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March 10, 2011

Via Email & Hand-Delivery

Kirk E. Miller, Esq.
Chief Counsel
Citizens Redistricting Commission
1130 K Street, Suite 101
Sacramento, California 95814

**Re: Statement of Qualifications in Response to Request for
Information (RFI) for Legal Services: Voting Rights Act
Counsel to the Citizens Redistricting Commission**

Dear Mr. Miller:

We are pleased to respond to the RFI and hope that you will find our qualifications well-suited to the needs of the Citizens Redistricting Commission. The firm would also welcome the opportunity to work with another lawyer or firm to perform the legal services described in the RFI.

This Statement of qualifications follows the Submission Format set forth in section VI of the RFI.

1. RFI Section VI(1): Personnel.

(a) Identify of attorneys who would be assigned to the work, and resumes.

(i) Marguerite Mary Leoni. I am a partner of the firm specializing in legal counseling and civil litigation relating to voting rights and redistricting, school district reorganizations, government, election, and initiative/referendum law. My practice includes both trial and appellate practice. I have substantial expertise and experience in administrative preclearance practice in the United States Department of Justice under Section 5 of the Federal Voting Rights Act. I have also been a guest speaker at numerous fora concerning voting rights and election issues and have published several articles on these topics. I have represented numerous state agencies, municipalities, counties, school districts and other special districts on districting, redistricting and electoral matters. I have assisted in all phases of such cases including design of plans, the public hearing process, analysis of proposed plan alternatives, enactment procedures, referenda, districting and redistricting, preparing and advocating preclearance submissions to the U. S. Department of Justice when required, and defending federal and state court litigation concerning the legality of electoral systems under the federal

constitution and Voting Rights Act and California Voting Rights Act. I represented the Administrative Office of the Courts on federal Voting Rights Act issues and electoral questions pertaining to trial court unification in California. I also represented the Florida Senate in designing that state's Senate and Congressional districts, Voting Rights Act preclearance, and in defending against ensuing state and federal court challenges. I also provided legal counsel on the consultant team of Arizona's Independent Redistricting Commission for the redistricting of state legislative and congressional seats.

I graduated from the University of California, Berkeley, where I earned both Bachelor of Arts and Master of Arts degrees. In 1981, I received my law degree from the University of California, Hastings College of the Law. I was on the editorial staff of the Hastings Law Journal to which I was selected for academic achievement.

(ii) **James R. Parrinello.** Mr. Parrinello has represented clients in redistricting and voting rights matters including litigation since 1980. He has argued cases successfully before the United States and California Supreme Courts and courts of appeal. He is an expert on voting rights and reapportionment, the legality of governmental regulations, and state and local initiatives. A representative list of reported cases Jim has argued include *Citizens Against Rent Control v. Berkeley*, 454 U.S. 290 (1981) (successfully argued that ordinance limiting contributions to ballot measure campaigns violates the First Amendment); *Wilson v. Eu*, 1 Cal. 4th 707 (1992) (represented California State Board of Equalization in the 1990s redistricting before the Special Masters appointed by the California Supreme Court, and in a lawsuit establishing unique criteria for redistricting of state taxing authority); *Assembly v. Deukmejian*, 30 Cal. 3d 638 (1982) (successfully defended legality of referendum petitions against redistricting plan); *Pala Band of Mission Indians v. Board of Supervisors*, 54 Cal. App. 4th 565 (1997) (successfully defended legality of San Diego County initiative establishing zoning and general plan amendments); *San Francisco Forty-Niners v. Nishioka*, 75 Cal. App. 4th 637 (1999), *rev. denied*, 2000 Cal. LEXIS 49 (Cal. Jan. 13, 2000) (successful pre-election challenge to initiative petition which established important legal precedent under the First Amendment).

Jim is a graduate of the University of San Francisco and the University of San Francisco School of Law where he was the class valedictorian. He is a member of the Litigation and Government Litigation Sections of the American Bar Association. He was a guest panelist at the 2000 redistricting conference sponsored by the Institute of Governmental Studies at the University of California, Berkeley. Jim was an appointee to the California Commission on Ballot Initiatives, and has served on the faculty of the Hastings College of Trial and Appellate Advocacy.

(iii) **Christopher E. Skinnell.** Chris Skinnell is an associate in the firm's litigation section, where he specializes in law and civil litigation relating to elections, state and local initiative and referendum law, redistricting and voting rights matters,

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campaign finance compliance and litigation, lobbying compliance and government ethics, and general constitutional and government law litigation.

Chris has extensive experience with voting rights matters, from the legal, academic and technical perspectives. In addition to advising clients on the process and legal requirements of drawing district lines, working on various voting rights lawsuits at the trial and appellate levels, and preparing numerous successful preclearance submissions to the U.S. Department of Justice under Section 5 of the Voting Rights Act, he has published and lectured on voting rights and redistricting.

Prior to law school, Chris worked as the lead researcher and demographic consultant on numerous redistricting and voting rights projects at the Rose Institute of State and Local Government, and also served as the technical/GIS consultant on several municipal redistricting projects. He is proficient in the use of Maptitude for Redistricting.

Chris graduated *magna cum laude* from Claremont McKenna College in 1999, where he earned the George S. Blair Award for State & Local Government. He received his law degree from the University of Chicago Law School, where he served as the Editor-in-Chief of the *University of Chicago Legal Forum*, and where he also published a student comment on the federal Voting Rights Act and edited volumes on cutting edge issues in equal protection law and class action litigation.

Resumes for Jim, Chris, and me are attached as Exhibit 1.

(b) *Extent to which each professional will be involved in performing work.*

I would be the lead attorney on this matter and involved in 100 percent of the work, the point person for client communications, and would have ultimate direction and oversight responsibility for the firm's work product.

