

Public Comment

A-7

From: [Philip Seymour](#)
To: [sbcob](#)
Subject: comment letter re Agenda Item A-7, March 9 BOS meeting
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Attachments: [Letter re Redistricting Commission Counsel Appointment.pdf](#)

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Dear Clerk of the Board: Please accept for filing and distribution the attached letter concerning Item A-7 on the March 9 Board of Supervisors agenda. Thank you in advance for your assistance.

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March 5, 2021

Santa Barbara County Board of Supervisors
105 E. Anapamu Street
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RE. March 9, 2012 Board Agenda Item No. A-7 (Approval of Contract for Independent Counsel for Santa Barbara County Citizens Independent Redistricting Commission)

Dear Supervisors:

I understand that COLAB, led by its inimitable leader Andy Caldwell, is asserting a claim that the Strumwasser & Woocher firm is legally disqualified from serving as counsel for the Citizens Independent Redistricting Commission. Although I would offer a slightly different analysis in response to COLAB's meritless claims, your County Counsel is absolutely correct that there is no legal basis for disqualification. This is, as one might expect from COLAB, simply an attempt to discredit in advance on the work of the Commission, since COLAB apparently does not expect that any truly independent redistricting commission will make decisions that suit COLAB's and its followers' political desires. As we learned in the most recent United States presidential election, it is now a preferred tactic of certain political interests to attack the democratic process itself when they cannot prevail in democratically conducted elections or legislative proceedings. I respectfully suggest that you disregard this attack and the political theater that is no doubt intended to accompany it, and base your decision on the relevant provisions of the County's voter approved Redistricting Ordinance *as they are written*, and on the sound advice of your own County Counsel.

Background Facts

COLAB's argument for disqualification of Strumwasser & Woocher is based on the fact that senior partner Fred Woocher represented former County Supervisor Doreen Farr in an election contest challenging votes cast in her favor in the 2007 County election for Third District Supervisor. In the interest of full disclosure, I served as co-counsel with Mr. Woocher in the election contest and subsequent litigation concerning attorney fees. I do not, however, have any other relationship, social or otherwise, to Mr. Woocher or his firm. To the best of my recollection I have spoken to Mr. Woocher only once since the conclusion of the litigation, and that communication involved a search for qualified younger associates for the firm (Fox & Sohagi) that I worked for in Los Angeles at the time.

The election contest was commenced in January, 2008 by Ms. Farr's election opponent Steven Pappas. Ms. Farr was named personally as a defendant as required by California law,

although there was no claim that she or her campaign were responsible for any the election errors claimed. The trial court judge, a conservative Republican, concluded that Pappas' election challenges were completely without merit, and that Pappas' claims of actual voter fraud were so completely baseless as to be "tantamount to [attempted] fraud on the court." The election contest ended in 2010 or early 2011 after Pappas exhausted all appeals from the judgment dismissing his claims. After that time, litigation continued only on the issue of whether Mr. Woocher and myself were entitled to an award of attorney's fees under California Code of Civil Procedure § 1021.5 (aka the "private attorney general doctrine") for successfully defending the right to vote of approximately 8,000 County residents whose votes had been challenged by Pappas. The attorney fee litigation continued through two appeals, two returns to the trial court to set the amount of fees, discovery requests, a petition for review in the California Supreme Court, and a patently frivolous petition for certiorari to the United States Supreme Court. Mr. Pappas lost at every phase of these proceedings and ultimately paid in excess of \$ 600,000 to Strumwasser & Woocher and myself. The great majority of this was for work done on the attorney fee issue. Neither Ms. Farr nor her campaign committee were actively involved in the attorney fee litigation in any way. To the best of my recollection, I occasionally reported the status of the litigation to Ms. Farr on a casual basis, usually when communicating with Ms. Farr about other County matters such as problems with County Animals Services or environmental issues. To the best of my knowledge, Mr. Woocher also had little or no contact at all with Ms. Farr regarding conduct of the attorney fee litigation.

COLAB's objections are based specifically on actions in the litigation occurring after February 3, 2013, i.e., on actions occurring within the 8 years preceding the selection of Strumwasser & Woocher as independent counsel for the Redistricting Commission. Under the Redistricting Ordinance, events occurring prior to that date are irrelevant for purposes of disqualification. Activities in the litigation after February 3, 2013 consisted solely of actions to enforce the order awarding attorney fees; opposing a frivolous petition for certiorari in the United States Supreme Court; and augmenting the attorney fee award to reflect additional time expended in defending the fee award.

Legal Analysis

The County rules governing selection of Redistricting Commissioners and Commission "consultants" are found in Section 2-10.9A of the County Code (herein, "Ordinance," or "Redistricting Ordinance"). This section codifies the provisions of the "You Draw the Lines – County of Santa Barbara Citizens Independent Redistricting Commission" initiative measure (aka "Measure G") adopted by County voters in 2018. The Redistricting Ordinance contains no direct instructions regarding selection of counsel for the Commission. The Ordinance's restrictions on the Commissioners' choice of "consultants" are found in subsection 2-10.9A(5)(d), which provides:

- “(1) the commission shall not retain a consultant who would not be qualified as an applicant pursuant to subsection (4)(d).
- (2) for purposes of this subdivision, "consultant" means a person, whether or not compensated, retained to advise the commission or commission member regarding any aspect of the redistricting process.”

