

No. S262530

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

LEGISLATURE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

ALEX PADILLA, in his official capacity as Secretary of State
of the State of California,

Respondent.

**RESPONSE TO CHARLES T. MUNGER LETTER
IN SUPPORT OF PETITION FOR WRIT OF MANDATE**

CRITICAL DATE: JULY 13, 2020

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INTRODUCTION

Petitioner Legislature of the State of California welcomes the support of Charles T. Munger, who was instrumental in the passage of the propositions that established the California's Citizens Redistricting Commission. Mr. Munger joins the Secretary of State, the current Commission, and every other group that has responded to the Legislature's petition in asking the Court to issue an extraordinary writ extending the Commission's deadlines due to delay in receipt of the 2020 census data. In addition, like every other group, Mr. Munger urges the Court to act now, before July 13, so as to avoid the need for a constitutional amendment and more uncertainty.

The Legislature disagrees, however, with Mr. Munger's request that the Court extend the Commission's deadlines only by the amount of time granted by Congress, rather than the four months requested by the Legislature. Although there is some logic to his request, Mr. Munger's proposal carries with it the distinct disadvantage that it lacks certainty. As described more fully below, certainty about deadlines is critical to the Commission's ability to accomplish its task.

Regardless of the ultimate remedy, however, the Legislature urges the Court not to let this issue delay resolution of the case beyond July 13, 2020, which is the latest the Legislature can wait before considering whether it must place a constitutional amendment on the November, 2020 ballot.

ARGUMENT

THE COMMISSION REQUIRES CERTAINTY IN ORDER TO DEVELOP A SCHEDULE FOR CONDUCTING HEARINGS AND DRAFTING MAPS

Mr. Munger argues that his proposal is necessary in the event that something goes wrong with the redistricting process, such as a referendum or failure of the Commission to reach agreement on a final set of maps. Keying the Commission's deadlines to actual receipt of the census data, he argues, could allow more time at the end of the process to deal with these situations. That argument, however, ignores the need for certainty at the *beginning* of the process in order for the process to succeed.

It is important to keep in mind that the new Commission has not even been chosen. Once the commissioners are chosen, they will have to accomplish a great deal in a short time. They must organize and coalesce into a working body able to hire staff, undergo training, conduct outreach and hold hearings even before they can begin to draw districts for the largest state in the nation. Under the Legislature's proposed remedy, the commissioners will have fixed deadlines from which they can work backwards to develop a schedule for doing all of these things. In short, they will have the certainty necessary to establish goals and a timeline for achieving them.

Mr. Munger's proposal lacks the crucial element of certainty. No one knows when Congress will act or what it will do when it does act. The only information we have at this stage is that the Census Bureau has

announced that redistricting data will go to the states by July 31, 2021,¹ that it has asked Congress to extend its deadline to that date,² and that there are three bills currently pending in Congress that would accomplish that.³ The longer Congress takes to act, the harder it will be to do anything other than to give the Bureau the full four months that it has requested.

Mr. Munger's proposal adds a second layer of uncertainty by keying the Commission's deadlines to when the Census Bureau releases the data. Thus, in addition to waiting for Congress to act, even once it does act the Commission cannot finalize a schedule without knowing when the data will actually be released.

Conducting an accurate census is enormously difficult under normal circumstances, and even before COVID-19, critics questioned whether the Census Bureau would have adequate staff or resources to do its

¹ U.S. Census Bureau, 2020 Census Operational Adjustments Due to COVID-19, available at <<https://2020census.gov/content/dam/2020census/materials/news/2020-census%20operational-adjustments-long%20version.pdf>> [as of June 26, 2020].

² U.S. Department of Commerce Secretary Wilbur Ross and U.S. Census Bureau Director Seven Dillingham Statement on 2020 Census Operational Adjustments Due to COVID-19, available at <<https://www.census.gov/newsroom/press-releases/2020/statement-covid-19-2020.html>> [as of June 26, 2020].

