

CITIZEN'S REDISTRICTING COMMISSION
GIBSON, DUNN & CRUTCHER LLP
STATEMENT OF QUALIFICATIONS FOR VOTING RIGHTS ACT COUNSEL
March 9, 2011

Dear Commissioners:

Gibson, Dunn & Crutcher LLP ("Gibson Dunn") is pleased to present its qualifications for the role of Voting Rights Act Counsel to the Citizen's Redistricting Commission (the "Commission"). As the attached materials highlight, we are one of the leading law firms in California and the United States, and have extensive experience in representing clients in important public policy matters. We have litigated and advised clients on numerous voting rights matters, including in multiple jurisdictions in California. Our experience in representing clients before the U.S. Supreme Court, the California Supreme Court, and other appellate courts is unparalleled, and we will be able to draw on that experience in assisting you in the variety of legal issues that a redistricting effort will necessarily entail.

We are proposing a team that will be led by George Brown and Dan Kolkey. Dan has extensive experience in redistricting matters, and is the principal draftsman of Proposition 20. Dan also played an important role in the drafting of Proposition 11 and has represented the Governor of California and the Arizona House of Representatives in redistricting, including Federal Voting Rights Act ("FVRA"), litigation. George has been involved extensively in litigating voting rights claims on behalf of minority voters under the California Voting Rights Act ("CVRA") since 2004, and has worked closely with leading advocates for minority voting rights over the past several years. Included in the attached materials are the professional biographical descriptions of our team members.

Scope of Work

We understand that the Commission is charged with drawing boundaries for the 52 U.S. Congressional Districts, 40 California Senate Districts, 80 Assembly Districts, and 4 Board of Equalization Districts. We understand that the Commission is required to and intends to hold public hearings prior to any map drawing and that it will hold public hearings after it has proposed maps. Given the significance of FVRA issues likely to impact the redistricting, we assume that the Commission will want counsel present at many of the public meetings.

In addition to attending meetings, we expect the Commission will want counsel to provide it with legal briefings on the range of issues arising under the FVRA in a redistricting setting. We believe that the following are among the issues that the Commission will want to consider:

- How will the transition from the current district maps to a set of maps drawn pursuant to the criteria required under Propositions 11 and 20 affect minority voting strength?

- Under what circumstances can the Commission create majority-minority districts while complying with the requirements of the United States Constitution concerning the extent to which race can be taken into account in map drawing?
- The overall demographics of California suggest a rapidly growing Latino and Asian population with declining growth among the white population and relatively flat African American population growth. These demographic changes, along with changes in the geographic locations of the various populations, will create questions concerning where and how to establish majority-minority districts.
- When creating or adjusting majority-minority districts to comply with the FVRA, the Commission should consider Citizen Voting Age Population (“CVAP”) as a relevant measure of the relative populations. Our understanding is that the 2010 Census did not collect or report on CVAP. This will mean that the Commission will need to develop a methodology for identifying or estimating CVAP.
- The Commission will need advice concerning the balance between complying with the one-person-one-vote requirement and the establishment of majority-minority districts that focus on eligible voters, as contrasted with the total population.
- The Commission will likely want advice concerning influence districts, including how they are defined and what standards will be used for the creation or maintenance of such districts.

Experience

Our team members have the experience, training, and education to advise the Commission on all of the above matters.

George Brown’s representative matters and experience include:

- *Sanchez v. City of Modesto*: George represented Latino voters and was the co-lead attorney in charge of this case, the first lawsuit filed under the CVRA, which was explicitly modeled on the FVRA. Plaintiffs, Latino voters in the City of Modesto, sued to change the method of election used to select the members of the Modesto City Council from an at-large system to a district-based system. The trial court dismissed the complaint on the grounds that the CVRA was facially unconstitutional under the U.S. Constitution. George and his team appealed this decision, and after establishing the constitutionality of the CVRA, convinced the Fifth Appellate District to reverse the trial court’s holding. After George and his team also defeated Modesto’s attempt to convince the U.S. Supreme Court to grant certiorari, Modesto settled, agreed to change its method of election, and also agreed to pay plaintiffs’ attorney’s fees. This litigation involved extensive work with voting rights experts, including statistical analysis of racially polarized voting. Under the CVRA, the standards for determining racially polarized voting are the same as under the FVRA.

- *Rey v. Madera Unified School District*: George represented Latino voters and was the co-lead attorney in charge of this important CVRA case filed in 2008. Plaintiffs, Latino voters in Madera Unified School District, challenged the at-large method of elections used to select the Governing Board of the Madera Unified School District, and sought a preliminary injunction against the scheduled November 2008 election. Based on the substantial statistical evidence George and his team developed that demonstrated racially polarized voting and minority vote dilution, the trial court granted the motion for preliminary injunction, the first of its kind issued under the CVRA. This case is presently on appeal to the Fifth Appellate District. Once again, litigation of this case involved extensive work with voting rights experts and a thorough understanding of FVRA case law, and racially polarized voting analysis.
- In addition to the matters listed above, George also has worked closely with leading voting rights advocates in numerous California jurisdictions on issues of analyzing statistical voting patterns and racially polarized voting, on behalf of minority voters in California. This work has included extensive analysis of the FVRA case law as well as development of a detailed understanding of the statistical methodologies and interpretation of regression results.
- George has served on the board of directors of the Lawyers' Committee for Civil Rights of the San Francisco Bay Area ("LCCR") since 2004, and currently serves as the board's co-chair. LCCR has a long history of protecting California citizens' voting rights, and during George's time on the board of LCCR he has been regularly involved in voting rights actions in California.

