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VIA EMAIL

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Legal Affairs Committee
2020 Citizens Redistricting Commission
votersfirst@crc.ca.gov

Re: RFI Candidates – Litigation Counsel and Voting Rights Act (VRA) Counsel

Honorable Members of the Legal Affairs Committee,

We write to express grave concern with the cursory review of applicants' Statements of Qualifications (SOQ's) for the Citizen Redistricting Commission's Voting Rights Act (VRA) and litigation counsel positions. The Commission's Chief Counsel recently openly acknowledged that its staff did only a "cursory review" of applicants' conflicts of interests. Such a perfunctory review is insufficient, especially where the fundamental voting rights of California's over 22 million voters are at stake.

The 2021 Commission is best served by heeding the lessons learned from the experiences of the 2011 Commission and its failure to fully vet its applicant pool for VRA counsel. Ten years ago, after a selection had been made by the Commission, it came to light that during the application submission, review, interview and selection process, the firm that was ultimately selected to serve as VRA counsel failed to disclose *all* of its political activities, including the full breadth of its lobbying and campaign contributions. That firm - Gibson Dunn & Crutcher LLP – provided poor legal advice that would have resulted in costly litigation had concerned groups not corrected Gibson Dunn. Yet now the Commission is in danger of allowing history to repeat itself as Gibson Dunn has once again failed to fully disclose its political affiliations and activities.

Gibson Dunn, having been the source of the non-disclosure in 2011, cannot earnestly claim ignorance of its responsibility to be fully transparent during this 2021 VRA Counsel selection process. Gibson Dunn's 2021 SOQ, not only *fails* to disclose a number of political contributions it made during the 2020 election cycle, it also *fails* to disclose that in the past ten years it has been registered as both a federal and state lobbyist and *fails* to provide a list of those clients it represents/ed as a lobbyist. In 2011, Commissioner Angelo Ancheta stated, "I have made it very clear that if it was an intentional or willful nondisclosure, then I would recommend terminating our contract."

Now, Gibson Dunn's nondisclosure, being unquestionably intentional and willful, should disqualify Gibson Dunn from getting another contract with the Commission.¹

While the existence of a potential conflict might not automatically disqualify an applicant, the failure to disclose information sufficient for the Commission to understand whether there is a potential conflict reflects upon an applicant's trustworthiness and should weigh heavily against the Commission selecting such a firm. For these reasons, we urge the Commission to demand transparency of all applicants and to carefully scrutinize the SOQs, particularly that submitted by Gibson Dunn.

We do not believe past donations or lobbying should disqualify consultants. Nor should Gibson Dunn's well-known lean towards the Republican Party,² disqualify it from serving. But applicants have a responsibility to be honest and forthright so the Commission can choose its counsel based on a full understanding of the applicants. Gibson Dunn has failed, twice now, to be honest and forthright; that should be disqualifying.

If you would like to discuss any of this, please feel free to call me at 310-457-0970. Thank you for your consideration.

Respectfully submitted,

SHENKMAN & HUGHES

/s/ Kevin I. Shenkman

Andrea A. Alarcón

¹ Though not quite as bad as Gibson Dunn, the lack of transparency in Akin Gump's SOQ is likewise evident in its vague response that: "Over the past 10 years, Akin Gump's political action committee has contributed to political candidates in California. If the Commission would like, Akin Gump is happy to provide additional information." Such a broad, sweeping statement lacks the requisite specificity because it fails to expressly "**identify** any political contributions, including contributions made by a firm('s) political action committee, **to candidates** as described in the California Government Code Section 8252." (emphasis added). The RFI did not merely call for applicants to disclose *whether* they had made such contributions, it required applicants to specifically identify the candidates to whom such contributions had been made. Full disclosure during the application review and interview process is critical to the Commissioner's deliberative process and to the interests of the public stakeholders involved. Disclosure after the Commission's selection provides no benefit and exposes the Commission to criticism and liability.

² Gibson Dunn's involvement with the Republican Party goes back several decades – from its representation of George W. Bush in *Bush v. Gore*, to its attorneys' outsized involvement in the Trump administration.