

No. 18-0749

In the Supreme Court of Texas

IN RE ED ENGLISH §
RELATOR §

**ORIGINAL EMERGENCY PETITION FOR
WRIT OF MANDAMUS**

Bill Aleshire
State Bar No. 24031810
AleshireLaw, PC
700 Lavaca St., Suite 1400
Austin, Texas 78701
512 320-9155 Office
512 750-5854 Cell
512 320-9156 Facsimile
Bill@AleshireLaw.com
COUNSEL FOR RELATOR

IN THE INTEREST OF TIME, ORAL ARGUMENT NOT REQUESTED

IDENTITY OF PARTIES AND COUNSEL

RELATOR:

Ed English

COUNSEL FOR RELATOR:

Bill Aleshire

State Bar No. 24031810

AleshireLaw, PC

700 Lavaca St., Suite 1400

Austin, Texas 78701

512 320-9155 Office

512 750-5854 Cell

512 320-9156 Facsimile

Bill@AleshireLaw.com

RESPONDENT:

City of Austin, Austin City Council

COUNSEL FOR RESPONDENT:

Anne L. Morgan

Austin City Attorney

State Bar No. 14432400

City of Austin-Law Department

P. O. Box 1546

Austin, Texas 78767-1546

Telephone: (512) 974-2507

Facsimile: (512) 974-1311

Anne.Morgan@austintexas.gov

TABLE OF CONTENTS

IDENTITY OF PARTIES/COUNSELii

TABLE OF CONTENTS.....iii

INDEX OF AUTHORITIES.....iv

STATEMENT ON ORAL ARGUMENT.....v

STATEMENT OF THE CASE.....v

STATEMENT OF JURISDICTION.....vii

ISSUE PRESENTED.....ix

STATEMENT OF FACTS.....1

ARGUMENT.....6

 STANDARD FOR MANDAMUS.....6

 THE AUSTIN COUNCIL HAS VIOLATED THE LAW.....9

 THE BALLOT LANGUAGE VIOLATES THE CITY CHARTER...9

 THE BALLOT LANGUAGE VIOLATES THE COMMON-
 LAW STANDARD.....11

 CONCLUSION.....14

PRAYER14

TRAP 52.3(J) CERTIFICATION.....16

CERTIFICATE OF COMPLIANCE16

CERTIFICATE OF SERVICE16

APPENDIX TABLE OF CONTENTS.....17

INDEX OF AUTHORITIES

CASES

Bischoff v. City of Austin, 656 S.W.2d 209 (Tex. 1983).....9, 12

Blum v. Lanier, 997 S.W.2d 259 (Tex. 1999).....1, 9

Dacus v. Parker, 466 S.W.3d 820 (Tex. 2015).....11, 12

In re McAllen, 275 S.W.3d 458 (Tex. 2008).....7

In re Prudential Ins. Co. of Am., 148 S.W.3d 124 (Tex. 2004).....7, 8

In re Reece, 341 S.W.3d 360 (Tex. 2011).....6

In re Team Rocket, L.P., 256 S.W.3d 257 (Tex. 2008).....8

In re Woodfill, 470 S.W. 3d 473 (Tex. 2015).....14

In re Williams, 470 S.W.3d 819 (Tex. 2015).....passim

Walker v. Packer, 827 S.W.2d 833 (Tex. 1992).....7

CONSTITUTION

Tex. Const. art 5, § 3(a).....6

Tex. Const. art 5, § 6vii

STATUTES

Tex. Elect. Code § 273.061.....vii, 6

Tex. Gov't Code § 22.002(a).....6

Tex. Gov't Code § 22.221(a).....vii

Tex. Gov't Code § 551.043(a).....viii

Austin City Charter, art. IV, § 1.....9

Austin City Charter, art. IV, § 5.....vii, 9

Austin City Charter, art. VII, § 16.....4

RULES

TRAP Rule 52.....vii

STATEMENT ON ORAL ARGUMENT

Due to the imminent deadline for correcting the ballot language, Relator has not requested oral argument. However, if oral argument is deemed appropriate, Relator asks to be included, although Relator’s Counsel is out of town on a trip returning the evening of August 15, 2018.

STATEMENT OF THE CASE

Relator Ed English and 30,895 others signed a petition ¹ calling for voter-approval of an ordinance requiring the City of Austin to obtain a comprehensive,

¹ Actually, 33,385 people signed the petition, but only 30,895 signatures were turned in to the City Clerk who certified that more than 20,000 Austin voters signed the petition.

independent, third-party efficiency audit of all city operations and budget. The Austin City Clerk certified the petition as being sufficient under requirements of the Austin City Charter, art. IV, section 1 wherein “[t]he people of the city reserve the power of direct legislation by initiative...” This initiative was designated as the City of Austin’s Proposition K for the November 6th General Election ballot.

On August 8, 2018, the Austin City Attorney released a memo to the City Council for the first time publicly revealing alternative ballot language being considered for the Efficiency Audit proposition. On August 9, 2018 Relator’s counsel wrote to the City Attorney warning that some of the alternative language for the proposition was unlawful and misleading for voters. That day, the Austin City Council adopted ballot language for the Efficiency Audit proposition as:

“Without using the existing internal City Auditor or existing independent external auditor, shall the City Code be amended to require an efficiency study of the City’s operational and fiscal performance performed by a third-party consultant, at an estimated cost of \$1-\$5 million?”
(emphasis added)

Relator brings this action in mandamus asserting that the underlined language (referred to hereafter as “the extraneous language) violates the Austin City Charter and, regardless, is prejudicial and misleading political commentary on the proposed ordinance, not language that merely identifies the measure’s chief features, character, and purpose.

Austin City Charter art. IV, section 5 requires:

The ballot used in voting upon an initiated or referred ordinance shall state the caption of the ordinance and below the caption shall set forth on separate lines the words, “For the Ordinance” and “Against the Ordinance.” (emphasis added)

Relator seeks a mandamus directly from the Supreme Court because there are only 15 business days between the date this Petition was filed and the deadline for finalizing the ballot language, as explained below. If the Court grants the mandamus, another meeting of the Austin City Council will have to be called (including with 72-hour notice to comply with the Texas Open Meetings Act (Tex. Gov’t Code section 551.043(a) ²) so the Council can vote on corrected ballot language, hopefully—but not for certain—resolving the litigation.