Dan Kolkey's representative matters and experience include:

- Dan was the principal draftsman of Proposition 20.
- Dan also participated in the drafting of Proposition 11 in its early stages.
- Dan drafted Proposition 77, the predecessor to the above-referenced redistricting measures.
- Dan successfully represented the Governor of California in redistricting litigation, which included FVRA issues, before the California Supreme Court. (*Wilson v. Eu*, 1 Cal.4th 707 (1992))
- Dan also successfully represented the Governor of California in FVRA litigation in the U.S. District Court in a companion piece of litigation to the above-referenced representation. (*Members of Cal. Democratic Cong. Delegation v. Eu*, 790 F. Supp. 925 (N.D. Cal. 1992))
- Dan successfully represented the Arizona House of Representatives in a trial and appeal to the U.S. Supreme Court over Arizona's congressional districts, which

included many FVRA issues. (*Arizonans for Fair Representation v. Symington*, 828 F. Supp. 684 (D. Ariz. 1992), *aff'd*, 113 S.Ct. 1573 (1993)).

- Dan is a former associate justice of the California Court of Appeal (1999-2003) and graduated from Harvard Law School magna cum laude and from Stanford University with distinction and departmental honors.

Matthew Kahn's representative matters and experience include:

- *Rey v. Madera Unified School District*: Matthew has worked from 2008 to the present as the principal senior associate on this CVRA case, which involved many issues relating to the FVRA, and in which the first-ever preliminary injunction against a unlawful election was issued under the CVRA. Among other work on this case, Matthew argued the first-ever motion for summary judgment to address which governmental entities involved in school district organization may be liable under the CVRA for unlawful at-large elections.
- Matthew has advised several California civil rights organizations on legal strategies for protecting minority voting rights under the FVRA and CVRA. As part of this work, Matthew has worked closely with voting rights experts to analyze voting patterns in multiple California jurisdictions and design appropriate remedies to address vote dilution.
- Matthew also has substantial experience litigating constitutional issues in appellate and trial courts at both the federal and state levels.
- Matthew is a native of San Francisco, California. He graduated from Stanford Law School with Honors in 2003, after which he clerked for the Honorable Mary L. Cooper, United States District Judge for the District of New Jersey.

Kahn Scolnick's representative matters and experience include:

- *Rey v. Madera Unified School District*: Kahn served as principal appellate advisor to the trial court team on this CVRA case, consulting on matters of appellate procedure and substantive constitutional issues.
- Kahn is currently working with LCCR in evaluating racially polarized voting and related issues in connection with potential voting rights claims on behalf of minority voters. As part of that work, Kahn has been involved in extensive analysis of FVRA case law, including an analysis of constitutional issues associated with various remedies.
- *Sturgeon v. County of Los Angeles*: Kahn represents the Los Angeles Superior Court in this "taxpayer" suit that seeks to invalidate (on California constitutional grounds) supplemental employment benefits provided by counties and courts statewide to approximately 90% of California's trial court judges. The Superior

Court and the County recently obtained a published decision by the California Court of Appeal, affirming summary judgment in their favor.

- Kahn also has experience litigating a wide variety of constitutional issues in state and federal courts, at the trial and appellate levels.
- Kahn graduated magna cum laude from the University of San Diego School of Law in 2003. Kahn served as a law clerk to U.S. Circuit Judge Ferdinand F. Fernandez (9th Circuit Court of Appeals) from 2005 to 2006. Kahn also served as a law clerk to U.S. District Judge Dana M. Sabraw (Southern District of California) from 2003 to 2005.
- Prior to law school, Kahn advised a Michigan State Senator on various policy matters during a successful reelection campaign.

In addition, Gibson Dunn has substantial resources to draw on to answer constitutional law questions and delve deeply into any legal or policy matters that may arise during the course of this engagement.

Fee Arrangements

Our firm normally charges an hourly rate for the time spent by each attorney on an engagement. We recognize that this project is an important public service opportunity, and, for that reason, we are willing to proceed on an alternative, mixed hourly and fixed fee basis. Upon selection by the Commission we will work with you to negotiate an alternative fee arrangement that is acceptable to the Commission. We will then need to have that arrangement approved by our Management Committee.

Conflict of Interest Disclosures

Financial, business, professional, lobbying or other relationships that present a potential conflict as described in California Government Code Section 8252:

- Within the past 10 years, Dan Kolkey has been elected to a state office: he was elected to a term as associate justice, California Court of Appeal, Third District, in 2002.
- Within the past 10 years, Dan Kolkey has been an associate member of the central committee of the California Republican Party.

