

April 7, 2011

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

RE: Selection of Voting Rights Act Counsel

Dear Members of the Citizens Redistricting Commission:

We understand that the Commission is conducting on-going deliberations regarding the selection of its Voting Rights Act (VRA) Counsel, and is considering whether to retain Gibson, Dunn & Crutcher LLP (Gibson Dunn) as its permanent counsel for this purpose. We are writing to express our recommendations about the selection process, should the Commission decide not to select Gibson Dunn for this position.

We continue to maintain that Gibson Dunn is not qualified to serve as VRA counsel

First, our position on Gibson Dunn remains unchanged from our previous public comments. We continue to believe that Gibson Dunn is not qualified to serve as VRA counsel for several reasons. Section 8253(a)(5) of the Government Code explicitly states that the VRA counsel must have extensive experience and expertise in implementation and enforcement of the VRA. While Gibson Dunn has done work to vindicate claims under the California Voting Rights Act challenging at-large elections, the firm lacks experience or expertise in VRA enforcement in the context of redistricting, including enforcement of Sections 2 and 5 of the VRA.

In addition, one of the attorneys Gibson Dunn envisions would be providing VRA services, Mr. Daniel Kolkey, was elected to state office within the past 10 years and was also a member of a party central committee. Both of these activities constitute conflicts of interest under Government Code Section 8252(a)(2), and as we noted in earlier comments, we believe those conflicts provisions should be applied to the selection of the VRA counsel. Moreover, we understand that the Commission has learned of additional activities of Gibson Dunn which constitute conflicts under Section 8252(a), including its registration as a federal lobbying firm.

Finally, we believe that as a result of Mr. Kolkey's past involvement supporting anti-immigrant issues and causes which have impaired the progress of California's underrepresented population groups, such groups lack confidence in Gibson Dunn's ability to provide VRA counsel and advice in an impartial manner. For example, Mr. Kolkey served as counsel to Governor Pete Wilson during the state's defense of Proposition 187, the ballot measure which would have denied education and other services to undocumented immigrants in California. Most of this ballot measure's provisions were found to be unconstitutional.

Nielsen, Merksamer, Parrinello, Gross, and Leoni, LLP is also not qualified to serve as VRA counsel

Should the Commission decide not to select Gibson Dunn, we also strongly discourage the Commission from choosing a "default" option by selecting the other finalist for the position, Nielsen, Merksamer, Parrinello, Gross, and Leoni, LLP (Nielsen Merksamer). We urge the Commission to remember that the choice of VRA counsel is a critical one. Compliance with the VRA is one of the top criteria for the maps developed by the Commission under the Voters First Act. Failure to fully comply with the VRA is one of the leading sources of redistricting litigation. And the VRA remains a critical protection to ensure the fair representation of communities that have been historically disenfranchised by the redistricting process.

As has been stated in previous letters, Nielsen, Merksamer, Parrinello, Gross, and Leoni, LLP is also not qualified to serve in the position. As is the case with Gibson Dunn, Nielsen Merksamer is a registered lobbying firm, which presents a conflict under Government Code Section 8252(a)(2).

Similarly, Nielsen Merksamer lacks experience and expertise in VRA enforcement. In fact, the firm's experience in voting rights litigation is almost exclusively limited to defending challenges brought by VRA-protected groups to safeguard their voting rights. Thus, Nielsen Merksamer would not garner the trust of California's underrepresented population groups.

The Commission should reopen the bid proposal for the VRA counsel position

If the Commission chooses not to proceed with Gibson Dunn, in light of the fact that Nielsen Merksamer is not qualified to serve as VRA counsel, we believe you should reopen the bid process and solicit additional proposals for the position. Reopening the bid proposal process will help invite others who may have not had the opportunity to apply given the confusion around the conflicts of interest provisions. Indeed by reopening the bid proposal, the Commission can require broader disclosures and independent verification by Commission staff, and be in a better position to efficiently review and select a qualified VRA counsel.

The Commission should hire Ana Henderson as interim counsel

If the Commission reopens the bidding process, we understand that the Commission will need advice on VRA issues as it is reviewing bids and selecting new counsel. Thus, we recommend that the Commission hire Ana Henderson as an interim, short term support for the VRA counsel role.

Ms. Henderson is a well-respected legal expert in the VRA with significant experience in VRA enforcement from her tenure as an attorney at the U.S. Department of Justice, Civil Rights Division, Voting Section. We believe her participation will help ensure that work done by the consultants, both before and after counsel is retained, is consistent with the requirements of the Act. The Commission can retain her for this purpose by granting her a personal service contract to provide limited legal counsel for purposes of the first few weeks of input hearings until permanent counsel can be selected through a reopened bid process.

In summary, we urge the Commission to make every effort to move forward with caution and care as you fill the VRA counsel position. Thank you for your attention to our comments, and we look forward to continuing our work together.

Sincerely,

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Asian Pacific American Legal Center, member of Asian American Center for Advancing Justice

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