



Date: June 16, 2021
To: Long Beach Independent Redistricting Commission
CC: Long Beach City Attorney's Office
From: Dan Vicuna, Common Cause national redistricting manager
RE: April 15, 2021 Memo from the Long Beach City Attorney and Olson Remcho titled "Use of Current Council Districts in the Redistricting Process"

In response to the memo from the office of the Long Beach City Attorney and the law firm of Olson Remcho regarding the use of existing City Council districts as a starting point for new districts, California Common Cause, a drafter and co-sponsor of Measure DDD, writes to inform the City of Long Beach and the Independent Redistricting Commission that the memo is incorrect and represents a significant departure from the plain language and spirit of Measure DDD:

1. The findings in the City Attorney's memo are inaccurate and inconsistent with the plain language, purpose, and intent of Measure DDD. As redistricting commissioners, you have no obligation to give any deference to existing district boundaries or to use them as a starting point. In fact, we discourage the use of existing districts as a starting point for the creation of Long Beach's new City Council districts.
2. Common Cause staff are democracy experts who have helped craft independent redistricting legislation for multiple states and numerous counties and cities. When drafting Measure DDD, we explicitly omitted criteria for maintaining the cores of previous districts because it conflicts with the independence of the Commission and its mandate to draw district lines absent undue political and legislative influence.
3. Despite the implications in the City Attorney's memo, ignoring the cores of previous districts *would* be given significant judicial deference and is consistent with the purpose of the Commission's creation. Measure DDD clearly outlines the Commission's legal obligations along with ranked criteria that the Commission must abide by when establishing district lines. Maintenance of existing districts is resolutely not one of the criteria or legal mandates of the Commission. The City Attorney's memo is incorrect in stating so and the memo's citations of case law to support its conclusion are outdated, erroneously applied, and incorrectly interpreted.
4. The memo incorrectly translates the legislative intent of the Measure's commission formation criteria. Counter to the City Attorney's memo, the Commission is partially composed of residents from the City's current nine districts to ensure geographic diversity and fair spatial representation across the City, *not* to mandate or even imply

that current districts should be maintained. If our intent, as framers, was to have the Commission use existing districts as a starting point for redistricting, the measure would explicitly state so. It intentionally does not.

In sum, the framers of Measure DDD, including California Common Cause, intentionally drafted the measure to comport with modern redistricting reforms that place maximum distance between sitting elected officials and the drawing of districts they will contest as candidates. Starting the process of drawing Long Beach City Council districts with boundaries drawn by elected officials with a clear conflict of interest would represent a significant departure from the intent of the Measure, the modern trajectory of democracy reform, and the underlying philosophy of community-led redistricting, which is to prioritize fair representation for the public over the political interests of elected officials.

The memo poses larger concerns about the City Attorney's office providing legal guidance to a commission that was formed to lead a redistricting process independent of political and incumbent interests. The Commission should discuss hiring independent legal counsel to examine this issue and future legal questions the Commission might encounter, to eliminate any possibility, either real or perceived, that the City Attorney's office is trying to influence the redistricting process. If hiring independent legal counsel is not feasible at this stage of the redistricting process, we urge the City Attorney to issue a new legal analysis on this matter, taking into account the concerns outlined in the attached memo, to affirm the plain language and spirit of Measure DDD. Finally, and most importantly, we urge the Commission to center the redistricting process on communities by giving no deference to existing district boundaries and to update its redistricting criteria.

Please see our attached memo for further details and feel free to contact me at dvicuna@commoncause.org or (571) 218-6135 if you have any questions. We look forward to your response.