Litigation adverse to California state entities:

- Gibson Dunn is presently involved in matters adverse to the California Insurance Commissioner.
- Gibson Dunn has represented a client in litigation against the California Secretary of State, which is now over.

- Gibson Dunn has handled, and expects to continue to handle, litigation on behalf of clients where the State of California, represented by the California Attorney General's Office, is an adverse party. However, over the past ten years, Gibson Dunn has also assisted the California Attorney General's Office on a wide range of matters.
- Gibson Dunn has handled, and expects to continue to handle, litigation on behalf of clients where the Governor is an adverse party. However, over the past ten years, Gibson Dunn has also assisted the Governor on a wide range of matters.
- If the Commission would like, we can provide further detail regarding matters in which Gibson Dunn is adverse to California state governmental entities.

Work relating to redistricting or other work during the past 10 years that could present the appearance of a conflict in connection with the representation of the Commission:

- George Brown, Matthew Kahn and Kahn Scolnick have worked on behalf of minority voters over the past several years in connection with litigation involving the CVRA.
- Dan Kolkey previously represented proponents of Proposition 77 in defense of litigation brought to prevent Proposition 77 from appearing on the ballot. That engagement ended more than four years ago.
- Gibson Dunn previously worked on redistricting litigation in Southern California in which the Mexican American Legal Defense and Education Fund was an opposing party. That engagement ended more than five years ago.
- Lawyers in Gibson Dunn's New York office have been involved in voting rights litigation matters, including litigation involving New York City's Local Law 51 (which extended term limits for local elected officials) and the FVRA case *Arbor Hill Concerned Citizens Neighborhood Association v. County of Albany* litigated in the Northern District of New York.

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Presentation to:

Citizens Redistricting Commission

March 2011





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Gibson Dunn – The Firm

Gibson, Dunn & Crutcher LLP is a full-service global law firm, with **over 1,000 lawyers in 17 offices worldwide**, including nine offices in major cities throughout the United States and over 100 lawyers in our London, Paris, Munich, Brussels, Dubai, Hong Kong, Singapore and São Paulo offices. We are recognized for excellent legal service, and our lawyers routinely represent clients in some of the most complex and high-profile transactions in the world. We consistently rank among the top law firms in the world in published league tables.

We have a strong and growing transactional practice in Europe, Latin America, MENA and Asia. Singapore and Dubai are important cornerstones of our international strategy.



We will work tirelessly on the matters you have entrusted to us. We believe in developing strong, long-term client relationships and are well positioned to provide you with a superior service throughout the world.

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Gibson Dunn – The Firm

Recent highlights of the Firm include:

- Gibson Dunn was named the 2010 **Litigation Department of the Year** by *American Lawyer*. In awarding this honor, the magazine dubbed Gibson Dunn's litigators the "Game Changers," adding, "when other firms and conventional strategies come up short, clients in deep trouble turn to Gibson Dunn for fresh, aggressive thinking and innovative rescues."
- *American Lawyer* ranked Gibson Dunn seventh on its 2010 A-List of the nation's law firm elite. The *American Lawyer* considers the 20 A-List law firms to be the most elite law firms in the country. The rankings are determined by financial performance, associate satisfaction, commitment to pro bono and diversity
- Gibson Dunn was named as one of the Global 50 by PLC Which Lawyer? in its 2009 Yearbook. The Global 50 are recognized as the "law firms that received the greatest depth and breadth of recommendations." Gibson Dunn was noted as "a West Coast stalwart with a truly global outlook. ... The firm's continued expansion beyond its established US and European offices, most recently in Dubai and Singapore, is evidence of the firm's global vision for the future. This ambition has helped Gibson Dunn earn its place among the top law firms in the world."
- *Corporate Board Member* magazine ranked Gibson Dunn eighth in its annual GCs' Top 20 Firms survey, where 252 general counsel were asked to name the outside law firms they most admire. In a separate survey, Gibson Dunn ranked 12th in the publication's annual top 20 list of America's Best Corporate Law Firms, based on the votes of 340 directors. The rankings are included in the 2010 second quarter issue of the magazine.
- *Chambers USA: America's Leading Lawyers for Business 2010*, an independent and comprehensive research-based directory, awarded Gibson Dunn 204 rankings, with the firm and its attorneys achieving a total of 51 first-tier rankings, 13 of which were firm practice group rankings.
- The 2010 edition of *IFLR1000*, a guide to the world's leading financial law firms, named Gibson Dunn as a recommended firm in six U.S. categories: Capital Markets - Debt and Equity, Capital Markets - High-Yield Debt, Mergers and Acquisitions, Private Equity - Fund Formation, Private Equity - Transactions, and Restructuring and Insolvency. Seven lawyers were recognized as leading partners: Steven Finley, Kevin Kelley, Stewart McDowell and Douglas Smith in Capital Markets; Dennis Friedman, Kevin Kelley and Jonathan Layne in Mergers and Acquisitions; and Jennifer Bellah Maguire in Private Equity. Gibson Dunn also was recommended for EU competition in Western Europe, and the firm was recommended in three Latin America categories, banking, capital markets and mergers and acquisitions.
- *The Best Lawyers in America 2011* identifies 100 Gibson Dunn lawyers as leading lawyers in 30 practice areas, based on peer review.