STATEMENT OF JURISDICTION

This Court has jurisdiction to issue writs of mandamus under Texas Constitution article 5, section 6; Tex. Government Code section 22.221(a); Tex. Election Code section 273.061; and Rule 52 of the Texas Rules of Appellate Procedure. No genuine issues of material fact exist to divest this Court of mandamus jurisdiction. Relator is mindful of TRAP 52.3(c), which ordinarily

requires a Relator to file this Petition and Motion first with the Austin Court of Appeals, given that Court and this Court both have original jurisdiction to review this matter. However, given the time constraints, there is simply not enough time to go thru both Courts, and thus a “compelling reason” within the meaning of the rule applies here for Relator to file with this Court and not the Austin Court of Appeals.

The statutory deadline for ballot language is September 7, 2018, but the Travis County Clerk (who is conducting the election) indicates her office has an internal deadline of September 4, 2018 to receive final ballot language from the City of Austin. *See In re Williams*, 470 S.W.3d 819, 821 (Tex. 2015). (noting that under these circumstances “resort to the court of appeals is excused” and stating, “Indeed, for the same compelling reason that we exercise jurisdiction even though mandamus relief was not first sought in the court of appeals, we also immediately grant relief without requesting additional briefs on the merits.”).

² Sec. 551.043. TIME AND ACCESSIBILITY OF NOTICE; GENERAL RULE. (a) The notice of a meeting of a governmental body must be posted in a place readily accessible to the general public at all times for at least 72 hours before the scheduled time of the meeting, except as provided by Sections 551.044-551.046.

ISSUE PRESENTED

Considering the content and purpose of the voter-initiated proposed ordinance calling for a comprehensive, independent, third-party efficiency audit of all city operations and budget, did the Austin City Council violate its ministerial duty such that mandamus should issue by including the extraneous ballot language referring to “the existing internal City Auditor or existing independent external auditor” and a speculated “estimated cost of \$1-\$5 million”?

STATEMENT OF FACTS

During the summer of 2018, over 33,000 Austin voters signed a petition calling for an Efficiency Study of the Austin city government. App. Tab A. The petition indicated that “Austin shall perform a municipal efficiency audit in order to provide an impartial, objective inventory of the city’s operational and fiscal performance.” *Id.* The Proposed Efficiency Study Ordinance, attached to the petition, did not technically have a caption, but its opening “Mission” statement said:

The City’s Efficiency Study will provide an impartial, objective review of the city’s operational and fiscal performance, including development of a Government Efficiency Blueprint which includes a comprehensive budget analysis, efficiency and enhancement recommendations, and a targeted list of opportunities for operating savings. *Id.*

Relator Ed English signed the petition on May 25, 2018. App. Tab B (page from petition submitted to the City Clerk showing Mr. English’s signature on the 6th line). *See Blum v. Lanier*, 997 S.W.2d 259, 263-64 (Tex. 1999) (noting standing of petition signers to seek relief to correct deficiencies in ballot language.). On August 3, 2018, the Austin City Clerk certified the petition as being “sufficient.” App. Tab K.

For its meeting on August 9, 2018, the Austin City Council had two agenda

items related to the Efficiency Study proposed ordinance. App. Tab C. When an initiative ordinance is proposed, the Council must either adopt the ordinance or put on the ballot for voters to consider it. Agenda Item 112 was for the Council to consider adopting the proposed ordinance, and Agenda Item 113 was for the Council to adopt ballot language for propositions, including for the Efficiency Audit proposition.

Agenda Item No. 112 (for adoption of the ordinance) was a non-argumentative, straightforward description of the proposed ordinance:

Adopt a citizen-initiated ordinance, supported by a petition certified sufficient on August 3, 2018, to amend the City Code, relating to a city efficiency study of the City's operational and fiscal performance.

There was no mention in the agenda subject of the existence of the city auditor, the external city auditor, or a presumed cost of the study. In fact, in contradiction of the ballot language adopted by the Council, the staff "Recommendation for Council Action" said, under the heading of "Fiscal Note" that "*There is no fiscal impact*" for adoption of the ordinance. App. Tab E.

As agenda backup to Agenda Item No. 113, there was a memo from City Attorney Anne Morgan, dated August 8, 2018—the day before the Council meeting—indicating draft ballot language for the Efficiency Audit ordinance and another citizen-initiated ordinance regarding the massive rewrite of the City's land-use rules called CodeNEXT. App. Tab D. The ballot language Option 1 in the

City Attorney’s letter for the Efficiency Audit was straightforward, non-political, and not prejudiced:

“Shall a city ordinance be adopted requiring a comprehensive, independent, third-party efficiency audit of all city operations and budget.”

But the City Attorney indicated that the ballot language included in the draft ballot order then before the Council for the Efficiency Audit was:

“In addition to having an internal City Auditor and independent external auditor, shall the City Code be amended to require an efficiency study of the City’s operational and fiscal performance performed by a third-party consultant, at an estimated cost of \$4 million, the funding of which will require a reduction in services or an increase in the tax rate?”

After seeing this proposed language, Relator’s counsel, Bill Aleshire, wrote to City Attorney Anne Morgan warning that the proposed language violated the City Charter provision requiring the ballot to include the caption of the proposed ordinance and would otherwise violate standards for such ballot language. App. Tab F. Aleshire’s letter pointed out that there was no factual basis for saying what the Efficiency Audit would cost—particularly considering that it might identify more savings than any consultant fee would cost for a net gain for taxpayers. *Id.* In addition, the letter pointed out that mentioning the City Auditor and the external financial auditor was misleading and improper.

That evening, August 9th, the Council adopted the following language for the

Efficiency Audit ordinance ballot proposition:

Without using the existing internal City Auditor or existing independent external auditor, shall the City Code be amended to require an efficiency audit of the City’s operational and fiscal performance performed by a third-party audit consultant, at an estimated cost of \$1-\$5 million?”

App. Tab L.

