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Proposition A: Charter Change Amendment on Redistricting
April 2016

SDCTA Position:

SUPPORT

Rationale for Position:

The SDCTA supports this amendment because it follows SDCTA redistricting principles and creates a clearer charter, where the Council, Appointing Authority and City Clerk will be able to exercise good governance while expanding the representation of all the City Council districts. The amendments would clarify the selection of the Redistricting Commission as well as the resulting “appointing authority,” their voting regulation and use of the federal consensus resulting in a geographically diverse appointing panel. The proposition addresses the concern brought forward by the Grand Jury and community feedback in regards to the inherent conflict of interest that exists when elected officials draw voting lines. Finally, Staff recommends support because empirical evidence has shown that the likely effect of increased homogeneity in representatives due to the goal of one commissioner per existing district is likely to result in a more heterogeneous and thus representative City Council (i.e., better able to represent diverse interests). Contemporary studies also encourage the addition of commissioners to lower paid staff costs and increase the overall quality of the districts to avoid expensive judicialization, and this change also resets the size of population represented by each commissioner to the number of people when the Redistricting Commission was first formed in 1990. Staff wish to point out that future amendments on redistricting ought instead to reference the number of City Council districts instead of a discrete numerical figure.

Title: Proposed Ballot Measure to Amend City Charter Related to the City’s Redistricting Laws
Jurisdiction: City of San Diego
Type: Charter Change Ballot Initiative
Vote: Majority (Not Subject to Mayor’s Veto)
Status: On the June 7, 2016 Municipal Election Ballot
Issue: Proposed Ballot Measure to Amend City Charter Related to the City’s Redistricting Laws

Description: This proposition would amend Section 5.1 of the San Diego Charter to update the process related to the redistricting of City Council districts, including amendments to expand the citizen Redistricting Commission from seven to nine members, to clarify qualification of members, to expand the timeline for the appointment (30 to 60 days), to provide for alternate members on the Commission and the appointing panel, and to explain the effective date of boundaries. The amendments are in response to pressure from community feedback, past Commissions and the City Clerk’s recommendations to maximize the potential community input during redistricting.

Fiscal Impact: The amendments would increase the number of public hearings during the creation of boundaries from four to nine and the number of public hearings before draft boundaries get approved by the council from three to five. An increase in the amount meetings will result in an increase in administrative costs. The application process will also be more expensive because it is now twice as long (one month to two) and in spring (instead of summer, when many potential applicants are on vacation).

However, these small increases in administrative cost may be mitigated by the expansion of the Commission. Based on observations in Austin, it is possible the increase in commissioners could reduce paid staff costs and the amount of expensive judicialization due to the higher quality of redistricts produced and the expensive nature of redistricting court cases. The money saved in both areas outweigh the small increase in bureaucratic costs. The Office of the City Clerk has also disclosed a rough estimate of \$450,000 to \$500,000 in costs resulting from the printing of the voter guide for the June election, which includes the text of Proposition A. The changes in Prop A also transfer authority to approve the Redistricting Commission’s budget to the City Council.

Background:

Redistricting and the Inherent Conflict of Interest

Redistricting or redrawing district lines usually takes place after the decennial census count. Redistricting is meant to account for population changes while preserving equal representation. By ensuring each district has the same number of people, each voter and vote hold the same weight, as stipulated in the 14th amendment. Redistricting has a direct impact on political power and political distortion due to legislative malapportionment, (unequal numbers of people living in different districts) and gerrymandering (deliberate manipulation of district lines to maximize a specific political interest).

Since the passing of the 14th Amendment, a variety of legislative and judicial actions (including a barrage of redistricting cases such as *Baker v. Carr*, *Wesberry v. Sanders* and *Reynolds v. Sims*, the 1962 “reapportionment revolution” and the transition to independent redistricting commissions in 2010) have resulted in a set of contemporary redistricting principles that have emerged to reflect the new opportunities and constraints resulting from the advancing of technology, data collection, representation and good governance. The passing of the 14th Amendment persuaded many to believe that legislators had been disarmed of their main tool of malapportionment (unequal district populations) and the change would significantly constrain redistricting mischief. However, elected officials reacted to the subordination of traditional redistricting principles to population equality by using population equality as justification to draw non-compact districts that split existing political boundaries. The intent behind shaping unusual districts was often to favor or disfavor a political party, minority community, or incumbent by finely slicing communities, and even isolating prospective candidates’ homes, through district lines. The gerrymander evolved and continued to thrive in its new legal environment.