Introduction

We are writing in response to the April 15, 2021 memo to the Long Beach Independent Redistricting Commission from the office of the Long Beach City Attorney and the law firm of Olson Remcho concerning the use of existing City Council districts as a starting point for new districts. In this memo, the City Attorney's office argues that the framers of Measure DDD intended to tie the hands of the Commission by including districting criteria that "requires that the Commission attempt to preserve the core of existing districts." As a framer of this

measure and co-signer of the ballot argument in favor of Measure DDD,¹ Common Cause is writing to inform the Commission that this argument is incorrect and represents a significant departure from the plain language and clear spirit of this historic democracy reform. As redistricting commissioners, you have no obligation to give any deference to existing district boundaries or to use them as a starting point. In fact, we strongly discourage the use of existing districts as a starting point for the creation of Long Beach's new City Council districts.

Common Cause and Equity for Cambodians were lead drafters of Measure DDD

In the summer of 2018, Common Cause and Equity for Cambodians began working closely with Mayor Garcia's office on the drafting of a city charter amendment to empower a community-led redistricting commission to draw Long Beach City Council districts. The earliest version of Measure DDD, which the mayor proposed at a City Council meeting on June 12, 2018, differed significantly from the final ballot measure language that was approved by voters, due to its lack of any criteria for commissioners to follow when drawing districts and giving the City Council veto power over the maps.²

After looking at sample criteria from several California cities whose redistricting law Common Cause helped to draft, our organizations recommended giving an independent commission control of the process with no City Council interference and explicitly rejected a criterion for maintaining the cores of previous districts. For example, we modeled several of Long Beach's provisions concerning commissioner selection and screening on Sacramento's 2016 ballot measure creating an independent redistricting commission. We also discussed Sacramento's mapping criterion requiring the preservation of the cores of previous districts and concluded it would undermine the purpose of the community-driven process we sought to create. These changes to the initial draft of Measure DDD are reflected in the final version of Measure DDD the City Council approved on July 17, 2018 and that voters approved with 60 percent of the vote on November 6, 2018.³

¹ The ballot argument in favor of Measure DDD and signed by Common Cause is available here: <https://www.longbeach.gov/globalassets/city-clerk/media-library/documents/elections/2018/redistricting-argument-in-favor>.

² See the original version of Measure DDD here: <https://longbeach.legistar.com/View.ashx?M=F&ID=6353536&GUID=945E4C79-7FCF-45D0-A722-8488F2676F89>.

³ Letters from Common Cause and Equity for Cambodians as well as the June 12 and July 17 versions of Measure DDD are available at <https://longbeach.legistar.com/LegislationDetail.aspx?ID=3548736&GUID=6546FD08-3B15-413C-A1D5-7A19861BAC61&Options=&Search=>.

As a framer of Measure DDD, our omission of the cores provision was no accident. Common Cause’s staff are democracy experts who have drafted measures creating independent redistricting commissions in states across the country and in cities throughout California. We are well aware of the existence of an option for including a cores provision and rejected its inclusion in the Long Beach City Charter. Omitting this criterion was an intentional drafting decision made to free Long Beach commissioners from the constraints of previous districts drawn by incumbent elected officials and to more effectively center the needs of Long Beach residents in the redistricting process from the start.

Preserving the cores of previous districts violates the plain language of Measure DDD

The City Attorney’s April 15 memo asks you to disregard the plain language of the Long Beach City Charter. The Charter requires the Commission to abide by three provisions regarding population equality, adherence to federal and state law, and contiguity, and eight ordered criteria that heavily prioritize keeping identifiable communities and neighborhoods in the same district.⁴ A separate subsection from the districting criteria prohibits consideration of the residence of any individual, includes a numbering convention, and prohibits partisan gerrymandering.⁵ City Charter section 2506, in which all mapping criteria can be found, intentionally omits any mention of preserving the cores of previous districts.⁶

The City Attorney’s memo concedes that the list of mapping criteria “does not include respecting existing district boundaries,” but nonetheless asks you to ignore this fact and give deference to districts drawn by city council members 10 years ago. It argues that a mere numbering convention that was intentionally omitted from the section of the city charter that lists boundary placement criteria is, in fact, a boundary placement criterion. The relevant section the City Attorney’s memo cites as evidence for its argument, subsection 2506(d), requires that “[t]he Commission shall number each Council district such that, for as many residents as possible, the number of the Council district they reside in remains the same.” This section was drafted as guidance for numbering the districts after the districts were drawn, however, the memo from Olson Remcho argues that this provision suggests that the Commission should prioritize making minimal changes to the current district maps. The argument made in the memo is incorrect on its face and undermines the intent of Measure DDD, which was to create new community-led district maps that center and empower communities.