Relator contends that there is no valid way for anyone to calculate the net cost of such an Efficiency Audit to such a certainty that it should be included in the ballot language. Depending on the auditor selected and audit proposals submitted, such an audit might cost more than the City’s wild guess, or it’s just as possible that the audit might produce more savings than the consultant’s fee (which might even be a contingent fee) and result in a positive gain for taxpayers.

In addition, the reference to the “independent external auditor” is challenged by the Relator as misleading since that audit is only an audit of the city’s financial “accounts” and does not have the scope or focus of the proposed Efficiency Audit. App. Tab G (Charter art. VII, section 16, requiring “an independent audit to be made of all accounts of the city by a certified public accountant.”). This is commonly understood to solely be an audit to certify the City’s Annual Financial Statement.

Even the City Auditor, Corrie Stokes, does not profess that her office conducts the kind of comprehensive Efficiency Audit called for in the proposed

ordinance. On August 9th, the day the Council voted on the ballot language, the City Auditor wrote an email to Council Member Ellen Troxclair in which she said:

As discussed, while we are independent of City operations, we do not typically conduct large scope projects like the proposed efficiency study. Specifically, we select more narrowly focused topics and then focus on risks within each selected topic to identify opportunities to improve effectiveness and efficiency. Focusing on those high risks helps us cover more topics than we would otherwise be able to audit.

App. Tab H (emphasis added).

This email helps to demonstrate that the reference in the ballot language is prejudicial and misleading to voters who might get the impression that the Efficiency Audit is a duplication of what the internal (or external) auditors already do. The comments by the City Auditor suggest that office does not have the resources to conduct the kind of Efficiency Audit that would be required by the proposed ordinance. The City Auditor elaborated further on the distinction between her office and the proposed Efficiency Audit in statements published on August 10th in the Texas Monthly. App. Tab I. The Texas Monthly reported:

Never in 27 years has a city council asked for an audit of 30 city departments and the two utilities, City Auditor Corrie Stokes told The Texas Monitor in an interview earlier in the week.... While her office might be capable of doing such an audit its purview, historically, has been audits of specific departments or problems, Stokes said. The department performs 18 to 20 audits a year and every year creates a list of 12 to 15 that need attention, she said.

App. Tab I.

The Austin City Charter, art. IV section 1 says, in part, “The people of the City reserve the power of direct legislation by initiative....” App. Tab J. The Charter, art. IV section 5 has a specific requirement that “the caption” of an initiated ordinance be stated on the ballot. App. Tab J (Section 5: “BALLOT FORM AND RESULTS OF ELECTION. The ballot used in voting upon an initiated or referred ordinance shall state the caption of the ordinance and below the caption shall set forth on separate lines the words, "For the Ordinance" and "Against the Ordinance.").

ARGUMENT

A. STANDARD FOR MANDAMUS

This Court’s constitutional and statutory grant of mandamus jurisdiction is very broad. *In Re Reece*, 341 S.W.3d 360, 374 (Tex. 2011) (orig. proceeding); *see* TEX. CONST. art. 5, § 3(a) (granting the Court power to issue writs of mandamus as specified by the Legislature); TEX. GOV'T CODE § 22.002(a) (permitting the Court to issue writs of mandamus "agreeable to the principles of law regulating those writs").

Most relevant to this case, the Texas Election Code provides a remedy through mandamus "to compel the performance of any duty imposed by law in connection with the holding of an election." *See* Tex. Elec. Code § 273.061. The Court has applied this mandamus authority in similar circumstances to compel a

city council to fulfill its ministerial duty to correct erroneous ballot language, particularly when the election deadlines are imminent. *In re Williams*, 470 S.W.3d at 821 (Tex. 2015).

Mandamus is an "extraordinary remedy, not issued as a matter of right, but at the discretion of the court." *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 138 (Tex. 2004) (orig. proceeding). "Mandamus review of significant rulings in exceptional cases may be essential to preserve important substantive and procedural rights from impairment or loss" *Id.* at 136. Mandamus is a remedy not restricted by "rigid rules" that are "necessarily inconsistent with the flexibility that is the remedy's principle virtue." *Id.*; see also *In re McAllen*, 275 S.W.3d 458, 464 (Tex. 2008) (orig. proceeding) (noting that whether a clear abuse of discretion can be remedied on appeal "depends heavily on circumstances, it must be guided by analysis of principles rather than simple rules that treat cases as categories"). Mandamus is a proper vehicle for this Court to correct blatant injustice that otherwise would elude review by the appellate courts. See *In re Prudential*, 148 S.W.3d at 138.

Mandamus is generally appropriate only when the relator has no adequate remedy on appeal. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-40 (Tex. 2004) (citing *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992)). The "adequacy" of an appellate remedy must be determined by balancing the benefits

of mandamus review against the detriments. *In re Team Rocket, L.P.*, 256 S.W.3d 257, 262 (Tex. 2008) (orig. proceeding). In evaluating the benefits and detriments, this Court should consider whether mandamus will preserve important substantive and procedural rights from impairment or loss. *Id.* In the present case, with appropriate speed in the Court and corrective action by the Austin City Council, the defective wording of the ballot can be corrected prior to the election. Under these circumstances, a post-election contest is not available as an adequate remedy. *See In re Williams*, 470 S.W.3d at 823 (Tex. 2015)(citing *Blum v. Lanier*, 997 S.W.2d at 264).

In addition to impairment of rights, this Court should consider whether mandamus will "allow the appellate courts to give needed and helpful direction to the law that would otherwise prove elusive in appeals from final judgments." *Prudential*, 148 S.W.3d at 136. Relator has good reason to doubt whether the Austin City Council will adopt lawful ballot language even if this Court invalidates the current ballot language. While, based on separation of powers considerations, the courts may not dictate to the City Council what the ballot language will be, Relator urges the Court to indicate that, for example, the "Option 1" language in City Attorney Anne Morgan's memo to Council is language that would comply with the applicable law. *See* App. Tab D ("Option 1: "Shall a city ordinance be adopted requiring a comprehensive, independent, third-party efficiency audit of all

city operations and budget.”).

