

January 21, 2022

Via Email

Leann Guzman
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RE: Analysis of Redistricting Plans proposed by Task Force

Ms. Guzman,

We have received and reviewed the proposed redistricting plans recommended by the City's Redistricting Task Force - Plans I, M, Q, S, T, U, V, X, and Z. As you requested, we have reviewed each plan for compliance with Section 2 of the Voting Rights Act. Our analysis is as follows.

The initial question, as articulated by the Task Force on several occasions, is whether the City is required to have a certain number of majority minority districts and/or minority opportunity districts. While proportional representation is not required by the Voting Rights Act, to the extent rough proportionality exists, it tends to negate a claim of discrimination. In Fort Worth, where the Anglo, Hispanic, and African-American percentages of citizen-voting-age population are 46.6 percent, 27.2 percent, and 20.1 percent respectively,¹ a ten-member council with five Anglos, three Hispanics, and two African-Americans would be roughly proportional. This proportionality would not be retrogressive when compared to the current eight-member council, where half of the members are either Hispanic or African-American. However, while it may be possible to have a plan where half of the districts are represented by minority members, the precise ratios of the three groups' proportionate citizen-voting-age population may not be attainable, especially in regard to districts that routinely elect the candidate of Hispanic choice.

Perhaps the greatest difficulty in drawing districts in Texas is being able to craft districts where Hispanics have electoral dominance in a number of districts that reflect the group's percentage of the population. This is due, in part, to:

- (1) the fact that the Hispanic population tends to be younger than other groups, therefore a smaller percentage is of voting age.

¹ 2019 American Community Survey, Table S2901.

(2) the Hispanic population typically has a larger percentage of non-citizens than other racial and ethnic groups.

(3) the fact that the Hispanic population is more dispersed than some other groups, making it harder to concentrate that population in an electoral district.

(4) Hispanic voters often tend to be less politically cohesive than other groups, such as African-Americans.

(5) Hispanics do not always have as consistent a history of registration and voter-turnout as some other groups.

Of course, any generalization will not necessarily apply to particular individuals and neighborhoods, but history suggests that greater concentrations of Hispanic voters are generally required to create a probability of electoral success than would be required for African-Americans or non-Hispanic whites (Anglos).

Thus, a district that has 50 percent Hispanic voting-age population (VAP) would certainly have the possibility of electing the candidate of Hispanic choice, but that is not necessarily a probable result. On the other hand, a district with a majority African-American VAP would be strongly favored to elect a candidate of African-American choice. Indeed, results in other Texas jurisdictions suggest that would generally be the case where the African-American percentage is in the mid-thirties, with electoral success also occurring with even lower percentages of African-American population. Although it is not a perfect comparison, since it is of a Democratic primary rather than a non-partisan general election and involves a jurisdiction that includes only a part of the City of Fort Worth, the 2012 election in the 33rd congressional district offers some information on the Hispanic and African-American electoral strength. In that race, Hispanics made up 61.3 percent of the VAP, while African-Americans constituted 17.8 percent.² The African-American candidate, Marc Veasey, prevailed with 52.73 percent of the vote compared to the Hispanic candidate, Domingo Garcia's, 47.27 percent.³ This is not to suggest that a Hispanic candidate would not prevail in a city council race involving similar demographic percentages, but it does suggest that even a district with a majority Hispanic population may not be a dependable indication of Hispanic electoral success.

With these points in mind, the plans that contain three districts with Hispanic-VAP majorities or near-majorities are Plans I, X, and Z. All three have one district in which Hispanics constitute about two-thirds of the VAP, affording a candidate of Hispanic choice a likelihood of prevailing. Plan I has two other districts where the Hispanic VAP exceeds 50 percent, while plans X and Z have one other majority-Hispanic-VAP district and one that falls slightly below 50 percent. These three plans seem likely to each elect a candidate of Hispanic choice in one district and provide for Hispanic-electoral opportunity in two other districts. In each of these three plans, one of the largely Hispanic districts also contains an African-American voting-age population of 34 percent or higher. While there is the opportunity for a Hispanic candidate to be elected in all

² *Perez v. Perry*, No. 5:11-CV-00360 (W.D. Tex. Feb. 28, 2012), Dkt. 681, Exh. C.

³ Texas Secretary of State Historical Election Returns, http://elections.sos.state.tx.us/elchist163_state.htm.

three of the predominantly Hispanic districts in Plans I, X, and Z, there is a strong likelihood that an African-American will be elected in one of the predominantly Hispanic districts in each of those plans. In each of these plans it seems likely that at least two districts would be expected to elect African-Americans and there would be the opportunity to elect at least one more.

From a voting rights perspective, it is important to look at the opportunity for both Hispanics and for African-Americans. Since Hispanics constitute the larger of the two groups, and the one where there has been lesser historic representation, a first priority should be to seek an opportunity for representation of that group. Accordingly, the nine plans appear to fall in the following groups.

One strong Hispanic District and two Hispanic opportunity districts

Plans I – District 2 strong; Districts 10 and 8 opportunity

Plan X – District 2 strong; Districts 1/11 and 8 opportunity

Plan Z – District 2 strong; Districts 10 and 8* opportunity

Potential African-American districts

Plan I – District 5 strong; District 8*⁴ opportunity, Districts 6 and 10* toss-up.

Plan X – Districts 5 and 8* strong; District 6 opportunity.

Plan Z – Districts 5 and 8* strong; District 6 opportunity.

Plan Q – Districts 5 and 11 strong; District 8* opportunity.

Plan T – Districts 5 and 8 strong; District 6 opportunity.

Plan U – Districts 5 and 1/11 strong; District 8* opportunity.

Plan V – Districts 5 and 8 strong; District 6 toss-up.

Plan S – Districts 5 and 8 strong.

Plan M - District 5 strong; Districts 1* and 6 opportunity.

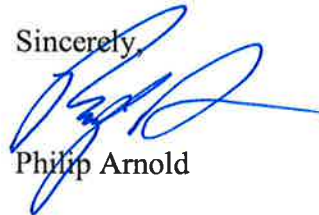
There is no guarantee that the electoral results in these districts will be as suggested. First, Fort Worth has demonstrated that the fact that a district has an Anglo plurality is not a guarantee that it will elect an Anglo. For example, in the current council, that is the case in District 6, which has an Anglo plurality but recently elected an African-American representative. Second, the line between strong, opportunity, and toss-up can be indistinct and is inherently subjective. Voter registration and voter turnout can be greater factors and the percentage of VAP. Third, how each district performs for a certain candidate can be dependent on many political factors, of which race may be only a small part.

⁴ *District is also considered to be a Hispanic opportunity district.

Finally, each of the nine plans we reviewed comply with the one person – one vote requirement of the federal constitution and all are plans that can be legally considered and adopted by City Council.

We hope this analysis has been helpful and we look forward to working with you as you refine this plan and consider other plans. Please do not hesitate to call us if you have questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Philip Arnold", is written over the word "Sincerely,".

Philip Arnold