

July 1, 2013

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Dear Members of the Independent Redistricting Commission:

It has been my privilege to draft the original independent commission wording of Proposition 3 and to freely provide my recommendations on implementation of the proposition to the city auditor, the applicant review panel, and this independent redistricting commission. I hope my recommendations have contributed at least a small amount to the phenomenal success of the process to this point. I am confident that the members of this commission will impartially fulfill their task of drawing the first single-member districts for the election of members of the city council of Austin.

I regret that I will be unavailable to continue my attendance at commission meetings and to offer my views on the redistricting process. I will be absent from the country beginning later this month and will not return until September 1, 2013. There are many competent and well-intended folks that will continue to provide their recommendations to this commission. More importantly, this commission seems well on a path of hiring its own staff. It is critical that it do so. The decisions about implementing the charter requirement for single-member districts are yours (and yours alone) to make.

As I leave, I wish to emphasize a few points:

1. Impartial Staff. The staff hired by this commission should be as impartial as a member of this commission. There are some persons likely to urge that a legal counsel or consultant identified with a particular political party or group can be objective if hired by this commission. Some can: some (as hard as they try) cannot. I am not as concerned that a biased staff will misdirect this commission as I am about the public perception of this commission hiring staff identified with a particular political tilt. I think that the members of this commission will be sufficiently skeptical of any "expert" advice that they will not be misled. On the other hand, **commissions throughout this country have run into trouble over the selection of staff that critics considered biased**. I urge you to avoid this criticism if possible because it can affect the credibility (if not the quality) of

the final commission product. The bottom line, of course, is that this commission must do the best possible under the circumstances and considering the available options.

2. Independent Staff. On Wednesday, June 26, 2013, Syd Falk joked about how the witness testimony in favor of hiring staff independent of the city was really about “not trusting” the city employees and consultants. I wish to make clear that I personally do not doubt the good intentions of Syd (who is a former law partner, an outstanding voting rights attorney and my personal friend) or any of the city employees assigned to assist this commission. Syd did his usual thorough and competent job of discussing the law relevant to redistricting.

Nevertheless, the need for an independent staff arises for two reasons. First, and foremost, the charter expressly prohibits hiring city employees or consultants. The policy and provision are clear. It may be tempting at a some moment in time to overlook this provision and hire or depend on a particular individual with city ties because the commission wants the simplest result and believes the person is impartial. However, it is important for this commission to consider that all of its actions are setting **a precedent for the future**. A precedent of this commission relying on city staff is contrary to the will of Austin voters embodied in the city charter and, even if such action avoids legal challenge at this time, sets a very problematic precedent for future commissions.

The second reason for hiring its own staff is that, as a practical matter, this commission needs a staff working solely or primarily for this commission’s success. The city employees are assigned to assist this commission, but continue to have other duties and responsibilities as city employees. Both the Applicant Review Panel and this commission have already experienced times in which the city staff was slow at finishing tasks assigned by the ARP or commission or was unable to anticipate or provide for the ARP or commission needs. This commission should have control over the persons ostensibly constituting its staff.

3. Executive Director. I renew my recommendation that this commission’s first hire should be an executive director. There are many potential sources for this person, including the universities and colleges and the unchosen applicants for this commission. An executive director could anticipate this commission’s needs (in conjunction with the chairperson and the commission), prepare for commission meetings and hearings (with appropriate secretarial or intern help), and oversee the search for legal counsel and technology consultant. The search

for executive director should not depend exclusively on the normal city hiring process, but should also involve a personal effort to enlist qualified persons for the brief duration of this commission's work. As I indicated at the last meeting, I believe that this commission can utilize a committee of the commission to interview applicants and recommend an executive director.

4. Nonpartisan. Austin elections are nonpartisan. The members of this commission are expected to be impartial. Partisan politics should play no part in the decision-making of this commission. I referred at the last meeting to the 2003 congressional redistricting led by Congressman Tom DeLay. I regret the reference because it is immaterial to this commission's task.
5. Technical Capability. Ideally, the mapping software and technical consultant utilized by this commission should have the following capabilities in addition to the basic ability to draw and to depict districts based on census data in accordance with the charter criteria:
 - a. Public Access – The public should be able to actually use the system to draw potential districts (from one to ten districts) that they can present to this commission.
 - b. Real-Time Viewing of Commission Alternatives – At commission meetings, the technician's computer screen should be shown on a large monitor as the technician shows the effects of any particular alternative. As Syd Falk indicated last evening, the software now available can immediately show the effect of a move of a precinct among districts on the population and demographics of each district. If properly used, this capability can effectively show the public the dilemmas that the commission faces and convince observers of the commission's good faith attempt to find solutions satisfactory to everyone.
 - c. Software and Data for Each Commissioner – The availability of such software and data for each commissioner would allow each commissioner to work at home on the task of drawing the best districts.

All of this capability exists and is desirable. This commission must decide if it is necessary and affordable.

6. Funding. It was thoughtful of the city council to appropriate \$120,000 for the expenses of this commission. However, this is a pittance alongside of what the council would spend on consultants and legal counsel if it were drawing the districts. This commission may find the current appropriation sufficient. If not, please remember that the city council is responsible for appropriating whatever

is necessary for the operation of this commission. The task of this commission is far too important to be compromised because of inadequate funding.

