name and address. After that, the voter must write his name and address in the roster of voters. If a voter is not a resident of the precinct, his or her vote may be challenged by a member of the precinct board or other official responsible for the conduct of the election. (Â§ 14216.) Thus the students, having announced that they resided on campus, prima facie appeared to be qualified electors. The burden to prove that they had voted in a precinct where they were not domiciled was on the challenger.

Here, in contrast, the recall petition signers whose signatures were rejected announced that their residence address was somewhere other than where **[227 Cal. App. 3d 423]** they had indicated on their voter registration affidavits. Had these petition signers gone to vote at their former precincts and had they announced their addresses as outside the precinct, their votes would have been challenged. The signers' decision to list their new addresses as their "residence address" is probative of their intent to make that new residence their "legal residence" or "domicile." (Cf. Walters v. Weed, supra, 45 Cal. 3d at p. 7.) The students' decision, on the other hand, to list the university campus as their address is probative of the fact that many of them had not found another domicile.

Additionally, the Walters court, in issuing its narrow opinion, focused in on the special problems encountered by students: "Policy considerations also support the use of students' abandoned domiciles for voting purposes. Our adoption of the trial court's rule avoids disenfranchisement. Were we to adopt the holding of the Court of Appeal, anyone who moved from one domicile and had not yet established another would be left without a domicile and thus would be unable to vote anywhere during the period of travel. University students would be especially hard hit, as it is not uncommon for them to relocate at summer's beginning or end, precisely when voter registration periods close. In communities with large student populations and low vacancy rates, the student's search for a new domicile can be particularly exasperating-and time-consuming. Thus, under the Court of Appeal's holding, many students would be subject to disenfranchisement. Such a result is, in itself, intolerable; it also conflicts with our holding that no construction of an election law should be indulged that would disenfranchise any voter if the law is reasonably susceptible to any other meaning (Otsuka v. Hite (1966) 64 Cal. 2d 596, 603-604 [parallel citation]), and it ignores our holding that students 18 years of age or older must be treated the same as other California residents for voter registration purposes (Jolicoeur v. Mihaly (1971) 5 Cal. 3d 565 [parallel citation])." (45 Cal. 3d at pp. 13-14.)

In summary, we find Walters inapposite. It held that one who, for voting purposes, announces that he resides at his former domicile, and who in fact has left that residence with the intent not to return, and who has not yet found another residence where he intends to remain, may vote in the precinct of the former residence. In Hartman's recall petitions, however, the signers whose signatures were rejected announced that they lived at a different address from that where they were last qualified to vote. The Clerk did not err in following the mandate of section 45 and disqualifying the signatures of signers who listed a different residence address on the

petition from the address they listed on their voter registration affidavit. **[227 Cal. App. 3d 424]** The judgment is affirmed.

Agliano, P. J., and Premo, J., concurred.

FN 1. All further statutory references are to the Elections Code.

FN 2. Section 45 provides, in pertinent part: "For purposes of verifying signatures on any ... recall ... petition or paper, the clerk shall determine that the residence address on the petition or paper is the same as the residence address on the affidavit of registration. If the addresses are different, or if the petition or paper does not specify the residence address, ... the affected signature shall not be counted as valid. [Â¶] Any signature invalidated pursuant to this section shall not affect the validity of other valid signatures on the particular petition or paper."

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EXHIBIT

D

Susan Lapsley's Memo in 2006

Petition Guidelines

Jarboe. Alice

From: LaVine. Jill
Sent: Monday, May 15, 2006 5:52 PM
To: Ditty. Heather; Jarboe. Alice; Jones. Diane; Weir. Steve
Subject: FW: petition

Okay, Alice go ahead and sign the letter.

Jill LaVine
Registrar of Voters
916-875-6558
Fax 916-876-5130

From: Lapsley, Susan [mailto:slapsley@ss.ca.gov]
Sent: Monday, May 15, 2006 5:51 PM
To: LaVine. Jill
Cc: Lapsley, Susan; Daniels-Meade, Caren; Giarrizzo, Pam; Kanotz, Michael; Southard, Joanna
Subject: RE: petition

[illegible] out of old procedures.

Jill,

You had asked about an initiative petition that was turned into your office with the year 2006 preprinted, but the month and date handwritten in the declaration of the circulator. This petition could only have been circulated in 2006. It is our opinion that the year preprinted does not otherwise invalidate a petition.

If you have any questions, please don't hesitate to call.

Susan

EXHIBIT

E

Buckley v. American Law Foundation

DIVISIONS:
Archives
Corporate Filings
Elections
Information Technology
Limited Partnership
Management Services
Notary Public
Political Reform
Uniform Commercial Code

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JAN - 7 2000
Sacramento County
Voter Registration & Elections

ELECTIONS DIVISION
(916) 657-2166
1500 - 11th STREET
SACRAMENTO, CA 95814
Voter Registration Hotline
1-800-345-VOTE
For Hearing and Speech Impaired
Only
1-800-833-8683
e-mail: comments@ss.ca.gov

BILL JONES
Secretary of State
State of California

January 4, 2000

TO: ALL CITY AND COUNTY CLERKS/REGISTRARS OF VOTERS (00004)

FROM: PAM GIARRIZZO
Elections Counsel

SUBJECT: Attorney General Opinion Regarding Petition Circulators

Attached is a copy of an Attorney General Opinion that was recently issued concerning the effect of the decision in *Buckley* v. *American Law Foundation, Inc.*, on circulators of city initiative petitions.