Jim Parrinello, head of our litigation section, would likely not be involved in the day-to-day legal representation of the Commission. However, he would be consulted on legal and factual questions that could lead to litigation. He may attend Commission meetings from time to time if the Commission requests our presence and I cannot attend.

I work closely with Chris Skinnell on redistricting and voting rights matters. Chris would also be involved in the day-to-day legal work, including research, demographic and voting analysis, and drafting of documents. He may attend Commission meetings from time to time if the Commission requests our presence and I cannot attend.

2. RFI Section VI(2): Attorney/ Firm General Description

(a) General description.

i. Redistricting/Voting Rights

Nielsen Merksamer's voting rights and redistricting experience includes advising governmental entities on compliance with the complex and ever-changing state and federal legal requirements in drawing and redrawing electoral district boundaries, including the federal Voting Rights Act. We are experienced in all the normal and customary duties of redistricting counsel including, (1) working closely with public agencies and their demographic and other consultants to address competing interests, develop a process for successful redistricting, and develop solutions to seemingly conflicting political demands and legal criteria; (2) reviewing maps and advising on applicable federal and state law as the new redistricting plan develops; (3) presenting at public and closed session meetings and providing counsel concerning associated Brown Act and Public Records Act issues; (4) preparing documentation required to enact and implement a redistricting plan and conduct elections thereunder; (5) retaining necessary experts and services; and (6) litigation concerning all aspects of voting rights law, redistricting and elections law. We have experience reviewing proposed redistricting plans; we understand the intricacies of the Census data and how it factors into the legal criteria for redistricting. No redistricting plan adopted by a public entity while represented by this firm has ever been successfully challenged in court.

Our legal team for redistricting also has substantial experience and expertise with the technological aspects of redistricting and is proficient in the use of Maptitude for Redistricting software. We have the capability—unusual for a law firm, in our experience—to receive plans electronically, and to analyze them in-house in detail and to experiment with alternatives to ensure all possible legal challenges have been identified. We can then provide legal opinions tied to the facts of a plan, including providing concrete options for considerations to address identified legal issues or reduce the likelihood of successful legal challenge.

In addition, we are one of the very few firms in California with experience in preclearance practice under Section 5 of the federal Voting Rights Act. We have made scores of preclearance submissions to the United States Attorney General for a variety of voting changes including redistrictings. No submission made by this firm on a client's behalf has ever drawn an objection from the United States Attorney General, except for one made on behalf of a California jurisdiction that had been out of section 5 compliance for decades. That objection was resolved when the jurisdiction changed its electoral system from at-large elections to elections in districts. We submitted the new system for preclearance. It was precleared along with the historical items of non-compliance.

Nielsen Merksamer is also thoroughly familiar with the intent and requirements of the Voters First Act that established the CRC, and the Voters First Act for Congress that brought congressional redistricting under the jurisdiction of the Commission. We were campaign legal counsel for both Proposition 11 and 20 and were intimately involved in the Section 5 preclearance process for both of the measures.

ii. Election Law.

Election law is also one of Nielsen Merksamer's leading specialties, and we are widely regarded as one of the premier election law firms in the State of California. We advise public entities, corporations, major campaign donors, trade associations and labor unions and their political action committees (PACs) with respect to the legal and technical requirements of the California Elections Code, the Federal Election Campaign Act, California's complex Political Reform Act, the campaign, lobbying and ethics laws of the 50 states, and campaign, lobbying and ethics laws on the local level. Over the past 35 years, we have been legal counsel for either the opponents or proponents of most major California statewide initiatives or referenda, along with scores of local ballot measures, advising on all aspects of campaigning, from initiative drafting and filing, to litigation, to contesting the final vote. A summary of representative campaigns on which the firm has worked since 1979 is available on the firm's website at www.nmgovlaw.com/firm_ballot.htm.

As a general matter, we do not represent partisan candidates or elected officials or their campaign committees with regard to election law and political compliance matters. On occasion, we have represented candidates in enforcement matters before the California Fair Political Practices Commission.

(b) Approach to handling elections or redistricting matters.

We do not have a single approach to handling redistricting matters. Each case presents its unique legal, political, and practical issues. Our overall goal in redistricting matters is to provide expert legal and frank practical advice that provides the client with clarity on the law, and with flexibility and options for resolving competing redistricting goals and demands as fully as possible within the requirements of the law.

We can make the following generalizations about our approach:

For all redistrictings, of course, compliance with legal standards of equality of vote and representation is first and foremost. With other than congressional redistricting, some variance from exactly equal populations of districts may be permissible. Our approach is to advise our client to set a goal for exact equality. If the jurisdiction has policies or goals that conflict with exact equality, then our role as legal counsel is to advise about the legitimacy of the goal and its non-discriminatory application, and hence the defensibility of any resulting population deviation.

For clients subject to Section 5 of the Voting Rights Act, early on we carefully analyze the affected districts to identify the benchmark for compliance with Section 5 standards to ensure those standards are met and that the final plan will not draw an objection from the United States Attorney General in the preclearance process. This is not always a straight-forward analysis. For example, benchmark demographics may violate other legal requirements, such as equal population.

We also have deep expertise in the requirements of Section 2 of the federal Voting Rights Act. At an early stage of the process, in conjunction with demographic analysis, we generally attempt to identify and highlight geographical areas that may pose compliance concerns. Community of Interest testimony and the consideration of the traditional redistricting criteria, are part of this assessment in order to comply with the teachings of *Shaw v. Reno*, 509 U.S. 630 (1993), and *Miller v. Johnson*, 515 U.S. 900 (1995). We also understand the statistical methodology for identifying politically cohesive racial groups or combinations of groups and racially polarized voting, and if the case warrants, we are able to retain the necessary experts to analyze pertinent voting patterns.

