



April 10, 2018

Dear Charter Review Commission:

The proposed system of “Democracy Dollars” for Austin is likely to materially improve our local democracy. It is also clear, under current law, that the program will be upheld by the courts as constitutional. In this letter, I will explain these two conclusions. My bottom line is this: If the Council decides to make this investment in local democracy, courts will uphold it if challenged, and it is likely to have positive downstream consequences for the quality of campaigns, political participation, and political representation. The only real question for you to decide is whether this is worth the dollar cost of the investment. In my view, it is.

I teach campaign finance law to my UT law students as part of my election law course, and I often find that students find campaign finance doctrine non-intuitive. To understand why the Democracy Dollars proposal is clearly constitutional, it helps to understand the basic outline of the constraints that courts have placed on campaign finance laws since the Supreme Court entered began striking down some such laws in 1976. That year, the Court struck down a limit on campaign *expenditures* while upholding a limit on campaign *contributions*. Later cases have held that independent (non-coordinated) expenditures by people, groups, and corporations, separate from candidate campaigns, similarly cannot be capped or limited. The First Amendment protects all these expenditures as speech.

The upshot of these decisions is that campaign finance reformers cannot succeed in limiting the total amount of cash spent in elections. But nothing in the Court’s campaign finance jurisprudence stops states and localities from using *public funds*—as the federal government does too, at the presidential level—to publicly finance elections, as long as candidates and independent groups are free to raise and spend money outside of the public funds. One case, *Arizona Free Enterprise v. Bennett* (2010), struck down one state public financing scheme because that scheme, uniquely, gave candidates *extra* public funds whenever independent groups spent large amounts of money attacking the candidate. This unique provision was judged an impediment to the independent groups’ free speech. In general, however, public financing has proved the most constitutionally secure of all campaign finance reform approaches.

Against this backdrop, and especially following the stunning rise of small-donor contributions to national political campaigns over the past decade, some states and localities have begun to democratize public financing. The first version of a democratized system of public financing of campaigns was the small-donor-multiplier programs—for instance, the system that has been in place in New York City since 2001, in which public funds match small (sub-\$175) donations from New York City residents to candidates for offices such as Mayor and City Council at what is now a 6:1 ratio. This system has the effect of giving individual New York City residents who do not have thousands of dollars to donate a meaningful say in the way political campaigns are financed. They still need to be able to afford a donation, though—perhaps \$100 or \$175. The least wealthy residents, who cannot afford to give even a “small” donation, do not participate in this system.

The newest effort to democratize public finance is the approach taken by Seattle, on which Austin’s Democracy Dollars program is modeled. In Seattle, instead of matching small donations, all city residents are given four \$25 paper vouchers, which they can give to candidates of their choice. From the perspective of improving the quality of local democracy, this approach is, on the whole, an improvement

over the New York City small-donor-matching approach. The chief improvement is that even those citizens without \$100 or \$175 to spare can have a meaningful, and equal, role in the distribution of public campaign funds. (Other than that, the purpose and effect of these two ways of democratizing public financing are fairly similar.)

Under current law, no court will hold that these new systems of democratized public finance violate anyone's First Amendment rights. Unlike in *Arizona Free Enterprise*, the proposal for Austin's Democracy Dollars system does not include any provisions triggered by the political expenditures of others. As far as I can tell from reading the March 12 draft, candidates participating in the proposed Austin system do not appear to have to agree to any special expenditure limits in order to qualify to receive the voucher dollars; this seems to me the right approach both as a policy matter and in terms of first amendment law. (There is a total limit on the number of *voucher* dollars a candidate can collect, see (C)(5), but the candidate is free to spend money beyond that. That is important.)

