

MEMORANDUM

TO: Commissioner Joe A. Gonzalez

FROM: Jose Garza and Rolando Rios

RE: Redistricting tasks for 2021

DATE: March 30, 2021

Background

The 2020 census will require the redrawing of commissioner, justice of the peace, and constable district lines in Nueces County.¹ In order to make the process as thorough, equitable, and accurate as possible, we are suggesting a number of tasks that should be undertaken beginning as soon as practicable. Importantly, unlike any other US Census, for a number of reasons, including the problems associated with the pandemic, the redistricting census data will not be available until sometime in late August, instead of April; this reality will create a time crunch for developing and adopting a plan in time for the looming election schedule. However, we do have working data, as outlined in our proposed schedule below that will allow us to start the redistricting process now in anticipation of the release of the 2020 census data.

CENSUS

Census taking is over. Coordination should have been ongoing when the counting was being done. Unfortunately, that responsibility fell on local jurisdictions and counties because the State devoted no resources to the effort. Now we are left with the real possibility that a severe undercount will impact not just the numbers but also the resources that will be distributed to states and local jurisdictions.² The staff from the County tasked with the redistricting process and its redistricting counsel should be: 1) identifying new growth areas throughout the County; 2) identifying new subdivisions or *colonias*, new streets and roads, and new additions to old neighborhoods, and 3) identifying where the greatest changes have occurred in population.

Regardless of our efforts to have an accurate census, there will be an undercount. Experts have predicted an undercount of between 5% and 12% for 2020. Historically, the undercount has been 3% or less. The impact will be severe, especially

¹ Local jurisdictions elected from single-member districts will also have to draw new lines after the release of the new census numbers.

² Fortunately, Nueces County developed and implemented a census program that hopefully ameliorated the impact of the State's negligence on that process.

in areas with the greatest likelihood of undercounts, generally poor and minority neighborhoods. Tens of millions of dollars are at stake. Therefore, all Texas counties, including Nueces, should begin discussions with our congressional delegations to **require** an adjustment to the census for purposes of redistricting and for funding formulas.³

All of these efforts will require the assistance of an outside counsel and redistricting expert to assist County staff in executing the strategy. Our firm has the expertise to assist with these efforts.

REDISTRICTING PREPARATIONS AND REDISTRICTING

Redistricting law centers on two concepts: a) “one person, one vote” (Fourteenth Amendment); and b) racial vote dilution (Fourteenth Amendment and Section 2 of the Voting Rights Act). Challenges to redistricting plans based on these legal theories are not uncommon.

In recent years, partisan and racial political forces have targeted jurisdictions for legal challenges by focusing on the type of population data used to redistrict and on reverse discrimination claims based on the shape and effect of district lines. Both of these challenges have as their premise that minority voters were unfairly favored in the redistricting process at the expense of Anglo voters. In addition, both Republican and Democratic voter challenges have also argued that a redistricting plan violates the Constitution if the plan unfavorably treats voters based on political affiliation.

No jurisdiction is immune from these challenges, but pre-redistricting tasks can better prepare a jurisdiction to defend against such challenges. Moreover, these tasks are useful to prepare for a better redistricting effort for the County and produce redistricting results that are more fair and equitable for all residents of Nueces County.

A. SET GOALS CONSISTENT WITH RECOGNIZED REDISTRICTING PRINCIPLES

1. Confer with individual elected officials to gauge their expectations

As your outside counsel and redistricting expert, we would be prepared to meet with each elected county official whose electoral district is subject to change as a

³ The Clinton administrations’ Department of Commerce developed a formula for adjustment, which was scrapped by the Bush administration just before the 2000 census was to be taken. This suggested strategy requires a change in administration in 2020 and the development of an adjustment formula by census experts together with census law experts.

result of redistricting, including individual commissioners, justices of the peace, and constables. These discussions should be individual and confidential, in order to best identify issues that may need special attention and to educate the officials on the limits placed on redistricting staff by legal requirements.

2. Goals for the process should be developed, presented to the Commissioners Court and a resolution passed adopting such goals

Once the individual meetings are conducted, a comprehensive list of objective and recognized goals for the redistricting process should be developed. For instance, should community field hearings be held? Where and how many? How much population deviation will be allowed among districts? Does the distribution of Justice Courts make sense given judicial administration? How will the County decide which communities of interest should remain whole? There are dozens of redistricting criteria, each of which implicate a policy choice or preference by the Commissioners Court. In turn, each policy choice also implicates compliance or non-compliance with federal and state law.

Once the goals are drafted, they should be presented to the Commissioners Court to be discussed, modified, and adopted. Thus, putting in place an objective blueprint for the process.

3. Analyze Voting Behavior

As mentioned above, court challenges to any plan adopted by Nueces County may come from variety of potential claims. Common to all is a review of voting behavior in the jurisdiction. Our firm would include a preliminary analysis of voting behavior which may be necessary to justify and defend the Nueces County plan.

B. EVALUATE THE GROWTH OVER THE LAST TEN YEARS

Existing voting precincts, justice of the peace and commissioner precincts should be evaluated using population estimates and projections from census data (American Community Survey data) and voter registration data. By using population and voter projections, the County can see where the major redistricting changes will need to be made and begin discussions with the elected officials to prepare them for the possible changes to their election districts. Election data should also be part of this report, showing turnout and voting patterns by voting precinct.

We are voting rights experts and will be involved with staff as the data is being developed and prior to presenting this data to the elected officials. We will make the presentations to the elected officials.

C. RELEASE OF CENSUS DATA FOR REDISTRICTING

Once the 2020 census data is released for redistricting, the shape files should be downloaded to the redistricting program. Data should be available by census tract, block group and by census block. Initially, the current boundaries should be reviewed using the official census data. The elected officials should again be met with on an individual basis. Potential changes should be discussed and their input secured.

Draft plan(s) should be developed and presented to the elected officials for suggestions. These presentations should be made individually and separately to preserve attorney client privilege and to avoid any issues with Texas Open Meetings laws.

Public hearings on plan(s) being considered should then be held, including field hearings in underserved portions of the County. The plan or plans should, then be presented for consideration and adoption.

D. SECTION 5

It is true that at this time no Section 5, of the Voting Rights Act compliance is required. However, serious efforts are underway in Washington D. C. to adopt amendments to the Voting Rights Act that would re-impose Section 5 submission requirements. We should and would be prepared to make a submission to the Department of Justice and secure the necessary federal approval of Nueces County's new plans in the event those efforts are successful and such amendments are made.

E. SCHEDULE

The following is a potential schedule for the activities described above:

March 2021 – August 2021:

- Evaluate growth and political data;
- Begin first interviews with affected elected officials;
- Develop the County's goals and process of redistricting.
- Review existing Commissioner, JP and Constable Precincts and discuss with elected officials
- Download existing population estimates and registered voter data to anticipate potential legally required changes.

August, September or October, 2021 or Release date to adoption of plan:

- Download shape files insert into GIS software;

- Begin to formulate possible draft plans;
- Meet with elected official to discuss draft plans;
- Begin public process, possibly including field hearings;
- Adoption of the plans.

After Adoption – First Primary Election

- Prepare for possible Section 5 submission process;
- Make Section 5 submission if necessary;
- Monitor for litigation activity;
- Prepare a pre-litigation defense memo;
- Respond to any litigation forcefully and aggressively.