GIBSON DUNN

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January 29, 2021

VIA ELECTRONIC MAIL & OVERNIGHT DELIVERY

Kary Marshall
Chief Counsel
Citizens Redistricting Commission
721 Capitol Mall, Suite 260
Sacramento, CA 95814

Re: Statement of Qualifications for Citizens Redistricting Commission Litigation Counsel

Dear Ms. Marshall:

Gibson Dunn would be honored to represent the California Citizens Redistricting Commission in the event of litigation concerning its four certified voting district maps. Nationally acclaimed as a litigation powerhouse, we have a long record of outstanding successes. *The American Lawyer* named Gibson Dunn its 2020 Litigation Department of the Year, recognized as the "best of the best." This unprecedented achievement was the firm's fourth win in the last six years of the publication's biennial "Litigation Department of the Year" competitions, and the sixth time in a row the firm has been a finalist.

As described in further detail below, we have litigated and advised clients on numerous voting rights and other constitutional matters, including in multiple jurisdictions in California. Our experience in representing clients before the U.S. Supreme Court, the California Supreme Court, and other appellate courts is unparalleled, and we will be able to draw on that experience in defending the Commission and its maps against a variety of potential legal challenges. Most notably, we served as Voting Rights Act counsel to the inaugural Commission in 2011 and played an integral role in the map-drawing process—we then successfully defended the Commission's maps against two challenges in the California Supreme Court.

Below are responses to each of the questions set forth in Sections V-VII of the Request For Information. We look forward to further discussing our qualifications and renewing our partnership with the Commission.

I. Personnel

We propose a team that would be led by litigation partners Ted Boutrous, Matt Kahn, and me. Included in our response are the attorney profiles of all proposed team members.

Theodore Boutrous Jr. (Partner; Los Angeles) was named by *The American Lawyer* as its Litigator of the Year Grand Prize Winner in January 2020. He has argued more than 150 appeals, including before the Supreme Court of the United States, 12 different federal circuit courts of appeals, 10 different state supreme courts (including numerous arguments in the California Supreme Court), and a multitude of other appellate and trial courts in complex civil, constitutional and criminal matters. Mr. Boutrous has litigated and won many significant constitutional cases throughout his career, including *Hollingsworth v. Perry* (2013) 570 U.S. 693 (the effect of which was to overturn Proposition 8, which banned same-sex marriage in California) and *Wal-Mart Stores, Inc. v. Dukes* (2011) 564 U.S. 338 (arguably the Court's most significant action ruling ever). *The New York Times* referred to Mr. Boutrous as having "a long history of pushing the courts and the public to see the bigger picture on heated issues." And the *Los Angeles Business Journal* has described him as "one of the nation's most prominent appellate attorneys."

Kahn Scolnick (Partner; Los Angeles) was a lead member of the Gibson Dunn team that served as Voting Rights Act counsel to the California Citizens Redistricting Commission in 2011 (discussed in more detail below), and he was the principal draftsperson of the Commission's winning appellate briefs before the California Supreme Court. Mr. Scolnick has also litigated a wide array of constitutional and complex litigation matters in state and federal courts across the country, at both the trial and appellate levels. He is currently serving as appellate counsel for the City of Santa Monica in its appeal involving the California Voting Rights Act (CVRA), which resulted in a complete victory for the City last year before the Court of Appeal (the case is now before the California Supreme Court). Mr. Scolnick was also involved in one of the three other CVRA cases that has yielded a published appellate decision to date, *Rey v. Madera Unified School District*, discussed in more detail below.

Matthew Kahn (Partner; San Francisco) has litigated many high-stakes trial matters and arbitrations and was recognized by *Law360* as a "Legal Lion." Mr. Kahn was another key member of the team that advised the California Citizens Redistricting Commission in 2011. He also was one of the lead lawyers who handled the successful *Rey v. Madera Unified School District* CVRA litigation, and has worked on other CVRA matters as well. Mr. Kahn also has significant experience in the prosecution and defense of commercial and real estate contracts and business tort actions and regularly advises clients regarding complex information law matters in both federal and state jurisdictions.

Tiaunia Henry (Associate; Los Angeles) was the lead associate on the Santa Monica CVRA litigation and trial team. As such, Ms. Henry managed various experts providing opinions regarding ecological regression and demographic analyses. During the trial phase of that case, Ms. Henry successfully argued motions in limine, first- and second-chaired percipient witnesses and first- and second-chaired expert witnesses. Ms. Henry also advised other California cities

concerning threatened or filed CVRA litigation. She has also litigated a number of high-profile litigation matters in courts throughout the United States and successfully advised clients on coordinating their litigation and press strategy.

Daniel Adler (Associate; Los Angeles) is the lead appellate associate responsible for drafting Santa Monica's briefs in the pending CVRA appeal mentioned above. Mr. Adler was also a key member of the trial team in that case—among other things, he argued and won motions during the trial, and he led the City's briefing efforts before, during, and post-trial. He has also advised multiple California cities concerning threatened or filed CVRA litigation. He has briefed dozens of appeals litigated in federal and state courts across the country and has presented oral argument several times in the California Courts of Appeal.

Emily Sauer (Associate; Los Angeles) represents clients in a variety of complex disputes in state and federal trial and appellate courts. She helped successfully defend against an emergency application for a temporary restraining order brought shortly before the 2020 General Election on First Amendment grounds. She has also briefed several matters involving constitutional issues, such as the constitutionality of a California arbitration statute, and currently represents a pro bono client alleging violations of his Fourteenth Amendment rights. Prior to joining Gibson Dunn, Ms. Sauer served as a law clerk for the Honorable Carlos Bea of the United States Court of Appeals for the Ninth Circuit.

II. Attorney/Firm General Description

In 1872, lawyer John Bicknell had his sights set on building a law practice in downtown Los Angeles. It took time to select a quality partner, but in 1890, Bicknell teamed with Walter Trask, launching the unbroken chain of partnership that today is Gibson, Dunn & Crutcher. They established a set of unique firm attributes that includes selecting only quality lawyers and providing powerful resources in both litigation and transaction-related legal services. In 1897, Judge James Gibson joined the firm, thus instituting another Gibson Dunn tradition – hiring lawyers who make an impact in their communities. In 1903, Bicknell, Trask, and Gibson merged their practice with that of attorney William Dunn and former Assistant City Attorney Albert Crutcher. Carried out at the behest of a client in order to create a "full-service" firm, the combination was called an "experiment" in the local press. It has worked ever since, as the firm has grown both nationally and globally, over more than a century.

Today, Gibson Dunn is a global firm, with more than 1,400 lawyers in 20 offices worldwide. We are recognized for excellent legal service, and our lawyers routinely represent clients in some of the most complex and high-profile transactions in the world. We consistently

rank among the top law firms in the world in published league tables. The firm's size and geographic diversity are distinct advantages when assisting our clients.

III. Experience

a. California Supreme Court Experience

Gibson Dunn has a truly national practice before state appellate courts. We have significant experience not only in the courts of the U.S. jurisdictions in which the firm maintains offices (including California), but in jurisdictions across the country. Working closely with the firm's Public Policy Practice Group, we also analyze proposed legislation and regulations from both legal and policy perspectives, testify before the U.S. Congress and state legislatures, and engage in other forms of legislative and public policy advocacy.

Some of our significant representations handled before the California Supreme Court include:

- We are now representing the City of Santa Monica on an important issue of first impression—namely, what must a plaintiff prove in order to establish vote dilution under the California Voting Rights Act. Gibson Dunn served as trial counsel for the City and then successfully appealed an adverse bench trial judgment to the California Court of Appeal. In July of last year, the Court of Appeal issued a published opinion reversing the trial court in full, holding that the plaintiffs had failed to establish vote dilution (because their proposed district-based election scheme would not benefit Latino voters) and had failed to prove that the City intentionally discriminated against minority voters by adopting and maintaining the at-large system. The case will be fully briefed later this year.

- Challenged the California Insurance Commissioner's authority to issue a regulation regarding replacement cost estimates for homeowners' insurance. Ted Boutrous argued on behalf of insurance trade organizations that had sought a declaratory judgment invalidating the regulation. The California Supreme Court held that the regulation was valid under California's Administrative Procedure Act, but remanded for the lower courts to address other challenge to the regulation.

- Represented the law firm of Latham & Watkins in a malicious prosecution suit. Adopting the arguments and distinctions developed and advanced by Ted Boutrous at oral argument, the California Supreme Court sided with Latham on both issues of broad significance to attorneys and their clients in California.

- Represented ABM Security Services, Inc. in a case concerning a $90 million classwide summary judgment order against a security guard company, ABM, that was premised on the theory that an on-call rest break is invalid under California law. Ted Boutrous argued on behalf of ABM. The California Supreme Court held, by a 5-2 vote, that ABM failed to provide sufficient rest breaks and that both on-duty and on-call rest breaks are impermissible in California, and remanded for further proceedings on ABM's remaining challenges to the judgment. The dissenting justices would have held that on-call rest breaks are not per se invalid and that genuine issues of material fact render the summary judgment order invalid.

- Represented BNSF Railway Company before the California Supreme Court in a "take-home" asbestos liability case. The Court held that a premises owner owes a duty to prevent take-home liability, but that the duty extends only to members of an employee's household. The Court established this bright-line limitation in recognition of Gibson Dunn's argument that unfettered take-home liability would burden businesses and premises owners in California, and exacerbate the asbestos litigation crisis by greatly expanding the pool of potential plaintiffs and defendants.