³ The first is part of COVID-19 legislation known as the Heroes Act, H.R. No. 6800, 116th Cong., 2nd Sess., Div. G, tit. II, § 70201 (May 15, 2020). The second is a different bill introduced in the House known as the Fair and Accurate Census Act, H.R. No. 7034, 116th Cong., 2nd Sess. (May 27, 2020). The third is a bill introduced in the Senate as Senate Bill 4048, 116th Cong., 2nd Sess. (June 23, 2020).

job.⁴ Now the task is much harder, because much of the work involves door to door in-person visits to follow up with households that have not returned their census forms. Conducting that kind of canvassing in the midst of a pandemic will take all the time that the Census Bureau can get.

The chances that census data will be available before July 31, 2021 are, therefore, very small, but the consequences of crafting a remedy to provide for an earlier release are large. The problem comes down to one of timing. Congress may or may not act before the new Commission is formed in August of this year, and even if it does, the Commission will not know when the census data will be released.

Thus, if the Court adopts Mr. Munger's proposal, the new Commission may have to begin its work without knowing its final deadline, which is essential in order for it to develop an overall schedule for its work. That schedule, in turn, is essential for members of the public who want to participate in the redistricting process to begin organizing and preparing to submit comments or attend public hearings. Such public participation is by no means limited to attendance at hearings held later in the process. During the last redistricting, the public weighed in early on everything from the Commission's hiring procedures to how it posts its upcoming meeting

⁴ See New York Counts, *The Count Starts Now: Taking Action to Avoid a 2020 Census Crisis* [expressing "serious concern that the current level of federal funding for the Census Bureau will compromise the fairness and accuracy of the 2020 Census."] Available at <<https://www.commoncause.org/new-york/wp-content/uploads/sites/20/2018/05/the-count-starts-now-2020-census.pdf>> [as of June 26, 2020].

schedule.⁵ That sort of involvement is exactly what supporters of the commission process are trying to achieve, but it depends heavily on having clarity about deadlines at the outset.

The negative impact of this uncertainty would not only affect the beginning of the Commission's work, but indeed the majority of the time between its formation and the adoption of maps. Even after a deadline is established, the Census Bureau will likely not announce the date of the actual data release until it is actually ready. As a result, even if the Bureau released the data a few weeks early, the Commission would have to wait until July of 2021 to have a definitive deadline. By that point the Commission members would have been working nearly a year without knowing their deadline.

Furthermore, providing a fixed deadline is most consistent with the voters' intent when adopting Propositions 11 and 20. Both measures provided fixed dates for the adoption of maps that would be known to both the Commission and the public at the start of the process. Because the deadline for the release of data was also fixed in law, the Commission would know from the beginning it would have at least that many days to draw lines. However, the Commission would also know that if the data were released early, this additional time would be used to expand the number of days available to draw lines. In other words, Propositions 11 and 20 guaranteed a minimum number of days for line drawing.

⁵ See California Citizens Redistricting Commission, Public Comment, available at <https://wedrawthelines.ca.gov/wp-content/uploads/sites/64/2011/02/public_comment_20110223_bernhard.pdf> and <https://wedrawthelines.ca.gov/wp-content/uploads/sites/64/2011/01/public_comment_20110119_kopp.pdf> [as of June 26, 2020].

Mr. Munger's request is contrary to the voters' intent and asks the Court to impose a maximum number of days for line drawing. Under his proposal, the Commission would have no more than four and a half months regardless of whether the data were released early, thereby precluding the possibility of providing additional time should the Census Bureau complete its work early.

For all of these reasons, the Legislature urges the Court to extend the deadline by which the Commission must publish its draft maps to no later than November 1, 2021 and to extend the deadline for delivery of its final maps to the Secretary of State to no later than December 15, 2021.

Dated: June 26, 2020

Respectfully submitted,

OLSON REMCHO, LLP

By: /s/ Robin B. Johansen
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of the State of California

**BRIEF FORMAT CERTIFICATION PURSUANT TO
RULE 8.204 OF THE CALIFORNIA RULES OF COURT**

Pursuant to Rule 8.204 of the California Rules of Court, I certify that this brief is proportionately spaced, has a typeface of 13 points or more and contains 1,443 words as counted by the Microsoft Word 365 word processing program used to generate the brief.

Dated: June 26, 2020

/s/ Robin B. Johansen

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My business address is 1901 Harrison Street, Suite 1550, Oakland, CA 94612.

On June 26, 2020, I served a true copy of the following document(s):

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I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on June 26, 2020, in Kings Beach, California.

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