B. THE AUSTIN COUNCIL HAS VIOLATED THE LAW

The Ballot Language Violates the City Charter

In adopting the Austin City Charter, the people reserved the power to direct legislation by initiative. App. Tab J (Austin Charter, art. IV § 1). Citizens exercising this power of initiative by signing the petition “become in fact the legislative branch of the municipal government” with standing to compel municipal authorities to perform their ministerial duties regarding the petitioned initiative. *Blum v. Lanier*, 997 S.W.2d at 262 (Tex. 1999).

“In general, the form of a ballot proposition to be submitted to the voters of a city is prescribed by municipal authority unless such form is governed by statute, city charter, or ordinance.” *Bischoff v. City of Austin*, 656 S.W.2d 209, 211-12 (Tex. 1983) (citing Tex. Elec. Code Ann. Art. 6.07 (Supp.1982)). Where no such other law prescribes the form of the ballot proposition, the City’s discretion is limited by “the common law requirement that the statement describe the proposition with such definiteness and certainty that the voters will not be misled.” *Id.* at 212.

In this case, the Austin City Charter *does* prescribe the form of the ballot proposition in Art. IV § 5:

The ballot used in voting upon an initiated or referred ordinance shall

state the caption of the ordinance and below the caption shall set forth on separate lines the words, “For the Ordinance” and “Against the Ordinance.” (emphasis added)

However, the Efficiency Audit ordinance does not have a designated “caption.” Therefore, Relator argues that the Council was required, still, to adopt ballot language derived from the proposed ordinance or at least equivalent to a proper caption. For example, the “Mission” statement in the Ordinance was in the location where the “caption” would normally be and could be modified slightly to fulfill the Charter requirement:

Shall the City Code be amended to require a [The] City’s Efficiency Study ~~will~~ to provide an impartial, objective review of the city’s operational and fiscal performance, including development of a Government Efficiency Blueprint which includes a comprehensive budget analysis, efficiency and enhancement recommendations, and a targeted list of opportunities for operating savings?

App. Tab A at 2.

Alternatively, the straightforward language of “Option 1” included in the City Attorney’s memo to Council (App. Tab D) would have sufficed as a “caption”:

“Shall a city ordinance be adopted requiring a comprehensive, independent, third-party efficiency audit of all city operations and budget.”

Given these alternatives, the Council was not free devise its own prejudicial and misleading ballot language in lieu of adopting an ordinance “caption” or its equivalent as required by the City Charter.

The Ballot Language Violates the Common-Law Standard

Even if the City Charter caption requirement did not exist, the adopted ballot language fails the common-law test for the ballot language to “identify the measure by its chief features, showing its character and purpose.” *See Dacus v. Parker*, 466 S.W.3d 820, 825 (Tex. 2015); *In re Williams*, 470 S.W.3d at 822 (Tex. 2015) (noting that common law demands the ballot identify “the measure’s chief features and character and purpose.”). The Council adopted superfluous, prejudicial, and speculative language that will mislead voters, as highlighted:

“Without using the existing internal City Auditor or existing independent external auditor, shall the City Code be amended to require an efficiency study of the City’s operational and fiscal performance performed by a third-party consultant, at an estimated cost of \$1-\$5 million?”
(emphasis added)

The highlighted language does not describe the “chief features” of the proposed ordinance in order to show “its character and purpose.” That language comments on irrelevant features of the city organization and propounds, as fact, a cost that cannot be possibly be ascertained at this time. In fact, the language about the internal City auditor and independent external auditor is misleading because it falsely suggests that those auditors already do the kind and scope of efficiency study proposed in the ordinance. The language about the “estimated cost” up to \$5 million is misleading because it is purely conjectural, there being no way for

anyone to know—prior to the City receiving proposals from consultants to perform the efficiency study—whether there would even be *any net* cost to taxpayers if the study identified more monetary savings than the consultant’s fee. A consultant could propose a contingent-fee arrangement based on savings enacted from the study.

While it may be true that most ballot-language challenges are based on there being too little descriptive language, as opposed to this case, where argumentative, unfounded language was used that does not describe the “chief features” of the measure but is placed to argue against its passage. *See e.g. Bischoff v. City of Austin*, 656 S.W.2d 209, 212 (1983). In this case, the Austin Council included negative political advertising within the ballot language that, itself, is misleading. If the ballot language cannot be misleading and must merely describe the chief features of the ordinance showing its character and purpose, then the superfluous language violates that standard.

As this Court explained in *Dacus*:

An inadequate description may fail to do that in either of two ways. First, it may affirmatively misrepresent the measure’s character and purpose or its chief features. Second, it may mislead the voters by omitting certain chief features that reflect its character and purpose. The common law standard thus requires that the ballot identify the measure for what it is, and a description that does either of the foregoing fails to comply with the standard.

Dacus v. Parker, 466 S.W.3d 820, 826 (Tex. 2015).

By reference to the existing internal and external auditors, the adopted ballot language “affirmatively misrepresents” the measure’s character and purpose as a unique, “comprehensive budget analysis, efficiency and enhancement recommendations, and a targeted list of opportunities for operating savings.” The Efficiency Audit was proposed and supported by petitioners precisely *because* the run-of-the-mill audit processes are not perceived as adequate.

By including a speculative cost of the ordinance in the ballot language, the language misleads voters by inclusion of unreliable information which would tend to urge voters not to vote for the proposition, when, in fact, the Efficiency Audit could result in tax *savings* to voters. It would be improper, under these circumstances, to include language attempting to define the cost or net savings when no factual basis exists for such “estimates.”

The bottom line is that the Austin Council should have followed the City Charter and adopted a caption of the ordinance for the ballot language. The ballot is not the place for political advertising or spin on a proposition. The proposition should be stated so that it fairly describes the chief features of the ordinance, *i.e.*, whether a city ordinance should be adopted requiring a comprehensive, independent, third-party efficiency audit of all city operations and budget.

Conclusion

The Austin City Council may see themselves as the protectors of the city government, including its bloat and waste. By using politically-charged ballot language to discourage voter approval, the Council has expressed its opposition to the Efficiency Audit proposition. But with this Council tactic, the legislative power reserved to the people of Austin is not being honored. Relator asks this Court to grant the mandamus without oral argument “lest the actions of city officials ‘thwart the will of the public.’” *See In re Woodfill*, 470 S.W.3d 473, 481 (Tex. 2015) (citing *Coalson v. City Council of Victoria*, 610 S.W.2d 744, 747 (Tex. 1980)).