The Attorney General was asked if, in light of the U.S. Supreme Court's decision in *Buckley*, it is unconstitutional to require circulators of city initiative petitions to declare that they are voters of the city. The Attorney General's opinion is that such a requirement is unconstitutional under *Buckley*. He was also asked if circulators of a city initiative petition must declare that they are city residents. The answer to that question is that they need not declare that they are city residents.

As always, you should discuss any action you intend to take as a result of this decision with your city attorney or county counsel. This is especially important if you are the elections official in a charter city, which may have charter provisions that are different from the election provisions found in state law.

If you have any questions, you may telephone me at (916) 657-2166.

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

BILL LOCKYER
Attorney General

OPINION of BILL LOCKYER Attorney General CLAYTON P. ROCHE Deputy Attorney General	:	No. 99-712 December 22, 1999

THE HONORABLE WILLIAM B. CONNERS, CITY PROSECUTOR, CITY OF MONTEREY, has requested an opinion on the following questions:

1. In light of the United States Supreme Court's recent decision in *Buckley v. American Law Foundation, Inc.*, is Elections Code section 9209 unconstitutional in requiring circulators of initiative petitions to declare that they are voters of the city?

2. Must circulators of a city initiative petition declare that they are city residents?

104, in turn, provides that each declaration attached to a section must contain, among other information, the printed name of the circulator and "[t]he residence address of the circulator, giving street and number, or if no street or number exists, adequate designation of residence so that the location may be readily ascertained."

1. Voters of the City

The first question to be resolved is whether the circulator of an initiative petition must be "a voter of the city" as required under section 9209, or whether such statutory requirement is now unconstitutional in light of the United States Supreme Court's recent decision in *Buckley* v. *American Constitutional Law Foundation* (1999) 525 U.S. 182 [142 L.Ed.2d 599, 119 S.Ct. 636]. We conclude that the statutory requirement is unconstitutional under *Buckley.*

In *Buckley*, the court ruled that a Colorado statute requiring all circulators of a statewide initiative petition to be "registered electors"[3] of the state was unconstitutional. The court explained in part:

> "By constitutional amendment in 1980 . . . Colorado added to the requirement that petition circulators be residents, the further requirement that they be registered voters. . . . Beyond question, Colorado's registration requirement drastically reduces the number of persons, both volunteer and paid, available to circulate petitions. We must therefore inquire whether the State's concerns warrant the reduction. [Citation.]
>
> "When this case was before the District Court, registered voters in Colorado numbered approximately 1.9 million. At least 400,000 persons eligible to vote were not registered. . . .
>
> ". . . . .
>
> "The Tenth Circuit reasoned that the registration requirement placed on Colorado's voter-eligible population produces a speech diminution of the very kind produced by the ban on paid circulators at issue in *Meyer* [v. *Grant* (1988) 486 U.S. 414]. [Citation.] We agree. The requirement that circulators

[3] A "voter of the city" would be one who is a "registered elector" of an election precinct located within the city. (See §§ 321, 359.)

registering to vote is "exceptionally easy" cannot "lift the burden on speech at petition circulation time." (*Buckley* v. *American Constitutional Law Foundation, supra*, 199 S.Ct. at 644.)[4]

We conclude in answer to the first question that in light of the recent *Buckley* decision, section 9209 is unconstitutional in requiring circulators of initiative petitions to declare that they are voters of the city.

2. City Residents

The second question presented concerns whether circulators of an initiative petition must declare that they are city residents under the terms of section 9209. We conclude that circulators need not declare that they are city residents.

As previously quoted, section 9209 requires each circulator of an initiative petition to file a declaration "that the circulator is a voter of the city, and shall state the voter's residence address at the time of the execution of the declaration." If a circulator no longer is required to be "a voter of the city" under *Buckley*, does the circulator nevertheless need to be a resident of the city by virtue of section 9209's reference to "residence address"?

Section 9209 does not expressly require a circulator to declare that he or she is a resident of the city. Once the "voter" requirement is severed from the statute, the circulator's "residence address" may be located outside the jurisdiction of the city under the plain language of the statute. We follow the well established principle of statutory construction that "'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.' [Citation.]" (*Wells Fargo Bank* v. *Superior Court* (1991) 53 Cal.3d 1082, 1097).

No other statute expressly requires petition circulators to be residents of the city. (See §§ 104, 9022.) No particular or restricted geographical area is specified when declaring a circulator's "residence address."

---

[4] By letter dated January 20, 1999, The Secretary of State, as chief elections officer, instructed local elections officials that due to the *Buckley* decision, "[t]here is no longer any requirement that initiative circulators be registered voters.". The effect of this administrative interpretation of section 9209 is beyond the scope of our discussion. (See Cal. Const., art. III, § 3.5; *Greener* v. *Workers' Comp. Appeals Bd.* (1993) 6 Cal.4th 1028, 1038; *Reese* v. *Kizer* (1988) 46 Cal.3d 996, 1001-1002; *Southern Cal. Lab. Management etc. Committee* v. *Aubry* (1997) 54 Cal.App.4th 873, 887; 68 Ops.Cal.Atty.Gen. 209, 219-222 (1985).)

