

SPECIAL MEETING AGENDA

**2010 REDISTRICTING COMMISSION
OF THE CITY OF SAN DIEGO**

SATURDAY, JUNE 25, 2011, AT 1:00 P.M.

**SILVER ROOM (2nd Floor)
SAN DIEGO CONCOURSE
202 C STREET
SAN DIEGO, CALIFORNIA 92101**

Web: <http://www.sandiego.gov/redistricting>

Email: redistricting_2010@sandiego.gov

Phone: (619) 533-3060

ROLL CALL

ACTION ITEMS

- ITEM 1: Discussion and approval of authorization for City Attorney's Office to negotiate and enter an agreement with the law firm of Remcho, Johansen & Purcell to provide specialized legal advice regarding redistricting and the Voting Rights Act not to exceed \$50,000.00.
- ITEM 2: Discussion and direction regarding scheduling of post-map hearings.

ADJOURNMENT

REMCHO, JOHANSEN & PURCELL, LLP
ATTORNEYS AT LAW

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Joseph Remcho (1944-2003)
Robin B. Johansen
Kathleen J. Purcell (Ret.)
James C. Harrison
Thomas A. Willis
Karen Getman
Margaret R. Prinzing
Kari Krogseng

FIRM GENERAL DESCRIPTION

Remcho, Johansen & Purcell, LLP specializes in political, election, constitutional, redistricting, and public policy law. We advise government agencies, nonprofits, ballot measure committees, candidates, public officials, corporations, and political action committees about participating in elections and government decision-making at the federal, state, and local levels.

Over the last twenty-five years, our attorneys have litigated some of the most important constitutional, ballot measure, campaign finance, education finance, and election law cases in California. This includes defending the state's redistricting plans, successfully challenging California's campaign finance laws, and defending against legal challenges to high-profile statewide initiatives, including the Stem Cell Research and Cures Initiative (Proposition 71) and the California Children and Families Initiative (Proposition 10).

Representative clients include the California Senate and Assembly, the California Institute for Regenerative Medicine, CalPERS, the California State Controller's Office, the California High Speed Rail Authority, Alameda County, Santa Clara County, Stanislaus County, San Francisco Unified School District, the City of Oakland, the City of Richmond, and many other state and local agencies, nonprofits and federal, state, and local public officials and candidates.

RJP has six full-time attorneys and one part-time attorney, one paralegal, one legal secretary, two full-time staff members and one firm administrator. Because of its small size, RJP is known for staffing matters efficiently and cost-effectively. That means that all work on a case is performed by only two to three attorneys, who will know all aspects of the case.

Ms. Johansen is one of the founding members of the firm and a partner. Mr. Willis is also a partner.

RESUMES

ROBIN B. JOHANSEN is a founding partner of Remcho, Johansen & Purcell, LLP. She was admitted to the California Bar in 1977 and the Bar of the District of Columbia in 1979. She is a graduate of the University of Illinois (B.A., cum laude 1968) and Stanford Law School (J.D. 1977).

Ms. Johansen was Senior Article Editor, *Stanford Law Review*, Volume 29, and is the author of “The New Federalism: Toward a Principled Interpretation of the State Constitution,” 29 *Stanford Law Review* 297, 1977 and “Searches and Seizures on Church Premises: Weighing the Privacy Rights of Religious Bodies” in Kelley, *Government Intervention in Religious Affairs II*.

Ms. Johansen is a member of the California Academy of Appellate Lawyers, and currently serves on the editorial board of *The Journal of Church and State*. She serves on the Board of Directors of First Place for Youth, and from 1992 to 1993, she was a member of the State Citizens’ Commission on Ballot Initiatives. In 1974, Ms. Johansen was a research assistant to the U.S. House of Representatives’ Impeachment Inquiry Staff.

In addition to her work on redistricting, Ms. Johansen has represented numerous local governmental entities on a variety of public policy issues and has worked extensively on matters involving the initiative and referendum process at both the state and local levels. She has also represented a broad range of clients, including the California Legislature, the State Superintendent of Public Instruction and the State Controller, in public policy, school finance, and constitutional litigation in both state and federal courts.

THOMAS A. WILLIS is a partner specializing in election, redistricting and campaign finance law. He was admitted to the California Bar in 1992 and is a graduate of Duke University (B.A., 1987) and the University of Virginia School of Law (J.D., 1992).

