

COVINGTON

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Daniel N. Shallman

Covington & Burling LLP
1999 Avenue of the Stars
Suite 1500
Los Angeles, CA 90067-6045
T +1 424 332 4752
dshallman@cov.com

Via Email

January 3, 2017

The Honorable Kevin de León
President Pro Tem of the California Senate
State Capitol, Room 205
Sacramento, CA 95814
Attention: Dan Reeves, Chief of Staff

The Honorable Anthony Rendon
Speaker of the California Assembly
State Capitol, Room 513
Sacramento, CA 95814
Attention: Alf W. Brandt, Senior Counsel

Re: Engagement Letter

Dear Senator de León and Speaker Rendon:

We are very pleased to confirm that we will serve as Special Counsel to the California State Senate and the California State Assembly (collectively "the Legislature") in helping the Legislature develop legal strategies regarding potential actions of the federal government that may be of concern to the State of California. We appreciate the opportunity to work with you on this important undertaking.

Our Client

We understand that the Legislature will be our client in this representation and not any other affiliates or related parties (including any other organ of the State of California, including any element of the executive branch or any regulatory body, educational institution or other organ or element of the State). If by subsequent agreement our representation is extended to other subject matter, the provisions of this letter will also apply to those undertakings unless we otherwise agree in writing. We will undertake work pursuant to this engagement only at your direction. Should the Legislature wish to retain us to work on any particular litigation or other matter or public policy advocacy work, that would not fall within the scope of this undertaking and would require a new engagement letter. As we have discussed, given the nature of this engagement and the wide array of issues we may be asked to address, we reserve the right to refrain from advising on any particular subject matter if it could conflict with the Firm's ethical obligations or the interests of the Firm's other clients.

COVINGTON

The Honorable Kevin de León
The Honorable Anthony Rendon
January 3, 2017
Page 2

Our Team

Eric H. Holder, Jr., Congressman Howard Berman, and I will be in charge of the engagement and will call upon our wide array of accomplished federal regulatory experts as appropriate in helping the Legislature develop legal strategies. As you know, we have more than 120 former regulatory and enforcement officials among our ranks, many of whom have been recognized by *Chambers and Partners* as among the best their fields. In addition, as we have discussed, our formidable litigation team has a well-deserved reputation for handling novel, complex, and high-stakes disputes and we have significant experience representing state governments and agencies.

As we have discussed, we have deep experience in three areas of immediate concern to the Legislature that I will briefly highlight:

Immigration-Related Litigation: Through its high impact public interest litigation work, Covington has been at the forefront of efforts to protect the legal rights of undocumented immigrants and those thought to be undocumented immigrants against improper enforcement policies and unlawful deportations. For example, in partnership with MALDEF and the ACLU, we recently succeeded in a high-profile racial profiling class action lawsuit in Arizona against Maricopa County Sheriff Joe Arpaio. Since 2010, Covington has been lead counsel representing a class of individuals injured by Sheriff Arpaio's efforts to apprehend undocumented immigrants. In 2013, after finding serious constitutional violations by the Sheriff, the Court entered a permanent injunction against him. Earlier this year, our team succeeded in a civil contempt action against the Sheriff which led to a criminal referral of Arpaio by the judge. Covington also partnered with the ACLU to successfully challenge a Department of Homeland Security policy of detaining mothers and children fleeing Central America without an opportunity for release on bond, in order to deter future migrants (*RILR v. Johnson*). The Covington/ACLU team obtained a preliminary injunction against the policy, and ultimately persuaded the government to abandon it. Covington partners Stan Young, Tammy Albarrán, and David Zions have led these efforts and will be available to assist the Legislature in this engagement.

Health Care: On health care reform issues, Covington has a number of leading subject matter experts who we may call upon. Joan Kutcher has more than 30 years of experience providing strategic advice to stakeholders in a broad range of industries, with a particular expertise in federal and state health care-related programs. Over the years, she has helped states, pharmaceutical companies, government contractors, insurance companies and trade associations successfully navigate the Congress and regulatory agencies. Drawing on decades of experience, Joan successfully advises clients on both proactive legislative campaigns and defensive strategies to advance their legislative and regulatory goals. Among other key successes, Joan helped Puerto Rico secure substantial additional Medicaid dollars under the Affordable Care Act.

