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March 9, 2011

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E. LEROY TOLLES
(1922-2008)

¹A PROFESSIONAL CORPORATION

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

Re: Request for Information re Voting Rights Act Counsel

Dear Mr. Miller:

We are pleased to have the opportunity to respond to the Request for Information of the Citizens Redistricting Commission with respect to its need for Voting Rights Counsel. We set forth below the information requested in Sections VI and VII of the RFI. If there is additional information that you need or you have questions about any of the information we are providing, please let me know.

1. Personnel

The team that we propose includes the undersigned, Brad Phillips, who would be the lead lawyer; Grant Davis-Denny; and Elisabeth Neubauer. Attached hereto at Tab 1 are copies of current biographies of each of us, which are also available on our firm's website at www.mto.com.

2. Firm General Description

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Kirk E. Miller

March 9, 2011

Page 2

Attached hereto at Tab 2 is a general description of our firm. There is additional information about our other attorneys and our practice available on our website at www.mto.com.

3. Experience

We do not have direct experience in advising public entities with respect to redistricting. We do have substantial experience, however, with the Voting Rights Act generally and with many election-law issues. I set forth below the experiences of each of the members of our proposed team that seem most relevant to providing voting rights advice to the Commission.

Bradley S. Phillips

a. Counsel for the plaintiffs in *Common Cause v. Jones*, 213 F. Supp. 2d 1106 (C.D. Cal. 2001); 213 F. Supp. 2d 1110 (C.D. Cal. 2001); 235 F. Supp. 2d 1076 (C.D. Cal. 2002). This was a federal court equal protection and voting rights challenge to the use of pre-scored punch card voting machines in California.

b. Counsel for Clean Elections Institute, Inc. in defending the constitutionality of Arizona's public financing law. *See McComish v. Bennett*, 611 F.3d 510 (9th Cir. 2010). The United States Supreme Court granted certiorari in the case, and I will be arguing in that Court on March 28, 2010, on behalf of both the Clean Elections Institute and the State of Arizona.

c. Counsel for Senators McCain and Feingold and Representatives Shays and Meehan in *McConnell v. Federal Election Commission*, 540 U.S. 93 (2003), concerning the constitutionality of the Bipartisan Campaign Reform Act of 2002.

d. Counsel for the sponsors of California Proposition 208, a comprehensive campaign finance reform initiative, in *California Prolife Council v. Scully*, 164 F.3d 1889 (9th Cir. 1999).

e. Counsel for Common Cause in *Griset v. F.P.P.C.*, 8 Cal.4th 851 (1994), defending the constitutionality of a requirement that candidates and those supporting or opposing a candidate identify themselves on mass mailings to prospective voters.

f. Counsel for petitioners in *Gerken v. F.P.P.C.*, 6 Cal.4th 707 (1993), an original petition for writ of mandamus seeking enforcement of a campaign reform initiative.

g. Counsel for the Commission to Draft an Ethics Code for the City of Los Angeles in *Johnson v. Bradley*, 4 Cal.4th 389 (1992), concerning the enforceability of public financing provisions enacted in Los Angeles.

Kirk E. Miller

March 9, 2011

Page 3

h. Counsel for the sponsors of California Proposition 68, a comprehensive campaign finance initiative, in *Taxpayers to Limit Campaign Spending v. F.P.P.C.*, 51 Cal.3d 744 (1990).

i. Counsel for Common Cause as *amicus curiae* in *Davis v. Federal Election Commission*, 554 U.S. ____ (2008), concerning the constitutionality of a portion of the Bipartisan Campaign Reform Act of 2002.

j. Counsel for several Congressmen as *amici curiae* in *Citizens United v. Federal Election Commission*, 558 U.S. ____ (2010), concerning the constitutionality of limits on corporate spending in election campaigns.

k. Co-Chair, Lawyers' Committee for Civil Rights Under Law, Washington, D.C., 2008-present, with responsibility for oversight of entire organization, including the Voting Rights Project. As a member of the Board of Directors, I participated in the work of the Lawyers' Committee in connection with Congressional reauthorization of the Voting Rights Act.

l. Chair, California Common Cause, 1992-1996.

m. I have also represented and advised numerous public entities with respect to various civil rights and related laws, including the University of California with respect to Proposition 209 and the Los Angeles Unified School District with respect to Proposition 187, Proposition 209, and Proposition 227.