The only part of the proposal that is not the way I would write it is the requirement that City Council candidates participating in the voucher program "shall not solicit or accept total contributions from any individual or entity in excess of a total of half of the contribution limits per election specified in Article III, Section 8" (C)(2). While the court's First Amendment jurisprudence is absolutely clear that states and localities can set contribution limits to prevent corruption, it is possible to set those limits so low that they no longer serve this purpose, at which point they may be struck down, see *Randall v. Sorrell* (2006). Austin's contribution limits from Article III, Section 8, are relatively low at \$350; because of that they were recently challenged in court in a lawsuit by Don Zimmerman (which also challenged a number of other moving parts of Austin's campaign finance system). In that suit, Austin's \$350 contribution limit was upheld. But there may be additional challenges to that limit in the future. The Democracy Dollars program does nothing to modify this limit. But if I were designing the new Democracy Dollars program, I would not include the requirement that, in effect, participants in the program who are running for City Council must use a lower contribution limit (half of \$350, or \$175). The worry is not for the Democracy Dollars program—which, as I have said, any court applying current law will definitely uphold—but rather for the contribution limit itself, which begins to look quite low indeed if all the candidates actually running for City Council find that their contribution limit, for contributions outside the Democracy Dollars program, is actually \$175 rather than \$350 (because of the interaction between the Article III Section 8 limit and the new rule that cuts it in half for those participating in the Democracy Dollars program). So, I would strike the words "a total of half of" from (C)(2), and leave contribution limits the same for those who participate in Democracy Dollars and any candidates who do not.

Regardless of what you do about that particular issue, I think the big picture is clear: this program is a major investment in local democracy. Over time, it is likely to enable a different kind of candidate to run, and win, and a different kind of citizen to become a donor/contributor, than is possible under current law. Over time, the program is likely to have a profound effect on who represents some districts on the council, and I think it is a salutary one. Like it or not, the Supreme Court has given us a system in which campaign donations are a central part of politics. You have in your hands a way to make that part of politics accessible to literally everyone who is a member of the electorate in our city.

Sincerely,



Joseph Fishkin
Marrs McLean Professor in Law
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Goodall, Jannette

From: Terrell Blodgett <blodgett@utexas.edu>
Sent: Thursday, April 12, 2018 1:06 PM
To: Goodall, Jannette
Subject: POSSIBLE REVISION OF AUSTIN CITY CHARTER

Dear Ms. Goodall: I would deeply appreciate your seeing that each member of the Charter Review Commission has a copy of the following preferably before or at least at the meeting Monday night, April 16:

Dear Chair and Members of the Charter Revision Commission:

I regret that I cannot be with you Monday night. At the time of your meeting, I will be hosting some 40-50 individuals at a dinner event honoring one of my family from out of state. I did appear last Saturday afternoon and was prepared to attend and speak at the meeting scheduled for this Thursday which I understand has now been cancelled.

I write this email with a background of some 70 years of experience in writing, teaching or working for local governments with particular emphasis on city charters. You have in your packet my monograph on TEXAS HOME RULE CHARTERS which was published by the Texas Municipal League. My involvement with the City of Austin in recent months has been keeping up with the appointment of the new city manager including appearances before the City Manager Advisory Task Force. Thus, I regret that your early meetings have been missed by me.

I write to strongly oppose three of the propositions now being considered by the Commission: the establishment of a Council-appointed budget office, the requirement for certain utility expenditures to be subject to a city-wide election, and changing the appointment of the city attorney. I have no opinion on the Dollars for Democracy or the reauthorization of an Ethics Commission EXCEPT AS TO THEIR FISCAL IMPLICATIONS.

I'm sure the Commission is aware that one of your "required products" set out by the City Council is that you set forth an "estimated fiscal budgetary impact" for each proposal that you recommend to the Council. I understand none of these impact statements have been made yet by the affected departments. My own estimate is that if you adopt the proposals - two of which you have already adopted - you will be proposing A SEVERAL CENT INCREASE IN THE TAX RATE, THIS ON TOP OF AN INCREASE ESTIMATED FOR THE 2018 GENERAL OBLIGATION BOND proposals.

Let me be specific as to cost of implementing these changes — in the order in which you list the proposals on your agenda sheet prepared for recent meetings of the Commission:

—City Attorney proposal - no fiscal impact that I can see.

—City Budget and Efficiency Officer - This proposal mandates that this Office will have a MINIMUM budget of 20% of the City's current budget office. I oppose this proposal substantively but in addition, the current budget of the Budget Office is roughly \$3.4 million. One-fifth of that is roughly \$680,000.

—Democracy Dollars program -while this may be a worthwhile endeavor, it comes with a cost. I do not believe any reasonable person would expect the City Clerk's Office to be able to handle this without a sizable increase in her budget.

—Independent Ethics Review Commission - this proposal calls for a staff - someone should attempt a cost estimate of such staff.

—Changes in Referendum and Recall requirements - The City Clerk should be able to project a rough staff cost to this , if any.