EXHIBIT

F

See Exhibit F: SOS memo 92117 dated April 20, 1992 (Note EC 43 is now EC 103 and EC 5352 is now EC 9602)

30 s file

RECEIVED

APR 22 1992

Sacramento County
Voter Registration & Elections

Office of the Secretary of State
March Fong Eu

1230 J Street
Sacramento, California 95814

ELECTIONS DIVISION
(916) 445-0820
For Hearing and Speech Impaired
Only:
(800) 833-8683

April 20, 1992

TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS (92117)

FROM: ANTHONY L. MILLER
CHIEF DEPUTY SECRETARY OF STATE

SUBJECT: WITHDRAWING SIGNATURES ON INITIATIVE PETITIONS

We have been advised that many purported signers of the "Education. Parental Choice. Scholarship" proposed initiative constitutional amendment may seek to withdraw their signatures from the petitions. Such withdrawals are permitted pursuant to Elections Code sections 43 and 5352. In implementing these provisions, please note the following:

1) To be effective, the statement of withdrawal must be in writing, must identify the subject initiative petition, must contain the signature of the person seeking to withdraw the signature, must contain the address of the signer, <u>must clearly state that the person seeking to withdraw a signature has signed the subject petition,</u> and must be sufficiently legible so as to permit correlation with the subject voter registration affidavit and/or initiative petition signature. Any doubt as to whether a purported withdrawal is from the same individual whose signature is contained on the initiative petition should be resolved in favor of the initiative petition signer (i.e., count the initiative petition signature and ignore the purported withdrawal).

2) To be effective, the statement of withdrawal must be received in your office <u>prior to the day</u> the initiative petition is filed. Thus, any withdrawal received the day of or after the initiative petition is filed must be disregarded.

3) Signatures that have been withdrawn shall not be counted in determining the number of valid signatures on the petition. Exclusion can be accomplished in the following ways:

METHOD A. The withdrawals can be compared with the initiative petition and the "matches" can be excluded and then subtracted from the "raw" count before reporting the "raw" count to the Secretary of State. This can be done

manually or with computer assistance after entering both withdrawals and petition signers into a data base. Regardless of the approach, "raw" counts must be reported to the Secretary of State within eight working days. Should random sampling or full verification be required, further reference to withdrawals would be unnecessary under this method.

METHOD B. For purposes of determining "raw" count, withdrawals are ignored. Then, should random sampling be required, the registration file would be "flagged" pursuant to Elections Code section 319 indicating which registered voters had submitted purported withdrawals. (Note that notations cannot be made on the affidavits of registration themselves.) During the random sampling process, selected initiative petition signatures that "hit" a "flagged" withdrawn signature are treated as "insufficient" signatures. (The "flags" are required to be destroyed pursuant to Elections Code section 319.) This method of calculation was approved by a latter from this office to county clerks and registrars on December 10, 1979, after conferring with statisticians. The validity of this method has been reconfirmed in the context of preparing this memo.

4) Statements of withdrawal should be preserved in accordance with the timeframe set forth in Elections Code section 14700 (eight months following the election or from final examination if the measure fails to qualify for the ballot.)

Other questions regarding this process are bound to arise. Don't hesitate to give us a call or fax when they do. Good luck.

EXHIBIT

G

Nader v. Brewer (2008)

FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RALPH NADER; DONALD N. DAIEN, *Plaintiffs-Appellants,* v. JANICE BREWER, in her official capacity as Secretary of State of Arizona, *Defendant-Appellee.*	No. 06-16251 D.C. No. CV-04-01699-FJM OPINION

Appeal from the United States District Court
for the District of Arizona
Frederick J. Martone, District Judge, Presiding

Argued and Submitted
April 15, 2008—San Francisco, California

Filed July 9, 2008

Before: Mary M. Schroeder, Richard R. Clifton, and
Consuelo M. Callahan, Circuit Judges.

Opinion by Judge Schroeder

COUNSEL

Robert E. Barnes, Milwaukee, Wisconsin, for plaintiffs-appellants Ralph Nader, et al.

Barbara A. Bailey, Phoenix, Arizona, for defendant-appellee Janice Brewer, et al.

OPINION

SCHROEDER, Circuit Judge,

Introduction

Ralph Nader and one of his supporters in Arizona, Donald Daien (collectively, "plaintiffs"), appeal from the district

court's grant of summary judgment to Janice Brewer, the Secretary of State of Arizona. Plaintiffs alleged that two provisions of Arizona's statutory election scheme—the requirement that circulators of nomination petitions be residents of Arizona and the requirement that nomination petitions be filed at least 90 days before the primary election—violated their rights to political speech and association under the First and Fourteenth Amendments. The case arose from Nader's efforts to appear on the 2004 Arizona general-election ballot as a presidential candidate. The district court upheld both petition requirements, holding that the burdens imposed on the exercise of plaintiffs' rights were not significant and were sufficiently justified by the state's interests.

The district court measured the burdens in terms of the effect the requirements had on Nader's ability to get on the Arizona ballot. The court held that these requirements were not a material cause of Nader's failure to get on the ballot in 2004 and the burdens were therefore minimal.

In this appeal Nader stresses that the burdens of the residency requirement should be measured in terms of the effect the requirement has on the rights of persons like himself who live outside Arizona and wish to circulate petitions in that state. Controlling Supreme Court authority and a persuasive opinion of the Seventh Circuit support Nader's position. *See Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182 (1999); *Krislov v. Rednour*, 226 F.3d 851 (7th Cir. 2000). Controlling Supreme Court authority also requires us to hold that the burdens imposed by Arizona's early filing requirement are severe and must be supported by compelling interests. *Anderson v. Celebrezze*, 460 U.S. 780 (1983).