Grant A. Davis-Denny

a. Counsel for international election scholars in filing amicus brief in *Crawford v. Marion County Election Board*, 553 U.S. ____ (2008), the challenge to Indiana's requirement that voters present photo identification at the polls.

b. Counsel for members of Congress in filing amicus brief in *Federal Election Commission v. Wisconsin Right to Life*, 551 U.S. 449 (2007).

c. Counsel for Common Cause in filing amicus brief in *Davis v. Federal Election Commission*, 554 U.S. ____ (2008).

d. Counsel for Common Cause in filing amicus brief in *Thalheimer v. City of San Diego*, 2010 WL 1201885 (S.D. Cal. Mar. 23, 2010).

e. Counsel for Clean Elections Institute in *McComish v. Bennett*, 611 F.3d 510 (9th Cir. 2010).

f. Author of *Divergent Disclosure: The Value of Uniformity in State Campaign Finance Disclosure Laws*, 4 Election Law Journal 282 (2005) (paper presented at the 2004 Midwest Political Science Association Conference).

Kirk E. Miller

March 9, 2011

Page 4

- g. Author of *The Constitutionality of Regulating Coordinated Issue Advocacy: A Reply to James Bopp, Jr. and Heidi K. Abegg's The Developing Constitutional Standards for 'Coordinated Expenditures'*, 2 Election Law Journal 267 (2003).
- h. Author of *Coercion in Campaign Finance Reform: A Closer Look at Footnote 65 of Buckley v. Valeo*, 50 UCLA Law Review 205 (2002).
- i. Chair of California Common Cause when the initiative that created the Citizens Redistricting Commission was passed.
- j. Advised numerous corporate clients on compliance with campaign finance laws.
- k. Assisted Professor Jonathan Zasloff with his work on the commission that was responsible for drawing the Los Angeles School Board electoral district lines.
- l. Keynote speech at the Nexus Symposium "Citizens Divided on Citizens United: Campaign Finance Reform and the First Amendment."
- m. Panelist for University of San Francisco Law Review panel "Corporate Personhood: the First Amendment Rights of Corporations in the Wake of *Citizens United*."
- n. Panelist for Federal Society 5th Annual Western Conference, "After the 2010 Election: What's Next for Campaigns and California."

Elisabeth J. Neubauer

- a. Election Protection / National Campaign for Fair Elections: *Director of Southern California Election Protection Effort*, November 2007-Present.
- b. Co-author, *Election Protection 2008 - California Report* (2008).
- c. Counsel for Clean Elections Institute in *McComish v. Bennett*, 611 F.3d 510 (9th Cir. 2010).
- d. Panelist, "Voter Empowerment Workshops: Making Community Voices Count," Hosted by League of Women Voters of Los Angeles, California Common Cause, California Participation Project, and NALEO Education Fund in the City of Bell, California (October 16, 2010).
- e. Panelist, "Election Protection 2008: What Happened in California and Across the Nation To Protect Your Vote During The Recent Election," Hosted by Common Cause and Munger, Tolles & Olson, LLP (December 16, 2008).

Kirk E. Miller

March 9, 2011

Page 5

f. Guest Speaker, "USC Law Election Protection Kickoff," Hosted by the Public Interest Law Foundation and Office of Public Service at USC Gould School of Law (October 16, 2008).

g. Guest Speaker, "The State of Election Administration: The Need for Voter Protection," Hosted by Loyola Law School (October 15, 2008).

h. Panelist, "Practicing Democracy: Reflections on Voter Protection and Political Participation Since 1968," Sponsored by the American Constitutional Society for Law & Policy and the David J. Epstein Program in Public Interest Law & Policy Critical Race Studies Program at UCLA School of Law (September 8, 2008).

i. California Common Cause: *Member of Board of Directors*, January 2009-Present.

j. Technology, Diversity, Democracy: The Future of Voting Systems in Los Angeles County: *Invited Symposium Participant*, September 16, 2009 (Pasadena, CA).

k. Externship: NAACP Legal Defense and Educational Fund, Inc. (New York, NY) (Fall 2004) - focus on economic opportunity litigation and voting rights / election protection initiatives.