—Requiring a city election to approve major utility-related bonds over \$25 million and to approve power and water purchases whose total price for each project exceeds \$ 50 million. This requirement would be in addition to the fact that these expenditures will have been carefully scrutinized by Austin Energy and/or the Water Department, the City budget office, the City Manager, and in some cases, bond houses prior to rating the City's bonds. The Austin utilities must deal each year with multi-million dollar purchases and this requirement would be unnecessary as well as very costly. The City Clerk has estimated to me that a "single-shot" election - that is, dealing with only

one issue, costs her office approximately \$900,000 . If the issue can be combined with other subjects, then the cost is still \$300,000 to \$500,000 to hold the election. The current city charter allows revenue bonds to be issued without a city-wide election required for general obligation (tax) bonds. There is no evidence that this provision has been abused or misused by Austin Energy.

I THINK COST ESTIMATES OF THESE PROPOSALS ABOVE WILL REVEAL A SIZEABLE COST TO THE TAXPAYERS OF AUSTIN. AND A COST NOT JUSTIFIED BY THE EXCELLENT AND DESERVED REPUTATION OF AUSTIN CITY GOVERNMENT.

Substantively, I strong object to the establishment of the independent budget office under the City Council. One city cited for having an independent office in a paper prepared by a former Austin city employee is Chicago. Chicago is hardly the example which the City of Austin would want to follow. Our City currently has a general obligation bond rating of AAA - the highest possible — with both Moody's and Standard and Poors rating agencies. Chicago's general obligation bond rating by Moody's was Ba1 - FOUR NOTCHES BELOW AUSTIN. The author of the paper could only cite 5 cities in the country with an independent budget office.

The Mayor and City Council already have the largest staffs for their offices in the history of the City. Several of those staff are dedicated to budget issues. Besides that, I think it is insulting to the concept of a city manager to try to place him in a situation in which he is accused of not giving city councils his full cooperation including total transparency in budget matters. The concept of an independent council-oriented budget staff is foreign to the council-manager form of government which has served Austin extremely well for almost 100 years.

Secondly, I strongly oppose the requirement for city-wide elections in the case of certain utility purchases. As pointed out above, these expenditures have already been thoroughly vetted. At any time, a breakage or shut down of a multimillion dollar piece of equipment in the City's power plants is a possibility. In such cases, approval of replacement of that piece of equipment cannot wait for a city-wide election.

Finally, I think that the Commission has been less than transparent when speaking to the subject of the appointment of the city attorney. Although the history of this amendment may have been mentioned in passing in a verbal presentation, I find no written admission by the Commission or staff that this proposal has already been turned down at least twice by City voters .

In summary, our city has just been voted by U. S. News and World Report as the number 1 most desirable city in the country. We are so lucky to have Barton Springs, great bar-b-q, a world class university and many other features. But let us not forget that business and residents also come here because of the solid reputation of our city government. Our AAA bond rating is not accidental. Houston , a mayor-council form of government, is one to two notches below Austin's rating and that costs their citizens money every year. Because we have the council-manager form of government, we have skilled professionals heading our city departments and business people and ordinary citizens know that City Hall decisions will be made without fear or favor.

I urge this Commission to reconsider their votes on the issues I have raised.

Terrell Blodgett

Terrell Blodgett
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Goodall, Jannette

From: Robin Orłowski <[REDACTED]>
Sent: Thursday, April 12, 2018 10:52 AM
To: 2018 Charter Review
Subject: City Charter Review comments

My name is Robin Orłowski and I am a resident of Austin. Because the City Council does appropriate money for the City Attorney and its daily operations, I feel that it should have direct oversight of the legal department

The 10-1 system had been created so the City would have direct representation.

If you went out onto the street and asked the public, most individuals would not know who the City Manager is, let alone who the Assistant City Managers are. They would incorrectly tell you that the City of Austin has a direct system of government. And that the City Council itself manages day to day operations. They do not know who the assistant City Manager in charge of the Legal Department is.

It is time to amend the charter. Eliminate redundancy, and inefficiency.

Sincerely

Ms. Robin Orłowski
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(512) 342 8788
[REDACTED]

Goodall, Jannette

From: Lauren Ross <[REDACTED]>
Sent: Friday, April 13, 2018 9:10 AM
To: 2018 Charter Review
Subject: Democracy Dollars Program

Dear City Charter Commission,

I support the proposal to provide funding for council candidates from resident vouchers.

Thank you for your work.



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