Neither the district court nor this court has had the benefit of much documentation of the state's needs for the requirements. We conclude, on the basis of this record, when examined after the passage of the considerable amount of time expended completing the appellate process, that the burdens

are significant and that the state has not shown the requirements are sufficiently narrowly tailored to further compelling interests.

I. Background

Ralph Nader, a resident of Connecticut, announced his independent candidacy for President of the United States on February 22, 2004. Donald Daien is one of Nader's supporters and is a registered voter in Arizona who wanted to vote for Nader and to serve as a presidential elector on Nader's behalf. Nader and Daien, along with other supporters, brought this action in August 2004 against Secretary of State Brewer, alleging that the residency requirement and the early filing deadline severely burdened the rights of expressive association and political speech of political candidates, potential petition circulators, and voters, in violation of the First and Fourteenth Amendments. They sought declaratory and injunctive relief.

A. Arizona's Nomination-Petition System

In Arizona, a person who is not a member of a recognized political party may gain a place on the ballot by filing nomination petitions containing a prescribed number of signatures. Ariz. Rev. Stat. § 16-341(C), (E), (F), (I). The petitions are filed for the office of presidential elector rather than for the presidential candidate; the petitions designate the presidential candidate and the names of ten individuals who would serve as electors for that candidate. *Id.* § 16-341(G), (H).

The same statute establishes the total number of signatures required for each political office, which is 3% of the registered voters in the political subdivision for which the candidate is nominated, who are not members of recognized political parties. *Id.* § 16-341(E), (F). Each signature must be witnessed by the petition circulator. *Id.* § 16-321(D). In 2004,

the number of signatures required for the office of presidential elector in Arizona was 14,694.

Only persons qualified to register to vote in Arizona can circulate petitions. *Id.* §§ 16-101, 16-321(D). In order to be qualified to register to vote, a person must, among other things, be a resident of Arizona and must have been a resident at least twenty-nine days before the election ("the residency requirement"). *Id.* § 16-101(A)(3). Under this statutory limitation, all non-residents of Arizona, including Nader himself, are prohibited from circulating petitions in support of Nader's candidacy.

Nomination petitions must be filed with the Secretary of State's office no later than 90 days before the primary election ("the filing deadline"). *Id.* §§ 16-311(A), (E), 16-341(C). This places the filing deadline 146 days before the general election. In 2004, the general election was held on November 2, the primary election was held on September 7, and the filing deadline was June 9.

An Arizona registered voter may challenge the validity of a candidate's petitions by bringing an action in superior court. *Id.* § 16-351. Such action must be brought within ten business days of the filing deadline, and the superior court must hear and decide the action within ten calendar days of its filing. *Id.* § 16-351(A). The decision is appealable only to the Arizona Supreme Court, and it must be appealed within 5 calendar days. *Id.* The Supreme Court must decide the appeal promptly. *Id.*

At least 45 days before the general election, the state must prepare a proof of a sample ballot. *Id.* § 16-461(A). According to the state's affidavits, the state also mails ballots to overseas members of the military 45 days before the general election. Voters can cast early ballots beginning 33 days before the general election; in 2004, early voting began on September 30.

As we construe the data provided by the state, the timeline for the 2004 election was as follows:

Presidential Preference Election...... February 3

Filing Deadline for Nader.................June 9

Primary Election................................September 7

Deadline to Prepare Proof
of Sample Ballot................................September 18

First Day of Early Voting.................September 30

General Election................................November 2

B. Proceedings Below

Nader filed his Arizona presidential nomination petitions with the Secretary of State on June 9, 2004. Two Arizona voters then filed an action on June 23 in the Superior Court in Maricopa County, challenging his eligibility. They alleged that his petitions did not provide the required number of valid signatures, that the petitions included signatures forged by circulators, that some petitions had been circulated by felons, and that the petitions contained falsified addresses of circulators. Nader conceded that the petitions did not meet the signature requirements and on July 2, 2004, withdrew his candidacy for the Arizona ballot.

In August 2004, plaintiffs brought this action for declaratory and injunctive relief, alleging that the residency requirement and the early filing deadline severely burdened the rights of expressive association and political speech of political candidates, potential circulators, and voters, in violation of the First and Fourteenth Amendments, and that neither regulation could survive strict scrutiny. They sought a declaration that Arizona's statutory election scheme was unconstitutional

as applied to them and an injunction barring the enforcement of the statutory deadlines in the 2004 election. The district court denied plaintiffs' motion for preliminary injunctive relief.

Both sides moved for summary judgment in January of 2006. The state argued that the restrictions did not impose a severe burden on plaintiffs' rights. It argued further that even if the burden imposed was severe, both the residency and filing deadline requirements should survive strict scrutiny. The state urged that the residency requirement was narrowly tailored to further the state's interest in preventing fraud in the election process, in order to ensure that circulators could be located and subpoenaed in time for petition challenges. With respect to the filing deadline, the state contended that it was narrowly tailored to further the state's administrative and statutory obligations, given the deadlines related to early voting and sample ballots and the state's schedule for printing the ballots.

In support of its 2006 summary judgment motion, the state submitted affidavits from Joseph Kanefield, the State Election Director, and Karen Osborne, the Director of Elections for Maricopa County, describing the planned schedule for the 2008 election. Osborne explained the procedures that would be utilized for the optical-scan ballots used in Maricopa and Pima Counties, which together represent almost 76% of the state's registered voters. According to Osborne, Maricopa County planned to begin the layout of its general-election ballot as soon as the June 11 filing deadline passed. The first candidates listed on the ballots would be those for the office of presidential elector. The layout of the remainder of the ballot thus depended on the number of candidates for that office. The judges and state initiatives, as well as the county, city, and school ballot propositions, were to be listed on the back of the ballot.