4. Conflicts of Interest

Brad Phillips currently represents plaintiffs, including the United Farm Workers, in a matter adverse to the State of California and Cal-OSHA. Other attorneys in the firm likely represent clients in matters adverse to various State agencies.

Both Mr. Phillips and Ms. Neubauer did unpaid work on behalf of the Obama Presidential campaign during 2008, some of which may have been on behalf of the Democratic National Committee.

Elisabeth Neubauer's sister is a paid member of the staff of the U.S. House of Representatives Energy and Commerce Committee, and three of her sisters served as U.S. Senate Pages within the last 10 years.

Other attorneys and employees of our firm (or members of their immediate families) may have conflicts of interest as described in Government Code §8252 or subsection 4 of section VI of the RFI.

5. Fee Arrangements

We propose to perform the required work at a flat hourly rate, for all attorneys, of \$250/hour. This is a very substantial reduction from our regular hourly billing rates, which are, respectively, Brad Phillips: \$825; Grant Davis-Denny: \$560; and Elisabeth Neubauer: \$535. We

Kirk E. Miller

March 9, 2011

Page 6

would bill the time of our paralegals at a flat rate of \$75/hour, which is again very substantially below our regular rates.

It is difficult to estimate what our total fees would likely be due to uncertainties about the scope and extent of the work. Assuming that we commence work later this month and complete our work by August 15, 2010, however, I would estimate that our fees would total between \$100,000 and \$150,000 (which would represent approximately 400-600 total attorney hours over four months), including attendance at meetings. I assume that the Commission would reimburse us for reasonable travel expenses in connection with such meetings.

Sincerely,

A handwritten signature in black ink, appearing to read "Bradley S. Phillips". The signature is fluid and cursive, with the first name "Bradley" being more prominent than the last name "Phillips".

Bradley S. Phillips

Attachments

TAB 1

Bradley S. Phillips

Experience

BRAD PHILLIPS is a litigation partner in the Los Angeles office of Munger, Tolles & Olson LLP.

Mr. Phillips's practice consists principally of complex civil litigation in the trial and appellate courts. He has been lead counsel in jury trials in both state and federal court; has argued on many occasions before the California Supreme Court, the federal Circuit Courts of Appeals, and the California Court of Appeal; and has been counsel of record on numerous briefs in the United States Supreme Court.

Mr. Phillips's areas of practice include antitrust, unfair competition, First Amendment, intellectual property, and general commercial litigation. He also does extensive litigation involving constitutional issues, civil rights, election law and other public law issues. Mr. Phillips has represented companies in the entertainment, publishing, newspaper, computer, telecommunications, aerospace, financial, law, energy, and education businesses; and he has also represented a public university and public school districts.

A few examples of Mr. Phillips's many significant representations are the following:

- Defending the University of California against constitutional claims that UC's high school course requirements for applicants discriminate against the plaintiff schools and students on the basis of their religion.
- Defending a major national law firm against claims of legal malpractice and fraud.
- Defending Shell Oil Company in numerous antitrust cases, including *Texaco Inc. v. Dagher*, 547 U.S. 1 (2006); *Rick-Mik Enterprises, Inc. v. Equilon Enterprises LLC*, 532 F.3d 963 (9th Cir. 2008); and *Aguilar v. Atlantic Richfield Co.*, 25 Cal.4th 826 (2001).
- Defending a major daily legal newspaper at jury trial against claims of unfair competition.
- Defending a major California law firm against a claim of malicious prosecution. *Hufstедler, Kaus & Ettinger v. Superior Court*, 42 Cal.App.4th 555 (1996).
- Defending a Los Angeles television network affiliate at jury trial against claims of defamation and invasion of privacy.