For purposes of argument, it is assumed here that subsection 2-10.9A(5)(d)(2) is worded broadly enough to include attorneys hired to provide legal advice to the Commission on an ongoing basis, as well as more traditional types of “consultants.” Assuming this, the constraints imposed by the Ordinance on attorney selection are limited to any applicable disqualifying provisions found in the referenced subsection 2-10.9A(4)(d).

COLAB’s main claim appears to be that the Strumwasser & Woocher firm, or at least Fred Woocher personally, is disqualified under subsection 2-10.9A(4)(d)(6)(C) which provides:

“No commissioner or immediate family member may, within the last eight years preceding appointment to the commission, have been a board member, officer, paid or volunteer staff of, or had a significant influence on the actions or decisions of a political committee required to register with the California Secretary of State, which expended funds in excess of five hundred dollars in support or opposition to a candidate for any elective office of the County of Santa Barbara, including member communications.”

To be disqualified under subsection 2-10.9A(4)(d)(6)(C), an attorney would thus have to have served a political committee in one of the underlined capacities, i.e., as an “officer,” “board member,” “paid or volunteer staff,” or as someone who “had a significant influence on actions or decisions of a political committee.” Notably, subsection 2-10.9A(4)(d)(6)(C) does not contain any restriction on persons who have served exclusively as attorneys, “consultants” or as any other kind of independent contractor to a political committee. Also, unlike some other provisions of the Redistricting Ordinance, subsection 2-10.9A(4)(d)(6)(C) does not contain any restrictions on persons who were engaged by a candidate or elected official as in individual, as opposed to having been engaged by or participated in some capacity in the activities of the candidate’s election committee. Subsection 2-10.9A(4)(d)(6)(A), for example, expressly disallows persons whose business enterprise has donated \$ 500 or more to any *candidate* for elected county office, or any political committee supporting that candidate.

Neither Fred Woocher nor anyone else in the Strumwasser & Woocher firm fall within any of the classes of persons disqualified under subsection 2-10.9A(4)(d)(6)(C). This subsection simply does not contain any disqualifying provision for attorneys, “consultants” or other independent contractors of any kind who may have served a political committee in some capacity. COLAB’s attorneys do not claim, nor could they, that Mr. Woocher or other members of the firm served as “officers,” “board members” or “staff” of Ms. Farr’s election committee. COLAB’s attorneys also do not explain how Strumwasser & Woocher’s representation of Ms. Farr as a named individual defendant in the election contest can be equated to service to her election committee, which was not named as a defendant and did not participate as a party in the litigation at any time.

COLAB’s attorneys also do not offer any evidence that Strumwasser & Woocher had any significant influence on decisions of the campaign committee at any time, let alone after February 3, 2013. In fact, nothing of that kind occurred. By 2013 the 2007 election campaign and the subsequent election contest were long over, and the actions of

the campaign committee regarding these events were, to the best of my knowledge, limited to filing routine financial statements required by the Elections Code. No substantive decisions regarding the election contest were being made by the committee at all. Much less were any committee decisions being significantly influenced by Strumwasser & Woocher. Instead, after 2010 the only issues being litigated were issues raised by plaintiff Steven Pappas' in his efforts to avoid payment of the attorney fees awarded by the court to Strumwasser & Woocher and myself under the private attorney general doctrine. In sum, there is no legal basis for disqualification under subsection 2-10.9A(4)(d)(6)(C).

Disqualification Under Subsections 2-10.9A(4)(d)(1)-(4)

COLAB's attorneys also make the truly frivolous argument that Strumwasser & Woocher's attorneys are disqualified because they do not live in Santa Barbara County, are not registered to vote in Santa Barbara County, and have not voted in Santa Barbara County in any of the last three statewide elections. (See Redistricting Ordinance, subsections 2-10.9A(4)(d)(1), (2) and (4).) If accepted, this argument would disqualify not only every attorney and law firm which actually applied for the job of independent counsel to the Commission, but probably also every other attorney in the state of California that actually had the specialized experience and knowledge in redistricting law and related issues necessary to adequately advise the Commission. For better or worse, Santa Barbara County does not have any attorneys with the required legal expertise in these esoteric areas of law; certainly none has come forward. As a general rule, courts will not interpret an ordinance in a manner which results in absurd or clearly unintended consequences. The subsections cited by COLAB have nothing to do with possible bias, or any other characteristic that might reflect on counsel's ability to act competently and impartially in advising the Commission. The cited provisions are included in the Redistricting Ordinance solely to ensure that Commission members – not their attorneys – have at least some history of participation in the County electoral process, as one would expect from any committed and qualified citizen Commissioner.

Conclusion

Thank you for considering these comments. I urge you to affirm the contract with the Redistricting Commission's own choice of independent counsel, and to disregard COLAB's meritless legal claims, along with the political theatrics that are no doubt intended to accompany COLAB's baseless allegations.

Sincerely,

Phil A. Seymour

Phil A. Seymour
Attorney at Law