Since joining the firm, Mr. Willis has litigated a number of election law, redistricting and campaign finance cases. Mr. Willis participated in litigation successfully defending the California Legislature’s 2001 redistricting plan. (*Nadler v. Schwarzenegger* (2006) 137 Cal.App.4th 1327; *Cano v. Davis* (C.D. Cal. 2001) 191 F. Supp. 2d 1135; (C.D. Cal. 2002) 211 F.Supp.2d 1208, affd. (2003) 537 U.S. 1100.) In 2009, Mr. Willis represented Alameda County in an appeal challenging the County’s election recount procedures for electronic voting systems. (*Americans for Safe Access v. County of Alameda* (2009) 174 Cal.App.4th 1287.) In 2006, Mr. Willis participated in defending Proposition 80 in a pre-election challenge in a case that now defines the standard for pre-election review of initiatives. (*Independent Energy Producers Assoc. v. McPherson* (2006) 38 Cal.4th 1020.) In 2003, he successfully challenged an interim contract approved by a municipality before a referendum election could take place. (*Lindelli v. Town of San Anselmo* (2003) 111 Cal.App.4th 1099.) In 2002, Mr. Willis successfully defended a member of the Public Utilities Commission in an action that sought to remove him from office based on an alleged conflict of interest. (*People ex rel. Found. for Taxpayer & Consumer Rights v. Duque* (2003) 105 Cal.App.4th 259.) Mr. Willis also

participated in a successful federal court challenge to San Francisco campaign contribution limits.

In addition to litigation, Mr. Willis advises state and local agencies on redistricting, election law, conflicts of interest and initiatives and referenda. Those clients have included the State Assembly, the City of Oakland, the City of Richmond, the City of Redwood City, and San Francisco Unified School District. Mr. Willis also represents clients before the Federal Elections Commission, the California Fair Political Practices Commission, and the San Francisco Ethics Commission. He advises candidates, state and local agencies, campaign committees, initiative and referendum committees, corporations and nonprofits about these laws and the electoral process, including election procedures.

SIGNIFICANT MATTERS

REDISTRICTING ADVICE AND LITIGATION:

1. **Matter:** Redistricting Advice
Public Entity/Client: State Assembly and Senate
Status/Outcome: Ongoing

Comments: For the last twenty years, RJP has advised the California State Assembly (and in some cases the Senate) on all aspects of redistricting matters, including: (1) the drafting of plans in 1991 and 2001; (2) advice on public hearings and input with respect to redistricting; (3) drafting legislation and proposed Constitutional amendments concerning redistricting; (4) advising the Legislature on issues related to the Statewide Redistricting Database; (5) advising the Legislature with respect to its obligations under Proposition 11, which established California's Redistricting Commission; (6) advising the Assembly with respect to various initiative and referendum issues related to redistricting, including the recent Propositions 11, 20 and 27; and (7) advising the Legislature on federal census issues. Ms. Johansen and Mr. Willis provide the Legislature this advice.

2. **Matter:** Redistricting Advice
Public Entity/Client: The State Bar of California
Status/Outcome: Completed

Comments: In 2009 and 2010, RJP advised the State Bar of California with respect to redistricting efforts for its Board of Governors. Ms. Johansen provided the State Bar this advice.

3. **Matter:** *Nadler v. Schwarzenegger* (2006) 137 Cal.App.4th 1327
Public Entity/Client: State Assembly
Status/Outcome: Court Decision

Comments: Successfully defended the State's 2001 redistricting plan against a lawsuit challenging the state legislative plans on the grounds that they violated the California Constitution requirements for redistricting (Former Cal. Const., art. XXI). Ms. Johansen and Mr. Willis litigated this case.

4. **Matter:** *Cano v. Davis* (C.D. Cal. 2001) 191 F.Supp.2d 1135;
(C.D. Cal. 2002) 211 F.Supp.2d 1208, affd. (2003) 537 U.S. 1100

Public Entity/Client: State Assembly

Status/Outcome: Court Decision

Comments: Successfully represented the California Assembly in a defense of the State's 2001 redistricting plan against a federal lawsuit challenging the congressional and state legislative plans on the grounds that they violated the Constitution and Section 2 of the federal Voting Rights Act. Ms. Johansen and Mr. Willis were part of the team that worked on the litigation.

5. **Matter:** *Department of Commerce v. U.S. House of Representatives*,
(1999) 525 U.S. 316

Public Entity/Client: State Assembly

Status/Outcome: Court Decision

Comments: Represented the California Assembly before the United States Supreme Court in a case challenging the way in which the decennial census is conducted. Ms. Johansen and Mr. Willis were part of the team that worked on the litigation.

6. **Matter:** *Senate of the State of California v. Jones* (1999) 21 Cal.4th 1142

Public Entity/Client: State Legislature

Status/Outcome: Court Decision

Comments: Successfully challenged a redistricting proposition that would have removed redistricting from the Legislature. Challenge was pre-election and removed the proposition from the ballot. Ms. Johansen and Mr. Willis were part of the team that worked on the litigation.

7. **Matter:** *Wilson v. Eu* (1992) 1 Cal.4th 707

Public Entity/Client: State Assembly

Status/Outcome: Court Decision

Comments: Represented the California Assembly in proceedings before the California Supreme Court regarding the submission and enactment of a statewide redistricting plan by court-appointed special masters. Ms. Johansen was one of two lead attorneys on this litigation.