Mr. Phillips devotes a substantial portion of his time to representing clients on a pro bono basis. He has represented classes of homeless individuals, immigrants, prisoners, and voters, as well as numerous non-profit organizations. A few examples of Mr. Phillips's many pro bono successes are the following:

- Obtaining an injunction against lethal injections in California based on the Administrative Procedure Act. *Morales v. California Dept. of Corrections and Rehabilitations*, 168 Cal.App.4th 729 (2008).
- Prosecuting a federal lawsuit that forced immigration officials to end their practice of forcibly administering anti-psychotic drugs to immigration detainees without a medical examination or a court order.
- Defending, as co-counsel, the constitutionality of the Bipartisan Campaign Reform Act of 2002. *McConnell v. Federal Election Comm'n*, 540 U.S. 93 (2003).
- Obtaining an order requiring California to replace its pre-scored punch card voting machines (of "hanging chad" fame) before the 2004 Presidential election. *Common Cause v. Jones*, 213 F.Supp.2d 1106 (C.D. Cal. 2001), 235 F.Supp.2d 1076 (C.D. Cal. 2002).
- Obtaining reversals of the convictions of two individuals who had been sentenced to death in California. *In re Wilson*, 3 Cal.4th 945 (1992); *People v. Hale*, 44 Cal.3d 531 (1988).

Mr. Phillips is the Co-Chair of the Lawyers' Committee for Civil Rights Under Law, the national organization that was founded in 1963 by prominent members of the Bar at the request of President John F. Kennedy. He is a Fellow of the American Bar Foundation, and

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Practice Areas

- Litigation
- Appellate
- Antitrust and Unfair Competition



MUNGER, TOLLES & OLSON LLP

he previously served on the Board of Directors of the California Bar Foundation. Mr. Phillips served as a member of the Board of Trustees of the Los Angeles County Bar Association and as Chair of the Association's Amicus Briefs and Legal Services for the Poor Committees. He served as President of the Legal Aid Foundation of Los Angeles in 1992-1993. Mr. Phillips was the 1996 recipient of MALDEF's Legal Services Award; and he has received the ACLU of Southern California's Pro Bono Civil Rights Advocates Award, its Voting Rights Award, and its Equal Justice Award.

Mr. Phillips has done extensive legal and policy work in the areas of ethics in government, campaign finance, and election law. He served from 1993-1996 as the Chair of California Common Cause and for a dozen years as a member of the National Governing Board of Common Cause.

Education

- Yale Law School (J.D., 1978); Member, Board of Editors, Yale Law Journal, 1977-78
- Stanford University (B.A., 1975); Phi Beta Kappa

Clerkships

- Clerk to Judge Wm. Matthew Byrne, Jr., U.S. District Court, Central District of California, 1978-79

Grant A. Davis-Denny

Experience

GRANT DAVIS-DENNY is an associate in the Los Angeles office of Munger, Tolles & Olson LLP.

His complex commercial litigation practice includes legal malpractice defense, patent and antitrust litigation, and appellate law. He also provides compliance advice on state and local laws covering campaign finance, gifts to public officials, and government procurements.

Mr. Davis-Denny maintains an active pro bono practice. He has represented members of Congress, Common Cause, and international election law scholars in filing *amicus curiae* briefs in the United States Supreme Court. Mr. Davis-Denny represented death-row inmates in a successful challenge to California's lethal injection regulations based on the Department of Corrections' failure to comply with the Administrative Procedures Act. He currently represents the Clean Elections Institute in its defense of the Arizona Citizens Clean Elections Act.

Mr. Davis-Denny is a member and former Chair of the Board of Directors of California Common Cause. His publications include:

Divergent Disclosure: The Value of Uniformity in State Campaign Finance Disclosure Laws, 4 Election Law Journal 282 (2005) (paper presented at the 2004 Midwest Political Science Association Conference)

The Constitutionality of Regulating Coordinated Issue Advocacy: A Reply to James Bopp, Jr. and Heidi K. Abegg's The Developing Constitutional Standards for 'Coordinated Expenditures', 2 Election Law Journal 267 (2003)

Coercion in Campaign Finance Reform: A Closer Look at Footnote 65 of Buckley v. Valeo, 50 UCLA Law Review 205 (2002)

Mr. Davis-Denny graduated from UCLA School of Law in 2003 and was elected to the Order of the Coif. He served as co-Editor in Chief of the Women's Law Journal and Comments Editor of the UCLA Law Review. He was also a member of the Program in Public Interest Law and Policy. Prior to attending law school, Mr. Davis-Denny worked for elected officials Kathleen Sebelius and Tom Torlakson.