Caroline Brown's practice focuses on government-sponsored health care programs—including Medicaid, Medicare, CHIP, and the Affordable Care Act—with a special

COVINGTON

The Honorable Kevin de León
The Honorable Anthony Rendon
January 3, 2017
Page 3

emphasis on how the different programs interrelate. Caroline is co-chair of the firm's Health Care Industry Group, and chair of the Federal-State Programs practice. Caroline has represented a multitude of state government agencies and she helps her clients navigate and comply with regulatory and statutory provisions that courts have described as "among the most completely impenetrable texts within human experience."

In addition to Joan and Caroline, our colleague Layth Elhassani gained significant health care reform expertise as a Special Assistant to President Obama for Legislative Affairs from 2012-2015, where he engaged with key federal agencies and Capitol Hill on implementation of the Affordable Care Act. Layth has forged deep relationships with Democratic and Republican Senate offices.

Environmental Policy: Gary Guzy brings three decades of experience in environmental law, regulation, and public policy through his leadership in government, business, and academia. Gary recently served as Deputy Director and General Counsel of the White House Council on Environmental Quality. In this position, he helped develop and guide the Obama administration's environmental, public health, and clean energy agenda, including working closely with California when he led White House efforts to double motor vehicle fuel efficiency requirements and new greenhouse gas emissions limits. He was also General Counsel of the U.S. Environmental Protection Agency and Counselor to the EPA Administrator during the Clinton Administration. In addition, he authored climate change opinions that were later ratified by the U.S. Supreme Court in its landmark decision finding that greenhouse gases are pollutants under federal law. Gary has also litigated environmental cases from the Everglades to Alaska, in courts from the state level to the U.S. Supreme Court, during his tenure as a Senior Trial Attorney at the Department of Justice.

Our Fees and Expenses

We will render our statements to you monthly. For the initial three-month phase of our engagement, we have agreed to charge the Legislature a fixed fee of \$25,000 per month. The engagement will begin on February 1, 2017 and continue through April 30, 2017. This fee will include a maximum of 40 attorney or advisor hours per month. Should the work you ask us to perform require more than 40 hours in a month, we will let you know in advance and will only exceed 40 hours with your advance approval and, subject to good faith negotiation, an agreement on the rates or fees to be charged. Upon request, we will make available to you a detailed narrative of the nature of the advice provided, the hours recorded, and the lawyers involved. We ensure strict oversight at a senior level in order to maintain customary Covington quality control—and either party may cancel the retainer on thirty-days' notice. This fee does not include charges for support services and out-of-pocket expenses described below. The monthly fee and any excess fees and expenses will be payable within 30 days of receipt of the Firm's invoice. Should the Legislature wish to continue this engagement beyond April 2017, this fee agreement will be subject to good faith negotiations and will only apply going forward upon mutual written agreement.

COVINGTON

The Honorable Kevin de León
The Honorable Anthony Rendon
January 3, 2017
Page 4

Our statements will include charges for support services incurred on your behalf, such as printing, duplicating, transcripts, computer research, telecommunications, any secretarial overtime attributable to your special needs, mail, deliveries and the like, as well as out-of-pocket costs, such as travel. If substantial third-party payments (such as co-counsel fees, expert fees, special studies, transcripts, or any single charge of more than \$1,000) are required, we reserve the right to forward the charge to you for you to pay directly, or to ask you to advance to us funds sufficient to allow us to pay the charge on your behalf.

Payment of our statements in full is due within 45 days of receipt. We reserve the right to charge interest on any portion of a statement that is not paid on time. If any statement remains unpaid for more than 60 days, you agree that we will have the right to cease performing services until satisfactory arrangements have been made for payment of outstanding statements and payment of future statements.