PRAYER

For these reasons, Relator Ed English ask the Court for the following relief:

- a. Cite the Respondent to appear herein;
- b. Issue an immediate writ of mandamus ordering and compelling the Austin Mayor and Council to perform the following ministerial acts: (1) draft new ballot language for Proposition K (the Efficiency Audit proposition) that excludes reference to the city auditor, external city auditor, or estimated cost of the Efficiency Audit; (2) substitute such properly drafted ballot language in place of the ballot language adopted by the Council on August 9, 2018; (3) in drafting the ballot language use only ballot language that fairly portrays the chief characteristic

and purpose of the proposed Efficiency Audit ordinance; and (4) to hold a validly called meeting of the City Council to take the actions within 4 business days of receipt of the Order from this Court.

- c. All costs of suit;
- d. All other relief to which Relator may show themselves to be justly entitled.

Respectfully submitted,



Bill Aleshire
Bar No. 24031810
AleshireLAW, P.C.
700 Lavaca, Suite 1400
Austin, Texas 78701
Telephone: (512) 320-9155
Cell: (512) 750-5854
Facsimile: (512) 320-9156
Bill@AleshireLaw.com
COUNSEL FOR RELATOR

TRAP 52.3(J) CERTIFICATION

Pursuant to TRAP 52.3(j), the undersigned certifies that he has reviewed the above Emergency Petition for Writ of Mandamus and concluded that every factual statement in the petition is supported by competent evidence included in the appendix.



Bill Aleshire

CERTIFICATE OF COMPLIANCE

I certify that this Brief complies with TRAP Rule 9.4 and contains 3,308 words in Times New Roman typeface of 14-point.



Bill Aleshire

CERTIFICATE OF SERVICE

On August 13, 2018, this document was emailed to Anne Morgan, Austin City Attorney, to her email address Anne.Morgan@austintexas.gov as counsel for Respondent City of Austin, Austin City Council. Ms. Morgan's address is Law Department, P.O. Box 1546, Austin, Texas 78767-1546.



Bill Aleshire

APPENDIX

TABLE OF CONTENTS

Tab A - Petitioned Ordinance

Tab B - Ed English signed Petition

Tab C - Council Agenda Items 112 and 113

Tab D - Anne Morgan Memo 8-8-2018

Tab E - Staff Memo Agenda Item 112

Tab F - Aleshire Letter to Morgan 8-9-2018

Tab G - Austin Charter art VII, sec. 16, 17

Tab H - Auditor Stokes Email to Troxclair 8-9-2018

Tab I - Auditor Stokes Comments to Texas Monthly 8-10-2018

Tab J - Austin Charter Art. IV select provisions

Tab K - City Clerk's Certification

Tab L - Efficiency Audit Ballot Language as Adopted

Tab A

Proposed Efficiency Study Ordinance

§ 2-3-12 – EFFICIENCY STUDY

MISSION

- (A) The City's Efficiency Study will provide an impartial, objective review of the city's operational and fiscal performance, including development of a Government Efficiency Blueprint which includes a comprehensive budget analysis, efficiency and enhancement recommendations, and a targeted list of opportunities for operating savings.

QUALIFICATIONS

- (B) The efficiency study shall be conducted by an independent third party entity with extensive experience in government efficiency, and is knowledgeable in fiscal and budget analysis, public administration, and municipal finance and fiscal practices. The city may not contract with or hire, as an independent third party entity, an entity which has had a contract directly with the city within the past 5 years, or which employs an individual who:
- (1) has served as the City's mayor, a council member, city auditor or city manager or has had a contract directly with the city within five years before the date of hire; or
 - (2) is related, by affinity or consanguinity within the second degree, to the mayor, a council member, city auditor, or the city manager.

OBJECTIVES AND WORK PRODUCT

- (C) The efficiency study shall produce a Government Efficiency Blueprint (Plan) that recommends specific opportunities for consolidation, shared services, and other changes that permanently reduce tax burdens and/or increase the quantity and quality of services. The efficiency study shall include all City Departments, including all General Fund Departments and all publicly-owned utilities, including, but not limited to, Austin Energy, Austin Water, Austin Resource Recovery, all Enterprise Departments, including, but not limited to, the Austin Convention Center, the Austin Transportation Department, and all Internal Service Departments, including but not limited to, Law, Human Resources, Economic Development and Fleet Services. The Plan will identify specific targets for program efficiencies, cost savings, revenue enhancements, private/public partnership initiatives, and monetization of unused or underutilized city assets. The Plan shall include:
- (1) A comprehensive diagnostic analysis of the City's budget to identify spending and revenue trends and outliers. This Plan objective should include:
 - o Trend Analysis – Review and analysis of both historical and forecasted revenue and expense trends
 - o Benchmarking analysis – Comparison of the City's revenue and expense spending levels to peer cities and other recognized benchmarks
 - (2) Identify recommendations that prioritize target areas with large and substantial expenditures that affect the City's general revenue fund and where the City can become more efficient and thereby provide cost savings.
 - (3) A prioritized listing of opportunities for operating savings, efficiency and enhancement recommendations both in written form and explained through testimony before the City Council and other responsible bodies. These recommendations should be classified into short-term opportunities which can be implemented within the current budget cycle, medium-term opportunities which can be implemented within one to three years, and long-term opportunities which may require three or more years to implement. The recommendations should be documented and the independent third party entity shall make the working papers available that detail the assumptions behind the cost and benefit estimates for each recommendation.
 - (4) The independent third party entity shall be available and willing to assist in the implementation of its recommendations. The Plan shall also include: a list of the required critical steps, including any statutory or regulatory changes, an estimate of the financial and personnel resources required, an estimate of the timeframe to implement the recommendations, and any deployment strategies, communication management, dashboards, and monitoring tools necessary for its implementation.

INDEPENDENCE AND NON-INTERFERENCE

- (D) The independent third party entity shall have the full cooperation and assistance of the City Manager, publicly-owned utilities, Enterprise Departments, Internal Services Departments and all other City Departments in providing unfettered access to all data and information requested. City employees shall provide free and open access to, and furnish copies of information in any medium, including a record, book, account, internal or external memorandum, tape, report, file, diskette, computer data, money, fund, or other information, and shall also provide free and open access to property, equipment, facilities, and operations for inspection or observation.

