

Tony Bernhard
[REDACTED]

March 14, 2011

California Citizens Redistricting Commission
1130 K Street, Suite 101
Sacramento, CA 95814

Re: *Applying Prop. 11's Conflict Provisions to the Voting Rights Act Counsel.*

Dear Commissioners,

Shouldn't the Commission's Voting Rights Act Counsel be free of any actual or perceived conflicts of interest? Proposition 11 contemplates that the Commission should apply to its consultants the same conflict provisions that apply to Commission members: "The commission shall apply the conflicts of interest listed in paragraph (2) of subdivision (a) of Section 8252 to the hiring of staff to the extent applicable." (Gov. Code, s 8253(a)(5).)

Although the provision may arguably permit the Commission to waive a conflict in extraordinary circumstances, I would argue, along with Commissioner Filkens-Weber, that the provision should apply to applicants for Voting Rights Counsel. That is particularly true in this case because there are many well-qualified attorneys who have applied for the position and who have no history of partisan political activity.

With that in mind, there are several applicants who state in their applications that they have disabling conflicts under the spirit and letter of Proposition 11. Those include the following:

- **Nielsen, Merksamer, Parrinello, Gross and Leoni.** Ms. Leoni, one of the bidding attorneys, states that she has been a registered state lobbyist in the last ten years. (Nielsen RFI at 13-14.) Her firm is also a registered lobbying firm. Under Government Code section 8252(a)(2)(iv), it is a disabling conflict to have been a registered federal, state or local lobbyist. In addition, Ms. Leoni candidly states her firm has represented the Republican Party and Republican-leaning interest groups, including in redistricting matters. For example, Ms. Leoni was counsel to the Florida Senate, in which Republicans were the majority party, during the last redistricting cycle. The Florida plan was known as one of the worst examples of a partisan gerrymandered plan in the last cycle. She also represented the "American Legislative Exchange Council, an organization of primarily conservative members of state Legislatures" (Nielsen RFI at 14) before the United States Supreme Court, urging that Court to uphold the Republican mid-decade

plan in Texas. Finally, Steve Merksamer, one of the main partners of the firm, was Chief of Staff to Governor Deukmejian.

- **Gibson, Dunn & Crutcher.** One of the bidding attorneys, Dan Kolkey, states that he has been a member of the Central Committee of the State Republican Party in the last ten years. (See Gibson RFI at page 5.) Under Government Code section 8252(a)(2)(iii), it is a disabling conflict to have been a member of a political party central committee in the last ten years. In addition, Mr. Kolkey is a well known Republican, having acted as Legal Affairs Secretary for Governor Wilson.
- **White & Case.** Two of the bidding attorneys, Aalok Sharma and John Sturgeon, represented the Republican Legislative Caucuses during litigation surrounding the 2001 legislative redistricting plans. (White & Case RFI at pages 3-6.) Under Government Code section 8252(a)(2)(vi)(B), that is a disabling conflict.
- **Arent Fox.** One of the bidding attorneys, Steve Haskins, worked for the Assembly Republicans during the last round of redistricting. Under Government Code section 8252(a)(2)(vi)(B), that is a disabling conflict.

These attorneys have clear conflicts under Proposition 11 and should, perforce, be disqualified.

I would urge the application of these standards to bidders with any similar histories with any political party.

Thank you for your consideration.

A handwritten signature in black ink, appearing to read 'Tony Bernhard', with a long horizontal flourish extending to the right.

Tony Bernhard
Davis, California