Fundamental to every redistricting is community concerns including municipal and other governmental boundaries as they promote or hinder effective representation. We urge our clients to solicit robust testimony and develop a complete record on communities of interest, and the boundaries that define the community, taking into consideration jurisdictional boundaries and notions of compactness. There will be conflicting interests and it will be the redistricter's task to balance competing community interests in the final design of the plan. The quality of the testimony and record will be fundamental to the success and defensibility of the final plan. We advise our client to fully explain its redistricting choices on the record and with reference to the public input and adopted redistricting criteria.

During the actual mapping process, we generally review in detail each alternative redistricting plan developed by the jurisdiction's demographic consultant, if necessary, using our in-house mapping capabilities (Maptitude), and assess the map's compliance with required legal standards. Our ability to perform a full demographic investigation in-house and test alternatives sharpens our ability to provide legal advice on draft redistricting plans.

3. RFI Section VI(3) & V: Experience.

The following is a sampling of our past representations which are directly relevant to the services contemplated under the RFI. This summary does not include our current 2011-12 redistricting clients. (See Exhibit 2 for current redistricting clients.)

SELECTED NON LITIGATION MATTERS

1. State of Arizona Independent Redistricting Commission: Legal representation on consultant team to Arizona's Independent Redistricting Commission concerning all aspects of the first ever citizen-commission redistricting of the state's congressional and legislative districts from the initial explanation of the nuts and bolts of the law and process to ordinary citizens who formed the commission, developing a public process to be followed, assisting in the preparation of the initial grid and subsequent mapping, assisting at numerous public hearings, appearing at public meetings, ongoing legal support for constitutional and voting rights act questions and legal clearances, including United States Attorney General preclearance under Section 5 of the federal Voting Rights Act. (Responsible Attorney(s): Marguerite Leoni)

2. Senate of the State of Florida: Representation of the State Senate concerning all aspects of the state's Congressional and state Senatorial redistricting including meetings with legislators, plan development, legal support for public hearings on the redistricting proposals, assisting the legislators to mesh their political concerns with the requirements of law, United States Attorney General preclearance under the federal Voting Rights Act; special litigation counsel in state and federal courts defending against constitutional and Voting Rights Act challenges to the final plans. (Responsible Attorney(s): Marguerite Leoni)

3. California Administrative Office of the Courts: Represented the AOC in obtaining United States Attorney General preclearance under the Federal Voting Rights Act for the unification of California's trial courts. The firm also obtained preclearance of statewide constitutional and statutory amendments (Proposition 220, Proposition 191, S.B. 2139) and the Rules of Court enabling trial court unification. Also, obtained United States Attorney General preclearance of the unification of the superior and municipal courts of Monterey and Kings counties. (Responsible Attorney(s): Marguerite Leoni)

4. Merced County, California: Representation of the County concerning all aspects of the 2001 redistricting of the County's supervisorial districts including legal advice, hands-on plan development, attendance and presentations at public meetings and hearings during the course of the redistricting process, and United States Attorney General preclearance under Section 5 of the federal Voting Rights Act. We provide ongoing advice to the County regarding voting rights and preclearance matters under Section 5. Currently representing the County with regard to its 2011 redistricting. (Responsible Attorney(s): Marguerite Leoni & Chris Skinnell)

5. Tulare County, California: Provided legal advice to the County pertaining to the 2001 redistricting of the Board of Supervisor districts, including redistricting plan development and working with the demographic consultant as legal support to adjust draft plan boundaries in open sessions of the Board of Supervisors. (Responsible Attorney(s): Marguerite Leoni)

6. Monterey County, California: Represented the County with regard to United States Attorney General preclearance of its 2001 supervisorial redistricting under the federal Voting Rights Act. (Responsible Attorney(s): Marguerite Leoni)

7. Tulare County Office of Education: Provided legal advice to the County Office of Education pertaining to the 2001 redistricting of the Board of Education electoral districts including redistricting plan development and public presentations. (Responsible Attorney(s): Marguerite Leoni & Chris Skinnell)

8. Monterey County Office of Education: Legal representation of the county committee on school district organization in its consideration and adoption of a proposal to move from at large elections to trustee area elections for Monterey Peninsula Community College District, and the in design of a trustee area plan. Obtained preclearance under the federal Voting Rights Act of the adopted change. (Responsible Attorney(s): Marguerite Leoni & Chris Skinnell)

9. Santa Clara Valley Water District: Represented the district in implementing a redistricting plan for use in 2010 elections, including an extensive public process. (Responsible Attorney(s): Marguerite Leoni & Chris Skinnell)

10. Alta Irrigation District. Represented the irrigation district in the 1990s advocating for special legislation permitting the district to expand the number of directors on its board, adjusting the electoral division boundaries to account for the new expanded board and comply with law, and obtaining preclearance of the new electoral plan from the United States Attorney General. Represented the district again in 2001 and currently to adjust its director division boundaries to reflect the new Census data. (Responsible Attorney(s): Marguerite Leoni)

11. Fresno Irrigation District: Represented this large irrigation district with regard to revising and updating its electoral system in compliance with federal and state laws concerning redistricting and voting rights, including redistricting plan development and implementation.