Clerkships

- Judge Richard A. Paez, U.S. Court of Appeals, Ninth Circuit, 2003-2004

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Practice Area

- Litigation



Elisabeth J. Neubauer

Experience

ELISABETH J. NEUBAUER is a litigation associate in the Los Angeles office of Munger, Tolles & Olson LLP. A third-generation Los Angeleno, Ms. Neubauer joined the firm in 2007, after serving as a law clerk first to the Honorable Margaret M. Morrow, in the United States District Court in the Central District of California (2005-2006), and then to the Honorable Joseph A. Greenaway, Jr., in the United States District Court in the District of New Jersey (2006-2007).

Ms. Neubauer's practice focuses on general and complex business litigation with a special emphasis on antitrust and intellectual property-related matters. She also has been actively involved in conducting internal investigations for her clients. Ms. Neubauer's clients include major entertainment, high-tech, retail, and non-profit entities.

Ms. Neubauer graduated from the University of Michigan Law School, from which she earned her J.D., *cum laude*. While in law school, Ms. Neubauer externed for the NAACP Legal Defense and Educational Fund, Inc., where her work focused on economic opportunity litigation and election protection initiatives related to the 2004 Presidential Election. Ms. Neubauer received her undergraduate degree from Columbia University with Honors in History, based in part on her thesis addressing the development of racially segregated housing patterns and violence in the South Side of Chicago during the early part of the Twentieth Century.

Ms. Neubauer also has spent significant time working on the Hill, first in the capacity of Head Democratic Page in the United States Senate, a position she obtained through an appointment by Senator Herb Kohl. Later, Ms. Neubauer interned in Senator Dianne Feinstein's Washington, D.C. and Los Angeles offices, where she focused primarily on press-related and appropriations matters.

Ms. Neubauer remains active in civic and community affairs. She helped organize and lead the non-partisan Election Protection 2008 effort in Los Angeles in conjunction with the Lawyers Committee for Civil Rights Under Law, and other national and local legal defense and grassroots organizations. She also has spoken throughout the Los Angeles area on election protection, voting rights and related topics. In addition, Ms. Neubauer sits on the Board of California Common Cause.

Ms. Neubauer is a member of the California and New York Bars.

Education

- The University of Michigan Law School (J.D., *cum laude*, 2005); Associate and Contributing Editor for the *University of Michigan Journal of Law Reform*
- Columbia University (B.A., *with Honors*, History, 2002)

Clerkships

- Clerk to Judge Margaret M. Morrow, U.S. District Court, Central District of California, 2005-2006;
- Clerk to Judge Joseph A. Greenaway, Jr., U.S. District Court, District of New Jersey, 2006-2007

Contact

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Practice Area

- Litigation

TAB 2



About MTO

In 1962 seven lawyers founded Munger, Tolles & Olson with the belief that a law practice of the highest quality could be established in a creative and stimulating environment. Today, MTO's 180 lawyers are known for trying bet-the-company cases and negotiating deals that shape our corporate landscape. In 2010, for the third consecutive year, MTO's accomplishments earned it first place on The *American Lawyer's* A-List of the nation's most elite law firms.

We are committed to providing our clients with legal services of the highest quality with the utmost integrity.

Our Work

Clients turn to MTO when the stakes are high. In a survey conducted by *The American Lawyer*, the firm's clients said that they called on MTO in "precedent-setting cases that require a creative mind" and in cases that require an "army of trial lawyers capable of waging war." MTO has built its reputation by providing clients with exceptional judgment, creative thinking, and a deep commitment to solving their problems.

MTO's work is national in scope. Our principal areas of practice include bankruptcy, corporate, environmental, labor and employment, litigation, real estate and tax.

MTO is committed to providing exceptional service to its clients in a cost-effective manner. With a one-to-one partner-associate ratio, we staff our matters leanly with partners providing strategic leadership from inception to conclusion. Where appropriate, we use paralegals and other personnel to handle tasks at lower cost.