Tab B

AUSTIN EFFICIENCY AUDIT PETITION

It is vital that Austin address its affordability crises so that it can remain the great, diverse, livable city that it has always been. To this end, the City must provide the highest quality services with the minimum amount of waste, inefficiency and overcharging. To ensure this result, Austin shall perform a municipal efficiency audit in order to provide an impartial, objective inventory of the city's operational and fiscal performance. Using the result, a Government Efficiency Blueprint (Plan) will be presented to the Mayor, Council and all citizens which includes a comprehensive budget analysis, efficiency and enhancement recommendations, and a targeted list of opportunities for operating savings. The study will be conducted by an independent third-party entity with extensive experience in government efficiency, which will produce a Plan that recommends specific opportunities to increase the quantity and quality of services and reduce tax burdens and utility costs. The Plan will identify specific targets for program efficiencies, cost savings, revenue enhancements, private/public partnership initiatives, and monetization of unused or underutilized city assets. Therefore, We, the undersigned qualified voters of the City of Austin, pursuant to City Charter, Article IV, offer the efficiency study ordinance printed on the back page of this petition for consideration to the City Council or a public vote.

ONLY REGISTERED VOTERS IN THE CITY OF AUSTIN MAY SIGN THIS PETITION. Please fill in ALL blanks that are NOT optional.

Date Signed	Signature	Printed Name	Residence Address (Street #, Street Name, Unit #)	City, State	Zip Code	County	Voter Registration Number or Date of Birth	Email (optional)
5/20/18	<i>[Signature]</i>	John Munn						
5/20/18	<i>[Signature]</i>	John Munn	966 GARDEN DR	Austin, TX	78750	TRAVIS	4/29/43	JACK.MUNN@2009.ELAC.COM
5-25-18	<i>[Signature]</i>	THOMAS CAMARDO	10707 Callaish Park Dr	Austin, TX	78750	Travis	12-06-56	camard1@sbcglobal.net
5/25/18	<i>[Signature]</i>	GARY TEAL	8901 TINA CT	Austin, TX	78758	TRAVIS	5/5/59	gary.teal@gmail.com
5/25/18	<i>[Signature]</i>	Mark Pulliam	7713 Basil Drive	Austin, TX	78750	TRAVIS	11/15/55	
5/25/18	<i>[Signature]</i>	Edwin English	12704 EUROPA LN	Austin, TX	78727	TRAVIS	11/13/53	
5/25/18	<i>[Signature]</i>	Robb J Wilson	7631 US290 W #1015	Austin, TX	78736	Travis	4/9/70	
5/25/18	<i>[Signature]</i>	Kathleen L. Holliman	9908 Chukar Bend	Austin, TX	78758	TRAVIS	2/1/49	
5/25/18	<i>[Signature]</i>	Peter L Salas Jr	3208 Esperanza Xing	Austin, TX	78758	Travis	4/25/84	Petersalasjr@gmail.com
5-25-18	<i>[Signature]</i>	Sarah Douglas	2529 Rio Grande St.	Austin, TX	78705	Travis	04/09/1996	sarahdouglastx@gmail.com
5-25-18	<i>[Signature]</i>	Rachel Lopez	5149 Ganymede Dr.	Austin, TX	78727	Travis	5-9-1976	rlopezAuto@yahoo.com
				Austin, TX				
				Austin, TX				

Tab C



City of Austin

301 W. Second Street
Austin, TX

Agenda

City Council Addendum Agenda

Thursday, August 9, 2018

10:00 AM

Austin City Hall

The City Council may go into a closed session as permitted by the Texas Open Meetings Act, (Chapter 551 of the Texas Government Code) regarding any item on this agenda.

All of the following items may be acted upon by one motion. No separate discussion or action on any of the items is necessary unless desired by a Council Member.

Consent Agenda

City Clerk

112. Adopt a citizen-initiated ordinance, supported by a petition certified sufficient on August 3, 2018, to amend the City Code, relating to a city efficiency study of the City's operational and fiscal performance.
113. Approve an ordinance ordering a general municipal election to be held on November 6, 2018, for the purpose of electing a Mayor (at large) and City Council Members (single member districts) for District 1, District 3, District 5, District 8, and District 9; ordering a special election to submit to the voters proposed charter amendments; ordering a special election to submit to the voters a proposed citizen-initiated ordinance, certified sufficient on April 23, 2018, regarding whether there must be both a waiting period and subsequent voter approval before any comprehensive revisions of the City's land development laws may go into effect; ordering a special election to submit to the voters a proposed citizen-initiated ordinance, certified sufficient on August 3, 2018, relating to an efficiency study of the city's operational and fiscal performance; ordering a special election for the purpose of authorizing the issuance of general obligation bonds; providing for the conduct of the general and special elections, including authorizing the City Clerk to enter into joint election agreements with other local political subdivisions as may be necessary for the orderly conduct of the elections; and declaring an emergency.

District(s): District 1; District 3; District 5; District 8; District 9

Adjourn

Tab D



LAW DEPARTMENT

MEMORANDUM

To: Mayor and Council

From: Anne L. Morgan, City Attorney

Date: August 8, 2018

Subject: Ballot Language for Citizen-Initiated Ordinances on November 6, 2018 Ballot

This memo serves as back up to the ordinance calling the election for November 6, 2018. We have posted an amended draft ordinance today. We changed the order of the election items. The ballot will begin with the general municipal election, then the bond election, then charter amendments, then citizen-initiated ordinances. The amended ordinance now contains draft ballot language for the citizen-initiated ordinances. The language changes in the amended ordinance are highlighted in yellow throughout the document.

In addition to the draft ballot language in the amended ordinance, council members asked us to provide alternative proposed ballot language for the citizen-initiated ordinances. The language currently shown in the ordinance as well as the proposed suggestions are listed below.