A sudden increase of citizen initiatives in regards to district lines during the 1980’s spurred the second wave of redistricting reform. For example, the original six districts of the City of San Diego were expanded to eight in 1963, which continued until the most recent 2010 census. However, since the 1980s, San Diego has experienced a range of uneven growth. In response, a citizens’ group placed an initiative on the ballot to establish an independent, seven-member redistricting commission to handle the 1990 redrawing of city political boundaries¹. In an attempt to constrain the growing partisan separation in San Diego, the selection process of the redistricting commission was designed to reduce the possibility of single party control. In 1992, San Diego voters approved Charter amendments establishing an Independent Redistricting Commission to draw district boundaries. Redistricting became inherently about balancing competing representational goals while conforming to existing geography and demography.

The intention of the reform was to reduce the influence of politics in the redistricting process. A crucial problem with the American approach of high politicization and high judicialization is that courts are less effective than commissions at mitigating the agency costs of redistricting. When

¹ "Fire-Rescue Department." History. Accessed April 28, 2016.
<https://www.sandiego.gov/fire/services/ems/history>.

voters in states with the initiative process become convinced the political system is polarized beyond what legislators can manage to repair, they often turn to changing the way legislators are selected².

Process of Appointing Authority and Commissioner Selection

Starting in 1992 all council districts in San Diego were drawn by an Independent Citizens' Redistricting Commission, a committee of volunteers appointed and operating as provided by the City Charter. The Commissioners draw district lines by considering criteria in local, state and federal redistricting laws. According to a growing literature, commission- crafted plans exhibit lower partisan bias, higher electoral responsiveness, and higher voter participation than do plans drawn by legislatures and then monitored by courts³. The low-politicization, low-judicialization position is also attractive because it allows courts to extricate themselves from the political thicket without incurring any democratic harm in the process.

Section 5 of the City Charter addresses San Diego's redistricting process and specifies the need for a redistricting authority, but has required constant legal interpretation in regards to Commissioner appointments, appointing authority requirements, when the results of redistricting will take effect, the City Council's role and how the Commissioners budget is set.

Responsibilities and Duties of the Redistricting Commission

In 2010, San Diego created its ninth City Council district. The addition of a ninth district and the following adjustments that maintained a common district population has made it more difficult for Democrats to translate their voter majority into actual seats victories. Yet, community groups in San Diego suggested that the members of the Redistricting Commission should reflect and be selected from each council district (the current Commission is still only comprised of seven members) in order for each district to have a voice in the process without requiring district-specific representation. In February 2015, the City Clerk gathered information from the feedback from the February and November Committee presentations, the 2000 and 2010 Commissions, a 2012 San Diego County Grand Jury Report and the community to present an informational report on how to maximize the potential community input regarding redistricting. The report intended to empower each districts' voice in the redistricting process without requiring district-specific representation.

In May 2011, the SDCTA adopted the following principles that would guide SDCTA staff involvement in the redistricting process. First, redistricting goals for the Commission are designed to

² Piersma, Brett. "Election Evidence: The Promises and Realities of California 's Citizen Commission." *William & Mary Bill of Rights Journal*, 7th ser., 22, no. 1. <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1668&context=wmborj>.

³ Stephanopoulos, Nicholas. "Our Electoral Exceptionalism." *University of Chicago Law School Chicago Unbound*, 2013. Accessed April 20, 2016. http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=10006&context=journal_articles.

Partisan bias refers to the divergence in the share of seats that each party would win given the same share of the statewide vote. Electoral responsiveness refers to the rate at which a party gains or loses seats given changes in its statewide vote share. See Andrew Gelman and Gary King, *Enhancing Democracy through Legislative Redistricting*, 88 Am Polit Sci Rev 541, 544-45 (1994).

be non-partisan and are only to be shaped by the interest of maximizing representation. Maximum representation is achieved when there are fair and competitive elections, yet competitive elections are dependent on maintaining fair districts. Redistricting should, therefore, help to increase the responsiveness of elected officials by creating compact and contiguous boundaries that follow geographic features, but contain the lowest possible population deviation.