Our People

To solve its clients' toughest problems, MTO strives to associate only the most qualified and creative lawyers we can find. Our 180 lawyers are extraordinarily talented and unusually diverse, nearly 70 percent served as law clerks to federal judges. Seventeen of our attorneys were law clerks to U.S. Supreme Court Justices. Many of our attorneys have experience in government, including service in the U.S. Department of Justice, U.S. Attorneys' Offices, and the Environmental Protection Agency. Numerous MTO lawyers have advanced degrees in computer engineering, mathematics, physics, computational neuroscience, chemical engineering, chemistry, biochemistry, molecular biology, medicine, finance, business, economics and statistics, among others.

MTO's culture—and the loyalty and pride that it breeds—has allowed the firm to avoid the revolving door of lawyers that ill serves a law firm's clients. Nearly 45 percent of the lawyers who joined MTO in the past 20 years—and 70 percent of our partners—are still at the firm.



Our Community

Service to the community is a core aspect of MTO's culture. Our lawyers serve on boards of community organizations, volunteer their time with local non-profits and political campaigns and lead bar activities.

MTO is deeply committed to pro bono service. MTO was one of the charter signatories to the American Bar Association's pro bono challenge and consistently devotes more than three percent of collective attorney time to delivering pro bono legal assistance. MTO was one of five law firms awarded a *National Law Journal* 2009 Pro Bono Award for its work obtaining a \$500 million settlement on behalf of 80,000 Social Security recipients previously denied benefits. The ACLU Foundation of Southern California recently presented MTO with its LGBT Award for representing several gay and lesbian couples in their California Supreme Court petition challenging the constitutionality of Proposition 8, the voter initiative that sought to eliminate the right of same-sex couples to marry; and its Social Justice Award to a team of MTO litigators that secured protections for farm workers exposed to heat-related illness and injury. Our corporate lawyers regularly advise non-profit organizations on intellectual property, employment, financing and other matters. We are proud to be one of a select group of firms to have received the American Bar Association's coveted Pro Bono Publico Award.

Our Commitment to Diversity

At MTO, a diverse workforce improves our ability to serve the needs of our clients and creates a more dynamic workplace for our attorneys. We have a long tradition of supporting diversity, and are proud of our leadership in this area, but know that achieving diversity can only be accomplished through consistent and sustained effort. We are committed to that effort and are determined to make further progress on diversity issues both within our firm and in the legal profession.

MTO's lawyers work in a democratic and egalitarian environment. The firm's major decisions are made by consensus, and all attorneys are encouraged to participate in firm governance. The firm is governed by more than 25 committees, including a policy committee in which 30 percent of its members are women and 17 percent are minorities. Additionally the firm's managing partner, Sandra Seville-Jones, is a woman; her predecessor, Bart Williams, is African American. MTO had one of the first women partners in Los Angeles, and we were one of the first major law firms in the United States to have an openly gay managing partner.

MTO places great importance on recruiting women and minority attorneys, and believes that our firm can be a platform for success for every lawyer we hire. We are dedicated to addressing the tough issues, in our firm and society, that impair success for women and minority lawyers. We actively encourage employment applications from women and members of minority groups. MTO offers a 1L summer program for exceptional first year law students who are members of racial or ethnic minority groups, are GLBT, are physically challenged or are from disadvantaged socioeconomic backgrounds. In its 2L and 3L program—the firm's main hiring vehicle—53 percent of the incoming 2010 group are minorities or women and 55 percent of 2009's group were minorities or women.

PROFILE

MTO Tops the AmLaw A-List



MTO took the top spot on *The American Lawyer's* 2010, 2009 and 2008 A-List, an annual ranking of the nation's elite law firms—a first for a California-based firm.

MTO reached #1 through its scores on the A-List's four core professional values: revenue per lawyer, pro bono practice, associate satisfaction and workplace diversity.

According to *The American Lawyer*, the A-List "isn't just a report card on firm statistics. It's a measure of how well firms balance moneymaking with the priorities of service and collegiality that used to distinguish the legal profession."