- Represented 926 Ardmore Avenue LLC in the California Supreme Court, challenging Los Angeles County's application and extension of the California Documentary Transfer Tax (a tax paid on documents that transfer real estate) to transfers of interests in entities that own the real estate. In an 8-1 opinion, the Court agreed with Gibson Dunn's arguments and affirmed the lower court's decision. The case plays a significant impact on all California real estate transactions.

- Secured a unanimous privacy victory for Facebook, Inc. and other businesses across the state when the California Supreme Court established a comprehensive framework for evaluating third-party subpoenas of consumer records held by businesses in general, and social media companies in particular. The Court's decision substantially raised the bar for litigants who wish to access the private electronic communications of non-parties. This decision provided much-needed clarity to social media and other web-based companies that are routinely inundated with requests for third-party communications and data for use in court proceedings.

- Obtained reversal from the California Supreme Court, on behalf of Arakelian Enterprises, Inc., of a trial court order denying Arakelian's petition to compel arbitration of the truck driver plaintiff's individual labor code claims, and two California Court of Appeal decisions also rejecting arbitration.

b. Federal Court Experience

Our litigators are also experienced in federal courts at both the trial and appellate levels and handle almost every imaginable area of controversy in every court in the country, including those pertaining to public policy and constitutional issues. Below is just a small sampling of our significant representations handled in federal court:

- Won a historic marriage equality victory before the U.S. Supreme Court, whose June 26, 2013, decision left intact the district court's broad injunction against the enforcement of California's Proposition 8, an amendment to the California Constitution restricting marriage in the state to between one man and one woman. Gibson Dunn filed the complaint challenging the constitutionality of Proposition 8 and, after trial, the Northern District of California declared it unconstitutional under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution. The Ninth Circuit affirmed.

- On January 18, 2021, one day before the effective date of a new rule that would have dramatically increased—up to eightfold—the fees for motion practice by respondents in deportation proceedings, Judge Amit Mehta of the U.S. District Court for the District of Columbia granted Gibson Dunn's request for a nationwide preliminary injunction and blocked the fees from going into effect. In *CLINIC et al. v. EOIR et al.*, Gibson Dunn represented four not-for-profit organizations that provide legal services to immigrants: Catholic Legal Immigration Network, Inc. ("CLINIC"), Community Legal Services in East Palo Alto, Kids In Need of Defense ("KIND"), and the Coalition for Humane Immigrant Rights ("CHIR"). The court recognized that the agency had simply ignored how the exorbitant fees in the final rule would impede the ability of such organizations to represent low-income immigrants by impairing their ability to place cases with pro bono partners and increasing the time spent on each case due to the additional need for fee waiver requests. And the court extended the injunction to the entire country.

- On May 4, 2020, Gibson Dunn and its co-counsel secured a significant Fifteenth Amendment victory enjoining a racially exclusionary vote on Guam when the Supreme Court denied Guam's petition for certiorari—the culmination of nine years of litigation. The government of Guam, a U.S. territory, has enacted a law calling for a plebiscite to determine Guam's future political relationship with the United States, but the law excludes otherwise qualified voters from registering to vote in the plebiscite if they do not have native Chamorro ancestry. Arnold Davis is a retired U.S. Air Force officer and registered voter in Guam who was excluded from registering to vote in the plebiscite because he does not have Chamorro ancestry. Represented by Gibson Dunn, the Election Law Center, the Center for Individual Rights, and the Law Offices of Park and Associates, Mr. Davis challenged Guam's plebiscite law under the

Fifteenth Amendment and the Fourteenth Amendment Equal Protection Clause, as well as Guam's Organic Act and the federal Voting Rights Act.

- On June 27, 2019, Gibson Dunn helped to obtain a significant victory on behalf of its amici curiae—25 businesses and business associations—when the U.S. Supreme Court struck down the proposed citizenship question for the 2020 Census and remanded back to the Department of Commerce for further administrative proceedings. Several challengers had filed suit in New York and elsewhere seeking to strike from the 2020 Census a question asking about the respondent's citizenship status, arguing that such a question would depress response rates among minority communities and that the Secretary of Commerce's proffered explanation for adding the question (to obtain data for enforcing the Voting Rights Act) was pretextual. Gibson Dunn filed an amicus brief in the district court on behalf of several businesses. After the challengers prevailed in the district court, the case went directly to the U.S. Supreme Court, where Gibson Dunn again represented businesses and business associations concerned that inclusion of a citizenship question would impair the accuracy of the Census. On June 27, 2019, the U.S. Supreme Court affirmed the district court's decision in part, holding that the Department of Commerce's explanation for adding the question did not align with the administrative record. The Court therefore affirmed the district court's decision to remand the issue back to the Department of Commerce to develop a fuller administrative record.

- On December 12, 2019, Gibson Dunn secured a historic victory for its pro bono clients John Fitisemanu, Pale Tuli, and Rosavita Tuli, all born in American Samoa but denied citizenship under 8 U.S.C. § 1408(1), which brands those born in American Samoa as "nationals, but not citizens, of the United States." Judge Clark Waddoups of the U.S. District Court for the District of Utah held that "[p]ersons born in American Samoa are citizens of the United States by virtue of the Citizenship Clause of the Fourteenth Amendment" and therefore that "8 U.S.C. § 1408(1) is unconstitutional both on its face and as applied" to our clients. The United States and the American Samoan Government, which intervened in the district court below, each appealed to the U.S. Court of Appeals for the Tenth Circuit. Gibson Dunn argued in defense of the district court's judgment on September 23, 2020, and we are awaiting a decision.

- In a major victory for Gibson Dunn pro bono clients, six individual DACA recipients or "Dreamers,", and hundreds of thousands of other DACA recipients, the U.S. Supreme Court held that the 2017 decision by the Trump Administration to terminate the Deferred Action for Childhood Arrivals (DACA) policy was arbitrary and capricious in violation of the Administrative Procedure Act. Since 2012, DACA allowed undocumented individuals who arrived in the United States as children—including nearly 700,000 current recipients—to live and work here without fear of deportation, so long as they qualified and remained eligible for the policy. DACA allowed them to work, build businesses, support their families, further their

educations, serve in the military, and contribute to their communities and to the economy of the only place most of them have ever called home. DACA recipients and others challenged the termination, including Gibson Dunn, on behalf of our pro bono clients. In 2018 the firm obtained and then defended on appeal in the Ninth Circuit the first nationwide preliminary injunction halting DACA's termination, as a result of which the large majority of DACA recipients were able to renew their applications while court proceedings continued. The Supreme Court granted review of the Ninth Circuit's affirmance of the injunction along with two other district court decisions enjoining or vacating DACA's termination.

- Commenced an action in the United States District Court for the District of Columbia, challenging actions taken by political appointees within the United States Agency for Global Media ("USAGM") that violate federal law and the First Amendment to the United States Constitution. USAGM is a federal agency that provides funding and oversight for some of the United States' international news broadcasting networks. These networks include the Voice of America, which was founded during World War II to combat Nazi disinformation campaigns. These broadcasting networks were created for the specific purpose of providing accurate, independent reporting, not state-funded propaganda, to a global audience. Despite their history of neutral and credible reporting, members of the administration have taken to criticizing the networks, accusing them of harboring a liberal bias and being unfair to the Trump Administration. In June 2020, President Trump's nominee for the position of Chief Executive Officer of USAGM, Michael Pack, was confirmed by the Senate. Since his installation, Pack has repeatedly violated the broadcasting networks' journalistic independence, including by terminating journalists, attempting to influence reporting, launching partisan investigations into neutral reporters, and refusing to allow the networks to hire necessary journalists. In so doing, Pack and his team have violated federal statutes and federal regulations that inscribe that independence into law, and the First Amendment's guarantee of freedom of the press. Gibson Dunn's action contends that Pack and his staff's actions have violated federal statutes, federal regulations, the First Amendment, and their own fiduciary duties to support, not destroy, the broadcast networks. Gibson Dunn brought the lawsuit on behalf of the former senior leadership of USAGM, all of whom were purged by Pack.

- Representing a CIA Information Technology specialist charged with improperly accessing U.S. Senate files and subsequently demonstrating a lack of candor in a follow-on review by the CIA's Inspector General, Gibson Dunn obtained complete exoneration. After an investigation that included an interview of the client and review of Gibson Dunn's written submissions, an independent Agency Accountability Board convened by the CIA found no disciplinary action warranted. The charges stemmed from the so-called "CIA spying on the Senate" scandal; the client was responsible for oversight and administration of an IT system

that permitted Senate Select Committee on Intelligence staffers access to highly classified CIA documents. After being called upon to investigate a potential network security breach by the staffers, the client was accused of participating in a gross violation of constitutional separation of powers principles.

- Filed an amicus brief on behalf of the pro bono clients, constitutional law scholars who, along with female lawyers and law students, medical professionals and others, urged the U.S. Supreme Court not to restrict reproductive health services. At issue in the case is a Louisiana regulation requiring all abortion providers in the state to have hospital admitting privileges. The law mirrors a Texas provision that was struck down by a divided 2016 ruling, *Whole Woman's Health v. Hellerstedt*, in which the Court determined the requirement would pose an "undue burden" to women seeking abortions. The Trump administration's brief asked the Court to narrow or overturn that ruling, which reproductive rights advocates argue is binding precedent.

