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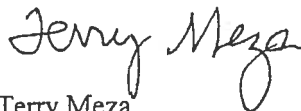
Hon. Gonzalo Barrientos, Chairman
Austin Charter Review Committee
City Hall
301 Willie Nelson Boulevard, 2nd Floor
Austin TX 78701

Dear Senator Barrientos:

The following brief is for informational purposes only. It has come to my attention that the City of Austin is considering amending the "At-Large" City Council system. As a friend and in the interest of a fellow Texas city, I am providing the enclosed information for your review as I believe that it demonstrates a potentially difficult pathway should the City undertake the "hybrid" system in which some districts are elected at large and some from individual districts.

The Voting Rights Act was created to protect the voting interests of all minorities in a community. It is my opinion that the proposed 8-2-1 plan could lead Austin through the same path of heartache that the City of Dallas has experienced with a similar Council make-up.

Very truly yours,



Terry Meza
Attorney

No. CA 3-88-1152-R
In the United States District Court,
N.D. Texas
Dallas Division
March 28, 1990

At-Large Districts in violation of
§2 of the Voting Rights Act

In the interest of City of Austin, Texas

Facts

1) Revision of Voting System

The City of Austin is considering a hybrid system of 0, 2 or 4 at-large positions in place of the current make up consisting entirely of at-large positions.

The City Council has instructed a Charter Review Commission as follows:

Make recommendations to the City Council regarding proposed City Charter amendment language in Resolution Nos. 20100624-078, 20110428-048 and 20110623-094. Make recommendations regarding the proposed maps presented to Council and any maps presented to the Committee in compliance with the districting criteria and guidelines in Resolution Nos. 20110526-024 and 20110526-025.

Throughout 2011 and 2012, the Charter Review Commission heard arguments and received testimony on the merits of various plans with the "10-0-1, 6-4-1 and 8-2-1" receiving the majority of interest.

A minority of the members of the Charter Review Commission are currently in support of a "hybrid" plan with the 8-2-1 (8 single-member, 2 at-large and 1 Mayor) receiving the largest number of supporters.

Court Finding regarding Dallas

"The 8-3 system for the election of members of Dallas City Council, i.e., eight single-member districts and three at-large places, violates §2 of the Voting Rights Act because it dilutes the votes of politically cohesive blacks and Hispanics in Dallas;" *Williams v. Dallas*.

2) Voting History and "Gentleman's Agreement"

The voting history of the Austin City Council has made arrangements over the last thirty five years ensuring "one Hispanic and one African American" serve on the City Council. At times Asians and multiple Hispanics have served on the same Council, however the number of years of such occurrences is significantly fewer than the years in which only one of each minority serves. For one two-year cycle only an African American and no Hispanic or other minority served on the City Council.

Court Finding regarding Dallas

"The history of minority participation in the political process of Dallas is not one of choice; it is a record of what blacks and Hispanics have been permitted to do by the white majority." *Williams v. Dallas*.

3) Maintaining Political Control and Electoral Scheming

The hybrid system will not impact the ability of the political majority to continue to exert its will. Under 8-2-1 for example, the political majority must simply maintain the ability to win 3 of the 8 single-member geographic races. The resulting coalition of power would win any contested Council vote 5 to 5 with the at-large Mayor breaking the tie in favor of the coalition (3 single-member Council members plus the 2 at-large and at-large Mayor.)

Court Finding regarding Dallas

"It has been widely recognized that the 'multi-member' district and at-large voting schemes may operate to minimize or cancel out the voting strength of racial minorities in the voting population." *Westwego, 872 F.2d. at 1205, Thornburg v. Gingles*.

4) Campaign Finance in an At-large Election

The most recent highly contested City Council race between incumbent Randi Shade and Kathy Tovo reported combined expenditures of \$297,501. The prevailing candidate had the financial ability to loan her campaign \$53,000. In order to raise such large amounts, Council candidates are forced to seek out the wealthiest members of the business and financial communities who overwhelmingly reside in a few affluent areas of the City. None of which are located in historically minority communities.

Court Finding regarding Dallas

"African Americans and Hispanics are denied access to the three at-large seats because they cannot raise from the own communities the amount of money required for an effective at-large, city-wide campaign;". *Williams v. Dallas*.

5) Packing

Under all existing 8-2-1 scenarios the majority of the geographically compact minority communities (such as East Austin) will be located in 2 single-member districts. While the ability of the minority community to impact elections in the two minority districts will be considerable, the 2 districts only account for 15% (2/13) of the elected positions on the Council.

Court Finding

"Packing" occurs when a minority group is concentrated into one or more districts so that the group constitutes an overwhelming majority in those districts, thus minimizing the number of districts in which the minority could elect candidates of its choice. *Voinovich v. Quilter*

6) Minority Cohesiveness

Proposed "10-1" (all single-member and a Mayor) plan demonstrates that 4 majority-minority districts can be created. Geographically, culturally and politically Hispanic and African American communities in Austin have regularly shown the ability and desire to remain cohesive communities. As 43% of the population, the Hispanic and African American communities are per se "sufficiently large enough".

"To establish a violation of §2 of the Voting Rights Act based on vote dilution by at at-large system, plaintiff must prove that the minority group is sufficiently large and geographically compact enough to constitute a majority in a single-member district; that the minority is politically cohesive; and that the majority votes sufficiently as a block...". Voting Rights Act of 1965§2, as amended.

Totality of Circumstances

Despite being 43% of the population, minorities have made up less than 20% of the city-wide elected officials. Under the 8-2-1 plan, it is possible that minority representation could drop slightly to 18%. The vast majority of representatives reside in non-historically minority neighborhoods. Despite a political cohesiveness among the Hispanic and African American communities, previous votes to amend the at-large makeup have failed on six occasions. The minority communities have been demonstrated to lack the financial ability to

raise enough money from their own communities to mount an effective city-wide campaign for office. Despite regular representation, the minority community is subject to the political permission given by the white majority. Members of the minority community, through geography, economics and access have a diminished capacity to participate in the political election process.

"A violation of subsection (a) of this section (Sec. §2 of the Voting rights Act) is established based on the *totality of circumstances*". As a result of the 8-3 system in Dallas the question arises as to whether African Americans and Hispanics "*do not have an equal opportunity to participate in the political process...*". *Thornburg v. Gingles*.

Conclusion

Should the Charter Review Commission and ultimately the City Council proceed with adopting a hybrid voting system, particularly one as potentially damaging as the 8-2-1 system, it is virtually inevitable that legal challenges will ensue. Based on the above case findings, it is also more than likely that that the Citizens of Austin will be forced to fund the entire plaintiff case as well. Many members of both the Commission and the Council have the best intention of increasing minority participation by eliminating the entirely at-large system. However, the well documented history of a hybrid system in a community as large as Austin is one of limiting minority opportunities as opposed to increasing such opportunities.