

Exhibit C



MEMORANDUM

TO: Bureau of Elections
Sally Williams, Director
Melissa Malerman, Elections Specialist

FROM: James R. Lancaster
Legal Counsel, Voters Not Politicians Ballot Committee ("VNPBC")

RE: Revisions to Proposal in Response to The Bureau's Comments at Our Meeting on
Thursday August 3, 2017

DATE: August 9, 2017

Thank you for the time you spent with us last week to discuss our July 31, 2017 memorandum, and the issues that it addresses. I appreciated that we were able to have a frank and candid conversation about the issues raised by the VNPBC proposed constitutional amendment.

Based on that conversation, it is our understanding you view the *Protect Our Jobs* decision somewhat differently than we do.

One area disagreement was with respect to whether the sections we proposed to only republish (but not alter) truly constitute an "exclusive" power or authority. For example, it is our understanding that you believe that Article IV, §1, does not constitute in "exclusive" grant of "legislative" power or authority to the Legislature. You indicated that this was based on the fact that the Constitution currently allocates certain "legislative" powers to other branches (e.g., administrative rulemaking power). Though we did not discuss this at length, I assume that you would take the same position with respect to Article V, §1. Our concern with this analysis is that it seems similar to the argument made by Justice Kelly's in her dissent in *Protect Our Jobs*.

You also expressed the disagreement with the "bundle of sticks" metaphor that I used in describing Justice Zahra's majority opinion. In my July 31 memorandum, I asserted that we believe that with respect to an "exclusive" power or authority, a constitutional amendment that takes away any one of the "sticks" from the "bundle" that constitutes that power, causes it to be abrogated. As, you described at the meeting, you believe that the entire "bundle of sticks" must be "burned for abrogation to occur. We agree with this analysis with respect to existing constitutional provisions addressing a power or authority that is not "exclusive." However, again, we believe the sections republished in our last proposal constitute the kind of "exclusive" power or authority contemplated by the majority opinion in *Protect Our Jobs*.

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We also discussed the existing language in Article VI, §1, which grants “judicial power,” “exclusively,” to the judiciary. You suggested that because this section contains the word “exclusively,” republication might be necessary. Our understanding of your position is that, possibly, a textual analysis is the correct manner to determine whether a power or authority is “exclusive.” Our concern is that the language of the majority opinion in *Protect Our Jobs* does not lend itself to an analysis limited to a plain reading of the text.

Notwithstanding our discussion, and the differing opinions we exchanged, I believe we all agreed that the *Protect Our Jobs* decision creates uncertainty as to how to determine when an existing constitutional provision is abrogated by a proposed amendment. We gathered from your comments that this is why you indicated that if VNPBC chose to proceed with its previous proposal, the Bureau would present it to the Board with no recommendation. It is our further understanding that the Attorney General’s office would not provide an opinion in writing; rather, it would only respond to questions posed by Board members at the meeting.

This obviously created a problem for us. The whole point of this “as to form” approval process is to provide certainty to both the proponents of a petition, and the voters who sign it, that the signatures gathered will not be disregarded because of a technical flaw in the form of the petition. As the Bureau has stated in the past, it considers the abrogation issue to be part of the form of the petition. We appreciate and respect this position.

Taking into account your comments, we believe we have a solution that we hope will result in a recommendation by the Elections Bureau and the Office of the Attorney General that the Board approve our petition “as to form.”

At the beginning of each of the existing constitutional provisions that we previously only republished (due our belief that they would be abrogated), we have added the following language:

“EXCEPT TO THE EXTENT LIMITED OR ABROGATED BY ARTICLE IV, §6 OR ARTICLE V, §2.....”

We believe that this language serves two purposes, both of which should allow both the Bureau and the Attorney General to recommend approval, without directly opining on the appropriate interpretation of *Protect Our Jobs*.

First, by expressly altering the language in the existing provisions we had previously proposed only republishing, an analysis of the abrogation issue, is unnecessary. The analysis in *Protect Our Jobs* supports this conclusion.

Second, the language satisfies the other concern expressed in our July 31 memorandum: to definitively advise voters that our proposal would involve a “stark” departure from the

manner in which the power or authority over redistricting has traditionally been allocated in the Constitution. Though it does not appear that the holding in *Protect Our Jobs* depended upon this issue, it is an issue that we nevertheless take very seriously.

We believe that the provisions found in our proposal at Article IV, §6(22) and the language added to Article V, §2, represent a significant change in the manner which political power is distributed within the Constitution. Creating a “commission” that is not subject to the oversight or authority of the executive branch is a new and significantly different concept not previously found within the 1963 Constitution. Further, though this commission would be housed within the legislative branch, its actions are not subject to approval or oversight by the Legislature. This is another new concept. We believe that republication of the five existing sections of the Constitution, which we previously only proposed to republish (but not alter), is necessary to adequately inform the voters of the significance of the change being proposed to the Constitution.

It is our hope that you find that the latest, and *final*, version of our proposal, which expressly alters these provisions, will cause the Bureau and the Attorney General to recommend that the Board approve our petition “as to form.”

Once again, we appreciate the time, attention, and assistance that you have given to Voters Not Politicians Ballot Committee. If you have any questions, please do not hesitate to contact me.