- In 2017, the U.S. Supreme Court agreed with Gibson Dunn client Raymond J. Lucia in a constitutional challenge to the manner in which the Securities and Exchange Commission selects its administrative law judges (ALJs). The Appointments Clause of the U.S. Constitution requires that all "Officers of the United States" be appointed by the President, a court of law, or a head of department such as the SEC acting as a whole. SEC ALJs, however, are selected by SEC staff. On the key question of whether SEC ALJs are "Officers," Gibson Dunn argued that they are, and the Supreme Court agreed. As a remedy for the Appointments Clause violation, Mr. Lucia was entitled to a new hearing before a properly appointed official other than the one who had decided his case. The decision opened up potential Appointments Clause challenges to a broad swath of ALJs across dozens of agencies.

- Secured a U.S. Supreme Court victory for the State of New Jersey—and for the right of U.S. states to control their legislatures—when the Court struck down the federal Professional and Amateur Sports Protection Act that prohibited states from authorizing or licensing sports gambling. The Court held that the statute violated the U.S. Constitution's Tenth Amendment because it dictated the content of state law, such as by preventing states from legalizing sports gambling. The Court also struck down additional federal prohibitions on state-run lotteries, private operation of sports gambling schemes, and advertising of sports gambling.

- Secured a major U.S. Supreme Court victory for BNSF Railway Company in its fight against frequent forum shopping in Federal Employers' Liability Act (FELA) litigation. Two former BNSF employees who alleged they were injured on the job sued in Montana state court, known for its liberal construction of FELA (the basis of their claims) rather than in the actual states where they were injured. On appeal before the Montana Supreme Court, BNSF argued that it

was not subject to general jurisdiction in Montana under the U.S. Supreme Court's 2014 *Daimler v. Bauman* decision, also a key Gibson Dunn jurisdictional win. That court disagreed but the U.S. Supreme Court agreed. The Court held that FELA does not confer personal jurisdiction on state courts, and that the U.S. Constitution's Fourteenth Amendment Due Process Clause prevents out-of-state defendants from being sued in state courts unless those defendants are "at home" in the forum under the *Daimler* standard.

- On behalf of then-Senate Republican Leader Mitch McConnell and 44 other U.S. Senators, we persuaded the U.S. Supreme Court to unanimously affirm a landmark separation-of-powers decision from the D.C. Circuit that held unconstitutional three 2012 appointments to the National Labor Relations Board made by President Obama pursuant to the U.S. Constitution's Recess Appointments Clause. Gibson Dunn filed an amicus brief at the certiorari and merits stages and presented oral argument by special leave of the Court.

c. Public agencies and state boards/commissions experience

Our lawyers have decades of wide-ranging experience dealing with governmental bodies, agencies, and officials in multiple capacities. We understand the myriad ways in which governmental laws, regulations and actions can affect businesses, organizations, projects and people—and even other governmental interests. And we know that each situation calls for a carefully tailored response to achieve optimal results. We have the necessary special knowledge of both governing legal precedents and historical regulatory precedents, as well as a familiarity with policies and past practices that influence or direct results. We are as well sensitive to the political considerations that can drive decisions and actions involving governmental entities.

Representative experience in this area includes:

- As explained further below, we represented the inaugural California Citizens Redistricting Commission and served as its Voting Rights Act counsel during the map-drawing counsel, and then as its litigation counsel (along with Morrison & Foerster), successfully defending the Commission's maps in the California Supreme Court.

- Representing the New York State Board of Elections, we won a major First Amendment victory by persuading the U.S. Supreme Court to reject a challenge to New York State's judicial election process. The Second Circuit had invalidated the State's primary and convention process for selecting general election candidates for state trial judge on the ground that the process granted party leaders undue influence over the selection of party nominees. The New York State Board of Elections then approached Gibson Dunn to defend the constitutionality of its nearly century-old judicial election procedure before the U.S. Supreme

Court. The Supreme Court unanimously reversed the Second Circuit's decision and held that the First Amendment does not require States to dilute the influence of political party leadership in the party's candidate selection process.

- We represented the Los Angeles Superior Court in a taxpayer suit against Los Angeles County, which threatened approximately 20 percent of the overall compensation for all 400+ superior court judges in the County. The trial court granted the Superior Court's and the County's motions for summary judgment and denied plaintiffs' cross-motion. We then persuaded the Court of Appeal to affirm. Adopting Gibson Dunn's arguments, the court held that the Legislature had validly and constitutionally "prescribed" the benefits paid by Los Angeles County to its judges, which supplement the state-provided base compensation.

- Our attorneys often work closely with local government bodies in land-use matters. For example, we represented the Golden State Warriors in their successful entitlement of the Chase Center in San Francisco, including successfully defending the entitlements and CEQA analysis in an expedited judicial review. We also were lead counsel in the successful redevelopment of the Hollywood Park Racetrack, including the addition of the 80,000-seat SoFi Stadium using a unique voter-sponsored initiative.

d. Voting Rights Act Experience

As mentioned above, Gibson Dunn has extensive experience representing clients in their most important public-policy, litigation, and other matters. We have also litigated and advised clients on many redistricting-related and voting-rights issues, including matters related to the Voting Rights Act.

Most significantly, as noted above, Gibson Dunn secured reversal from the California Court of Appeal of a bench trial judgment against the City of Santa Monica under the California Voting Rights Act and the California Constitution. The decision marked the first victory ever for any defendant in a California Voting Rights Act case. The plaintiffs alleged that Santa Monica's at-large method of electing its Councilmembers discriminated against minority voters. Following a six-week bench trial, the Superior Court entered judgment in favor of the plaintiffs and ordered the City to adopt a district-based election system. The Court of Appeal rejected every basis for the trial court's decision and became the first court to decide that the California Voting Rights Act requires proof that a challenged voting system dilutes minority voting strength. The Court of Appeal also rejected plaintiffs' "unprecedented and unwise" theories that would have unduly expanded both the California Voting Rights Act and the Equal Protection Clause of the California Constitution.

Additionally, as noted above, the firm served as Voting Rights Act counsel to the inaugural California Citizens Redistricting Commission in 2011. Gibson Dunn advised the Commissioners extensively throughout their map-drawing process on a variety of issues related to the Voting Rights Act and the federal and state Constitutions. We then successfully defended the Commission's maps against challenges in the California Supreme Court (along with co-counsel at Morrison & Foerster). The petitioners had challenged a number of the State Senate districts on California Constitutional grounds and several U.S. Congressional districts as allegedly violating the 14th Amendment, the Voting Rights Act, and the California Constitution. The Court agreed with Gibson Dunn that the challenged districts were drawn in full compliance with federal and state redistricting requirements and summarily denied both petitions.

The firm's work on voting-rights and redistricting-related cases also includes:

- *Bush v. Gore* (2000) 531 U.S. 98: Gibson Dunn secured a ruling from the United States Supreme Court that standardless manual recounts in Florida's presidential election violated the Equal Protection Clause.

- *Davis v. Guam* (9th Cir. 2019) 923 F.3d 822: Gibson Dunn obtained a ruling from the Ninth Circuit that a plebiscite excluding voters if they did not have native Chamorro ancestry violated the Fifteenth Amendment.

- *Pope v. County of Albany* (N.D.N.Y. 2015) 94 F.Supp.3d 302: Gibson Dunn won a complete victory on behalf of minority citizens of Albany County, New York, challenging redistricting legislation under the Voting Rights Act.

- *Rey v. Madera Unified School District* (2012) 203 Cal.App.4th 1223: Gibson Dunn successfully represented minority voters in a lawsuit brought under the CVRA against a school district, which abandoned its at-large election system as a result of the lawsuit.

- Successfully defended Proposition 77 before the California Supreme Court. Proposition 77 was a comprehensive electoral redistricting measure. We secured a ruling on behalf of the proponents of Proposition 77 that guides both the timing and nature of future legal challenges to initiative measures in California.

e. eDiscovery Experience

Gibson Dunn has been handling complex, cross-border electronic discovery matters for decades. As data volumes face exponential growth and new data sources permeate into nearly every facet of business and personal life, the need for sophisticated solutions has never been

greater. To respond to this need, the firm has invested in leading technology to help navigate today's eDiscovery landscape and provide our clients with seamless, secure and cost-effective services.

Our Global Practice Services (GPS) team is equipped to handle the complex and large-scale eDiscovery demands that are commonplace in today's regulatory and litigation arenas. GPS provides a full range of customized eDiscovery solutions -- from data collection through trial presentation -- leveraging best of breed tools in order to deliver true end-to-end discovery services. Our technology stack is hosted within Gibson Dunn's global data centers and includes the following programs: Relativity (v10.3), Relativity Analytics, LAW PreDiscovery, LiveNote, CaseMap, and Sanction.

In addition to the investment Gibson Dunn has made with eDiscovery technology, we have also invested heavily in the people and process to help drive that technology. Our GPS team consists of more than a dozen eDiscovery specialists with extensive experience managing complex, cross-border discovery projects. Every GPS team member has at least 10 years of industry experience and is responsible for handling end-to-end eDiscovery workflows, from collection and data processing through review and production. GPS team members frequently utilize Relativity's structured and conceptual analytics tools in support of our projects. These tools allow for faster review and analysis of client data and support our goal to quickly identify actionable information and minimize unnecessary expenditure on eDiscovery. We are continually evaluating new tools and methods to better support this effort and drive down cost and time to insight.