Maricopa County's plan was to print its 2008 ballots in two stages. It would send the back side of the ballot for printing

on August 20. The printing of the front side would begin on September 16, after the candidates for the offices listed on the front side were determined in the primary election. The county would receive the completed ballots from the printer no later than September 24, to allow time for testing and inspecting the ballots, distribution to early voting sites, and mailing for early voting, to begin October 2. The affidavit stated that ballots undergo "Logic" and "Accuracy" tests in each precinct in October.

The only explanation for why the names of the presidential candidates for the general election had to be known in June, three months before the primary, was that the ballot paper had to be ordered about five months before the election. According to the election officials' affidavits, the paper for the ballots would be ordered in late May or early June to ensure availability. The state's motion asserted that if it were to find out later than June that ten presidential electors needed to be added to the ballot, the ballot would require two pages instead of one, and, as a result, Maricopa County would be unable to acquire the additional paper or print the ballots in time. According to the affidavits, however, there are a total of more than 400 state and local offices and dozens of other ballot measures on the general-election ballot. So far as this record indicates, the candidates for all offices, from presidential electors to local officials, are on the same ballot. The state did not explain with any specificity how many offices and measures would appear on a ballot in any given precinct. Nor did the state explain when the nature and number of initiative measures, school bond measures, and other types of ballot measures, which may vary in number and size, need to be known.

The state's affidavits did not fully deal with Arizona's history of moving the filing deadline back. The state legislature in 1993 moved the filing deadline from a date 10 days after the primary election to a date 75 days before the primary election. *See* Act of Apr. 14, 1993, 1993 Ariz. Sess. Laws ch. 98, sec. 24, § 16-341(C). The legislature in 1999 again moved

back the deadline, this time to 90 days before the primary election. *See* Act of May 13, 1999, 1999 Ariz. Sess. Laws ch. 224, sec. 1, § 16-311(A). The record indicates that the 1999 change was made to allow more time for petition challenges, but there is no information in the record about the reasons the deadline was moved in 1993.

Kanefield's affidavit dealt with the history of ballot access by candidates. It declared that since 1994, eight candidates for the state legislature, one candidate for U.S. Representative in Congress, one candidate for the U.S. Senate, and one candidate for governor of the state of Arizona have gained access to the general-election ballot using the procedure provided by section 16-341. Of these offices, only two are voted on statewide. Since the filing deadline was moved in 1993, no independent presidential candidate has achieved a place on Arizona's ballot.

The state also submitted evidence of five criminal prosecutions that the state has pursued for petition fraud. The state did not assert that any of the prosecutions had to do with nonresident circulators.

The district court in June 2006 granted the state's motion for summary judgment and denied plaintiffs' motion for summary judgment. The district court rejected the state's threshold position that plaintiffs' challenge to the requirements as they applied to the 2004 election was moot, applying the exception to the mootness doctrine for problems "capable of repetition, yet evading review." *See Moore v. Ogilvie*, 394 U.S. 814, 816 (1969) (internal quotation marks omitted) (quoting *S. Pac. Terminal Co. v. Interstate Commerce Comm'n*, 219 U.S. 498, 515 (1911)). The state does not challenge this conclusion on appeal.

With respect to the merits of plaintiffs' claims, the district court viewed the burden on plaintiffs' rights as minimal. It reasoned that even with the residency requirement for petition

circulators, there were still several million Arizona residents eligible to vote and hence to circulate petitions. Regarding the filing deadline, the district court observed that states now hold their presidential primaries much earlier in the election year than they did when the Supreme Court held in *Anderson*, 460 U.S. at 806, that an early filing deadline impermissibly burdened independent voters' access to candidates of their choice. The district court reasoned that the Supreme Court's concern about maintaining the ability of an independent to announce a candidacy as a response to developments in major-party candidates' campaigns was less valid than it was when *Anderson* was decided. The district court concluded that the filing deadline provided a "reasonably diligent" candidate enough time to gather the required number of signatures under the standard this court utilized in *Libertarian Party of Washington v. Munro*, 31 F.3d 759, 762 (9th Cir. 1994).

The district court ruled both restrictions constitutional, holding that any burden imposed on plaintiffs' rights by the residency requirement was justified by the state's compelling interest in protecting the integrity of the election process, and any burden imposed by the filing deadline was justified by the state's compelling interest in allowing sufficient time to verify signatures, permit challenges to petitions, and print and distribute ballots. Because the court did not find that a severe burden was imposed by the restrictions, it did not hold the state to the heightened requirement of proving the restrictions were narrowly tailored to serve compelling state interests.

On appeal, plaintiffs argue that the court should have applied strict scrutiny to both restrictions because each severely burdens plaintiffs' rights, and that under strict scrutiny, neither is narrowly tailored to further a compelling state interest.

II. Analysis

[1] The Supreme Court has held that when an election law is challenged, its validity depends on the severity of the bur-

den it imposes on the exercise of constitutional rights and the strength of the state interests it serves. In the seminal case of *Anderson*, 460 U.S. at 789, the Court held that, in considering a constitutional challenge to an election law, a court must weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments" against "the precise interests put forward by the State as justifications for the burden imposed by its rule." The Court struck down Ohio's March filing deadline for independent presidential candidates because the state's "minimal" interests did not justify the "extent and nature" of the burdens imposed by the deadline. *Id.* at 806.