SDCTA has supported the creation of districts that maximize the connection that councilmembers have with their constituency if the current communities and neighborhood are maintained and the boundaries do not violate court standings such as the Voting Rights Act. Coupled with the renewed emphasis on traditional redistricting principles is a recognition that they do not, alone, suffice to curtail gerrymandering, that political outcomes should be explicitly incorporated into redistricting criteria, and that these criteria must be considered by an independent redistricting body⁴.

Size and Cost of Redistricting Commissions

The seven member redistricting commission has developed and approved the district lines for several years and has been generally successful at promoting competitive districts that do not violate municipal or federal law. The proposed initiative directs the Appointing Authority to appoint one Commission member from each of the nine Council districts, “to the extent practicable, given the other requirements of this Charter Section, and considering the extent of the applicant pool and an individual’s qualifications to serve”. This process expands geographic representation.

Redistricting Processes in Peer Metros

The City of San Francisco also uses a 9 member commission, but they do not use a similar system of selection. Starting in 2002, three members are appointed by the Board of Supervisors, three members are appointed by the Mayor and three members are appointed by the Director of Elections unless an Elections Commission is created in which the appointments designated to the Director of Elections shall be made by the Elections Commission⁵.

The City of Los Angeles uses a 21 person commission to make up the Redistricting Panel⁶. Five at-large commissioners are appointed, one by the Mayor, two by the Council President, and one each by the City Attorney and City Controller, and then one from each district appointed by the remaining 14 members of the City Council. The Commission members and the Los Angeles Mayor have continued this system of representation because it causes empowerment and political representation across the City of Los Angeles⁷. This is similar to the proposed change for San Diego because the

⁴Altman, Micah, and Michael P. McDonald. "Redistricting Principles for the Twenty-First Century." *Case Western Reserve Law Review* 62, no. 4 (2012). Accessed April 20, 2016.

⁵"San Francisco." ELECTION OF SUPERVISORS (§ 13.110.)- Decoded- Decoded. Accessed April 20, 2016. <http://charter.sanfranciscocode.org/XIII/13.110/>.

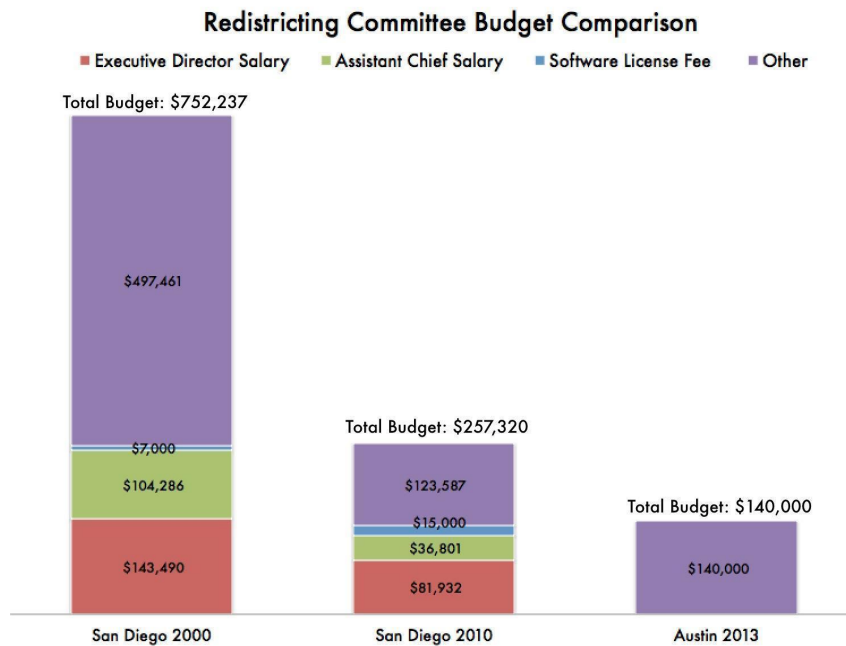
⁶"City of Los Angeles Redistricting 2011." City of Los Angeles Redistricting 2011. Accessed April 20, 2016. <http://redistricting2011.lacity.org/LACITY/commissioners.html>.