IV. Conflicts of Interest

Litigation adverse to California state entities:

- Gibson Dunn is presently involved in matters adverse to the California Insurance Commissioner.

- Gibson Dunn has represented a client in litigation against the California Secretary of State, which is now over.

- Gibson Dunn has handled, and expects to continue to handle, litigation on behalf of clients where the State of California, represented by the California Attorney General's Office, is an adverse party. However, over the past ten years, Gibson Dunn has also assisted the California Attorney General's Office on a wide range of matters.

- Gibson Dunn has handled, and expects to continue to handle, litigation on behalf of clients where the Governor is an adverse party. However, over the past ten years, Gibson Dunn has also assisted the Governor on a wide range of matters.

- If the Commission would like, we can provide further detail regarding matters in which Gibson Dunn is adverse to California state governmental entities.

Work relating to redistricting or other work during the past 10 years that could present the appearance of a conflict in connection with the representation of the Commission:

- Matthew Kahn and Kahn Scolnick have worked on behalf of minority voters in connection with litigation involving the CVRA.

- Ted Boutrous, Kahn Scolnick, Tiaunia Henry, and Daniel Adler are presently representing the City of Santa Monica before the California Supreme Court in a case that will determine what a plaintiff must show to establish vote dilution under the California Voting Rights Act.

- Gibson Dunn previously worked on redistricting litigation in Southern California in which the Mexican American Legal Defense and Education Fund was an opposing party. That engagement ended more than five years ago.

- Lawyers in Gibson Dunn's New York office have been involved in voting rights litigation matters, including litigation involving New York City's Local Law 51 (which extended term limits for local elected officials) and the FVRA case *Arbor Hill Concerned Citizens Neighborhood Association v. County of Albany* litigated in the Northern District of New York.

V. Fee Arrangements

Our firm normally charges an hourly rate for the time spent by each attorney on an engagement. We recognize that this project is an important public service opportunity, and, for that reason, we would be happy to proceed on an alternative, mixed hourly and fixed fee basis. Upon selection by the Commission, we will work with you to detail the extent of the work required and to determine the most appropriate fee structure and related staffing. We will then need to have that arrangement approved by our Management Committee.

2021 Standard Rates for each proposed attorney above are available upon request.

VI. References

- George Cardona
  Interim City Attorney, City of Santa Monica

- Kirk Miller
  Former Chief Counsel, Citizens Redistricting Commission

- Todd Labinsky
  Senior Vice President and Assistant General Counsel, Inspire Brands

- Gabe Stern
  Vice President, Legal, Slack Technologies, Inc.

Contact information and additional references available upon request.

VII. Billing Guidelines

We have reviewed the State of California Citizen's Redistricting Commission Billing Guidelines and agree to abide by the terms subject to the limited clarifications outlined below:

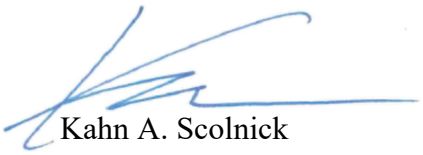
- **B. Legal Research / Memoranda:** We respectfully reserve the right to bill for all research projects that are, in the Firm's reasonable professional judgment, consistent with providing quality service to CRC and supported by detailed narratives.

- **E. Retention of Experts and Independent Consultants:** Unless otherwise negotiated, the Firm will require CRC to retain third parties directly or require that CRC pay for outside services directly, or to reimburse us if we make payment for these services on CRC's behalf. CRC and not Gibson Dunn will ultimately be responsible for the payment of any fees or costs in connection with the services provided.

- **F. Secretarial/Clerical/Administrative Functions at Professionals Rates:** We respectfully reserve the right to utilize and charge for non-attorney resources (such as research specialists and electronic discovery specialists) where deemed substantive in nature and a cost-effective alternative to utilizing the efforts of attorneys or paralegals.

Once again, we would consider it a privilege to represent the Commission in the event of any litigation. Thank you for considering Gibson Dunn.

Sincerely,



Kahn A. Scolnick

Appendix A: Attorney Profiles

Enclosed please find the attorney profiles for the proposed team.

Theodore J. Boutrous Jr.

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Theodore J. Boutrous, Jr., a partner in the Los Angeles office of Gibson, Dunn & Crutcher LLP, is global Co-Chair of the firm's Litigation Group and previously led the firm's appellate, crisis management, transnational litigation and media groups. He also is a member of the firm's Executive and Management Committees. Recognized for a decade of excellence in the legal profession, the Daily Journal in 2021 named Mr. Boutrous as a Top Lawyer of the Decade for his victories. As a tireless advocate and leader for high-stakes and high-profile cases, Mr. Boutrous was also named the 2019 "Litigator of the Year, Grand Prize Winner" by The American Lawyer.

As *The New York Times* has noted, Mr. Boutrous has "a long history of pushing the courts and the public to see the bigger picture on heated issues." He has represented clients in the federal and state appellate courts throughout the nation in a wide spectrum of cases. He has argued more than 150 appeals, including before the Supreme Court of the United States, 12 different federal circuit courts of appeals, 10 different state supreme courts and a multitude of other appellate and trial courts in complex civil, constitutional and criminal matters. Mr. Boutrous has successfully persuaded courts to overturn some of the largest jury verdicts and class actions in history. In 2011, he successfully represented Walmart before the Supreme Court of the United States in the *Dukes* case, which unanimously reversed what had been the largest employment class action in history and established important standards governing class actions (*Wal-Mart Stores, Inc. v. Dukes*). In 2013, he successfully represented the prevailing party in obtaining a unanimous Supreme Court decision enforcing the Class Action Fairness Act (*Standard Fire Insurance Co. v. Knowles*). Also in 2013, Mr. Boutrous successfully represented plaintiffs in the Supreme Court in a case invalidating California's prohibition on same-sex marriage, Proposition 8 (*Hollingsworth v. Perry*), in which he also served as one of the lead trial lawyers and architects of the legal strategy that led to this landmark victory. Mr. Boutrous is currently handling a lawsuit on behalf of actor Ashley Judd against Harvey Weinstein seeking redress for the career-changing harm Mr. Weinstein caused when he defamed Judd to filmmakers in retaliation against Ms. Judd for having rejected Mr. Weinstein's sexual advances. And Mr. Boutrous successfully represented Cable News Network, Inc. and Jim Acosta in bringing First Amendment and Due Process claims against President Donald Trump and other White House officials, forcing the White House to restore Mr. Acosta's press credentials. Months later, Mr. Boutrous represented Brian Karem, Playboy's White House Correspondent, bringing similar First Amendment and Due Process claims and again prevailing in the district court in forcing the restoration of Mr. Karem's press credentials.

As both a crisis management strategist and a seasoned appellate and media lawyer, Mr. Boutrous has extensive experience handling high-profile litigation, media relations and media legal issues. He routinely advises clients in planning how to respond, and in responding, to crises and other especially significant legal problems that attract the media spotlight. According to *The National Law Journal*, which in 2013 named him one of the "100 Most Influential Lawyers in America," he "is known for his wise, strategic advice to clients in crisis and is a media law star."

The Hugh M. Hefner Foundation awarded him with the First Amendment Award in 2019. He also received the 2020 Freedom of Press Award from the Reporters Committee for Freedom of the Press and the Distinguished Leadership Award by PEN America in 2019 for his leadership in advancing rights and protecting freedom of expression.

Numerous profiles of Mr. Boutrous and his practice have appeared in the media. Prominent mentions include: "Litigator of the Week: How Gibson Dunn Helped Hit Print on Mary Trump's Best-Seller," *The American Lawyer* (July 2020). "Litigator of the Year Grand Prize Winner" *The American Lawyer* (January 2020). "Litigator of the Week: Gibson Dunn's Theodore Boutrous Jr. Scores Another Win for the Fourth Estate," *The American Lawyer* (September 6, 2019). "Lawyer of the week: Theodore Boutrous Jr, attorney in White House press pass victory *The Times of London* (November 29, 2018); Litigators of the Week: Gibson Dunn's Two Teds Score for the Free Press," *The Am Law Litigation Daily (November 30, 2018);* Ted Boutrous, CNN's Champion, Is Fired Up," *Law.com* (November 30, 2018); "Litigator of the Week," *The Am Law Litigation Daily* (April 27, 2017); "Litigator of the Week," *The Am Law Litigation Daily* (September 8, 2016); "Practice Group Performs In Spotlight and Under Pressure," *Los Angeles Daily Journal* (March 2012); "Litigator of the Week," *The Am Law Litigation Daily* (June 2011); "Lawyer of the Week," *The Times of London* (June 2011); "Appellate Lawyer of the Week," *National Law Journal* (March 2011); "Litigation Department of the Year, *The American Lawyer* (January 2016); "Litigation Department of the Year," *The American Lawyer* (January 2012); " Litigation Department of the Year," *The American Lawyer* (January 2010); and " He's a Hired Gun of the Highest Caliber," *The Los Angeles Times* (June 24, 2007).