12. Consolidated Irrigation District: Represented CID in conducting its 2001 redistricting; sought and obtained preclearance of new redistricting plan and dozens of historical annexations from the United States Department of Justice. (Responsible Attorney(s): Marguerite Leoni & Chris Skinnell)

13. City of Modesto: Following litigation under the California Voting Rights Act, which the City lost on appeal (this firm did not represent the city in the litigation), retained to advise the City regarding issues concerning its redistricting Commission and plans, and compliance with federal voting rights law and the process for moving to by-district councilmanic elections. (Responsible Attorney(s): Marguerite Leoni)

14. City of Vista: Represented the City in an investigation and threatened litigation by the United States Department of Justice concerning a possible violation of Section 2 of the federal Voting Rights Act. By taking a multifaceted approach to the defense, including instituting a parallel investigation that demonstrated that the legal standards under Section 2 could not be met, the Department of Justice was convinced to terminate its investigation. (Responsible Attorney(s): Marguerite Leoni)

15. City of Hanford: The firm represented the City with regard to Voting Rights Act compliance under Section 5 and institution of its councilmanic system of elections in the 1990s, and then with its 2001 redistricting and United States Attorney General preclearance under section 5 of the federal Voting Rights Act. (Responsible Attorney(s): Marguerite Leoni)

16. State Center Community College District: Represented the district under threat of litigation in all aspects of the legal process for changing its electoral system and establishing single-member "by trustee area" elections for the 2010 board elections. (Responsible Attorney(s): Marguerite Leoni & Chris Skinnell)

17. Merced College and College of the Sequoias: The firm represented these College districts with regard to 2001 redistricting and United States Attorney General preclearance under section 5 of the federal Voting Rights Act. (Responsible Attorney(s): Marguerite Leoni)

18. Fresno Unified School District: Represented the school district under threat of litigation in all aspects of the legal process for changing its electoral system and establishing single-member "by trustee area" elections for the 2010 board elections, and continuing representation in connection with re-drawing trustee area boundaries following the release of the 2010 Census. (Responsible Attorney(s): Chris Skinnell & Marguerite Leoni)

19. Madera Unified School District: Represented the school district that had been sued under the California Voting Rights Act to develop plans for electoral area-based board elections, and the legal process for moving to by-trustee area elections. (Responsible Attorney(s): Marguerite Leoni & Chris Skinnell)

20. West Fresno Elementary School District: Represented the school district under threat of litigation in all aspects of the legal process for changing its electoral system and establishing single-member "by trustee area" elections for the 2010 board elections, and continuing representation in connection with re-drawing trustee area boundaries following the release of the 2010 Census. (Responsible Attorney(s): Chris Skinnell & Marguerite Leoni)

21. San Diego Unified School District: Legal representation concerning the post-2000 Census redistricting of the school district's trustee area boundaries,

redistricting plan development, and legal advice concerning the California Voting Rights Act. (Responsible Attorney(s): Marguerite Leoni & Chris Skinnell)

SELECTED REDISTRICTING & VOTING RIGHTS LITIGATION

Our firm has extensive experience litigating redistricting and voting rights matters. That experience too sharpens the legal advice we can provide to our redistricting clients. The following is a partial list of litigation cases:

1. *Avitia v. Tulare Local Healthcare District*, Case No. 07-224773 (Tulare Co. Superior Court filed Aug. 10, 2007). We represented the individual board members of the Tulare Local Healthcare District in its defense against a suit brought under the California Voting Rights Act, alleging that the presence of racially-polarized voting made the District's at-large electoral system illegal. The case was settled on the eve of trial, with the District agreeing to draw a districting plan for submission to the voters in 2012. (Responsible Attorney(s): Marguerite Leoni & Chris Skinnell)
2. *Lopez v. Merced County*, 473 F. Supp. 2d 1072 (E.D. Cal. 2007) (three-judge court); *Lopez v. Merced County*, 2007 U.S. Dist. LEXIS 44426 (E.D. Cal. June 8, 2007) (three-judge court), and *Lopez v. Merced County*, 2008 U.S. Dist. LEXIS 3941 (E.D. Cal. Jan. 16, 2008) (three-judge court). We represented the County of Merced in successfully defending an action alleging violations of Section 5 of the federal Voting Rights Act based on the purported failure to preclear dozens of boundary changes to cities and special districts within the County. (Responsible Attorney(s): Marguerite Leoni & Chris Skinnell)
3. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399 (2006). We represented the American Legislative Exchange Council and Free Enterprise Coalition as *amicus curiae* in urging the denial of plaintiffs' claim that mid-decade redistricting violates the U.S. Constitution. The Court agreed with our position. (Responsible Attorney(s): Marguerite Leoni & Chris Skinnell)
4. *Gomez v. Hanford Joint Union High School Dist.*, Case No. 04C0294 (Kings County Super. Ct. 2004). We represented the Hanford Joint Union High School District & Kings County Board of Education in California Voting Rights Act litigation. Settlement resulted in dismissal of the case, leaving authority in school district to institute area elections without court supervision. (Responsible Attorney(s): Marguerite Leoni & Chris Skinnell)
5. *Hernandez v. Merced County*, Case No. 03-CV-06147-OWW-DLB (E.D. Cal. filed Aug., 25, 2003) & *Gallegos v. State of California*, Case No. 03-CV-06157-OWW-DLB (E.D. Cal. filed Aug. 25, 2003). We represented the County of Merced in defending against a lawsuit seeking to enjoin the conduct of the

2003 gubernatorial recall election and related statewide ballot measures under Section 5 of the federal Voting Rights Act. The complaint incorrectly alleged that the County had made voting changes, without seeking preclearance. Preclearance was granted shortly after the filing of the complaint, and the case was dismissed with prejudice as moot. (Responsible Attorney(s): Marguerite Leoni & Chris Skinnell)