⁴ Long Beach City Charter § 2506(a)-(b).

⁵ Id. at § 2506(c)-(e).

⁶ Id. at § 2506.

The City Attorney's argument begs an important question. Assume, for the moment, that a lawmaker was asked to draft language for the Long Beach City Charter designed to be a numbering convention to be applied after boundaries have already been drawn and not a mandate to preserve the cores of existing districts. Would the lawmaker's version of this provision differ in any substantive way from the existing version of section 2506(d)? The drafter would almost certainly exclude that provision from the subsection of the City Charter stating that "the Commission shall consider the following criteria when drawing the final map, in order of priority." The drafter would omit any language referring to preserving the cores of districts or even boundaries at all. The first verb in the sentence would very likely be "number" and the drafter might even repeat the word as a noun to establish that the sole purpose of the provision is to ensure that already-drawn districts are *numbered* in a certain way. In summary, to intentionally limit the impact of a provision to how districts are numbered and not how they are drawn, the drafter would very likely write a City Charter provision that looks identical or nearly identical to the existing version of section 2506(d).

The City Attorney's memo defends its curious twisting of unambiguous legislative intent by placing unreasonable importance on the fact that the first nine of the 13 commissioners selected for service on the Long Beach Redistricting Commission must reside in different city council districts. Provisions designed to ensure geographic diversity on redistricting commissions are a common feature of contemporary reforms.⁷ These requirements simply provide a specific mechanism for implementing a general requirement for diverse geographic representation on the commission. By dividing the city into nine different sections of equal population, existing city council districts provide an efficient method for achieving that objective by ensuring that one neighborhood or community cannot dominate commission deliberations. If a numbering convention conclusively sanctioned the use of existing districts as a starting point for new districts by itself, a separate provision mandating consideration of the cores of previous districts would be unnecessary. However, Sacramento provides an example of a city charter that explicitly requires consideration of the cores of previous districts despite also requiring the first eight redistricting commissioners to reside in the city's eight existing city council districts.⁸ A reading of the plain language of section

⁷ See Oakland City Charter, Art. II, § 220(J)(3)(a): "The appointed Commissioners and Alternates shall be selected in an open and public process and as the most Qualified to perform the duties of the commission and reflective of the geographic, racial, ethnic and economic diversity of the City of Oakland, including at least one Commissioner from each district."

⁸ Sacramento City Charter § 174(h): "Immediately after the subpool has been created, and at that same public meeting, the chair of the screening panel shall randomly select eight names – one from each existing council district – from the subpool. These eight individuals shall serve as commissioners on the commission." Id. at § 175(b)(6): "In addition to following the requirements of subsection (a), the commission shall consider the following criteria when drawing the final map, in order of priority...Preservation of population cores that have consistently been associated with each council district"

2506(d), the clear intent of the framers to establish a redistricting process that avoids the conflict of interest inherent in City Council members drawing their own districts, and the absence of a cores provision point to the obvious conclusion that this commission should give no deference to existing districts drawn by City Council members.