Mr. Boutrous is a member of the American Law Institute. He is a Fellow of the American Academy of Appellate Lawyers. He has been named a California "Litigation Star" in *Benchmark Litigation*, as well as a "National Practice Area Star" and a "Labor & Employment Star." *Chambers USA* ranks him as a leading lawyer in four different categories, describing him as "an absolute star" and clients prizing his skills as "an amazing orator" and his "incredible knack of picking the winning argument and his oral advocacy skills are peerless. He picks the right point in response to every question without even blinking." *Legal 500* has named Mr. Boutrous a "Leading Lawyer" for Supreme Court and Appellate litigation for the past three years in a row, calling him a "renowned advocate" and "the preeminent authority on punitive damages defenses in the U.S." BTI Consulting named Mr. Boutrous to its 2019 BTI Client Service All-Stars List, which recognizes attorneys "who deliver incomparable levels of client service excellence." In 2015, *The National Law Journal* named Mr. Boutrous to its "Trailblazers – Litigation" list, and the *San Francisco Recorder* named Mr. Boutrous to its 2015 Groundbreakers list. In 2012, Mr. Boutrous was named an "Attorney of the Year" by both the *California Lawyer* and the *San Francisco Recorder*. In 2019, the *Los Angeles* and *San Francisco Daily Journals* named Mr. Boutrous one of the 100 best lawyers in California for the fifteenth year in a row. In 2016, the *Daily Journal* named Mr. Boutrous to its 2016 list of Top Labor and Employment Lawyers. In naming him to its list of the 500 Leading Lawyers in America, *Lawdragon* calls him "one of the best media and appellate attorneys in the nation," and the *Los Angeles Business Journal* describes him as "one of the nation's most prominent appellate attorneys."

Mr. Boutrous is a frequent commentator on legal issues. His articles include: "Trump's Lawsuit Against Bolton Will Fail," *The Washington Post* (June 18, 2020). "Why Trump's Frivolous Libel Lawsuit Against the New York Times is Dangerous," *The Washington Post* (February 29, 2020). "Spare the 'Dreamers' a Nightmare by According Them Due Process," *Wall Street Journal* (May 2, 2017); "Why I'll Defend Anyone Trump Sues for Speaking Freely," Politico.com (October 31, 2016); "Poor Children Need a New Brown v. Board of Education," *Wall Street Journal* (August 28, 2016); "A First Amendment Blind Spot," *Wall Street Journal* (May 27, 2014); "California Kids Go to Court to Demand a Good Education," *Wall Street Journal* (January 28, 2014); "A Radical Departure on Press Freedom," *Wall Street Journal* (May 23, 2013); "A Killer's Notebook, a Reporter's Rights," *New York Times* (April 9, 2013); "Broadcast 'Indecency' on Trial," *Wall Street Journal* (January 17, 2012).

Mr. Boutrous is a member of the Advisory Board of the International Women's Media Foundation and its 2015 Leadership Honoree. He serves on the Business Advisory Council of ProPublica, the Advisory Board of Reveal for the Center of Investigative Reporting and the Steering Committee of the Reporters Committee for Freedom of the Press.

Mr. Boutrous received his law degree, *summa cum laude*, from the University of San Diego School of Law in 1987, where he was Valedictorian and Editor-in-Chief of the *San Diego Law Review*.

Mr. Boutrous is admitted to practice in California, New York and the District of Columbia.

Kahn A. Scolnick

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Kahn A. Scolnick is an appellate and general litigation partner in the Los Angeles office of Gibson, Dunn & Crutcher. He is a member of the firm's Appellate and Constitutional Law, Class Actions, Securities Litigation, and Transnational Litigation practice groups.

Mr. Scolnick has handled a wide range of litigation matters in state and federal courts, from the pre-filing stage through the appeal. He has represented clients in a variety of breach-of-contract, real estate, consumer and securities class actions, and other business disputes, as well as constitutional litigation involving challenges based on due process, equal protection, the Commerce Clause, and the First Amendment.

Recent matters in which Mr. Scolnick played a significant role include:

- He is a member of the team representing Chevron Corporation in multiple venues against a conspiracy seeking to extort billions of dollars from the company based on a fraudulently procured multi-billion dollar judgment in Ecuador. Mr. Scolnick was a member of both the trial team and the appellate team in Chevron's successful RICO suit against the co-conspirators. *Chevron Corp. v. Donziger*, 974 F. Supp. 2d 362 (S.D.N.Y. 2014), *aff'd*, 833 F.3d 74 (2d Cir. 2016).

- Successfully briefed and argued an opposition to a preliminary injunction motion in Nevada state court, which sought to enjoin a $2.8 billion merger of two gaming companies. As a result of the ruling, the plaintiffs agreed to dismiss the entire case voluntarily, with each side paying their own fees and costs.

- Advised the inaugural California Citizens Redistricting Commission on a variety of legal issues including the Voting Rights Act and equal protection, and then successfully defended the Commission's maps against an assortment of constitutional and statutory claims before the California Supreme Court. *Vandermost v. Bowen*; *Radanovich v. Bowen*.

- Won a complete defense verdict following a lengthy bench trial before the California Superior Court in two consolidated nationwide class actions against a commercial mortgage lender.

- Secured the reversals on appeal of judgments totaling $295 million in three certified class actions in New Mexico and California involving installment payment plans for auto insurance policies. *Nellis v. Farmers Ins. Co. of Ariz.*, 2011 N.M. App. LEXIS 114 (N.M. Ct. App. Sept. 20, 2011); *Nellis v. Mid-Century Ins. Co.*, 2011 N.M. App. Unpub. LEXIS 344 (N.M. Ct. App. Sept. 20, 2011); *Troyk v. Farmers Group, Inc.*, 171 Cal. App. 4th 1305 (2009).

- Persuaded the California Court of Appeal to affirm the dismissal with prejudice of a high-profile wrongful death action against a major university.

- Defended an automotive manufacturer, a number of its subsidiaries, and certain of its officers and directors in a highly publicized shareholder class action.

- Obtained a defense verdict following an eight-week jury trial in the California Superior Court (the case was a mass action brought by hundreds of homeowners alleging a private nuisance).

- Prevailed on summary judgment in a high-profile "taxpayer" action challenging the constitutionality of a California statute – and then persuaded the California Court of Appeal to affirm in a published decision, of which the California Supreme Court denied review. *Sturgeon v. County of Los Angeles*, 191 Cal. App. 4th 344 (2010).

- Persuaded a Nevada trial court to grant summary adjudication of plaintiffs' prayer for punitive damages in a mass action one week before the start of a scheduled 12-week jury trial (the case then settled on the second day of trial).

- Achieved dismissal with prejudice of a wage-and-hour class action in the Northern District of California on behalf of a leading retailer.

- Defeated certification of a putative nationwide consumer class action in the Central District of California concerning nutritional labeling. *Hodes v. Van's International Foods*.

- Obtained a published decision by the United States Court of Appeals for the Third Circuit reversing a substantial award of attorney's fees. *Chin v. Chrysler LLC*, 538 F.3d 272 (3d Cir. 2008).

- Prevailed on summary judgment on behalf of a leading retailer in a tort suit brought by a former officer and director.

Mr. Scolnick graduated *magna cum laude* in 2003 from the University of San Diego, School of Law. He was a Lead Articles Editor for the *San Diego Law Review* and the recipient of the Hickman Award for the Outstanding Student in Constitutional Law. Mr. Scolnick received his Bachelor of Arts degree in Public Policy Studies, with honors, from Michigan State University in 2000.

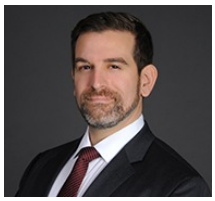
Before joining the firm in 2006, Mr. Scolnick served as a law clerk to Judge Ferdinand F. Fernandez of the United States Court of Appeals for the Ninth Circuit (2005–06), and as a law clerk to Judge Dana M. Sabraw of the United States District Court for the Southern District of California (2003–05). While in law school, Mr. Scolnick served as a judicial extern to Judge M. Margaret McKeown of the United States Court of Appeals for

the Ninth Circuit, and also to Magistrate Judge Louisa S. Porter of the United States District Court for the Southern District of California.

Mr. Scolnick has published and spoken on a variety of topics, including class actions, trial practice, civil procedure, punitive damages, and constitutional issues. He has been named eight times as one of Southern California's 'Rising Stars' by *Los Angeles Magazine* and *Southern California Super Lawyers – Rising Stars Edition* (2009-2016). Mr. Scolnick serves on the boards of the Legal Aid Foundation of Los Angeles (LAFLA) and the Los Angeles Chapter of the Association of Business Trial Lawyers (ABTL).

Mr. Scolnick is a member of the California Bar. He is admitted to practice before the United States Court of Appeals for the Ninth Circuit and the United States District Courts for the Northern, Southern, and Central Districts of California.

Matthew S. Kahn



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Matthew S. Kahn is a partner in the San Francisco office of Gibson, Dunn & Crutcher LLP. He practices in the firm's Litigation Department, and is a member of the Law Firm Defense Group Steering Committee, the Securities Litigation Group, and the Class Actions Group.

