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Thursday, March 25, 2021

California Citizens Redistricting Commission  
1130 K Street, Suite 101  
Sacramento, CA 95814

Re: public comment for March 29-April 1 Commission meeting (Item 10)

Dear Commissioners:

As the former County Clerk in Yolo County, I know the importance of robust disclosure and good legal counsel. I previously offered my comments to the Legal Affairs Committee, and offer these additional comments to the Commission in that light.

This week's meeting the Legal Affairs Committee found some confusion among applicants about what disclosures were required by the RFI's Conflict of Interest Provisions. Chairman Yee committed to leading planned follow-up with applicants before taking up the Committee's recommendations before the full Commission. However, the form and scope of the planned follow-up remains unclear.

These comments provide suggestions on how the planned follow-up might be conducted and its results evaluated. The planned follow-up should be structured to ensure applicants provide all the information the Commission intended them to provide under the original RFI. A planned follow-up can set standards for evaluating whether missing information was omitted as the result of legitimate confusion or whether it was a failure to disclose.

#### RFI CONFLICTS OF INTEREST PROVISIONS

The first section of the Conflicts of Interest provision of the RFIs asks individuals to disclose conflicts as defined under Government Code Section 8252. The second section asks the firm to disclose lobbying and political contributions.

#### ATTORNEYS

*With respect to the attorneys who are expected to work in connection with this representation, please disclose any financial, business,*

*professional, lobbying or other relationship that presents a potential conflict as described in California Government Code Section 8252.*

In seeking clarification from individuals, you might consider requiring all attorneys to complete the first page of Attachment D of your Line Drawer RFP (<https://bit.ly/3rkcIKG>). This document lists potential conflicts, identifies the relevant state regulation, and emphasizes that, while potential conflicts themselves are not disqualifying, full disclosure is required.

While the rest of the Attachment is not relevant as it asks for disclosures that are not required of counsel, using this form would take advantage of existing Commission work, and provide consistency for members of the public.

As I wrote previously, the RFI was unambiguous: individual contributions in excess of \$2,500 to California candidates is required. Planned follow-up would provide an opportunity for applicants to identify previous omissions.

If the commission desires information on other individual contributions (e.g. contributions under \$2,500, those made to non-California candidates or to non-candidate committees) planned follow-up should be treated as a *supplemental* request for information and applicants should not be penalized.

#### FIRMS

*In addition: (1) identify any lobbying work the firm has performed in California during the past 10 years; and (2) identify any political contributions, including contributions made by a firm political action committee, to candidates as described in California Government Code Section 8252, during the past ten years.*

The RFI clearly requested additional information about a firm's activities. What was less clear: §8252 defines three levels of activity

\* Federal - clarification is required: 1) should the firm disclose all federal lobbying activity, 2) only federal lobbying activity relating to California clients, or is 3) no federal lobbying activity required to be disclosed? Given the ambiguity here, planned follow-up should be treated as a *supplemental* request for information and applicants should not be penalized.

\* State - The RFI was unambiguous: this information is required. Planned follow-up would provide an opportunity for applicants to identify previous omissions.

\* Local - You may wish to clarify what lobbying activity directed towards local jurisdictions in California needs to be disclosed. Because the scope at present is unclear, planned follow-up should be

treated as a *supplemental* request for Information and applicants should not be penalized.

As I wrote previously, the RFI was unambiguous: firm contributions in excess of \$2,500 to California candidates is required. Planned follow-up would provide an opportunity for applicants to identify previous omissions.

If the commission desires information on firms' other contributions (e.g. contributions under \$2,500, or made to non-California candidates or to non-candidate committees), planned follow-up should be treated as a *supplemental* request for information, and applicants should not be penalized.

#### CONCLUSION

It appears Strumwasser Woocher made good faith efforts to meet the original disclosure requirements, though the Commission may request additional supplemental Information.

It appears Gibson Dunn may need to identify previous omissions, along with any Commission request for additional, *supplemental* information.

Thank you for your consideration.

A handwritten signature in black ink, appearing to read 'Tony Bernhard', with a long horizontal flourish extending to the right.

Tony Bernhard  
Davis, California