6. *United States v. Upper San Gabriel Valley Muni. Water Dist.*, Case No. 00-CV-07903-AHM-BQRx (C.D. Cal. filed 7/21/2000). We represented the water district in a lawsuit under Section 2 of the Voting Rights Act to enjoin elections and compel interdecennial redistricting. We defeated a motion for a preliminary injunction. Subsequently the lawsuit was dismissed with prejudice. We then assisted the Water District in adjusting its director divisions for subsequent elections. (Responsible Attorney(s): Marguerite Leoni).
7. *Lopez v. Monterey County*, 525 U.S. 266 (1999). We represented the Monterey County municipal court in an enforcement action under Section 5 of the Voting Rights Act; represented the Court in obtaining preclearance of the consolidation of the municipal and justice courts. Preclearance terminated the litigation. (Responsible Attorney(s): Marguerite Leoni)
8. *Yrigollen v. City of Hanford*, Case No. 93-cv-05303-OWW-SMS (E.D. Cal. 1993). The firm defended the City of Hanford in a lawsuit under section 5 of the Voting Rights Act seeking to compel preclearance submission of historical voting changes, shorten the terms in office of all city council members, force court-ordered districting, and require special elections immediately. The firm represented the city before the United States Attorney General in obtaining preclearance of these changes. In connection with the preclearance, the firm assisted the city in establishing a district electoral system and obtaining preclearance for the new system. Following resolution of the preclearance issues, the firm represented the city in opposing a demand by plaintiffs for very high attorney's fees and negotiated a favorable settlement for the city. (Responsible Attorney(s): Marguerite Leoni & Jim Parrinello)
9. *Wilson v. Eu*, 1 Cal. 4th 707 (1992). We represented real party in interest California's nonpartisan State Board of Equalization in suit to have state Supreme Court craft statewide districting plans when Governor vetoed legislatively-approved plans. (Responsible Attorney(s): Jim Parrinello & Marguerite Leoni)
10. *Reyes v. Dinuba Elementary School District*, Case No. 91-cv-00170-REC (E.D. Cal. filed 4/5/1991), *Elizondo v. Dinuba Joint Union High School District*, Case No. 91-cv-00171 (E.D. Cal. filed 4/5/1991), *Espino v. Cutler-*

Orosi Unified School District, Case No. 91-cv-00169-REC (E.D. Cal. filed 4/5/1991). The firm represented the school districts against claims that the at-large electoral systems violated section 2 of the Voting Rights Act. The firm also represented the school districts in establishing district election systems and in resolving the plaintiffs' demand for attorney's fees. (Responsible Attorney(s): Marguerite Leoni & Jim Parrinello)

11. *Davis v. Bandemer*, 478 U.S. 109 (1986). We represented amicus urging affirmance of the Court of Appeals decision on partisan gerrymandering. (Responsible Attorney(s): Jim Parrinello & Marguerite Leoni)
12. *Assembly v. Deukmejian*, 30 Cal.3d 638 (1982). Represented real parties in interest who were proponents of referendums against the 1980s redistricting statutes enacted by the California Legislature and were successful in defeating a challenge to the legality of the referendums.
13. *Badham v. March Fong Eu*, 694 F. Supp. 664 (N.D. Cal. 1988). We represented plaintiffs in action challenging statewide redistricting in California. (Responsible Attorney(s): Jim Parrinello & Marguerite Leoni)

4. **RFI Section VI(4): Conflict of Interest.**

We are aware of no ethical conflict of interest under the California Rules of Professional Conduct for attorneys.

Under Government Code section 8252, we disclose that Nielsen Merksamer is a lobbying firm. A complete listing of the clients for which we lobby can be found at <http://cal-access.ss.ca.gov>. Mr. Parrinello and Mr. Skinnell are not registered lobbyists, and have never been registered. I have been registered within the last ten years primarily in connection with the representation of clients in school district boundary matters before the California Board of Education, and, very occasionally, the Legislature. I was last registered to lobby in 2008. As noted above, however, Nielsen Merksamer does not represent candidates for partisan office, except occasionally in enforcement proceedings before the California Fair Political Practices Commission. We would certainly be amenable to completely isolating any attorney in our firm who is registered as a lobbyist from our work for the Commission.

Mr. Parrinello, Mr. Skinnell, and I have not contributed two thousand dollars (\$2,000) or more to any congressional, state, or local candidate for elective public office in any year. Nielsen Merksamer as a firm does not make political donations.

Nielsen Merksamer currently has three active litigations in which the firm's client is adverse to a state agency. The first is *Artichoke Joe's v. California Bureau of*

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Gambling Control, The Department of Justice, and the State of California, San Francisco Superior Court Case No. CGC-11-508774, which concerns a licensing matter.

Second, we represent the California Chamber of Commerce and Larry Dicke in *Tomra Pacific, Inc. v. Chiang*, California Court of Appeal, 1st Dist., Case No. 8129407, concerning the Legislature's diversion of funds from the beverage container recycling fund.

Third, we represent the California Redevelopment Association in *California Redevelopment Association v. Matosantos*, California Court of Appeal, 3rd Dist., Case No. C064907. The case concerns the diversion of redevelopment fees by the Legislature. The firm also represents the CRA in opposing aspects of Governor Jerry Brown's budget proposal that would eliminate local redevelopment agencies and redistribute their funds.

In litigation concerning ballot measures, we often represent clients who have an adverse position to the California Attorney General, Secretary of State or Legislative Analyst. No such litigation is currently pending.

Matters and clients that could present the appearance of a conflict of interest include the following:

Nielsen Merksamer has in the past represented the California Republican Party. The firm does not currently represent the CRP or any interest group funded by or working on behalf of the CRP, and has not represented the CRP within the last 10 years. The Republican National Committee has also in the past been a client of the firm. The firm has not worked for the RNC since 2003. The only matters on which the firm has represented the RNC in the past 10 years involved routine compliance with the Political Reform Act. In *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399 (2006), Nielsen Merksamer represented the American Legislative Exchange Council, an organization of primarily conservative members of state legislatures, and the Free Enterprise Coalition, a conservative organization, as *amicus curiae* in urging the denial of plaintiffs' claim that mid-decade redistricting of the State of Texas violates the U.S. Constitution as a partisan gerrymander. The firm no longer represents either of these entities.