Mr. Kahn's practice focuses on securities and derivative litigation, class action defense and law firm defense. Recognized by *Law360* as a "Legal Lion," he has experience at all phases of trial court litigation and arbitration, including several victories at trial. Mr. Kahn has successfully represented companies, boards of directors, law firms, and individuals throughout the country in high-stakes matters in federal and state courts, involving claims, among others, under the Securities Act of 1933 and Securities Exchange Act of 1934; breach of fiduciary duties and insider trading under Delaware, California, and New York law; legal malpractice, breach of fiduciary duty, and aiding and abetting tortious conduct; and California's Unfair Competition Law and Consumers Legal Remedies Act. Mr. Kahn also has significant experience in the prosecution and defense of commercial and real estate contracts and business tort actions and regularly advises clients regarding complex information law matters in both federal and state jurisdictions.

Mr. Kahn regularly handles bet-the-company litigation and precedent-setting matters. His depositions of former Secretary of State, Labor and Treasury George Shultz and whistleblower Tyler Shultz in litigation against Theranos Inc. and its founder Elizabeth Holmes are featured in the HBO documentary *The Inventor: Out for Blood in Silicon Valley* and ABC News's *The Dropout*, an investigative podcast following the story of Elizabeth Holmes and Theranos. He was selected as a Northern California "Rising Star" by *Super Lawyers Magazine* each year between 2012 and 2016 and a "Lawyer on the Fast Track" by *The Recorder* in 2013.

Mr. Kahn is a member of the Association of Professional Responsibility Lawyers, the American Bar Association, and the Bar Association of San Francisco. He also serves on the Executive Committees of the San Francisco Bar Association's Litigation and Legal Malpractice Sections and as a Settlement Conference Officer for the San Francisco County Superior Court. In the latter role, Mr. Kahn presides over mandatory settlement conferences in civil cases.

Mr. Kahn clerked for the Honorable Mary L. Cooper, United States District Judge for the District of New Jersey, from 2003 to 2004. Mr. Kahn received his law degree, with distinction, from Stanford Law School in

2003. He received his B.A. in political science with honors, from Swarthmore College in 1999, where he was elected to Phi Beta Kappa and was captain of the varsity wrestling team.

Mr. Kahn is an active provider of pro bono legal services, and he serves on Gibson Dunn's Pro Bono Committee. Mr. Kahn also serves on the Leadership Council of Tipping Point Community, which finds, funds and partners with the most promising direct-service non-profits working to educate, employ, house and support those in need in the San Francisco Bay Area.

Mr. Kahn's recent speaking engagements include:

- Speaker, "Legal Malpractice and Ethics: 2020 in Review," Bar Association of San Francisco, Legal Malpractice Section, San Francisco, CA, January 12, 2021
- Presenter, "Basics of Accounting for Lawyers 2020," Practicing Law Institute, July 22, 2020
- Speaker, "When Lawyers Don't Get To Talk: Working with fact witnesses to prepare them for deposition," Bar Association of San Francisco, Litigation Section, San Francisco, CA, February 11, 2020
- Speaker, "Legal Malpractice and Ethics: 2019 in Review," Bar Association of San Francisco, Legal Malpractice Section, San Francisco, CA, January 22, 2020
- Speaker, "Dos and Don'ts of Litigation Funding," Bar Association of San Francisco, Litigation Section, San Francisco, CA, January 10, 2020
- Presenter, "Everything You Don't Know About E-Discovery (But Wish You Did)," National Business Institute, March 14, 2019
- Speaker, "Legal Malpractice and Ethics: 2018 in Review," Bar Association of San Francisco, Legal Malpractice Section, San Francisco, CA, January 23, 2019
- Presenter, "Primer on Attorney-Client Privilege and Work Product for In-House Counsel," Gibson Dunn MCLE Marathon, San Francisco, CA, January 16, 2019
- Speaker, "Legal Malpractice and Ethics: 2017 in Review," Bar Association of San Francisco, Legal Malpractice Section, San Francisco, CA, January 17, 2018
- Presenter, "Lawyers In The Cross-Hairs: Recent Trends In Claims Against Attorneys, Related Ethical And Insurance Issues, And Defense Strategies," Bar Association of San Francisco, Legal Malpractice Section, San Francisco, CA, June 3, 2015
- Presenter, "Ethics & E-Discovery: What You Need to Know About Committee on Professional Responsibility and Conduct's Proposed ESI Opinion," Gibson Dunn MCLE Marathon, San Francisco, CA, January 8, 2015
- Panelist, "Outside Counsel Views On Managing E-Discovery In Complex Litigation," GOAL Conference, San Francisco, CA, November 17, 2014

- Guest Lecturer regarding international arbitrations for "International Business Transactions" class, Berkeley Law School, Fall 2014

- Panelist, "Internal Investigations in the Era of Big Data: Today's Challenges and a View of the Promised Land," Sausalito, CA, May 29, 2014

- Panelist, "2012 Year-End Electronic Discovery Update: Moving Beyond Sanctions and Toward Solutions to Difficult Problems," Webcast, March 7, 2013

- Panelist, "Don't Become the Next Samsung: Learn How to Create Defensible, Efficient and Automated Legal Holds," Palo Alto, CA, December 13, 2012

Mr. Kahn's recent publications include:

- "Ninth Circuit Asks the New York Court of Appeals Whether Litigation Financing Agreements Are 'Usurious,'" Client Alert, July 13, 2020

- "Think Your Client Is Up To No Good? You May Have a Duty to Inquire," Article, June 24, 2020

- "Risk Management: Lawyers Facing Claims for Breach of Fiduciary Duty," Article, April 25, 2019

- "2017 Year-End Securities Litigation Update," Client Alert, February 1, 2018

- "The Dangers of Attorney Disqualification Motions," Article, November 30, 2017

- "A Cautionary Tale For Law Firms Engaging With Prosecutors," Article, August 30, 2017

- "The Gray Zone: What All Lawyers Need To Know About Providing (Or Not Providing) Business Advice After Peterson v. Katten Muchin," Article, Sept. 2016

- "Transactional Lawyers in the Crosshairs," Article, July 22, 2015

- "2012 Year-End Electronic Discovery and Information Law Update," Client Alert, Jan. 13, 2013

- "2012 Mid-Year Securities Litigation Update," Client Alert, Aug. 3, 2012

- "Strategies for Mitigating Civil Liability Consequences of FCPA Investigations & Enforcement Actions," Article, Apr. 2012

- "More Than Your Firm Bargained For: The 'Unfinished Business' Doctrine of *Jewel v. Boxer,*" Article, Feb. 2012

Tiaunia Henry

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Tiaunia N. Henry is an associate in Gibson, Dunn & Crutcher's Los Angeles office where she is a member of the firm's Litigation Department with a practice that focuses primarily on antitrust, breach of contract and transnational cases. She has represented clients in various industries including the medical device, media and entertainment, semiconductor, oil and gas, paper manufacturing and information technology consulting industries.

Matters in which Ms. Henry has been involved include:

- Representation of Chevron Corporation in defense against the recognition and enforcement of a fraudulently obtained multibillion dollar environmental judgment in Ecuador. Ms. Henry was a member of the trial team in Chevron's RICO suit against the co-conspirators who participated in a conspiracy seeking to extort billions of dollars from Chevron. *Chevron Corp. v. Donziger*, 974 F.Supp.2d 362 (S.D.N.Y. 2014).

- Representation of a multinational company and several affiliated directors in a civil shareholder class action and derivative litigation in Delaware's Court of Chancery relating to a more than $8 billion stock transaction.

- Representation of Intel Corporation in antitrust cases asserting violations of Section 2 of the Sherman Act and Section 5 of the FTC Act challenging various business practices. Ms. Henry focused on establishing consumer and OEM brand preferences, damages analysis and product quality and performance, resulting in settlement of all claims.

- Representation of a multinational healthcare product manufacturer in an antitrust suit brought by a putative class of purchasers of pulse oximetry products resulting in victory on summary judgment.

- Representation of Deloitte Consulting LLP in a breach of contract case alleging failure to properly perform under an information-technology agreement governing the design and configuration of a software system, resulting in settlement of all claims.

Ms. Henry received her Juris Doctor degree and a Master of Laws in Comparative and International Law from Duke University School of Law. While earning her degrees she was also a member of the *Duke Journal of Comparative and International Law*. In 2003, Ms. Henry graduated *magna cum laude* from Pepperdine University with a Bachelor of Arts degree in Political Science.

Ms. Henry is Co-Chair of the firm's Los Angeles-Area Diversity Committee and formerly served on the firm's Associates Committee. Ms. Henry currently serves on the Associate Leadership Board of Public Counsel and the Law Alumni Association Board of Directors of Duke University School of Law.

Daniel R. Adler

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Daniel R. Adler is a litigation associate in the Los Angeles office of Gibson, Dunn & Crutcher. His practice focuses on complex commercial and constitutional litigation in trial and appellate courts. He has briefed dozens of appeals litigated in federal and state courts across the country and has presented oral argument several times in the California Courts of Appeal.

Highlights include:

- *Complex commercial appeals.* Mr. Adler has represented clients before the Supreme Court of the United States, federal circuit courts, and state and territorial appellate courts across the country. Among other victories, Mr. Adler secured a unanimous decision from the Delaware Supreme Court reversing the judgment of the Court of Chancery in a high-profile appraisal action.

- *Voting-rights litigation.* Mr. Adler defended a municipality, at both trial and on appeal, against claims brought under the California Voting Rights Act and the Equal Protection Clause. Mr. Adler has also counseled other California cities threatened with litigation under the California Voting Rights Act and section 2 of the federal Voting Rights Act.

