

2020 CRC Legal Affairs Committee Memo on selection of VRA and Litigation Counsels

Commissioners Yee (Chair), Toledo (Vice Chair), and Sadhwani

Applicants for Voting Rights Act Counsel:

1. Crimcard Akin Group (CAG)
2. UCLA
3. Strumwasser Woocher + David Becker (SWB)

Applicants for Litigation Counsel

1. Gibson Dunn (GD)
2. Renne Group (RG)
3. Strumwasser Woocher + David Becker (SWB)

LAC Motions passed unanimously 3/24/21:

- 1. To recommend retaining SWB as VRA Counsel**
- 2. To recommend retaining SWB and GD as Litigation Co-Counsel**

Reasoning:

For VRA Counsel, we were impressed by all three candidates. We investigated and debated at length the question of having a team lead not admitted to the California Bar, as would be the case for CAG and UCLA. We decided on SWB both because of the strength of its team (with David Becker easily a full replacement for Justin Levitt) and its absence of Bar membership issues.

For Litigation Counsel, we were likewise impressed by all three candidates, with the SWB and GD the two strongest, and about equally so, though in different ways. Attached is our list of positives and negatives for those two firms.

We discussed at length the concerns raised in public comment concerning potential failures to disclose conflict-of-interest items. We are following up with Gibson Dunn about these items.

We also discussed at length GD's representation of matters adverse to the CRC's values. For instance, GD is currently representing the City of Santa Monica in a case that would weaken the CVRA. We also noted GD's successful representations in high profile, highly charged decisions such as *Bush v. Gore* (2000) and *Citizens United* (2010).

We decided the most important consideration is to have the strongest representation for the CRC. Our values and our work will mean nothing if we are successfully challenged at any point in our process and on any grounds. We're as likely to be challenged on procedural matters as on our maps. We also noted that retaining GD means we will not find ourselves facing a challenge led by GD. We're sympathetic to those who feel GD does not fit the CRC's values. However, we feel GD can actually support those values by helping us successfully defend our work.

We decided on a co-counsel arrangement because we recognized the greater coordination and continuity of having one firm (SWB) involved in both the map-drawing and litigation phases; but also the benefits of having very wide litigation representation available when challenges actually come. We noted that litigation challenges could begin at any time, even long before our maps are drawn. However, we anticipate negotiating GD's participation in the mapping phase to be much less than if it were serving alone as Litigation Counsel. We also noted that the 2010 CRC retained two different firms (GD and Morrison Foerster) in its successful efforts.

Gibson Dunn

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1. Biggest guns for actual litigation, easy access to additional personnel as needed
2. Different assets and strengths than VRA counsel = greater overall CRC strength
3. Track record of success with 2010 CRC
4. Has been on both “sides”—a litigation advantage

1. Questions about adequate disclosures from 2010 and now, negative public comments and issues of public trust
2. Unspecified fee structure and likely (much) higher total cost
3. Values not always aligned with CRC

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1. Repeat firm from 2010
2. Mixed reviews from 2010 CRC?

Strumwasser Woocher + Becker

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1. If also VRA Counsel, greater efficiency, internal coordination, and defensive strategy alignment
2. Firm specializes in government agency representation, shared values with CRC (esp. Becker)
3. Clear fee structure and probably (much) lower total cost

1. Late change in personnel (Becker for Levitt) adds unknowns to application
2. Smaller firm, may not have ready access to additional personnel if needed

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1. Net effect of change from Levitt to Becker