For the citizen-initiated ordinance regarding a comprehensive rewrite of the land development laws (Proposition J), the proposed ballot language currently included in the ordinance is as follows:

“Shall the City Code be amended to include a requirement that there shall be both a waiting period and subsequent voter approval by election before any future comprehensive revisions of the City’s land development laws may go into effect?”

Two alternative options for ballot language for this ordinance are as follows:

Option 1:

“Shall a city ordinance be adopted to require a waiting period and voter approval before CodeNEXT or subsequent comprehensive land development revisions become effective?”

Option 2: “Shall the City Code be amended to include a requirement that there shall be both a waiting period, for up to three years, and subsequent voter approval by election before any future comprehensive revisions of the City’s land development laws, which include environmental, transportation, utility, zoning, subdivision, site plan, and other city ordinances, may go into effect?”

For the citizen-initiated ordinance regarding the efficiency study (Proposition K), the proposed ballot language currently included in the ordinance is as follows:

“In addition to having an internal City Auditor and independent external auditor, shall the City Code be amended to require an efficiency study of the City’s operational and fiscal performance performed by a third-party consultant, at an estimated cost of \$4 million, the funding of which will require a reduction in services or an increase in the tax rate?”

Two alternative options for ballot language for this ordinance are as follows:

Option 1:

“Shall a city ordinance be adopted requiring a comprehensive, independent, third-party efficiency audit of all city operations and budget.”

Option 2:

“Shall a city ordinance be adopted requiring a comprehensive, independent, third-party efficiency audit of all city operations and budget, possibly costing the city \$1,000,000 to \$4,000,000, and potentially identifying \$160,000,000 million or more in annual savings opportunities for the city?”

Please feel free to contact me with any questions or concerns you might have.

Cc: Spencer Cronk, City Manager

Tab E

AGENDA



Recommendation for Council Action

AUSTIN CITY COUNCIL

Regular Meeting: August 9, 2018

Item Number: **112**

City Clerk

Adopt a citizen-initiated ordinance, supported by a petition certified sufficient on August 3, 2018, to amend the City Code, relating to a city efficiency study of the City's operational and fiscal performance.

Lead Department	Office of the City Clerk.
Fiscal Note	There is no fiscal impact.
For More Information	Jannette Goodall, City Clerk (512) 974-2210.

Tab F

ALESHIRELAW

A PROFESSIONAL CORPORATION

700 LAVACA STREET, SUITE 1400
AUSTIN, TEXAS 78701

Bill Aleshire

Bill@AleshireLAW.com

512 320-9155 (call) 512 320-9156 (fax)

August 9, 2018

VIA EMAIL: Anne.Morgan@austintexas.gov

Anne Morgan, City Attorney
City of Austin, Texas
301 W. 2nd Street
Austin, Texas 78701

RE: Efficiency Audit Proposition K: Courtesy Notice of Anticipated Litigation to Block Deceptive Ballot Language (Council Agenda Items 112, 113).

Dear Ms. Morgan,

I have been retained by Ed English and others to immediately seek mandamus relief from the 3rd Court of Appeals (and any necessary district court relief) if the Council adopts the ballot language for Proposition K that your attached August 8th memo describes as “currently included in the ordinance” calling the November election. If Council accepts your recommended prejudicial language (in lieu of the neutral language of your Option 1), litigation is necessary to protect Austin citizens’ right to petition and election without interference by the Mayor and Council.

You will recall that this Mayor and a Council majority unlawfully refused to place the CodeNEXT Proposition on the ballot at all and are now under court order to do so (Proposition J). Apparently, the Mayor and Council, having been thwarted in that tactic to deny petitioning rights to Austin citizens, are now attempting to use the wording of the ballot proposition as an opposition political advertisement, instead of fairly presenting the proposed ordinance to the voters.

Your August 8th memo will be a fine exhibit for us in court because it demonstrates that you know how to word the ballot in a neutral and fair way, Option 1, versus manipulating the ballot to prejudicially and misleadingly encourage voters to vote against the Efficiency Audit proposition. Here is what you provided as options for the ballot under Agenda Item 113:

Option 1 (A neutral presentation of the petitioned ordinance):

“Shall a city ordinance be adopted requiring a comprehensive, independent, third-party efficiency audit of all city operations and budget.”

Your Recommended Prejudicial Language:

“In addition to having an internal City Auditor and independent external auditor, shall the City Code be amended to require an efficiency study of the City’s operational and fiscal performance performed by a third-party consultant, at an estimated cost of \$4 million, the funding of which will require a reduction in services or an increase in the tax rate?”

Option 2:

“Shall a city ordinance be adopted requiring a comprehensive, independent, third-party efficiency audit of all city operations and budget, possibly costing the city \$1,000,000 to \$4,000,000, and potentially identifying \$160,000,000 million or more in annual savings opportunities for the city?”

Ironically, the staff memo for agenda item No. 112, objectively presents the nature and purpose of the Efficiency Audit ordinance and says “There is no fiscal impact” to the ordinance that your proposed ballot language claims will cost \$4 million. (Agenda Item 112: “Adopt a citizen-initiated ordinance, supported by a petition certified sufficient on August 3, 2018, to amend the City Code, relating to a city efficiency study of the City’s operational and fiscal performance.”). So, under Agenda Item 112, the record shows that if the Council adopts the Efficiency Audit ordinance, without an election, it would have no fiscal impact, but under your proposed ballot language under Agenda Item 113, the voters would be told, erroneously, that the ordinance would cost \$4 million!

Austin City Charter, art. IV, section 5 says, “The ballot used in voting on an initiated or referred ordinance shall state the caption of the ordinance and below the caption shall set forth on separate lines the words, “For the Ordinance” and “Against the Ordinance.” The Texas Supreme Court has referred to such obligation for placing citizen-initiated ordinances on the ballot, properly worded, as a “ministerial duty” to “substantially submit the measure with definiteness and certainty by identifying the measure’s chief features and character and purpose.” *In re Williams*, 470 S.W.3d 819 (Tex. 2015). Your Option 1 on Agenda Item 113 is the only ballot version that meets this standard.