- *Intellectual-property litigation.* Mr. Adler was part of the team that won a complete defense verdict for a major wireless carrier in a patent trial litigated in the District of Nebraska. Mr. Adler successfully defended the verdict before the Federal Circuit, which enlarged the scope of the wireless carrier's victory at trial by holding the plaintiff's patent claims were ineligible for patent protection under 35 U.S.C. § 101. Mr. Adler has also litigated other patent cases in trial and appellate courts, as well as cases concerning software copyright.

- *Class actions.* Mr. Adler has defended clients in high-stakes class actions. Among other cases, Mr. Adler has defended Facebook against claims stemming from the Cambridge Analytica events, a technology company against securities claims, and a boat and motorcycle manufacturer against manufacturing-defect and mislabeling claims.

- *Insurance litigation.* Mr. Adler has extensive experience representing insurers in a variety of disputes, including against a bad-faith action; in the appeal of a bellwether case brought against an insurer for its

connections to a Ponzi scheme; and against oil producers seeking payment under reinsurance policies for damages caused by water contamination.

Mr. Adler also maintains an active pro bono practice. Highlights include:

- *First Amendment.* Mr. Adler represents a nonprofit sued by a political group for an alleged violation of the First Amendment. Mr. Adler has also counseled other clients facing potential First Amendment litigation.

- *Fourth Amendment.* Mr. Adler represents the R Street Institute and the Cato Institute in opposing the United States Customs and Border Protection's policy of searching electronic devices at the border, including at international airports, without even reasonable suspicion.

- *Civil rights.* Mr. Adler first-chaired an administrative mandamus trial in Los Angeles Superior Court in which he presented a constitutional challenge to a provision of the Los Angeles Municipal Code.

- *Criminal appeals.* Mr. Adler has represented former prosecutors and public defenders serving as amici curiae in support of nonviolent drug offenders seeking to withdraw their guilty pleas on the ground that their counsel did not advise them of the immigration consequences of those pleas. In one case, Mr. Adler helped to persuade the California Court of Appeal to grant the defendant's habeas petition. In another, Mr. Adler helped to persuade the California Supreme Court to grant the defendant's petition for review. Mr. Adler has also represented a client in a direct criminal appeal challenging convictions for attempted murder and first-degree assault.

- *Prisoners' Rights.* Mr. Adler secured a published opinion from the Ninth Circuit holding that a former prisoner's claim of indifference to his medical needs was not barred by the Prison Litigation Reform Act's exhaustion requirement.

Emily Sauer

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Emily Sauer is an associate in the Los Angeles office of Gibson, Dunn & Crutcher. She currently practices in the firm's Litigation Department.

Prior to joining Gibson Dunn, Ms. Sauer served as a law clerk to the Honorable Carlos Bea of the United States Court of Appeals for the Ninth Circuit.

Ms. Sauer graduated *summa cum laude* and as Salutatorian from Pepperdine University School of Law in 2018, where she was elected to the Order of the Coif. While in law school, she served as Associate Editor of the Pepperdine Law Review, Co-Chair of the International Commercial Arbitration Moot Court Team, and as an extern for the Honorable Sandra S. Ikuta of the United States Court of Appeals for the Ninth Circuit. Ms. Sauer graduated *magna cum laude* from University of Nevada, Las Vegas in 2015 with a Bachelor of Science degree in marketing.

Ms. Sauer is admitted to practice in California and before the United States Court of Appeals for the Ninth Circuit.

Appendix B: Firm Highlights

Enclosed please find highlights for the firm's litigation and appellate practices and partner Ted Boutrous.

Appellate and Constitutional Law Practice Group

The Appellate and Constitutional Law Practice Group's lawyers participate in appeals in all 13 federal courts of appeals and state appellate courts throughout the United States and have presented arguments in front of the Supreme Court of the United States more than 100 times. The group has broad experience in complex appellate litigation at all levels of the U.S. federal and state court systems.

In addition to traditional appellate litigation activities, the Appellate and Constitutional Law group provides a wide range of services on constitutional and related issues that include:

- Formulating and briefing new legal arguments in the trial courts to ensure that legal arguments are developed and preserved for appeal
- Developing and advancing constitutional and policy arguments on proposed legislation and regulations
- Managing complex litigation
- Developing novel or complex legal theories, sometimes long before the suit is filed
- Advising on possible constitutional challenges to statutes and the effects of regulations on proposed transactions or business plans
- Analyzing proposed legislation and regulations from legal and policy perspectives, testifying before the U.S. Congress and state legislatures, and engaging in other forms of legislative and public policy advocacy
- Counseling government entities, allowing them to anticipate legal challenges and to avoid needless litigation

In recognition of the firm's achievements, *The American Lawyer* named Gibson Dunn its 2020 Litigation Department of the Year, recognized as the "best of the best." This unprecedented achievement was the firm's fourth win in the last six years of the publication's biennial "Litigation Department of the Year" competitions, and the sixth time in a row the firm has been a finalist. *The National Law Journal* named Gibson Dunn to its 2020 Appellate Hot List, featuring law firms that "tackled novel issues and undoubtedly overcame unprecedented challenges over the past year, boasting high-profile and high-stakes wins in the nation's highest appellate courts." Recognized by additional top legal publications including *Chambers*, we are proud of our reputation as aggressive, creative appellate lawyers and constitutional law practitioners.

The Appellate and Constitutional Law group has been involved in matters that cover a wide array of constitutional, statutory, regulatory and common-law issues. Our experience and expertise extend beyond the courts in the U.S. jurisdictions where we maintain offices — California, Colorado, New York, Texas and Washington, D.C. — to include many others.

The Appellate and Constitutional Law group's team of lawyers has a winning track record for grants of certiorari petitions, exceeding by far the Supreme Court's average grant rate. Our partners include the former Solicitor General of the United States Theodore B. Olson, former Assistant to the Solicitor General and Deputy Solicitor General Thomas G. Hungar, and former Assistant to the Solicitor General Miguel Estrada. The group also includes several former Supreme Court law clerks.

Our strong, high-profile and successful presence before the Court includes appearances on behalf of clients that have included major U.S. corporations, U.S. states and presidential candidates. Our group aims to win each case, but we also seek to address the root causes of your legal difficulties and, if possible, improve the legal, social and policy environments in which your rights will be decided.

THE 2020 FORECAST ■ OUTSOURCING: THE SILENT REVOLUTION ■ MOLDING MANAGERS

THE AMERICAN LAWYER

law.com/americanlawyer

JANUARY 2020

BEST OF THE BEST

Gibson, Dunn & Crutcher is the Litigation Department of the Year.

FROM LEFT: THEODORE J. BOUTROUS JR., MYLAN DENERSTEIN, RANDY MASTRO, DEBRA WONG YANG AND ORIN SNYDER

An ALM Publication

WINNER

Department Size and Revenue:

Partners 208
Associates 518
Other 29

Department as Percentage of Firm 56.8%

Percentage of Firm Revenue, 2018 54.7%

BY DAVID BARIO

CHALLENGE ACCEPTED

When the stakes are highest and the spotlight is brightest, Gibson Dunn answers the call.

EVEN FOR A PRESIDENT WHO HAS MADE "FAKE NEWS" A rallying cry, Donald Trump's Nov. 7, 2018, press conference was contentious. But his invective—calling CNN's Jim Acosta a "terrible person" and attacking the media as "the enemy of the people"—was overshadowed when the White House revoked Acosta's press pass the same day, falsely claiming he had "placed his hands" on an intern.

As media organizations absorbed the implications, Gibson, Dunn & Crutcher's Theodore Boutrous and Theodore Olson leapt into action. Before the night was over, they hashed out a strategy with CNN and assembled a team to counter the White House on First Amendment grounds.

The case was quintessential Gibson Dunn: high-profile, high-impact and high-stakes.

"There was concern that, if you lose, there will be a bad precedent," Boutrous recalls. "Our view was, well, if we don't file a suit, if we're not willing to defend the First Amendment, then who cares?"

The result was quintessential Gibson Dunn, too: a gigantic win, delivered under great pressure, with lasting significance. The firm sued, argued the case and secured an order restoring Acosta's pass in nine days. It was no surprise that when the White House this year pulled the credentials of Playboy's Brian Karem, Boutrous got the assignment—and won again.

What's the secret? Size doesn't hurt, with more than 700 litigation partners and associates supplying more than half of the firm's head count and revenue. The firm has superstars—including Olson and Boutrous—sprinkled across practices, time zones and borders. But other firms have hundreds of litigators, marquee advocates and far-flung offices. What sets Gibson Dunn apart is how its cases routinely check all those boxes: enormous financial stakes, unsettled legal questions and a nexus to major national issues.

Take the firm's victories over the U.S. Securities and Exchange Commission, which had long been challenged, unsuccessfully, on the grounds that its administrative judges were unconstitutionally appointed.

In New York, litigation department co-chair Randy Mastro fended off a $200 million case against Lynn Tilton of hedge fund Patriarch Partners after replacing another firm just weeks from trial. "No one gave us any odds on winning that case," Mastro says, noting that a challenge to the SEC before one of its own judges was considered nearly unwinnable. But Mastro did win, persuading an SEC judge to reject the agency's own case in September 2017.

