



March 16, 2011

Citizens Redistricting Commission Members
1130 K Street, Suite 101
Sacramento, CA 95814
Email: votersfirstact@crc.ca.gov

Re: Selection of Voting Rights Act Counsel

Dear Members of the Citizens Redistricting Commission,

As Chair of the California Democratic Party's Redistricting Subcommittee, I urge you to exclude two individuals for the position of Voting Rights Act counsel.

Your Legal Advisory Committee has recommended that you interview four of the applicants who responded to your request for bids. Two of those applicants – Ms. Marguerite Leoni of Nielsen, Merksamer, and Mr. Daniel Kolkey of Gibson, Dunn & Crutcher – not only have disqualifying conflicts of interest under Proposition 11, but are closely affiliated with Republican candidates and officeholders. Although I do not doubt that both Ms. Leoni and Mr. Kolkey are excellent lawyers, choosing either of them would seriously undermine the public's trust in the fairness of your process and the district boundaries that you ultimately adopt.

Ms. Leoni's application reveals that she has been a registered state lobbyist in the last ten years and that her firm is a registered lobbying firm. Government Code section 8252(a)(2)(iv) makes clear that having been a registered federal, state or local lobbyist is a disabling conflict of interest, and Government Code section 8253(a)(5) states that the Commission shall apply section 8252's conflict provisions to the hiring of its staff to the extent applicable. In my view, this conflict of interest is highly applicable to your Voting Rights Act counsel. Lobbyists have ties not only to their clients, past and present, but to the legislators with whom they have worked.

In addition, Nielsen, Merksamer's application makes clear that it has spent a great deal of time litigating against minorities who have raised claims under the Voting Rights Act. When you add in the fact that Nielsen, Merksamer is widely known as a Republican law firm, that Ms. Leoni and her firm have represented Republicans in statewide redistricting litigation both in California and in other states, and that one of Ms. Leoni's partners, Steven Merksamer, was chief of staff to Governor

Deukmejian, it would be very hard to argue that the Commission's Voting Rights Act counsel was either impartial or nonpartisan.

Mr. Kolkey has a different disqualification under section 8252, but one that equally affects his ability to appear impartial: He has served as a member of the Central Committee of the State Republican Party within the last ten years. Section 8252(a)(2)(A)(iii) specifically lists this as a disqualifying conflict of interest, and for the same reasons set out above, this conflict of interest clearly should apply to the person who advises you on something as sensitive as the Voting Rights Act.

In addition, Mr. Kolkey served as Governor Wilson's Legal Affairs Secretary, and then he and his firm, Gibson, Dunn & Crutcher, went on to represent the Republican Governor in the 1990 redistricting litigation. As part of that litigation, Governor Wilson submitted modifications to plans drawn by a group he appointed to submit plans to the special masters, but the special masters rejected both sets of plans on the ground that they were not sufficiently protective of minority voting rights. *Wilson v. Eu*, 1 Cal. 4th 707, 767. This history is not one that would inspire trust that the Commission's Voting Rights Act counsel would be either impartial or sensitive to minority voting rights.

I do not mean to disparage either of these applicants in any way. But just as I would not expect you to hire someone who had been a member of our party's Central Committee or who had a distinguished career representing Democrats, I urge you not to undermine the public trust that you have worked so hard to foster by hiring counsel who may give the appearance of bias or who do not meet the conflict of interest standards written into law.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jess Durfee". The signature is fluid and cursive, with the first name "Jess" written in a larger, more prominent script than the last name "Durfee".

Jess Durfee
Chairman, San Diego County Democratic Central Committee
Co-Chair, Voter Services Committee, California Democratic Party
Chair, CDP Redistricting Subcommittee