Conflict Waiver

Our records reveal no representation of another client adverse to the Legislature in any existing matter presently being handled by this firm or in this matter. However, as you recognize, we are a large law firm with multiple practices in multiple offices throughout the world, and we represent many different clients in many different industries, including clients who are competitors of each other and sometimes adversaries in legal matters. We also represent pharmaceutical companies, energy companies, media companies, and clients engaged in many other industries and activities that often advocate legislative positions before federal and state legislatures, including the Legislature of the State of California, and many of our clients are also involved in litigation or regulatory matters before other organs of the State of California. In taking on this representation, we commit that we will not represent any other client in any undertaking adverse to the Legislature that is substantially related to this undertaking. In this context, "substantially related" is a term that has come to have a settled meaning in the case law and in Bar ethics opinions. What this commitment means is that we will not take on any matter adverse to the Legislature on behalf of another client in circumstances in which any of your confidential data or information, as normally would have been obtained by us in our representation of you, would be material to any new matter adverse to you that we might accept from another client.

In return for our agreement to represent you in this matter, you consent and agree that we may be adverse to the Legislature and advocate positions before the Legislature on behalf of other clients in matters that are not substantially related to the matter we are now undertaking on your behalf or to any additional matter we may undertake on your behalf in the future. This means that we might be adverse to the Legislature in legislative advocacy, litigation, intellectual property matters (including patent litigation), transactional matters, counseling, matters involving administrative agencies, lobbying and other legislative matters, or any other type of matter so long as the matter is not substantially related to work we have performed for you.

In addition, you consent and agree that nothing in this agreement will prevent us from representing any current or future client in any matter adverse to any executive, administrative, educational or other organ of the State of California, or any department or agency thereof other

COVINGTON

The Honorable Kevin de León
The Honorable Anthony Rendon
January 3, 2017
Page 5

than the Legislature itself. In order to assure that our representation of the Legislature would not provide a basis for challenging our representation of clients in other current or future matters adverse to any other organ of the State of California (or any departments or agencies thereof), we ask that you secure the consent of the State through the Attorney General.

In addition, if there are parties adverse to you in the matter we are undertaking on your behalf, it is possible that those adverse parties will have need for counsel in matters which do not have a substantial relationship to the matter in which we represent you. Even though we would, as a result, be receiving some fee income from your adversary, you consent to our representing such parties in matters that are not substantially related to any of our work for you. We, for our part, commit to continued zealous representation of your interests in the matters in which we do represent you notwithstanding any fee income we may receive from any adversary.

Miscellaneous

You agree that both the Legislature and our firm may use electronic devices and Internet services to communicate with each other and forward documents notwithstanding some risk that such communications may be intercepted by and disclosed to unauthorized parties. You agree that the benefits of using such technology outweigh the risks of unauthorized disclosure.

You agree that the Legislature will provide the Firm a reasonable opportunity in advance to approve and provide input on any public statements the Legislature may make describing or characterizing the nature of Covington's work for the Legislature on this engagement.

Covington & Burling LLP is a limited liability partnership organized under the laws of the District of Columbia. Under this form of partnership, a partner's personal assets are not subject to claims against the firm (and other partners) based on contracts, professional negligence or other liability unless the partner is personally liable based on his or her own conduct.

This Agreement and any and all written amendments to this Agreement shall be governed by and construed in accordance with the laws of the State of California.

I trust this letter accurately states our mutual understanding. If you have questions about any aspect of it, please let me know promptly. Otherwise please confirm our understanding by signing and returning a copy of this letter to me.

We very much appreciate your selecting our firm to assist you, and we look forward to working with you on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel N. Shallman", with a long horizontal flourish extending to the right.

Daniel N. Shallman

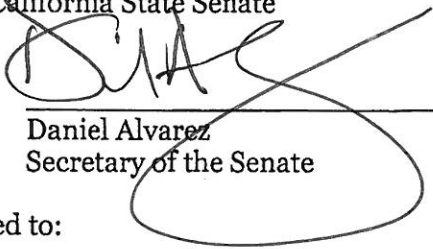
COVINGTON

The Honorable Kevin de León
The Honorable Anthony Rendon
January 3, 2017
Page 6

Agreed to:

The California State Senate

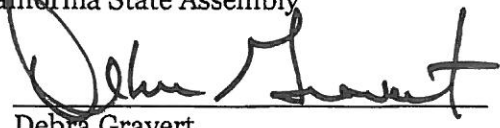
By:


Daniel Alvarez
Secretary of the Senate

Agreed to:

The California State Assembly

By:


Debra Gravert
Chief Administrative Officer

Agreed to as to the Conflict Waiver Issues:

The California Attorney General

By: _____