CARMEN NATALE/ALM

FROM LEFT Theodore J. Boutrous Jr., Mylan Denerstein, Randy Mastro, Debra Wong Yang and Orin Snyder

An even bigger victory came nine months later, when partner Mark Perry persuaded the U.S. Supreme Court to rule that SEC administrative law judges are "officers of the United States" subject to the Appointments Clause. The opinion was not only a win for Gibson Dunn's client; it tilted the balance of power away from the administrative state, with implications beyond the SEC. And it came on the heels of another successful agency challenge, when then-partner Eugene Scalia—now U.S. Secretary of Labor—persuaded the Fifth Circuit to strike down the Labor Department's fiduciary rule, clearing a regulatory thicket for the investment industry.

Those were just two of the firm's blockbuster appellate wins. In May 2018, Olson persuaded the Supreme Court to strike down a federal sports-betting ban, reshaping the economics of both professional athletics and online gambling. On the immigration front, Boutrous and partner Ethan Dettmer were part of the coalition that overturned the White House's decision to rescind the Deferred Action for Childhood Arrivals program, paving the way for Olson to argue for the so-called Dreamers before the Supreme Court in November. (A decision is expected by summer.)

The firm's trial court record was just as impressive. In the landmark AT&T-Time Warner merger case, Texas partners Robert Walters and Michael Raiff, representing AT&T, helped to beat back the government's antitrust challenge. In the fight over corporate responsibility for climate change, Boutrous helped persuade judges in New York and California to reject municipalities' theories of liability against Chevron and other oil companies.

Chevron is a longtime Gibson Dunn client, but the firm has also made inroads with clients in younger industries, including Facebook, which is relying on Gibson Dunn in a tangle of privacy and data security cases. For Grubhub, partners Michele Maryott and Theane Evangelis defeated a bellwether employment case at trial after trimming away class action claims, drawing a roadmap for other gig economy defendants.

The firm's combination of discipline and savvy keeps clients coming back. CNN general counsel David Vigilante, who worked with Boutrous and Olson on the Acosta case, says Gibson Dunn lawyers have the intellectual curiosity to come up with good ideas—and the skills to apply them.

"The biggest premium for me, other than are you smart and are you nice, is are you curious," Vigilante says. "Some people just crackle. They seem to attract lawyers like that." ■

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Appellate Group Of The Year: Gibson Dunn

By **Sarah Jarvis**

Law360 (November 30, 2020, 3:48 PM EST) -- Gibson Dunn & Crutcher LLP's appellate practice represented Dreamers before the Supreme Court and helped secure them an injunction halting the termination of the Deferred Action for Childhood Arrivals program, earning the firm a spot among Law360's 2020 Appellate Groups of the Year.

Appellate practice co-chair Mark Perry defines attorneys in the practice group — which he said is the largest in the country — as those who spend more than half their time on appeals, adding that all the group's attorneys work in other areas as well.

The firm has 20-odd partners and 50 to 60 associates doing appellate work, with about half of the group's attorneys working in Washington, D.C., and the other half working at Gibson Dunn's offices in New York, Dallas, Denver, Los Angeles and San Francisco, he said.

Perry said a highlight of the past year was Gibson Dunn's three Supreme Court victories, noting that for the second year in a row, the firm had four partners argue five cases beforeit. He said more than 20 partners at the firm have argued cases there.

Among those Supreme Court victories, he said the DACA case stood out for its human impact and for "that fundamental principle of liberty and administrative regularity that will transcend the individual issue in the case."

Gibson Dunn represented six DACA recipients in obtaining — and defended on appeal — the first nationwide preliminary injunction halting the termination of the program, which offers deportation relief and work permits to young immigrants brought to the U.S. as children. The Supreme Court found in June that the U.S. Department of Homeland Security's decision to terminate the program was arbitrary and capricious.

"The tone and tenor of the Supreme Court's opinion in the challenge are very important for holding the government to its promises and ensuring that all people, citizens and non-citizens, get a fair shake from the government," Perry said.

In another case before the high court, Gibson Dunn represented Comcast in obtaining a largely unanimous decision that sent a Black-owned production studio's $20 billion discrimination case against the telecommunications conglomerate back to the Ninth Circuit.

In the March decision, the justices mandated that courts use the "but-for" test to evaluate allegations of racial bias under Section 1981 of the Civil Rights Act, meaning accusers must prove discrimination was the defining factor in a contracting decision.

"We don't doubt that most rules bear their exceptions. But, taken collectively, clues from the statute's text, its history, and our precedent persuade us that [Section 1981] follows the general rule," Justice Neil Gorsuch wrote on behalf of the court. "Here, a plaintiff bears the burden of showing that race was a but-for cause of its injury."

In another Supreme Court victory, Gibson Dunn represented victims of the 1998 embassy bombings in Kenya and Tanzania, and helped secure a decision in May that cleared the way for $4.3 billion in punitive damages.

The 8-0 ruling overturned a D.C. Circuit ruling holding that Congress changed the Foreign Sovereign Immunities Act to allow punitive damages in 2008, it did not make it retroactive to previous terror attacks.

Perry said that while money can't replace "lost limbs and shattered lives," providing redress for victims of horrific acts of terrorism is a small way to make the world a better place.

"Holding governments responsible when they sponsor terrorism — and using American courts as appropriate to provide what relief is available — is doing something," he said. "Lawyers can't change the world in every way, but we can try to make the world better."

Perry said the appellate practice group has expanded over the last decade and will continue to do so in the future, through a mix of internal promotions and lateral hires. He said Gibson Dunn aims to spread its appellate work among different generations and offices, rather than focusing it on one or two partners.

That spirit of collaboration is foundational to a good appellate team, he said, whether it's with the firm's partners, other law firms or a client's in-house lawyers. Appellate lawyers, whom he said are generalists by training and disposition, can't do this job alone.

"There's one person at the podium at the end of the day, but behind him or her is a very, very large team," Perry said.

--Additional reporting by Suzanne Monyak, Anne Cullen and Jimmy Hoover. Editing by Adam LoBelia.

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TOP LAWYERS OF THE DECADE 2011-2020

Theodore J. Boutrous Jr.

At the intersection of law and national policy

Boutrous joined Gibson Dunn in 1987, straight out of the University of San Diego School of Law where he'd graduated summa cum laude. He was assigned first to work with the firm's new appellate group in Washington, D.C., launched by Theodore B. Olson, the future solicitor general.

"Right from the start we had a Supreme Court case, to do with punitive damages," Boutrous recalled. The high court and Olson would both figure prominently in Boutrous' career.

Boutrous' first argument before the justices came in 2011 in the massive potential workers' rights class action known as *Wal-Mart Stores Inc. v. Dukes*, in which some 1.5 million female employees sued the giant retailer. *Wal-Mart Stores Inc. v. Dukes*, 10-277 (S.Ct., op. filed June 20, 2011).

Boutrous' argument prevailed: The court voted 9-0 to reverse the 9th U.S. Circuit Court of Appeals and rule the women could not be certified as a plaintiff class on lack of commonality grounds. The case had been grinding its way through the appellate process since the Northern District had granted certification in 2004.

"Winning my first Supreme Court argument in a significant case that I had worked on for years — that was a big highlight for me," Boutrous said. "It was the first time the Supreme Court had looked at class action law in years, and it proved significant for future cases by establishing fundamental class action principles of predominance and due process."

Even as the *Wal-Mart* case climaxed, Boutrous was becoming deeply involved with Olson in the litigation that would legalize gay marriage. What began as their lead roles in the effort to overturn California's gay marriage ban, Proposition 8, reached the high court as *Hollingsworth v. Perry*, where the vote in 2013 was 5-4 that gay marriage foes could not defend the ban. *Hollingsworth v. Perry*, 12-144 (S.Ct., op. filed June 26, 2013).

"Both Wal-Mart and Prop. 8 were erupting at the same time," recalled Boutrous, who served as a lead lawyer and architect of the legal strategy that led to the landmark gay rights advance. "It was a very exciting time in the realm of civil liberties and civil rights, in part because at the time we filed over Prop. 8, some felt it was too early to go to federal court on the issue. That upped the pressure. We knew we had to win. We went forward because we felt that the stars were aligned both legally and with the issue's public dialogue component."

Daily Journal photo

From the time of the 2016 presidential campaign, Boutrous has emerged as a prominent and consistent opponent to Trump and his supporters' attempts to use the courts to squelch foes. When Trump threatened to sue his sexual assault accusers, Boutrous tweeted, "I will represent pro bono anyone #Trump sues for exercising their free speech rights."

Since then he has successfully defended members of the media against revocation of their White House press passes; MSNBC news host Rachel Maddow, targeted in a defamation suit over on-air comments; and Mary Trump in a suit seeking to halt publication of a tell-all memoir about her uncle. *CNN v. Trump*, 1:18-cv-02610 (D. D.C., filed Nov. 13, 2018); *Herring Networks Inc. v. Maddow*, 19-cv-01713 (S.D. Cal., filed Sept. 9, 2019); *Robert S. Trump v. Mary L. Trump*, 2020-05027 (Dutchess Co. S.Ct. N.Y., filed June 26, 2020).

Boutrous pointed out that his earlier gay rights efforts and his free speech work, along with his current representation of Ashley Judd in her sexual harassment claims against Harvey Weinstein, have taken his career beyond legal victories. *Judd v. Weinstein*, 2020 DJDAR 7916 (9th Cir., filed May 2, 2019).

"The last decade for me has been very meaningful in that it involved the intersection of the law and national policy," Boutrous said.

— John Roemer