In voting rights litigation, the firm has nearly always represented a public entity and has been vigorous in defense of our client's interests. The firm has also been called upon to advise about the requirements of the Act and assist jurisdictions in applying them. No redistricting plan for a public entity for which the firm has been counsel has ever been successfully challenged in court. No redistricting plan for a California public entity subject to Section 5 of the Voting Rights Act for which the firm has been counsel has drawn an objection from the United States Attorney General, nor has any such plan

ever been withdrawn from preclearance consideration and revised because of concern that it would draw an objection.

The firm is currently representing a number of public entities seeking the United States Attorney General's consent to the entity "bailing-out" from the coverage of Section 5 of the federal Voting Rights Act. Bailout is a procedure set forth in Section 4 of the Act, 42 U.S.C. § 1973b. It permits a jurisdiction to exit from coverage of Section 5 by judicial decree if it can show that for the previous 10 years it has not used any forbidden voting test, has not been subject to any valid objection under section 5, and has not been found liable for other voting rights violations; it must also show that it has "engaged in constructive efforts to eliminate intimidation and harassment" of voters, and similar measures. §§1973b(a)(1)(A)–(F). The Attorney General can consent to entry of judgment in favor of bail out if the evidence warrants it. The ability of a covered jurisdiction to bailout has been held by the United States Supreme Court to be foundational to the constitutionality of Section 5. *NAMUDNO v. Holder*, 129 S. Ct. 2504 (2009).

Lastly, we represent a number of California counties that may advocate positions before the Commission. None of these Counties has retained us for that purpose.

5. RFI Section VIII – Fee Arrangements.

The RFI specifies the following services to be performed by Voting Rights Act Legal Counsel: review of documents, including proposed district maps, review and preparation of legal memoranda related to applicable legal issues, advice to the Commission, Commission staff, and consultants, and attendance from time to time at Commission meetings throughout the state. The legal services specified do not contemplate advice and assistance concerning a preclearance submission for the Commission's final plans.

The RFI further states that it is "the Commission's preference to contract for legal services—exclusive of litigation and attendance at public meetings—on a fixed fee rather than an hourly basis, assuming the assignment will continue through August 15, 2011." The firm would be willing to contract in this manner. The following would be a proposed structure for such a contract:

1. Representation of the Commission pursuant to the contract is not contemplated to be "full-time"; counsel would anticipate a time commitment on average of approximately 60 hours per month working on Commission assignments. If after the first two months of contract performance, the time commitment requested by the Commission is significantly more than this estimate, the monthly fee reflected below would be adjusted.
2. The fixed fee would be \$30,000.00 per month payable in advance on the first day of each month, with a prorata amount paid upon retention of the firm

through March 31, and from August 1 through August 15, or the date of completion of the maps. Actual out of pocket expenses would be separately billed and not charged against the monthly fee.

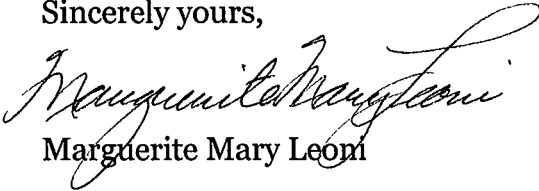
3. Commission staff would provide to counsel a complete set of documents with back-up, which the Commission wishes counsel to review.
4. Commission staff would provide to counsel a complete set of maps and data in hard copy and electronic file to be imported into Maptitude for any proposed maps on which the Commission seeks counsel's legal review. Staff would also provide to counsel specific citation to the date of testimony which counsel should take into consideration in its review.
5. Commission staff would provide to counsel full background on any issue on which the Commission or staff wishes counsel's legal advice.
6. Except when counsel is in attendance at a meeting, the Commission would communicate with counsel only through its general counsel, Mr. Kirk Miller.
7. Attendance at meetings would be separately billed at normal hourly rates. Depending on the location, travel and attendance at an all-day (8hr) meeting would cost in the range of \$5,000 - \$7,500.00.

This fixed fee would not include racially polarized voting analysis or legal analysis of same, which would be billed at the normally hourly rates in addition to expert fees.

* * * * *

Please let me know if we can provide additional information.

Sincerely yours,



Marguerite Mary Leon

MML:klh

EXHIBIT 1

LEGAL EXPERIENCE

NIELSEN MERKSAMER PARRINELLO GROSS & LEONI. *San Rafael, Calif.* Sept. 1981-present
Partner. Member of litigation practice group of a firm specializing in government and election law. Areas of specialization include: law and civil litigation relating to redistricting and voting rights, elections, state and local initiative/referendum law, and general constitutional and governmental litigation.

EDUCATION

HASTINGS COLLEGE OF THE LAW, UNIVERSITY OF CALIFORNIA.
San Francisco, Calif.

J.D., June 1981

- Selected Activities & Honors: *The Hastings Law Journal, Associate Managing Editor, (1980 – 1981).*

UNIVERSITY OF CALIFORNIA. *Berkeley, Calif.*

M.A., 1974

UNIVERSITY OF CALIFORNIA. *Berkeley, Calif.*
Major: Italian.