[2] The Court clarified the standard in *Burdick v. Takushi*, 504 U.S. 428, 434 (1992), when it held that the severity of the burden the election law imposes on the plaintiff's rights dictates the level of scrutiny applied by the court. In *Burdick*, the Court upheld a prohibition on write-in voting in Hawaii, holding that the limited burden imposed was justified by Hawaii's interests in preventing factionalism and the manipulation of parties' primary elections through write-in campaigns. *Id.* at 438-40, 441-42. The Court held that an election regulation that imposes a severe burden is subject to strict scrutiny and will be upheld only if it is narrowly tailored to serve a compelling state interest. *See id.* at 434. It held that a state's "important regulatory interests" are usually sufficient to justify election regulations that impose lesser burdens. *Id.* The Court recently reaffirmed these principles in *Washington State Grange v. Washington State Republican Party*, ___ U.S. ___, 128 S. Ct. 1184, 1191-92 (2008).

[3] The leading case in our circuit is *Libertarian Party*, where we upheld the state of Washington's filing deadline for minor-party candidates that was only weeks before the deadline established for major-party candidates. 31 F.3d at 762, 765. We held that the burden on plaintiffs' rights should be measured by whether, in light of the entire statutory scheme regulating ballot access, "reasonably diligent" candidates can

normally gain a place on the ballot, or whether they will rarely succeed in doing so. *Id.* at 761-62 (internal quotation marks omitted) (quoting *Storer v. Brown*, 415 U.S. 724, 742 (1974)). To determine the severity of the burden, we said that past candidates' ability to secure a place on the ballot can inform the court's analysis. *See id.* at 763.

With that legal background, we turn to each of the challenged Arizona election restrictions.

A. Residency Requirement for Petition Circulators

The first provision at issue here is the requirement that petition circulators be residents of the state. Petition circulators must be "qualified to register to vote in [Arizona]." Ariz. Rev. Stat. § 16-321(D). The provision enumerating the requirements for voter registration in turn provides, in relevant part: "Every resident of the state is qualified to register to vote if he . . . [w]ill have been a resident of the state twenty-nine days next preceding the election, ..." *Id.* § 16-101(A)(3).

[4] Plaintiffs contend that such a residency requirement unconstitutionally burdens their rights to speech and association because it interferes with substantially more core political speech than is necessary. The leading decision on qualifications for petition circulators is *Buckley*, 525 U.S. 182, which involved a challenge to Colorado's regulation of initiative-petition circulators. One of the restrictions considered in that case was a requirement that circulators actually be registered to vote in the state. *Id.* at 186. The Court first stated, as it had done in *Meyer v. Grant*, that "[p]etition circulation . . . is 'core political speech,' because it involves 'interactive communication concerning political change,' " and that First Amendment protection for such interaction is therefore " 'at its zenith.' " *Id.* at 186-87 (quoting *Meyer v. Grant*, 486 U.S. 414, 422, 425 (1988)). The Court then determined that the registration requirement imposed a severe burden on the speech rights of individuals involved with the initiative pro-

cess because it significantly decreased the pool of potential circulators, which in turn limited the size of the audience that could hear the initiative proponents' message. *See id.* at 192 & n.12, 193-96.

[5] The state attempted to justify the burden as necessary to ensure circulators were subject to the state's subpoena power, but the Court found that the state's separate residency requirement achieved the same end, and agreed with the Tenth Circuit's statement that it did so "more precisely." *Id.* at 196-97. The Court expressly did not decide the validity of the separate residency requirement because it was not challenged in that case. *See id.* at 197. (Arizona's residency provision appears similar to the residency requirement described in *Buckley* and is, of course, less restrictive than the provision invalidated in *Buckley* because the Arizona provision does not require circulators to be actual registered voters. While the district court correctly observed that there remain millions of potential Arizona circulators, the residency requirement nevertheless excludes from eligibility all persons who support the candidate but who, like Nader himself, live outside the state of Arizona. Such a restriction creates a severe burden on Nader and his out-of-state supporters' speech, voting and associational rights. Because the restriction creates a severe burden on plaintiffs' First Amendment rights, strict scrutiny applies. This is a conclusion we believe to be mandated by the Supreme Court in *Buckley*. The Court held in *Buckley* that significantly reducing the number of potential circulators imposed a severe burden on rights of political expression. *See id.* at 194-95.

This conclusion is also supported by two more recent circuit decisions. In *Chandler v. City of Arvada*, the Tenth Circuit held that a city ordinance requiring petition circulators to be residents imposed a severe burden on the speech rights of initiative proponents. 292 F.3d 1236, 1238-39, 1241-42 (10th Cir. 2002). It applied strict scrutiny. The court stated that "[s]trict scrutiny is applicable where the government restricts

the overall quantum of speech available to the election or voting process . . . ." *Id.* at 1241-42 (internal quotation marks and citation omitted). The court specifically ruled that strict scrutiny must be applied when the rights of potential petition circulators are restricted. Quoting from an earlier Tenth Circuit decision, it said that strict scrutiny must be " 'employed where the quantum of speech is limited due to restrictions on . . . the available pool of circulators or other supporters of a candidate or initiative, as in [*Buckley*] and *Meyer*.' " *Id.* (quoting *Campbell v. Buckley*, 203 F.3d 738, 745 (10th Cir. 2000)).