⁷Sierra, Jose Luis, and Suzanne Manneh. "LA Voters' Political Voice Hangs on Redistricting Commission - New America Media." LA Voters' Political Voice Hangs on Redistricting Commission - New America Media.

majority of the commission has been selected along district lines. The main differences between the City of Los Angeles’ system and the proposed system in the City of San Diego are the usage of at-large members in the former and an appointment authority in the latter. Like the City of San Diego, the City of Los Angeles current system will require updates to the charter to increase the number of redistricting commission members as the number of city council districts increases.

The City of Austin has recently adjusted in its redistricting process, and the effects of these changes are illustrative of the potential impact of streamlining redistricting. The budget for redistricting in City of Austin is nearly \$100,000 less than San Diego (see *figure 1*) yet Austin encounters similar obstacles as San Diego.

Figure 1: Cost Comparison Between Commissions in San Diego v.s. Austin



Source: CREDIT ANN CHOI/KUT NEWS

The main difference between the two commissions is size. Austin's redistricting commission is made up of fourteen members unlike San Diego's current seven. The larger volunteer staff decreases initial staff costs and allows the larger commission to finish in a more timely manner. In San Diego, each redistricting process takes about a year, while the redistricting commission in Austin is preparing to have the city's new maps ready after about six months. The differences in staff costs and duration of work may seem minor, but the impact on the budget is clear.

Policy Implications:

Impacts on the Local Taxpayers by the Amendments to the Appointing Authority

The current City Charter instructs the appointing authority, or presiding judges of the Municipal Court (San Diego Judicial District), to appoint members "who will give the Redistricting Commission geographic, social and ethnic diversity, and who, in his or her judgment, have a high degree of competency to carry out the responsibilities of the Commission."⁸ The commission is designed to reduce political influence in redistricting through regulating the selection and activities of commissioners. In addition, current regulations provide for a provision by which City Councilmembers can appoint redistricting commission members as a last resort.

This initiative would change the appointment process by establishing a panel of three retired judge drawn at random by the City Clerk. The changes clarify the transfer of power from the original presiding judges to a new Appointing Authority panel, preventing judicial review of the selection of the commissioners. The initiative also proposes to draw an additional retired judge to be designated as an alternate; in the case one judge is not able to serve.⁹ The ballot proposal adds a paragraph to address a situation where the entire panel cannot serve as the appointing authority. It gives the City Clerk the responsibility of conducting a ministerial review of the commission applications, and identify all qualified applicants. From that point, the City Clerk is instructed to randomly select the Commission members and alternates from the established pool of qualified applicants. City Clerk can serve as the appointing authority if three judges are unable to serve. However, the Clerk also selects two alternates for the redistricting commission from that same pool in the case of selected members' absence.¹⁰

The proposal also expands the nomination timeline from 30 days to 60 days to expand the opportunity to participate.

The amendments remove language that allowed the City Council to appoint the Commission as a last resort, eliminating the possibility of a Councilmember's conflict of interest. This section of the amendment would also limit opposing legal reactions, such as *Krvaric v Redistricting Commission*¹¹,

⁸ Jan I. Goldsmith. "Ordinance Submitted for Approval ... Amending Article II, Sections 4, 5, and 5.1; Article III, Section 12; and Article XV, Section 270; Relating to Redistricting in the City of San Diego" (Report Presented at City Council meeting San Diego, CA on 1/11/16_ O-2016-62).

⁹ Goldsmith. "Ordinance for Approval" (O-2016-62). Pg 6-7

¹⁰ Goldsmith. "Ordinance for Approval" (O-2016-62). Pg 7- 8.

¹¹ *Krvaric's* lawsuit claims the commission – which was appointed by only two judges after third failed to appear at the hearing – was illegally appointed and has no authority to take action.

that resulted from failures to adhere to the old extended and ambiguous requirements by clarifying the selection of the three appointing authority and their possible replacements.

Impacts on the Local Taxpayers by the Amendments to the Redistricting Commission

Once selected the panel strives to promptly and publicly:

“appoint one Commission member from each of the nine Council districts to the extent practicable, given the other requirements of [the] Charter Section, and considering the extent of the applicant pool and an individual's qualifications to serve. The Appointing Authority shall also attempt to appoint Commission members who possess working knowledge of the geography and neighborhoods of The City of San Diego”.

The changes to the Appointing Authority and Redistricting Commission selection process clarify the ambiguous and extended charter language that prompted judicial backlash over the unfulfilled complicated requirements. The proposed amendments would clarify the selection of the Redistricting Commission as well as the resulting “appointing authority”, their voting regulation and use of the federal consensus.