8. **Matter:** *Assembly v. Deukmejian* (1982) 30 Cal.3d 638

Public Entity/Client: State Assembly

Status/Outcome: Court Decision

Comments: Represented the California Assembly in California Supreme Court original writ proceeding regarding effect of referendum on statewide redistricting plans. Ms. Johansen was one of two lead attorneys on this litigation.

ELECTION LAW ADVICE AND LITIGATION CASES:

1. **Matter:** *Americans for Safe Access v. County of Alameda*,
(2009) 174 Cal.App.4th 1287

Public Entity/Client: County of Alameda

Status/Outcome: Court Decision

Comments: Represented the County of Alameda in an appeal in a lawsuit challenging the County's election recount procedures for electronic voting systems. Ms. Johansen and Mr. Willis were part of the team that worked on the litigation.

2. **Matter:** Advice on Initiatives and Charter Amendments

Public Entity/Client: City of Redwood City

Status/Outcome: Completed (2008)

Comments: RJP advised the City of Redwood City on all aspects of a local charter amendment measure that qualified for the ballot and also drafted a competing Charter amendment for the City. The firm advised the City about the initiative and election process, the use of public funds in such situations, drafted analysis of the measures, and drafted related ordinances and resolutions. Mr. Willis provided this advice to the City of Redwood City.

3. **Matter:** Advice on Initiatives

Public Entity/Client: City of Richmond

Status/Outcome: Completed (2010)

Comments: RJP advised the City of Richmond on a proposed fee initiative that qualified for the ballot. The firm advised the City on initiative and election law issues, the use of public funds in such situations, and reviewed analysis of the measure and related ballot material. Mr. Willis provided this advice to the City of Richmond.

4. **Matter:** Advice on Special Election

Public Entity/Client: City of Oakland

Status/Outcome: Completed (2009)

Comments: RJP advised the City of Oakland about placing certain budget and revenue related measures on a special election ballot. Mr. Willis provided this advice to the City of Oakland.

DRAFT AND DEFENSE OF INITIATIVES:

Matter: Drafting and Defense of Initiatives

Public Entity/Client: Various

Status/Outcome: NA

Comments: RJP has extensive experience in connection with ballot measures and referenda, including drafting measures and defending them in litigation. Our 360 degree experience with ballot measures affords us unique insight into the potential legal vulnerabilities of ballot measures and referenda. As a result, RJP is very familiar with the arguments, strategy, and case law regarding pre- and post-election challenges to ballot measures. We have been involved in drafting dozens of ballot measures for numerous clients, including Proposition 25 (On-Time Budget Act), Proposition 93 (term limits), Proposition 87 (clean energy), Proposition 82 (preschool), Proposition 71 (stem cell research), Proposition 56 (budget accountability), Proposition 26 (school bonds), and Proposition 10 (early childhood development). We have also drafted ballot measures in the areas of land use planning, the civil justice system, health care, workers' compensation, education funding, and corporate accountability.

We have also successfully defended several statewide initiatives from constitutional challenges. In the Fall of 2000, the firm successfully defended Proposition 10 during a 10-week trial in San Diego. The court held that the initiative did not violate the single-subject rule, the separation of powers doctrine or the constitutional prohibition against state funding of entities outside the state's exclusive management and control. The Fourth District Court of Appeal upheld the trial court's ruling in 2003. *California Assoc. of Retail Tobacconists v. State* (2003) 109 Cal.App.4th 792. Ms. Johansen participated in all aspects of that litigation. More recently, the firm helped defend Proposition 71, the stem-cell initiative, against a similar challenge, again succeeding at the trial and appellate levels. (*California Family Bioethics Council v. California Institute for Regenerative Medicine* (2007) 147 Cal.App.4th 1319.) Ms. Johansen also participated in that defense.

REMCHO, JOHANSEN & PURCELL
PROPOSED FEE ESTIMATE FOR VOTING RIGHTS ACT ADVICE

RJP would provide advice on the Voting Rights Act and also be available to review draft and final plans to ensure those plans comply with federal and state law and the redistricting criteria set forth in the San Diego Charter. Tom Willis and Robin Johansen would provide most if not all of the advice; we each charge \$375 per hour.

June 27 – July 9, 2011

30-50 hours

- Review Commission proceedings to date and identify unique City characteristics;
- Identify specific Voting Rights Act issues with City Attorney;
- Review plans submitted by community groups; and
- Provide advice and potential guidelines for line-drawing and prioritizing criteria.

July 9, 2011

6-8 hours

- Meet with Commission to discuss Voting Rights Act and guidelines for line-drawing (travel to/from San Diego)

July 10-22, 2011 (or until draft maps are released)

30-50 hours

- Review proposed plans for VRA and other criteria compliance;
- Provide ongoing VRA advice;
- Work with line-drawer on plan options; and
- Review draft written statement of findings.

August 2011

Unknown

(The scope of work will depend on the degree to which draft plans are changed and whether significant VRA issues remain)

- Provide advice about proposed changes to draft maps;
- Continue answering VRA questions as they arise; and
- Review and revise revised written statement of findings.