

March 18, 2011

Via Electronic Mail
Citizens Redistricting Commission
1130 K Street, Suite 101
Sacramento, CA 95814

RE: Candidates for Voting Rights Act Counsel

Dear Members of the Citizens Redistricting Commission:

We understand that on March 17, 2011, the Citizens Redistricting Commission's Legal Advisory Committee interviewed four candidates for the Commission's Voting Rights Act (VRA) counsel. We further understand that the Legal Advisory Committee subsequently narrowed the pool of applicants to two candidates, the firms of Gibson, Dunn & Crutcher LLP (Gibson Dunn) and Nielsen, Merksamer, Parrinello, Gross & Leoni, LLP (Nielsen Merksamer).

We write to inform you that neither firm is qualified to serve as the Commission's VRA counsel, based on information each firm submitted to the Commission about its work and its proposed team of attorneys. While both firms are widely recognized for their work, neither firm meets the requirements set forth in Section 8253(a)(5) of the Government Code, which provides:

“...The commission shall require that at least one of the legal counsel hired by the commission has demonstrated extensive experience and expertise in implementation *and* enforcement of the federal Voting Rights Act of 1965 (42 U.S.C. Sec. 1971 and following)...” (emphasis added)

The plain meaning of Section 8253(a)(5) is clear: the Commission's VRA counsel must have extensive experience in both implementation and enforcement of the VRA. Based on their applications, neither Gibson Dunn nor Nielsen Merksamer have any experience, much less extensive experience, in enforcement of the VRA. Neither firm's application describes any litigation or other action to enforce claims under the VRA, either in the firm's capacity or on behalf of clients. Both firms' applications do describe their representation of clients in litigation involving VRA claims, but in all of these cases, the firms represented clients either defending against VRA claims or standing in third-party status in relation to VRA claims, rather than representing clients seeking enforcement of the VRA's provisions.

In contrast, the other two candidates that the Legal Advisory Committee interviewed do have extensive experience, as well as expertise, in enforcement of the Voting Rights Act. The other two candidates that were interviewed are Federal Compliance Consulting LLC (Bruce Adelson) and GRD Consulting (Gilda Daniels). As described in their applications, both Mr. Adelson and Ms. Daniels are former senior attorneys in the U.S. Department of Justice, Civil Rights Division, Voting Section, where they devoted their work to enforcing key provisions of the Voting Rights Act, including Sections 2, 5 and 203.

Of the candidates interviewed by the Legal Advisory Committee, we believe that the Commission's only candidates to choose from are Mr. Adelson and Ms. Daniels. If the Commission were to hire Gibson Dunn or Nielsen Merksamer, the Commission would have no funds to hire an attorney who does meet the requirements of Government Code section 8253(a)(5), resulting in a violation of that provision.

If the Commission unwisely decides to ignore the plain meaning of Section 8253(a)(5) and consider the two candidates recommended by the Legal Advisory Committee, then the Commission should apply the conflicts provisions set forth in Government Code section 8252(a)(2). The Commission's Conflicts Policy provides that the Commission may exercise discretion in applying these conflicts provisions to staff, attorney and consultant hires. **It would be a grave abuse of this discretion for the Commission not to strictly apply all of the conflicts provisions to candidates for VRA counsel.**

The Commission's VRA counsel will be central to whether the Commission succeeds or fails in complying with the VRA's requirements, which in turn will be a definitive measure of the Commission's overall success or failure. The Voters First Act places paramount importance on the VRA, in essence adopting the VRA as one of its core values. For example, of the line-drawing criteria that the Voters First Act requires the Commission to follow, compliance with the VRA is assigned utmost priority, second only to the U.S. Constitution's equal population requirement.

Given this, the VRA counsel position is unquestionably of such critical importance that the Commission must strictly apply the conflicts provisions to candidates for the position. Indeed, the Commission's VRA counsel is the only staff, attorney or consultant that the Voters First Act requires the Commission to hire. Government Code section 8253(a)(5) provides:

"The commission shall hire commission staff, legal counsel, and consultants *as needed*... The commission shall require that at least one of the legal counsel hired by the commission has demonstrated extensive experience and expertise in implementation and enforcement of the federal Voting Rights Act of 1965 (42 U.S.C. Sec. 1971 and following)." (emphasis added)

We advise you that applying the conflicts provisions to candidates for VRA counsel means two things:

1. Candidates that as a firm are conflicted out cannot be considered for VRA counsel. This means that Nielsen Merksamer cannot serve as VRA counsel. Nielsen Merksamer is a registered lobbying firm, as noted in the firm's application.
2. If a firm that is not itself conflicted out is selected as VRA counsel, then individual employees of the firm who are conflicted out cannot conduct any of the work that the firm provides for the Commission, and must be firewalled. This means that if the Commission selects Gibson Dunn as VRA counsel, then Daniel Kolkey cannot conduct any of the work that Gibson Dunn provides to the Commission. Mr. Kolkey was elected

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to state office within the past 10 years and was also a member of a party central committee within the past 10 years, as noted in the firm's application.

We also note that the two other candidates whom the Legal Advisory Committee interviewed on March 17 have no conflicts under the provisions set forth in Government Code section 8252(a)(2), according to their applications: Federal Compliance Consulting LLC (Bruce Adelson) and GRD Consulting (Gilda Daniels).

Thank you for your consideration of our comments.

Sincerely,

Eugene Lee

Voting Rights Project Director

Asian Pacific American Legal Center (APALC), member of Asian American Center for Advancing Justice

Rosalind Gold

Senior Director of Policy, Research and Advocacy

National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund

Erica Teasley Linnick

Coordinator

African American Redistricting Collaborative (AARC)