Competition Implications

The two main goals of establishing an independent Redistricting Commission are to ensure that redistricting plans are implemented without engaging the courts and to minimize the elected officials involvement in the process while maximizing citizen involvement. Simply put “The system of redistricting in the U.S. tends to allow representatives to choose people instead of people choosing representatives”¹². The intrinsic makeup of constituencies is significant both for its own sake and because of its connection to the distribution of views in the legislature. Proposition A may cause an increase in local partisan affiliation. However, empirical evidence supports the argument that districts that are individually heterogeneous typically give rise to a legislature that is more homogeneous, while individually homogeneous districts typically generate a more diverse legislature¹³.

The degree to which Proposition A will increase partisan bias (or divergence in the share of seats that each party would win given the same share of the statewide vote¹⁴) will be dependent on the demographic and community changes within each district. However, these increases in partisanship will be tempered by the general tendencies of an Independent Redistricting Commission. The Commission's intent is to respond to neutral impulses that consider the change in population (without considering incumbent protection), to naturally produce competitive districts (as CA Prop

¹² (President Obama, 2001)

¹³ http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=10006&context=journal_articles

¹⁴ Andrew Gelman and Gary King, *Enhancing Democracy through Legislative Redistricting*, 88 Am Polit Sci Rev 541, 544-45 (1994)

11 does not mention a “competitiveness” requirement for redistricting). The resulting competitive districts will encourage elected officials to make compromises, therefore, depressing the partisan influences over the appointing authority and the redistricting commission¹⁵.


Impacts Due to Changes in Population

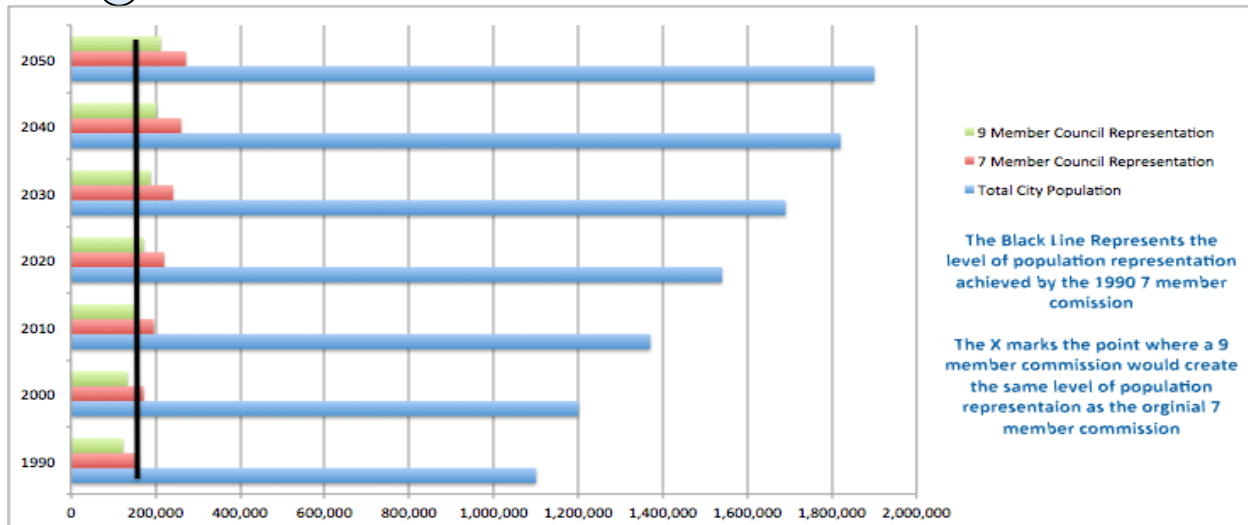
The City of San Diego has not been immune to the population increases across California. The current population levels within the City of San Diego have reached approximately 1.34 million, but in 1990 the population was closer to 1.1 million leaving the original seven members of the commission individually responsible for representing a maximum of 157,143 people. That level of population representation would have been achieved by a 9 member commission in 2010 (see the “x” on *figure 2* below). If the City wants to maintain a similar level of population representation then an increase in the number of commissioner would mitigate the increase of the overall population in the City of San Diego (as shown by the black line on *figure 2* below).