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Appellate and Constitutional Law Practice

- Gibson Dunn's clients include most of the Fortune 100 companies and nearly half of the Fortune 500 companies.

Appellate and Constitutional Law Practice

The Appellate and Constitutional Law Practice Group of Gibson, Dunn & Crutcher is one of the nation's leading appellate practices with broad experience in complex appellate litigation at all levels of the state and federal court systems. In recognition of its achievements, Gibson Dunn was named the 2010 Litigation Department of the Year by *American Lawyer*. The publication noted that in case after case, Gibson Dunn litigators were the "Game Changers" who "stepped in when clients needed not just a law firm, but a rescue squad." In giving the award, the publication described Gibson Dunn's appellate practice as one of the firm's greatest assets.

Accolades

- *The National Law Journal* ranked Gibson Dunn as one of the top appellate practices nationally in its annual Appellate Hot List. Gibson Dunn was recognized for its "impressive track record." The Appellate Hot List recognized 20 law firms with significant appellate victories since January 2009 before the U.S. Supreme Court and lower appellate courts.
- *The American Lawyer* ranked Gibson Dunn seventh on its 2010 A-List. *The American Lawyer* considers the 20 A-List law firms to be the most elite law firms in the country. The rankings are determined by financial performance, associate satisfaction, commitment to pro bono and diversity.

U.S. Supreme Court Litigation

Gibson Dunn has a strong and high-profile presence before the Supreme Court of the United States, appearing numerous times in the past decade in a variety of cases on behalf of the nation's leading corporations, U.S. states, presidential candidates, and others. Gibson Dunn has had more than 100 Supreme Court arguments among the firm's active lawyers. The firm's recent track record speaks for itself. In the 2007 Term, Gibson Dunn was 3-0 in cases

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it argued. In the 2008 Term, Gibson Dunn argued six cases and won three of five. The final case, *Citizens United v. Federal Election Commission* was set for reargument. In January, Gibson Dunn obtained a victory in that case, as well. The Court issued a landmark decision holding that portions of the McCain-Feingold campaign finance law and other federal laws banning corporate and union expenditures on political speech violate the First Amendment. Thus, over the past three years, Gibson Dunn has won 10 of 12 cases. Gibson Dunn's seven oral arguments in the 2008 Term were more than any other law firm. Moreover, while the grant rate for certiorari petitions is below 1%, Gibson Dunn's certiorari petitions have captured the Court's attention: Gibson Dunn has persuaded the Court to grant its certiorari petitions more than 30% of the time in the last five years.

Four of our partners have served in the Office of the Solicitor General of the United States, the office charged with representing the United States before the Supreme Court. Theodore B. Olson was the U.S. Solicitor General from 2001 to 2004. Olson rejoined the Firm in July 2004 as a partner in our Washington, D.C. office. *New York Times* columnist William Safire called Mr. Olson "this generation's most persuasive advocate" (*New York Times*, November 8, 2004) and "the most effective constitutional lawyer in the nation" (*New York Times*, March 24, 2004). In addition, Thomas G. Hungar recently returned to the Firm after serving as Deputy Solicitor General since 2003. Mr. Olson and Mr. Hungar serve as co-chairs of the Appellate and Constitutional Law Practice Group, along with Miguel A. Estrada in Washington, D.C., Theodore J. Boutros, Jr., in Los Angeles, and Daniel M. Kolkey in San Francisco.

Some of our recent representations in the U.S. Supreme Court include:

- Obtaining a landmark 5-4 decision holding that portions of the McCain-Feingold campaign finance law and other federal laws banning corporate and union expenditures on political speech violate the First Amendment.
- Obtaining a landmark ruling that the Constitution's Due Process Clause requires a state judge to recuse himself where a litigant's financial support for the judge's election campaign creates a probability that the judge is biased.
- Obtaining a significant Supreme Court ruling for the Governor of Rhode Island that preserves Rhode Island's ability to exercise sovereignty over land that the U.S. Department of the Interior sought to take into trust on behalf of an Indian tribe.
- Winning a unanimous Supreme Court victory on behalf of the New York State Board of Elections in which the Court upheld the constitutionality of the New York State judicial elections process.
- Winning a unanimous Supreme Court ruling in 2006 on behalf of a major automaker, in which the Court rejected a challenge by Ohio taxpayers to a state tax credit that rewards companies that locate plants within the state. The Court held that the state taxpayers

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lacked Article III standing to challenge the investment tax credit under the Constitution's Dormant Commerce Clause.

