



NIELSEN MERKSAMER
PARRINELLO GROSS & LEONI, LLP



Presentation to
California Citizens Redistricting Commission
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Overview of Presentation

- What does the Commission need from its Voting Rights Counsel?
- How does Nielsen Merksamer fill the bill?
- Public confidence/perception issues
- An approach to redistricting California
- Preview of some special problems facing the Commission
- Cost-effective counsel





What Does The Commission Need From Its Voting Rights Counsel?

- Specialized knowledge of the law (federal Voting Rights Act §§ 2, 5 and 203, and U.S. and California Constitutions)
- Hands-on §5 experience, including making and defending preclearance submissions
- Hands-on experience putting lines on a map
- Mapping capabilities/knowledge of the technology and data
- Experience anticipating and avoiding line-drawing problems, offering creative solutions/options for those problems that cannot be avoided
- Availability/capacity to do the work
- Litigation experience/perspective
- Statewide redistricting/commission/§ 5 experience
- Experience with racially-polarized voting experts and analysis
- Experience working with public entities in open session





Why Does Nielsen Merksamer Fill The Bill?

- Expert in redistricting and voting rights law for 30 years—no map challenged; no § 5 objection
- Represent clients on § 5 matters; hundreds of preclearance submissions
- Have drawn scores of maps
- Maptitude for Redistricting “in-house”
- Been around the block with redistricting; have legally and successfully resolved mapping conflicts
- California firm; Sacramento & Bay Area offices; redistricting “teams”
- Litigated redistricting issues for 30 years in trial and appellate courts; expert in writ / injunction proceedings and unique evidentiary issues
- Legal counsel/consultant on three statewide redistrictings, including to a nonpartisan redistricting commission, in addition to local redistrictings
- Understanding of regression methodologies, legal strengths & weaknesses; experience working with experts
- Numerous public entity clients





Public Confidence/Perception Issues

- Lobbying:
 - Firewall
 - Ms. Leoni's limited lobbying background in school boundary matters
- Existing redistricting representations:
 - No representations regarding California statewide redistricting
 - No conflict with local redistricting
 - No capacity problems
- Relationships with potentially-interested groups not unique to Nielsen Merksamer
- Former partisan representations:
 - Do not represent parties or candidates
 - Do not represent RNC or CRP
- Voting Rights Act defense counsel
 - Vigorous representation of client interests
 - Counsel on the State's major good-government reform measures (Props. 11, 14 and 20)
 - Counseled dozens of public entities on Voting Rights Act compliance
- Teaming with other counsel
 - Team approach in Arizona in 2000





An Approach to Redistricting California (There May Be Others!)

- Review population shifts
- Identify Section 5 counties/benchmarks & implications
- Divide State into manageable redistricting units (*e.g.*, Central Valley, North Coast, etc., based on public testimony)
- Identify Section 2 compliance areas based on demographics and public testimony and put district outlines in place
- Redistrict around VRA compliance areas based on community of interest testimony and other Proposition 11/20 criteria.
- Final refinements based on further public testimony

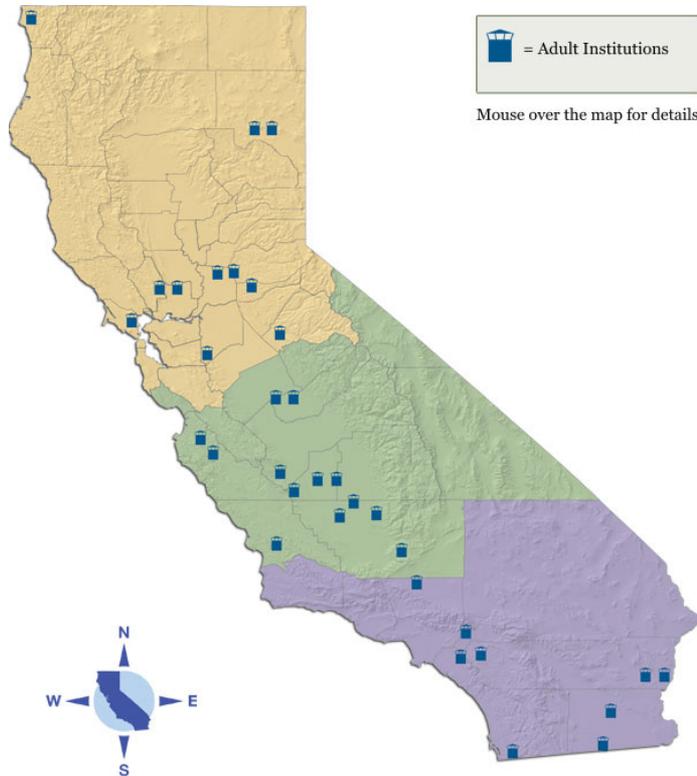




Preview of Some Special Problems Facing Commission

- How to get started: what do Propositions 11 and 20 require?
- Maintaining Section 5 benchmarks
- Amendments to Section 5 standards in VRARA
 - Impact of *LULAC v. Perry*
- Census and other data issues
- Prisoner population
- Shifting proportions of minority population
- Coalition districts
- Competing VRA /other legal concerns
 - *E.g.*, influence districts vs. *Shaw v. Reno* & progeny; impact of *Bartlett*
- Developments in equal population case law (*e.g.*, *Larios v. Cox*)
- Competing Prop. 11 / 20 criteria
- Caution re press reports of partisan information
- Census anomalies





- Total Prison Population (Adult): 165,000 (approx.)
- Impact on Section 5 analysis
- Two Attorney General opinions
- Need to re-evaluate in light of Prop. 11 and 20, Voting Rights Act and constitutional equal protection case law
- Availability of prisoner data
 - Impact of privacy laws
- Other alternatives for addressing prison population
- Potential differences between congressional and state legislative districts





Some Common Pitfalls

- Insufficient minority language assistance
- Insufficient availability of record during process
- Lack of understanding of demographic standards and limitations
- Poor record
- Not eliciting appropriate testimony
- Failure to provide satisfactory justifications for population deviations and/or inconsistent application
- Failure to provide for ability to make post-enactment technical clean-up





Cost-Effective Counsel: Nielsen Merksamer's \$150K Services

- “Crash course” presentation on voting rights law with a California focus at an in-person public meeting
- Work closely with consultants and “in house” to understand California’s new demographics (Census, ACS, Special Tabulation, SWDB) and legal implications
- In-depth presentation on demographics & legal implications at in-person public meeting
- Recommend “cheat sheet” outlining general components of effective public input on voting rights issues
- Stay on top of mapping through communication with consultant & in house Maptitude
- Review Commission transcripts to stay abreast of developments
- Coordinate with General Counsel re maintaining telephone / e-mail availability during all meetings
- Stay on top of indicators of VRA legal concerns, including review of RPV analysis, and advise re: issues / conflicts / solutions / options / litigation exposure
- Keep General Counsel in loop at all times
- Advise staff on developing / monitoring systems to expedite a thorough, persuasive § 5 submission
- Develop and present at in-person public meeting final written report on compliance with VRA





Services At Additional Cost

- Attend more meetings
- Additional written legal memoranda
- Defend against litigation during and after the process
- Full responsibility for preclearance submission after adoption of final plan including responding to USDOJ requests & public Comments during preclearance process
- Coordination with SOS and local ROV's re legal aspects of plan implementation