Figure 2: Commissioner Representation by Population (1990-2050)

Source: Population figures from SANDAG; SDCTA

Fiscal Impact:

The amendments would increase the number of public hearings during the creation of boundaries from four to nine and the number of public hearings before draft boundaries get approved by the council from three to five. An increase in the amount meetings will result in an increase in administrative costs. The application process will also be more expensive because it is now  twice as long (one month to two) and in spring (instead of summer, when many



potential applicants are on vacation).

However, these small increases in administrative cost may be mitigated by the expansion of the Commission. Based on observations in Austin, it is possible the increase in commissioners could reduce paid staff costs and the amount of expensive judicialization due to the higher quality of redistricts produced and the expensive nature of redistricting court cases. The money saved in both areas outweigh the small increase in bureaucratic costs.

The Office of the City Clerk has also disclosed a rough estimate of \$450,000 to \$500,000 in costs resulting from the printing of the voter guide for the June election, which includes the text of Proposition A.¹⁶ The changes in Prop A also transfer authority to approve the Redistricting Commission's budget to the City Council¹⁷.

Summary of Policy Recommendations:

The SDCTA supports this amendment because it, firstly, follows SDCTA redistricting principles ensuring appropriate representation of communities across San Diego. Prop A creates a clearer charter, where the Council, Appointing Authority and City Clerk are able to exercise good governance while expanding the representation of all the City Council districts. The amendments would clarify the selection of the Redistricting Commission as well as the resulting "appointing authority", their voting regulation and use of the federal consensus resulting in a geographically diverse appointing panel. The expansion and clarification of the Commission will create a more competitive, less costly and less contested redistricting process. Moreover, the enlargement to a nine member commissioner panel facilitates an increase in homogeneity of representatives (due to the goal of one commissioner per existing district), which is likely to result in a more heterogeneous and thus representative City Council (i.e., better able to represent diverse interests). This change also resets the size of population represented by each commissioner to the number of people when the Redistricting Commission was first formed in 1990.

The proposition addresses the concern brought forward by the Grand Jury and the community feedback gathered in regards to the inherent conflict of interest that exists when elected officials draw voting lines. Cities that allow legislators to draw districts lines enable intentional manipulation of elections through redistricting principles that protect or threaten partisan interest rather than using principles that promote creative policy solutions, which can improve San Diego's democracy. In order to avoid issues of gerrymandering legislators in San Diego and several other states have devolved the authority over redistricting to independent citizen commissions and non-partisan panels.

¹⁶ City News Services. "San Diego To Begin Preparing Ballot Language For City Charter Changes" *City News Service*. December 7, 2015. Accessed March 29, 2016. <http://www.kpbs.org/news/2015/dec/07/san-diego-begin-preparing-ballot-language-city-cha/>.

*Note: The fiscal impacts on the city are negligible due to their low cost and the \$4,173,583.00 budgeted under Citywide Program Expenditures for the June 2016 election.

¹⁷ The San Diego City Attorney's Office. "Ordinance for Approval" (O-2016-62). Pg 11-13. (Regarding Article III Section 12 and Article XV, Section 270)



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List of Proponents:

- The Democratic Party of San Diego County
- League of Women Voters of San Diego
- San Diego Regional Chamber of Commerce.
- Councilmember Sherri Lightner
- Councilmember Todd Gloria
- Councilmember Chris Cate
- Councilmember Marti Emerald

Proponent Arguments:

The main proponent arguments for Charter changes have been an increase to the number of Commission members from seven to nine allowing for the possibility of a Commissioner from each of the nine Council Districts. The second argument is that the amendments are necessary to establish a process that ensures full representation on the Commission in the event that a Commissioner cannot complete his or her full term. The proposed amendments will also allow an alternate to serve on the Appointing Authority to appoint the members of the Redistricting Commission. The alternate would prevent a two-member panel from making Commission appointments and the conflict of interest the results from the City Council selecting the commission. Next the expansion of the nomination period from thirty to sixty days and the process starting earlier in the year, will enable more potential Commissioners to apply. The expansion of the required number of public hearings will increase public participation and encourage geographical diversity in meeting locations. So finally the clarification of the language related to the timing of boundary adjustments following a redistricting of Council district boundaries, making the City's Charter consistent with current federal law.

List of Opponents:

None Known

Opponent Arguments:

No official arguments have been filed against the Initiative.