- Successfully serving as lead counsel for candidate George W. Bush in federal court litigation stemming from the disputed ballot counting in Florida during the 2000 presidential election. In less than three weeks, a team of Gibson Dunn appellate lawyers led by Mr. Olson successfully briefed and argued two cases before the Supreme Court, *Bush v. Palm Beach County Canvassing Board* and *Bush v. Gore*, both of which raised novel and complex issues of federal constitutional and statutory law.
- Obtaining a Supreme Court victory in 2005 on behalf of the State of Kansas in which the Court reversed a decision of the Tenth Circuit that placed significant constraints on states' taxation powers. The Court ruled that the State of Kansas could impose a motor fuel tax on distributors that later resell their fuel to an Indian tribe that operates a gas station and casino on its Kansas reservation.

Appellate and Constitutional Law Nationwide

Our lawyers have participated in appeals in all 13 federal courts of appeals and state appellate courts throughout the country in matters involving a wide array of constitutional, statutory, regulatory, and common law issues. Gibson Dunn has a truly national practice before state appellate courts. We have significant experience not only in the courts of the U.S. jurisdictions in which the firm maintains offices (California, New York, Washington, D.C., Texas and Colorado), but in jurisdictions across the country.

Some of our significant appellate and constitutional law representations include:

- Successfully representing Comcast in a landmark case where the U.S. Court of Appeals for the D.C. Circuit abolished Federal Communications Commission limits on cable market share. In 2001, the D.C. Circuit threw out on First Amendment grounds an FCC rule that barred cable operators from controlling more than 30 percent of the nationwide market, but, in 2007, the FCC re-established the 30 percent rule. Comcast argued that the FCC's calculations were based on pre-2001 data that ignored satellite television's increasing market share, and the court agreed.
- Persuading the California Court of Appeal to vacate a \$30 million jury verdict against a law firm where a former client alleged that the firm had committed malpractice by missing a statute of limitations.
- Successfully litigating a major separation-of-powers appeal in which the U.S. Court of Appeals for the D.C. Circuit upheld the constitutionality of a section of the Safe, Accountable, Flexible, Efficient Transportation Equity Act.
- Obtaining a precedent-setting decision regarding the Americans with Disabilities Act from the *en banc* U.S. Court of Appeals for the Ninth Circuit. The *en banc* panel

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overruled an earlier Ninth Circuit decision that had placed a higher burden on employers seeking to use safety-based qualification standards than intended by Congress.

- Obtaining a significant *pro bono* victory in March 2007 before the *en banc* U.S. Court of Appeals for the Federal Circuit on behalf of a disabled veteran concerning equitable tolling under the Uniformed Services Employment and Reemployment Rights Act.
- Convincing the U.S. Court of Appeals for the Federal Circuit in June 2005 to uphold the dismissal of two patent infringement claims against our client, a university-affiliated medical company.
- Persuading the California Supreme Court in June 2006 that the City and County of San Francisco could not sue our major financial-services client for violating the California False Claims Act, because cities and other public entities do not qualify as “persons” under the False Claims Act.
- Convincing the California Supreme Court in June 2005 to reject the “aggregate profit disgorgement approach” to punitive damages, and thereby hold that a \$10 million punitive award against a major automaker was excessive and unconstitutional in a “Lemon Law” case.
- Persuading the Arkansas Supreme Court in April 2007 to recognize that corporate officers and directors have a fiduciary duty to disclose their own wrongdoing against the company before entering into lucrative retirement agreements with the company.

Legal and Strategic Counseling

In addition to our traditional appellate litigation activities, the Appellate and Constitutional Law Practice Group provides strategic counseling and advice regarding constitutional and other issues arising outside the appellate context. We brief and argue constitutional and other complex legal issues in trial courts and assist in ensuring that legal arguments are developed and preserved for appeal. We also develop and advance constitutional and policy arguments concerning proposed legislation and regulations. For example, we have been leading national advocates of civil justice reform, testifying before Congress and state legislatures and writing and speaking out about costly, capricious and unpredictable aspects of America’s civil justice system.

Members of our Practice Group develop and manage complex litigation involving constitutional issues. For example, in the U.S. Supreme Court, we secured a groundbreaking decision that portions of the McCain-Feingold campaign finance law violated the First Amendment. We obtained another landmark victory when the Court held that the Due Process Clause requires a state judge to recuse himself where a litigant’s financial support for the judge’s election campaign creates a probability that the judge is biased. In addition, Gibson Dunn currently represents the plaintiffs in *Perry v. Schwarzenegger*, the first federal case to consider whether gay men and lesbians are guaranteed the freedom to marry under

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the U.S. Constitution. After a three-week trial, a federal district court in San Francisco held that California's Proposition 8 is unconstitutional under both the Due Process and Equal Protection Clauses because it fails to advance any rational basis in singling out gay men and lesbians for denial of a marriage license. The case is currently on appeal to the Ninth Circuit.

We assist clients in developing novel or complex legal theories, sometimes long before suit is filed. For example, we often are asked to advise clients as to whether a constitutional challenge can be mounted against governmental statutes or whether regulations stand as an obstacle to a proposed transaction or business plan. Working closely with the Firm's Public Policy Practice Group, we also analyze proposed legislation and regulations from both legal and policy perspectives, testify before Congress and state legislatures, and engage in other forms of legislative and public policy advocacy.