In *Krislov*, the Seventh Circuit held that an in-district residency requirement, which operated as an in-state residency requirement for a candidate for the U.S. Senate, severely burdened candidates' rights to association and ballot access. 226 F.3d at 855-56, 857, 860-62. The court explained,

> What is particularly important in this case [in assessing the severity of the burden] . . . is the number of people the . . . requirements exclude from gathering signatures and thus disseminating the candidates' political message . . . . [The residency requirement] places a substantial burden on the candidates' First Amendment rights by making it more difficult for the candidates to disseminate their political views, to choose the most effective means of conveying their message, to associate in a meaningful way with the prospective solicitors for the purposes of eliciting political change, to gain access to the ballot, and to utilize the endorsement of their candidacies which can be implicit in a solicitor's efforts to gather signatures on the candidates' behalf.

Id. at 860, 862 (citing *Buckley*, 525 U.S. at 193 n. 15).

A brief Eighth Circuit opinion came to the opposite conclusion and upheld a residency requirement for initiative-petition circulators. *See Initiative & Referendum Institute v. Jaeger*,

241 F.3d 614, 617 (8th Cir. 2001). *Krislov* had been decided a few months earlier, but *Jaeger* did not cite it. The Tenth Circuit in *Chandler* did cite *Jaeger* and disagreed with it. *See Chandler*, 292 F.3d at 1244. We do not find *Jaeger* persuasive.

[6] The state contends here that if the standard is strict scrutiny, then the restriction is justified by the state's compelling interest in preventing fraud in the election process. It points to the evidence it presented of past election fraud in Arizona. A state's interest in ensuring the integrity of the election process and preventing fraud is compelling. *See Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam). We therefore agree with Arizona that the state's interest in preventing election fraud is a compelling one. The state, however, bears the burden of proving that a regulation is narrowly tailored. *See ACLU of Nev. v. Heller*, 378 F.3d 979, 997 (9th Cir. 2004).

The state contends that this restriction is narrowly tailored to ensure that circulators are subject to the state's subpoena power, and that the state can locate them within the ten-day period allotted for petition challenges. Plaintiffs argue that requiring circulators to submit to jurisdiction by agreement would achieve the same end and would be more narrowly tailored to further the state's interest in preventing fraud.

[7] Federal courts have generally looked with favor on requiring petition circulators to agree to submit to jurisdiction for purposes of subpoena enforcement, and the courts have viewed such a system to be a more narrowly tailored means than a residency requirement to achieve the same result. *See Chandler*, 292 F.3d at 1242-44 (holding that city residency requirement was "substantially broader than necessary" to ensure the integrity of the petition process in part because the city could instead require circulators to submit to jurisdiction of the city for subpoena enforcement); *Krislov*, 226 F.3d at 866 n.7 (invalidating residency requirement and suggesting agreement to submit to jurisdiction as permissible restriction

to further state's interest in preventing fraud); *Frami*, 255 F. Supp. 2d at 970 (noting that requiring petition circulators to agree to submit to jurisdiction for subpoena enforcement was a "less onerous method[ ]" than a residency requirement for serving the state's interest in ensuring circulators were subject to the state's jurisdiction). *Cf. Kean v. Clark*, 56 F. Supp. 2d 719, 733 (S.D. Miss. 1999) (holding that a residency requirement was narrowly tailored, but without considering any "consent to jurisdiction" alternative).

[8] The state responds that petition circulators could conceivably be spread throughout the country, and that given the narrow timeframe for petition challenges in Arizona, such a "consent to jurisdiction" system would be unworkable. The state does not provide any evidence, however, to support this contention, observing only that professional petition circulators can be "nomadic." Nor did the state ever contend that its history of fraud was related to non-resident circulators, a history that might justify regulating non-residents differently from residents. *See Krislov*, 226 F.3d at 866 n.7 ("[I]f the use of non-citizens were shown to correlate with a high incidence of fraud, a State might have a compelling interest in further regulating noncitizen circulators."); *Frami*, 255 F. Supp. 2d at 970 (holding a residency requirement was not narrowly tailored to serve the state's interest in preventing fraud because defendant had "not even alleged that the state has experienced problems in the past with non-resident petition circulators or that such circulators are more likely to engage in fraud than in-state . . . circulators.").

[9] We conclude that the state did not meet its burden of showing that this residency requirement is narrowly tailored to further the state's compelling interest in preventing fraud. On the basis of the record before us, the requirement cannot be sustained.

B. Filing Deadline

The second provision at issue is the requirement that petitions be filed 90 days before the primary election. Plaintiffs

argue that this deadline imposes a severe burden on their speech, association and voting rights and that the state has not shown that the deadline is narrowly tailored to further a compelling interest.

[10] In *Anderson*, the Supreme Court struck down Ohio's March filing deadline for an independent presidential candidate's nomination petition. 460 U.S. at 806. In evaluating the severity of the burden imposed, the Court observed that the deadline deprived independent candidates of their ability to respond to developments in the course of the campaigns of the major-party candidates. *See id.* at 791-92, 791 n.12. The Court observed that particular independent candidacies, and voter support for those candidacies, sometimes occur as a reaction to the particular nominees of the major parties. *See id.* It also found that collecting 5,000 signatures far in advance of the general election was difficult, since interest levels were low and volunteers were difficult to recruit. *See id.* at 792. The Court concluded that none of the state's asserted interests justified the "extent and nature" of the burden imposed by the March filing deadline. *Id.* at 806.