7. The Obligation to Use the Census. As Mr. Falk indicated at the last meeting, election districts are almost always drawn using decennial census data even several years after the data has been accumulated. **Any decision to try to substitute for the decennial census data is an invitation for a legal challenge that the commission probably would lose.**

There is reason for this apparent madness. The census is taken nationwide based on a person's residence on April 1 of the last year of a decade (e.g. 2010). It takes time to compile and verify the data. As a result, the federal decennial census is not released until approximately a year later (e.g. 2011) when it already is somewhat outdated. However, the data is uniform, an actual enumeration of persons (not an estimate), comprehensive (throughout the jurisdiction) and objective. Courts have not foreclosed the use of other data for redistricting, but finding a satisfactory alternative is virtually impossible. An alternative must account for all change in population in every corner of the jurisdiction. Simply knowing that some area has grown in population is immaterial unless the same methods of measurement are used uniformly (for the same date) throughout the jurisdiction. Also, alternatives to the census are almost always estimates or projections, not enumerations, and are an invitation for litigation by groups with "demographic experts" disputing the accuracy of the estimate or projection. Ah, the pleasure of dueling experts. Moreover, redistricting requires knowing the supposed population for each block or precinct. General overviews of population change at the county or city level are not usable; while extrapolations of these estimates or projections to precincts or blocks are demonstrably unreliable. The county and state records on how the number of registered voters changes annually in a precinct are not usable even if reliable (such data is itself sometimes suspect) because they are a count of registered voters, not population.

8. What to Expect on the Commission. Your task is not an easy one. The commission in California had to conduct hearings throughout the state so often members of the commission were traveling overnight several days each week. Austin is clearly more compact and each of you will be home each evening. Still, the hearings are likely to be long and the testimony may often be repetitive. A competent staff can help greatly. For example, it can discern what is/ is not helpful from a long hearing and can take much of the work from the members of this commission between meetings. However, ultimately the burden is on the

members of this commission to be present at the hearings and to hear the witness testimony.

The initial task for this commission will be to draw a map to embody the legal criteria existing in federal law and the charter, including districts of approximately equal population. **The first districts should be drawn to comply with the Voting Rights Act and should include districts in which African-American and Latino voters have the opportunity to elect the person of their choice.** As Mr. Falk explained at the last meeting, Section 2 of the Act requires this commission to avoid either cracking or packing areas of minority concentration. Once these minority opportunity districts are drawn (there are likely to be some disputes over the number of predominately Latino districts (2-3) and the precise district boundaries because the areas of heavily African-American, Latino and other population often overlap) the commission can set about drawing the remaining districts based on the criteria in the charter. Witness testimony will be important in determining the boundaries of all districts, but will be particularly important in determining the boundaries of the districts based on neighborhoods. It is for this reason that I suggested last night that witnesses be asked to clarify what they believe to be the boundaries of any neighborhood that they are testifying should be preserved intact in the new districts. It will be helpful to get witnesses to realize that this commission is limited to using precincts and to acknowledge **that an existing precinct is more or less coterminous with a neighborhood.**

It also will be necessary to use citizen voting age population data to determine the actual ability of a majority Latino district to elect the person of their choice. Such data is **not** used to equalize population among districts but to ascertain the level of Latino population necessary to create a district with a majority of eligible Latino voters. The position of organizations such as LULAC and MALDEF will be important. The position of the NAACP and Asian organizations will also be important on this and other issues.

The commission redistricting process consists of eight stages as set out in the charter and my June 17th letter. The critical part of this process is that the commission comes up with an initial map based on its first eight hearings and the applicable criteria and then **must** allow persons to respond in writing and at hearings to this initial map. This two-step process may be repeated as many times as needed for this commission to reconcile as many differences as possible before adopting a final map. Not every witness' wish can be granted. However, some of the greatest assets of an independent commission are that it is more

likely to act on the basis of witness public testimony and to reconcile differences in a manner that is perceived as fair than a governing body that sees such testimony through the prism of politics and self-interest and bargains outside public view. These assets can be critical to public confidence in the fairness of a final map even though the map inevitably disappoints some persons or groups.

One aspect of Proposition 3 makes this commission's task easier. The charter amendment requires the use of election precincts as the building blocks for the districts unless the splitting of a particular precinct is necessary to meet requirements of the Voting Rights Act. In many circumstances, these precinct boundaries also serve as neighborhood boundaries. The very weird districts shown in Syd Falk's powerpoint presentation last week, such as the congressional districts drawn in Harris County in 1991, are stark examples of what can happen when census blocks (instead of election precincts) are used to build districts. The Austin charter excuses you from the very, very difficult task of trying to use census blocks.

Good luck over the next few months. Your task is difficult, but vital. As I have indicated previously, you are not only drawing the districts that will be used in 2014, but will be the foundation of districts for decades in the future. Your work now is also the culmination of work by many persons. The voters approved Proposition 3, but the successful implementation of the charter provision has required the significant, good-faith efforts of the city auditor (and his staff) and the members of the Applicant Review Panel. You are the beneficiaries of the effort of these persons and the group, Austinites for Geographic Representation, that worked tirelessly to win voter approval of Proposition 3.

The charter amendment belongs to the residents of Austin. None of the persons (including me) or groups testifying before this commission has control of this redistricting process or a monopoly on the right answer to the many questions that arise. The city charter entrusts you to act independently on behalf of all of the city's residents in seeking the right answers.

I trust this commission. If I can help let me know.

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