We also provide strategic counseling to government entities on a wide array of legal issues, allowing them to anticipate legal challenges and to avoid needless litigation. We have served as advisors to several governors in California and Florida and served as Governor Arnold Schwarzenegger's lead negotiator for tribal-state compacts under the Indian Gaming Regulatory Act.

Shaping the Litigation Environment

We are known for being aggressive, creative appellate lawyers and constitutional law experts. Not only do we try to win each case, but we also seek to address the root causes of our clients' legal difficulties and, if possible, improve the legal, social and policy environments in which our clients' rights will be decided.

When a client confronts a recurring or otherwise significant issue on appeal, it very often is not enough simply to win the case at hand. Some issues are so important, and implicate so many different legal, social and policy concerns, that they deserve special attention. We specialize in assisting clients in developing and implementing a comprehensive approach to such problems, and ensuring, to the greatest extent possible and appropriate, that our clients' positions are fully and properly understood by the public, the media and all relevant decision makers.

Professional Profiles

Daniel M. Kolkey



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Daniel M. Kolkey is a partner in the San Francisco office of Gibson, Dunn & Crutcher. A member of the Litigation Department, he is co-chair of the Appellate and Constitutional Law Practice Group and vice-chair of the Crisis Management Practice Group. Mr. Kolkey returned to the firm in November 2003 after five years as an Associate Justice on the California Court of Appeal, Third Appellate District, in Sacramento.

Recognized in 2005 and 2007 by *California Lawyer* magazine as an Attorney of the Year in the fields of Government/Public Policy and Appellate law, respectively, and ranked in the first tier for California Appellate Litigation by Chambers USA in 2010, Mr. Kolkey's practice focuses on appellate litigation. He has also advised four different governors on legal issues, and served as Governor Pete Wilson's and Governor Arnold Schwarzenegger's lead negotiator for tribal-state compacts under the Indian Gaming Regulatory Act. He was named in 2004, 2005, and 2006 by the *Daily Journal* as one of the top 100 attorneys in California. And in May 2010, he was appointed by the California Chief Justice to the California Judicial Council's Appellate Advisory Committee for a three-year term.

Prior to being appointed as an Associate Justice on the California Court of Appeal, Mr. Kolkey served as Legal Affairs Secretary and counsel to Governor Pete Wilson for four years. As such, he was responsible for all of the legal advice within the Governor's Office;

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approving all state agency appeals; supervising and directing litigation strategy with respect to lawsuits brought against the Governor in his official capacity; drafting the Governor's civil justice reform legislation; and negotiating tribal-state compacts under the Indian Gaming Regulatory Act.

Before serving Governor Wilson, Mr. Kolkey was a partner at Gibson Dunn, where he handled litigation at both the trial and appellate levels, including commercial disputes, political law litigation, and international arbitration.

As a litigator (before and after his government service from 1995 to 2003), Mr. Kolkey has handled class and shareholder actions; construction, real estate, employment, and contract disputes; unfair competition litigation; and political law litigation, including ballot litigation, Voting Rights Act claims, and redistricting matters.

Representative Matters

Successful appeal of a national drugstore chain's equal protection challenge to a municipal ordinance in the California Court of Appeal (*Walgreen Co. v. City and County of San Francisco*, ___ Cal.App.4th ___ (2010))

Successful reversal of a multimillion dollar legal malpractice judgment against a client. (*Blanks v Seyfarth Shaw LLP*, 171 Cal.App.4th 336 (2009))

Successful defense of a claim under the California False Claims Act in the California Supreme Court. (*Harris v. PricewaterhouseCoopers*, 39 Cal.4th 1220 (2006))

Successful defense of Proposition 77 in the California Supreme Court. (*Costa v. Superior Court*, 37 Cal.4th 986 (2006))

Successful representation of business interests over the validity of a referendum petition. (*Zarembeg v. Superior Court*, 115 Cal.App.4th 111 (2004))

Successful representation of a corporation in a proxy dispute before the federal district court and Ninth Circuit. (*Acosta v. Pacific Enterprises*, 950 F.2d 682 (9th Cir. 1993))

Successful representation of a government contractor in a bankruptcy dispute before the bankruptcy court, federal district court, and Ninth Circuit. (*Softwaire Centre International, Inc.*, 994 F.2d 682 (9th Cir. 1993))

Successful representation of the Governor of California in the redistricting litigation before the California Supreme Court. (*Wilson v. Eu*, 1 Cal.4th 707 (1992))

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Successful representation of the Arizona House of Representatives in the trial over Arizona's congressional districts. (*Arizonans for Fair Representation v. Symington*, 828 F.Supp. 684 (D. Ariz. 1992), affirmed, 113 S.Ct. 1573 (1993))

Successful representation of the Governor of California against a challenge to a ballot initiative. (*League of Women Voters v. Eu*, 7 Cal.App 4th 649 (1992))

He has also maintained an international arbitration practice that has included matters under the English Arbitration Acts and before the International Chamber of Commerce, the American Arbitration Association, and the Iran-United States Claim Tribunal.