B.A., 1972

SELECTED PUBLICATIONS/PRESENTATIONS

- Leoni & Skinnell, Presentation, *The California Voting Rights Act: Developing Jurisprudence*, CALIFORNIA SCHOOL BOARDS ASSOCIATION: ANNUAL 2009 EDUCATION CONFERENCE & TRADE SHOW (December 4, 2009).
- Leoni & Skinnell, Presentation, *The California Voting Rights Act: Developing Jurisprudence*, LEAGUE OF CALIFORNIA CITIES: 2009 CITY CLERKS NEW LAW & LEADERSHIP CONFERENCE (December 3, 2009).
- Leoni, Presentation, *Trends in Redistricting for 2011*, CALIFORNIA POLITICAL ATTORNEYS ASSOCIATION (Sept. 12, 2009).
- Leoni, Presentation, *Redistricting Law 2011*, ROSE INSTITUTE: REDISTRICTING, THE 2000 CENSUS, AND YOUR BUDGET (October 15, 2009).
- Leoni & Skinnell, *The California Voting Rights Act*, (CAL. STATE BAR) PUB. L. J. 15 (Spring 2009).
- Leoni & Skinnell, *School Districts and the California Voting Rights Act*, CAL. SCH. MAGAZINE 9 (Spring 2009).
- Leoni & Skinnell, *Voting Rights: Claims, Redistricting & More* (NAT'L BUS. INST. 2008) (online seminar).
- Leoni & Skinnell, *Congress Considers Renewal of Two Key Sections of the Federal Voting Rights Act: California Elections Could See Dramatic Impacts*, CA COUNTY MAGAZINE 41 (Mar/Apr 2006).
- Leoni & Skinnell, *The California Voting Rights Act*, CITY ATTORNEYS ANNUAL CONFERENCE PAPERS 295 (League of Cal. Cities Sept. 2003).
- Leoni, Presentation, *Line Drawing, Minorities and the Law*, ROSE INSTITUTE: TIME TO DRAW THE LINE (March 23, 2001).
- Leoni, 1990s *Redistricting Under Section 2 of the Voting Rights Act: Beyond Thornburg v. Gingles*, (CAL. STATE BAR) Public Law News (Fall 1990)
- (In progress) Leoni, topic "A comparison of present and proposed state voting rights acts with the federal counterpart, the Voting Rights Act of 1965, as amended VRAR of 2006," chapter in AMERICA VOTES! A GUIDE TO MODERN ELECTION LAW AND VOTING RIGHTS (ABA 2d. ed. 2012)

SELECTED AFFILIATIONS

- Admitted to Practice: State Bar of California (SBN 101696); United States Supreme Court; 9th Circuit; No., East. & Cent. Districts of California.
- Member, California Political Attorneys Association.

JAMES R. PARRINELLO

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2350 Kerner Blvd., Suite 250
San Rafael, California 94901
(415) 389-6800
jparrinello@nmgovlaw.com

Mr. Parrinello is a founding partner, head of the firm's litigation section and a member of the firm's Management Committee.

For more than 25 years, Mr. Parrinello has represented clients in regulatory, constitutional and government law and complex litigation and arbitration matters. He has tried cases in state and federal courts and argued many cases before the United States and California Supreme Courts and Courts of Appeal. Mr. Parrinello is an expert on the constitutionality of governmental regulations; legality of state and local initiatives and referenda; voting rights and property rights. Representative cases include Citizens Against Rent Control v. Berkeley, 454 U.S. 290 (1981) [successfully argued that ordinance limiting contributions to ballot measure campaigns violates the First Amendment]; Wilson v. Eu, 1 Cal.4th 707 (1992) [Represented the State Board of Equalization in establishing redistricting criteria for state tax agency]; Chemical Specialties Manufacturers Association v. Deukmejian, 227 Cal.App.3d 663 (1991) [successfully argued Proposition 105, the so-called Public's Right to Know Act, violated the California Constitution]; Pala Band of Mission Indians v. Board of Supervisors, 54 Cal.App.4th 565 (1997) [successfully defended legality of San Diego County initiative establishing zoning and general plan amendments for sanitary waste facility]; San Francisco 49ers v. Nishioka, 75 Cal.App.4th 637 (1999) [successfully invalidated initiative for false representations to prospective signers]; Citizens to Save California v. California Fair Political Practices Commission, 145 Cal.App.4th 736 (2006) [invalidated FPPC regulation restricting contributions to candidate controlled ballot measure committees]; County of Amador v. Ione Band of Miwok Indians, 149 Cal.App.4th 1089 (2007) [invalidated Tribal-City Municipal Services Agreement which violated CEQA].

Mr. Parrinello has served as a Gubernatorial appointee to the California Commission on Ballot Initiatives, and on the faculty of the Hastings Law School College of Trial and Appellate Advocacy.

Mr. Parrinello is a graduate of the University of San Francisco and the University of San Francisco School of Law where he was the class valedictorian. He is a member of the Litigation and Government Litigation Sections of the American Bar Association, and is admitted to practice before the United States Supreme Court, the United States Court of Appeals for the Ninth Circuit, all Federal District Courts in California, and all California State Courts.

LEGAL & POLITICAL EXPERIENCE

NIELSEN MERKSAMER PARRINELLO GROSS & LEONI LLP. *San Rafael, Calif.* Sept. 2003-present
Associate. Member of litigation and political law practice groups of a firm specializing in government, political and election law. Areas of focus include: law and civil litigation relating to redistricting and voting rights, elections, state and local initiative/referendum law, campaign finance compliance and litigation, lobbying and government ethics compliance, and general constitutional and governmental litigation. (Also 2002 Summer Associate.)

COOPER & KIRK, PLLC. *Washington, District of Columbia.* Summer 2001
Summer Associate. Prepared legal memoranda on voting rights, government contracts, intellectual property, and eminent domain/takings for a law firm specializing in government litigation.

NATIONAL DEMOGRAPHICS CORPORATION. *Claremont, California.* 1998-2000
Political/Demographic Consultant. Performed politically-sensitive tasks, including: demographics consultant to local redistrictings; advising local candidates & ballot measure sponsors; creating advocacy mailers for campaigns.

ROSE INSTITUTE OF STATE & LOCAL GOVERNMENT. *Claremont, California.* 1995-2000
Research Associate. Published policy studies for a nationally-renowned research institute on: representation & voting rights (especially redistricting); legislative reform; and political demography. Supervised GIS department.