In this case, the district court concluded that *Anderson* was not controlling. The court reasoned that Arizona's 2004 presidential preference election was held well in advance of the filing deadline, that the major parties' candidates and platforms were well-known, and the level of public interest was high by then. The district court dismissed the significance of the concerns in *Anderson* because they were not present in the 2004 election.

The 2004 election, however, may not have been representative of future elections, where the major party candidates may not be determined so far in advance of the filing deadline. *Anderson* remains binding Supreme Court authority. We conclude that the concerns expressed in *Anderson* may well remain significant, and in any event, we are not free to disregard them.

[11] The historical evidence of ballot access in Arizona further supports this conclusion. *See Libertarian Party*, 31 F.3d at 763 (looking to historical experience to support conclusion that ballot-access scheme did not severely burden minor-party candidates' rights). Since 1993, when Arizona changed its filing deadline from 10 days after the primary election to 75 days before the primary election, no independent presidential candidate has appeared on Arizona's ballot. This experience suggests that the regulations impose a severe burden that has impeded ballot access.

The state tries to maintain that this record supports the early deadline for presidential candidates, because independent candidates for other offices have gained ballot access. Yet candidates for president are national candidates and thus situated differently from candidates for state offices, or even other federal offices in Arizona; presidential candidates in Arizona are required to file more signatures than candidates for local offices. Evidence regarding independent candidacies for other offices is not particularly persuasive and certainly not conclusive in this case.

The state relies upon *Libertarian Party*. There we upheld a Washington statute requiring minor-party candidates to obtain 200 signatures for statewide offices or 25 signatures for other offices by July 4 of the election year. *Libertarian Party*, 31 F.3d at 760-61. The case thus involved a comparatively small number of signatures and a date closer to the major parties' conventions. For those reasons we concluded that only a de minimis burden was imposed. *See id.* at 763. We explained why the restrictions were much less burdensome than those in *Anderson*. *See id.* at 762. We pointed out that collecting such a small number of signatures just four to five weeks before the selection of major-party candidates was not particularly difficult. *See id.* We also deemed it significant that the plaintiffs challenging the regulation had all been able to announce and file on time, and that they could not identify

any candidates who had been denied ballot access because of Washington's procedures. *Id.* at 763.

In *Anderson*, by contrast, where the plaintiff was forced to file petitions in March, five months before the major-party candidates were to be decided, 460 U.S. at 790-91, and had been unable to get his name on the ballot, *id.* at 782-83, the early filing deadline was struck down, *id.* at 806. Nader's predicament is like that of the plaintiff in *Anderson*. Here, the signature requirement is greater and the deadline tighter than in *Libertarian Party*. Unlike the candidates in *Libertarian Party*, independent presidential candidates in Arizona have not been able to get on the ballot. The Sixth Circuit's opinion in *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 590-91 (6th Cir. 2006), contains a good discussion of the various circuit court decisions in cases considering and striking down early filing deadlines in state elections.

[12] For these reasons we must conclude that the Arizona deadline imposes a severe burden on plaintiffs' rights. Because a severe burden is imposed, strict scrutiny applies to the filing deadline as well. *See Anderson*, 460 U.S. at 792, 795, 806.

[13] The state next contends that even under strict scrutiny, the filing deadline is constitutional because it is necessary in order for the state to meet its various deadlines for petition challenges, sample ballots, early voting ballots and overseas military personnel, as well as for the layout and printing of ballots.

[14] When we examine the timeline, however, together with the relatively small impact of the presidential election on the overall length of Arizona's general-election ballots, we cannot say that the state has justified the early filing deadline. The state asserts that Arizona's general election ballots include over 400 different federal, state, and local elected offices and dozens of local ballot measures. The state con-

tends in effect that it can accommodate all the other offices and initiatives, but not the addition of ten electors for the office of President. This does not appear on its face to be an internally consistent position. The state has not explained when and how it learns of the number of other offices and initiatives that must be placed on the general-election ballot. Presumably, the results of the September primary election would have some effect on the length of the general-election ballot as well, but the state has not documented the process in sufficient detail to determine what effect it would or would not have. The state made the conclusory assertion that it must order the ballot paper by early June to ensure availability, but it has not provided documentation or any other evidence supporting this conclusion.

[15] There is thus no satisfactory explanation in the record as to why the state needs the full amount of time between the filing deadline for independent candidates, which in 2004 fell on June 9, and its first statutory deadline of printing a sample ballot 45 days before the general election, which in 2004 fell on September 18, to prepare the ballots for the general election. In light of the state's ability to put together the general-election ballot after the primary in September, and its failure adequately to demonstrate why the petition filing deadline must be so early, the state has on this record failed to show that the deadline is narrowly tailored to further compelling administrative needs.

Conclusion

Election cases are difficult. The historical background for such litigation changes rapidly. The district court was faced with a serious challenge to ballot-access requirements that have proved difficult for courts to evaluate, given both the state's compelling interests in preventing fraud and providing orderly election administration, and the Constitution's mandate for free political expression and participation that require such ballot-access restrictions to survive strict judicial scru-

tiny. Although the district court did not agree with plaintiffs that the requirements constituted serious impediments to the exercise of their constitutional rights, we conclude that the burdens are serious and the restrictions are not sufficiently narrowly tailored to serve the state's compelling interests. The state was given every opportunity to meet the heavy burden that the district court or a higher court might eventually determine that it must shoulder under strict scrutiny. On the basis of the record before us, the state did not do so.

The judgment of the district court is **REVERSED** and **REMANDED** with instructions to enter summary judgment in favor of plaintiffs.