As a judge, Mr. Kolkey's representative decisions include *FNB Mortgage Corp. v. Pacific General Group*, 76 Cal.App.4th 1116 (1999) (tolling of statute of limitations); *Bank of America v. Jennett*, 77 Cal.App.4th 104 (1999) (Full Faith and Credit Clause); *Marin Healthcare District v. Sutter Health*, 103 Cal.App.4th 861 (2002) (application of statute of limitations to public use property); *Intel Corp. v. Hamidi*, 94 Cal.App.4th 325 (2001) (dissenting opinion regarding e-mail trespass that became the majority decision in the California Supreme Court); and *Pacific State Bank v. Greene*, 110 Cal.App.4th 375 (2003) (parole evidence rule).

Appointments

Appointed by the California Chief Justice to the California Judicial Council's Appellate Advisory Committee (2010 – present).

Elected to membership in the American Law Institute (2003 – present).

Appointed to the California State-Federal Judicial Council, 2001-2003.

Appointed by the California Judicial Council to the Blue Ribbon Commission on Jury System Improvement, 1996.

Appointed by the Governor to the California Law Revision Commission, 1992-94, and elected chair of the Commission, 1994.

Appointed by the U.S. Trade Representative as an arbitrator on the bi-national panel for the U.S.-Canada Free Trade Agreement, 1990-94.

Educational History

Mr. Kolkey received his J.D., *magna cum laude*, from Harvard Law School in 1977 and his B.A., with distinction and departmental honors, from Stanford University in 1974.

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Affiliations

Mr. Kolkey is co-editor of *The Practitioner's Handbook on International Arbitration and Mediation* (Juris Publishing) and was an adjunct professor teaching international arbitration at McGeorge Law School from 2001-2004.

He is admitted to practice in all California state and federal courts, the United States Court of Appeals for the Ninth Circuit, the United States District Court for the District of Arizona, and the United States Supreme Court.

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George H. Brown is a partner in the Palo Alto office of Gibson, Dunn & Crutcher and a member of the Litigation Department. Mr. Brown practices in the areas of complex securities litigation, accountants' liability and corporate governance. He has represented officers, directors, board committees and the professionals who serve those corporate constituencies in class action securities litigation, internal company investigations, regulatory and grand jury investigations, derivative actions, arbitration proceedings, and related matters. He regularly represents accounting firms in a wide variety of disputes proceedings and regulatory settings.

Prior to joining the firm, Mr. Brown practiced with Heller Ehrman and O'Melveny & Myers. He was also previously a law professor at UCLA School of Law, where he taught contracts, business associations, and securities regulation courses. He is a licensed Certified Public Accountant (inactive).

He currently serves as Co-Chair of the Board of Directors for the Lawyers Committee for Civil Rights in San Francisco and has been a member of the board since 2005.

He received a joint JD/MBA in 1988 from UCLA, where he served as editor-in-chief of the National Black Law Journal.

Securities and Corporate Governance Representation:

- Representing Big 4 accounting firm in multi-billion dollar shareholder class action

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involving Fannie Mae.

- Represented commercial mortgage investment REITs in investor class action concerning appraisal rights in San Diego County Superior Court.
- Represented commercial mortgage investment REITs in group actions by investors concerning challenges to merger transactions in state court proceedings in Las Vegas, Nevada.
- Represented Audit Committee and Special Litigation Committee of a Silicon Valley technology company in an internal investigation of stock option practices, and related matters.
- Represented CEO of a Silicon Valley technology company in connection with internal investigation and SEC investigation relating to past stock option practices.
- Represented Chief Financial Officer of a Silicon Valley technology company in connection with Special Committee investigation into stock option practices and related shareholder derivative actions in U.S. District Court, Northern District of California, and in Santa Clara County Superior Court.
- Represented Big 4 accounting firm in a multi-billion dollar claim relating to shareholder class actions with New Jersey based consumer marketing company.
- Represented interim CEO of a mobile media and entertainment provider who was appointed by venture capital investors to replace founders in connection with lawsuit by founders involving dispute over voting rights agreement and related corporate governance issues.
- Represented Providian Financial Corporation in a shareholder class action alleging failure to disclose numerous alleged fraudulent consumer practices in connection with subprime credit card lending.
- Represented Symantec Corporation in connection with shareholder class action alleging revenue recognition fraud.
- Represented Big 4 accounting firm in securities fraud class action, related derivative lawsuits, opt-out cases, and SEC investigations arising out of alleged revenue recognition fraud committed by Silicon Valley technology company.
- Represented Ireland affiliate of Big 4 accounting firm in connection with shareholder class action arising after a 2002 merger with SkillSoft Corporation.
- Represented Ireland affiliate of Big 4 accounting firm in connection with SEC investigation arising out of announced restatement of financial statements based on incorrect software revenue recognition by SmartForce Plc.

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- Represented accounting firm in connection with shareholder class action based on alleged revenue recognition fraud. Successfully forced plaintiffs to voluntarily dismiss all claims with prejudice after prevailing on motion to compel responses to subpoenas directed to plaintiffs' counsel's law firms concerning evidence to support statute of limitations inquiry notice argument.