EDUCATION

UNIVERSITY OF CHICAGO LAW SCHOOL. *Chicago, Illinois.* J.D., June 2003
 • Selected Activities & Honors: *The University of Chicago Legal Forum* (Editor-in-Chief, 2002-03); Research Asst. for Professors Garrett & Hamburger; Federalist Society; Edmund Burke Society (Winter '02 Chairman).

CLAREMONT MCKENNA COLLEGE. *Claremont, California.* B.A., *magna cum laude*, May 1999
 Dual Major: Government & Legal Studies.
 • Selected Activities & Honors: *Phi Beta Kappa*; Washington, D.C. Program (Fall 1997); Government Dept. Award for Most Outstanding Student in Major, Class of '99; George S. Blair Award for State & Local Gov't (1999).

SELECTED PUBLICATIONS/PRESENTATIONS

- Skinnell, Presentation, *Redistricting Essentials: 2011 Redistricting & Local/Special Districts*, LOS ANGELES COUNTY REGISTRAR-RECORDER/COUNTY CLERK (January 20, 2011).
- Skinnell, Presentation, *Redistricting Law 2011: The same . . . but different*, NAT'L CONFERENCE OF STATE LEGISLATURES: FALL FORUM (December 11, 2009).
- Leoni & Skinnell, Presentation, *The California Voting Rights Act: Developing Jurisprudence*, CALIFORNIA SCHOOL BOARDS ASSOCIATION: ANNUAL 2009 EDUCATION CONFERENCE & TRADE SHOW (December 4, 2009).
- Leoni & Skinnell, Presentation, *The California Voting Rights Act: Developing Jurisprudence*, LEAGUE OF CALIFORNIA CITIES: 2009 CITY CLERKS NEW LAW & LEADERSHIP CONFERENCE (December 3, 2009).
- Skinnell, Presentation, *The California Voting Rights Act: Developing Jurisprudence*, ROSE INSTITUTE: REDISTRICTING, THE 2000 CENSUS, AND YOUR BUDGET (October 15, 2009).
- Leoni & Skinnell, *The California Voting Rights Act*, (CAL. STATE BAR) PUB. L. J. 15 (Spring 2009).
- Leoni & Skinnell, *School Districts and the California Voting Rights Act*, CAL. SCH. MAGAZINE 9 (Spring 2009).
- Leoni & Skinnell, VOTING RIGHTS: CLAIMS, REDISTRICTING & MORE (Nat'l Bus. Inst. 2008) (online seminar).
- Leoni & Skinnell, *Congress Considers Renewal of Two Key Sections of the Federal Voting Rights Act: California Elections Could See Dramatic Impacts*, CA COUNTY MAGAZINE 41 (Mar/Apr 2006).
- Nielsen, Kaune & Skinnell, *Overview of Federal Campaign Finance Rules*, in CORP. POL. ACTIVITIES: COMPLYING WITH CAMPAIGN FIN., LOBBYING & ETHICS LAWS (Gross, Nielsen & Baran eds., 2005 & 2006).
- Leoni & Skinnell, *The California Voting Rights Act*, CITY ATTORNEYS ANNUAL CONFERENCE PAPERS 295 (League of Cal. Cities Sept. 2003).
- Skinnell, Comment, *Why Courts Should Forbid 'Minority Coalition' Plaintiffs under Section 2 of the Voting Rights Act Absent Clear Congressional Authorization*, 2002 UNIVERSITY OF CHICAGO LEGAL FORUM 363.
- Skinnell, Presentation, *Gerrymandering: How To and How Not To*, ROSE INSTITUTE: TIME TO DRAW THE LINE: REDISTRICTING IN 2001 (March 23, 2001).
- Skinnell, Dominguez & Haskins, *THE POLITICAL CONSEQUENCES OF REDISTRICTING: THREE SCENARIOS IN 2001* (Rose Institute 2000).

SELECTED SKILLS, AFFILIATIONS & ACTIVITIES

- Admitted to Practice: State Bar of California (SBN 227093); 9th Circuit; All California Federal District Courts.
- Member, California Political Attorneys Association.
- Proficient with Maptitude GIS for Redistricting and ArcView GIS.

EXHIBIT 2

EXHIBIT 2

**NIELSEN MERKSAMER PARRINELLO GROSS & LEONI
2011-12 REDISTRICTING CLIENTS AS OF MARCH 10, 2011***

Alpaugh Unified School District
Alta Irrigation District
Arvin Union School District
Bakersfield City School District
Buena Vista Elementary School District
Burton Elementary School District
Caruthers Unified School District
City of Elk Grove
City of Modesto
City of Stockton
Consolidated Irrigation District
Firebaugh-Las Deltas Unified School District
Fowler Unified School District
Fresno County Office of Education
Fresno Irrigation District
Fresno Unified School District
Fruitvale School District
Greenfield Union School District (Kern County)
Kern Union High School District
Kings River Elementary School District
Liberty Elementary School District
Lindsay Unified School District
McFarland Unified School District
Merced County
Monson-Sultana Joint Elementary School District
Monterey County

Monterey County Bd of Education
Palo Verde Elementary School District
Panama-Buena Vista Union School District
Pleasant View Elementary School District
Porterville Unified School District
Rockford Elementary School District
Rosedale Union School District
San Diego Board of Education
San Diego County
Santa Clara Valley Water District
State Center Community College District
Strathmore Union Elementary School District
Sundale Union Elementary School District
Sunnyside Union Elementary School District
Terra Bella Elem School District
Traver Joint Elementary School District
Tulare City Schools School District
Tulare County
Tulare County Bd of Education
Tulare Joint Union High School District
Tulare Local Healthcare District
Visalia Unified School District
Waukena Jt Union Elem School District
West Fresno Elementary School District
West Hills Community College District
Woodlake Public Schools

* NMPGL is actively negotiating additional representations