Starting with a blank slate and prioritizing community input would be given significant judicial deference and is consistent with the purpose of the commission's creation

The City Attorney's argument that courts will give "significant judicial deference" to districts the Long Beach Independent Redistricting Commission draws is irrelevant to the question of whether the commission should start with the cores of existing districts. Such deference would apply equally to a decision by this commission to follow the clear intent of the framers of Measure DDD by ignoring districts Long Beach City Council members drew 10 years ago and starting anew. None of the cases the memo cites in its judicial deference section mandates or even demonstrates a preference for maintaining the cores of previous districts. The memo incorrectly narrows judicial deference to the use of existing districts without clarifying that deference is a standard "applicable to constitutional challenges generally."⁹ Judicial deference is not limited to the City Attorney's argument and the court's respect for the separation of powers would equally apply to the commission's decision to ignore existing districts. It is telling that the City Attorney's argument concerning judicial deference includes no references to redistricting case law from the last 13 years, when California developed the citizens redistricting commission, which is the gold standard model for redistricting reform.

In 2008, California voters approved the creation of the state's Independent Citizens Redistricting Commission. This landmark reform demonstrates the clear trajectory toward greater limitations on the role of elected officials in redistricting.¹⁰ For example, redistricting commissions created in Hawaii and Pennsylvania in 1968 allowed sitting legislators to draw districts while only limiting partisanship by requiring an equal number of Democrats and Republicans to serve as commissioners.¹¹ Later commissions created between 1972 and 1994 in Idaho, Montana, and Washington maintained a partisan balance requirement but also prohibited sitting legislators from serving.¹² However, those three states allowed legislators to make direct appointments to their commissions. In 2000, Arizona passed a ballot initiative

⁹ *Nadler v. Schwarzenegger*, 137 Cal.App.4th 1327, 1339 (2006).

¹⁰ For a detailed history of redistricting reforms, see the amicus brief of Common Cause, the Leadership Now Project, Issue One, Equal Citizens Foundation, the Center for the Study of the Presidency and Congress, and Represent US in *Daunt v. Benson* and *Michigan Republican Party v. Benson*. This is available at <https://www.commoncause.org/wp-content/uploads/2020/02/CA6-Daunt-Amicus-final-1.pdf>.

¹¹ Haw. Const. Art. IV, § 2; Pa. Const. Art. II, § 17(b).

¹² Idaho Const. Art. III, § 2(2); Mont. Const. art. V, § 14; Wash. Const. Art. II, § 43.

that kept partisan balance, prohibited a longer list of individuals from service, and allowed legislators to directly appoint commissioners.¹³ However, Arizona only allowed legislators to appoint commissioners from a list of applicants that had been pre-screened by a nonpartisan state agency. California went further in 2008 by mandating partisan balance, prohibiting a much longer list of individuals with conflicts of interest from serving as commissioners, and further minimizing legislators' influence by giving them only a limited number of strikes – but no direct appointments – from a list of commissioner candidates that had already been pre-screened by a nonpartisan state agency.¹⁴ In 2018, a year in which voters in Long Beach and a record five states approved ballot measures designed to curb gerrymandering, Michigan created an independent redistricting commission closely modeled on California's. However, Michigan's ballot measure required commissioner applicants to be selected randomly from a pre-screened list and denied legislators the power even to strike candidates.¹⁵

The drafters of Measure DDD recognized that the drawing of district lines is susceptible to “manipulation . . . by politicians.” *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 135 S. Ct. 2652, 2672 (2015). In fact, this manipulation by political insiders is nothing short of election-rigging, and it is deeply “incompatible with democratic principles.” *Id.* at 2658. The framers of Measure DDD intentionally drafted it to comport with modern redistricting reforms that place maximum distance between sitting elected officials and the drawing of districts that they will contest as candidates. Starting the process of drawing Long Beach City Council districts with boundaries drawn by elected officials with a clear conflict of interest would represent a significant departure from the intent of the measure, the modern trajectory of democracy reform, and the underlying philosophy of community-led redistricting: to prioritize fair representation for the public over the political interests of elected officials. We urge you to center the redistricting process on communities by giving no deference to existing district boundaries.

¹³ Ariz. Const., art. IV, pt. 2, § 1(3).

¹⁴ Cal. Gov't Code § 8252(a)(2).

¹⁵ Mich. Const. Art. IV, § 6.