Matthew S. Kahn



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Matthew S. Kahn is a senior associate in the San Francisco office of Gibson, Dunn & Crutcher LLP. He practices in the firm's Litigation Department, and he is a member of the Securities Litigation Group, the Class Action and Complex Litigation Group, and the Electronic Discovery and Information Law Group.

Mr. Kahn's practice focuses on securities and derivative litigation, consumer and wage-and-hour class action defense, and information law. He has successfully represented clients throughout the country in complex cases in federal and state court, involving claims, among others, under Section 10(b) of the Securities Exchange Act of 1934; breach of fiduciary duties and insider trading under Delaware, California and New York law; California's Unfair Competition Law and Consumer Legal Remedies Act; and the federal Fair Labor Standards Act. Mr. Kahn also has significant experience in the prosecution and defense of commercial contracts and business tort actions. In addition, Mr. Kahn has extensive expertise regarding complex information law matters in numerous federal and state jurisdictions.

Mr. Kahn clerked for the Honorable Mary L. Cooper, United States District Judge for the District of New Jersey, from 2003 to 2004. Mr. Kahn received his law degree, with honors, from Stanford Law School in 2003. He received his B.A. in political science with honors, from Swarthmore College in 1999, where he was elected to Phi Beta Kappa.

Mr. Kahn serves on Gibson Dunn's Bay Area Pro Bono Committee and is on the Board of Directors of the Public Interest and Social Justice Law Board at Santa Clara University School of Law, which supports public interest and social justice legal work, and also Parallel Exit, a not-for-profit theater company. Mr. Kahn is an active provider of *pro bono* legal services, including representation of Tipping Point Community. In 2009, Mr. Kahn won an appeal against the German government on behalf of a Holocaust survivor who had been denied pension benefits. In 2008, Mr. Kahn was honored for his pro bono efforts on behalf

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of victims of domestic violence when he was given the Above and Beyond Award by Sanctuary for Families, the largest nonprofit in New York State dedicated exclusively to serving domestic violence victims and their children.

Mr. Kahn is admitted to practice in the states of California and New York. He is a member of the Association of Business Trial Lawyers.

Kahn A. Scolnick



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Kahn A. Scolnick is an appellate and general commercial litigation associate in the Los Angeles office of Gibson, Dunn & Crutcher. He is a member of the firm's Appellate and Constitutional Law and Class Actions practice groups. Before joining the firm in 2006, he served as a law clerk to Judge Ferdinand F. Fernandez of the U.S. Court of Appeals for the Ninth Circuit (2005–06), and as a law clerk to Judge Dana M. Sabraw of the U.S. District Court for the Southern District of California (2003–05).

Mr. Scolnick has substantial experience litigating a wide range of matters in state and federal courts, at both the trial and appellate levels. Recent matters in which Mr. Scolnick played a significant role include: obtaining 24 (out of 24) defense verdicts in a nuisance action following an eight-week jury trial; achieving a complete defense verdict after a lengthy bench trial in a nation-wide class action; attaining the reversal on appeal of a \$135 million class judgment in an Unfair Competition Law action; securing dismissal with prejudice of a putative wage-and-hour class action in federal court; defeating certification of a putative nation-wide consumer class action; obtaining a published decision by the U.S. Court of Appeals for the Third Circuit reversing a substantial award of attorney's fees; prevailing on summary judgment on behalf of a major retailer in a suit brought by a former officer; persuading the California Court of Appeal to issue a published decision striking down a state statute on constitutional grounds; and winning a motion to strike a prayer for punitive damages in a class action weeks before trial was scheduled to begin. In addition, Mr. Scolnick has drafted numerous petitions and briefs filed in the California Courts of Appeal, the California Supreme Court, the U.S. Courts of Appeals, and the U.S. Supreme Court.

Mr. Scolnick graduated *magna cum laude* in 2003 from the University of San Diego School of Law. He was a Lead Articles Editor for the *San Diego Law Review* and the recipient of the Hickman Award for the Outstanding Student in Constitutional Law. While in law school, Mr. Scolnick served as a judicial extern to Judge M. Margaret McKeown of the U.S. Court of Appeals for the Ninth Circuit, and also to Magistrate Judge Louisa S. Porter of the U.S. District Court for the Southern District of California. Mr. Scolnick received his bachelor of arts degree in Public Policy Studies, with honors, from Michigan State University in 2000.

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Mr. Scolnick has published on a variety of topics, including class actions, punitive damages, and the Federal Rules of Civil Procedure. In 2009 and 2010, *Super Lawyers* magazine selected Mr. Scolnick for inclusion in its “Rising Stars” edition for Southern California, a recognition bestowed upon a select group of young lawyers based on an extensive peer-nomination and polling process. Since 2007, Mr. Scolnick has served on the Associates Advisory Board for the Legal Aid Foundation of Los Angeles.

Mr. Scolnick is a member of the California Bar. He is admitted to practice before the U.S. Court of Appeals for the Ninth Circuit and the U.S. District Courts for the Northern, Southern, and Central Districts of California.

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