I am addressing agenda item 10 re: recommendations from your Legal Affairs Committee. I wish to share our experience hiring litigation counsel from the perspective of a 2010 Commissioner who is not an attorney, but headed the Finance & Administration Committee. As the first CRC, we were short on both time and financial resources. Hiring two firms exceeded the cost of one—a big concern because the cost to taxpayers for litigation can rival the actual cost of line-drawing ($2.4MM vs. $3MM in our case).

I recommend that you consider delaying your decision to hire litigation counsel until closer to the time you may need them. There are plenty of time-sensitive decisions you must make; this is not one of them. We did not hire litigation counsel until shortly before we released our final maps. Reopening the RFP at a later date may provide better options. For example, new Attorney General Bonta may agree to defend the CRC, as is typically done for a government agency. This would dramatically reduce the cost over outside firm(s). You may attract additional firms who after seeing your draft maps and assessing potential litigation issues and current caseload, decide to bid.

I have some specific comments about our experience with Gibson Dunn. We chose them as our VRA Counsel (but only after another firm withdrew). During the line-drawing process, they provided adequate counsel, but I believe we were much better served by the fact that we had two experts on our Commission, as well as two on our line-drawing consultant’s staff, including one extremely experienced attorney who previously worked at DOJ implementing the VRA.

Only after the AG declined to defend the CRC’s maps did we consider hiring outside counsel. When James Brosnahan of Morrison Foerster responded to our RFP, the Commission was elated. Most of us would have happily awarded the contract just to MoFo. However after more discussion, we agreed to appoint Gibson Dunn as co-counsel. The thinking was that they had learned enough about the VRA and our decision-making process that it would be more cost-effective and efficient to bring MoFo up to speed. As the first CRC, we wanted to provide the best possible chances for our maps to prevail.

We were right on the latter, but not necessarily on the former assumption. As someone who saw all the invoices, I was very concerned about Gibson Dunn’s billing practices, and we pushed back. Though they were co-counsel, the majority of litigation billings were from Gibson Dunn. In particular we objected to conferences between the firms where Gibson Dunn billed for numerous associates in addition to expensive senior partners. We were only partially successful in reducing charges for these mass lawyer-to-lawyer meetings. I’d also say that their legal research was very complete. I’m not an attorney, but I am a consultant, and there are diminishing returns once you’ve exposed multiple facts to support your position. I’d urge you to clarify billing practices before hiring.

I understand that there are concerns about lack of disclosure and conflicts of interest. For us, this alone would have been a disqualifier. Transparency and a nonpartisan ethos were key values we sought to embody. (Gibson Dunn should be well aware that we disqualified one of the line-drawing consultant bids as nonresponsive for precisely these reasons.)

I urge you to be responsible stewards of taxpayer money. Do not rely only on info provided by bidders. Proactively seek external information to thoroughly vet them, just as the Auditor’s office did when they vetted us and you. Take your time, and save yourselves from having to terminate another critical hire.

Respectfully,
Cynthia Dai
2010 Citizens Redistricting Commissioner, Finance & Administration Chair