Your other versions are obviously political, obviously prejudiced, and misleading by the addition of language that is either unsupported by *facts* and irrelevant material, going far beyond just presenting a caption of the proposed ordinance. The City cannot prove the proposition will cost the City \$4 million or have the *net* effect of requiring “a reduction in services or an increase in the tax rate.” The fact that the City has a City Auditor is irrelevant. It would be reasonable to assume that the Auditor would not deliberately duplicate the work of an outside efficiency auditor. And the fact that the City has an “independent external auditor” to certify the City’s annual financial report does not mean that external auditor conducts any work like what the Efficiency Audit ordinance calls for.

As a result of the short timing for getting the November ballot finalized, it would behoove the Mayor and Council to adopt your Option 1 language and avoid the chaos of trying to get the language corrected via a court order and another meeting of the Council before the August 20th deadline. Adoption of Option 1 might also indicate that this Mayor and Council majority are finally willing to show some respect they have so far lacked for Austinites' petitioning rights. If Council does not adopt Option 1, I trust your office will cooperate in expeditious litigation of the matter.

CONCLUSION

As I've said to you before, I do not relish seeing my City of Austin hauled into court for arrogant abuse of power and failure to conform to standards of good government. I hope you will take this information under serious consideration and encourage the Council to not require another lawsuit to protect the people of Austin from its government.

ALESHIRELAW, PC



Bill Aleshire

Tab G

Austin City Charter art. VII

§ 16. - INDEPENDENT AUDIT.

At the close of each fiscal year, and at such other times as may be deemed necessary, the council shall cause an independent audit to be made of all accounts of the city by a certified public accountant. The certified public accountant so selected shall have no personal interest, directly or indirectly, in the financial affairs of the city or any of its officers. Upon completion of the audit, the results thereof shall be published immediately in a newspaper in the city of Austin and copies placed on file in the City Hall as a public record.

§ 17. - CITY AUDITOR.

There shall be a city auditor who shall be appointed by the city council. The city auditor may be removed at the conclusion of a five-year term of office by a majority of the city council, or during the five- year term by a vote of three-fourths of the city council. The auditor shall report to the city council through an audit committee of the council. The auditor shall have such duties, responsibilities and staff as determined by ordinance including the responsibility to conduct, or cause to be conducted, financial, performance, investigative, and other audits following government auditing standards as promulgated by the Comptroller General of the United States. The city auditor shall assist the city council in establishing accountability and in improving city system and service delivery.

Tab H

From: Stokes, Corrie
Sent: Thursday, August 9, 2018 6:37 PM
To: Troxclair, Ellen <Ellen.Troxclair@austintexas.gov>
Subject: efficiency audit item

Council Member Troxclair,

As discussed, while we are independent of City operations, we do not typically conduct large scope projects like the proposed efficiency study. Specifically, we select more narrowly focused topics and then focus on risks within each selected topic to identify opportunities to improve effectiveness and efficiency. Focusing on those high risks helps us cover more topics than we would otherwise be able to audit.

I hope that is helpful.

Sincerely,

Corrie

Corrie Stokes

Austin City Auditor

Tab I

Found At: <https://texasmonitor.org/attorney-citys-ballot-language-on-independent-austin-audit-political-prejudiced/>

Attorney: City's ballot language on independent Austin audit 'political,' 'prejudiced'

By
[Mark Lisher](#) - August 10, 2018



A group calling for an independent audit of all Austin city departments said it intends to sue the city for passing what it contends is a prejudicial ballot question that would doom such an audit with voters in November.

The release of language preferred by Mayor Steve Adler earlier in the day prompted Bill Aleshire, an attorney for members of the group, Citizens for an Accountable Austin, to send an email letter to City Attorney Anne Morgan.

“Your other versions are obviously political, obviously prejudiced, and misleading by the addition of language that is either unsupported by facts and irrelevant material, going far beyond just presenting a caption of the proposed ordinance,” Aleshire wrote.

Council member Ellen Troxclair repeatedly challenged Adler’s decision to fold the resolution into an omnibus resolution on all of the questions slated for the ballot on November 6, including all of the elements of a [\\$925 million bond issue](#).

After Troxclair’s fourth request for a separate vote shortly before the meeting adjourned at 12:47 am, Adler told Troxclair such a vote was out of order. The council passed Adler’s ballot language on an 8-3 vote with Troxclair, Ora Houston and Alison Alter opposed.

By adding the audit language to the resolution Adler invited comparisons with the council’s handling of a petition to put the city’s land development code project, CodeNext, on the November ballot. [Petitioners sued](#), the city lost and the [city council voted Thursday night to bury six years of work](#) at a cost of more than \$8 million.

“The ballot language they drafted for the audit is bogus and illegal,” said Bill Bunch, an attorney and activist, who has opposed council action on CodeNext and the audit. “They are using the ballot language to argue against the audit.”

“You will get sued again and you will lose again,” David King, vice-chairman of one of the city’s citizens planning committees told the council before its vote. “You need to look at efficiency in an unbiased way.

At question was Adler’s insistence that the ballot question point out to voters that “Without using the existing internal city auditor or existing independent external auditor, shall the city code be amended to require an efficiency study of the city’s operational and fiscal performance performed by a third-party audit consultant, at an estimated cost of \$1-\$5 million.”

Citizens for an Accountable Austin preferred, and Troxclair supported, a question that said, “Shall a city ordinance be adopted requiring a comprehensive, independent, third-party audit of all city operations and budget?”

Michael Searle, whose petition drive gathered more than 30,000 signatures and was [certified for ballot consideration](#) by the council last week, said the mayor’s language biases a voter about the need for an independent audit and its cost.

Searle also objected to including a cost estimate for audit in the ballot language. At the least, he said, the question should then include what Searle has estimated would be savings to the city of between \$156 million and \$390 million a year in efficiencies identified in an audit.

Polling has shown that 82 percent of Austin residents, when asked in simple language, said they favored an efficiency audit, Searle said.

“You’re using ballot language as political advertising,” Searle told the council early Friday morning.

Ed English, a proponent of a citywide audit since 2014 who has served as an advisor to the group, called the ballot language “outrageous” and “clearly and obviously designed to mislead a voter.”

“It’s fairly safe to say that we’ve sought legal counsel and I have no problem taking legal action on this language,” English told the council.

The city of Austin has always used an independent external auditor, but only on accounting questions of a focused scope. The city created its own auditor department in 1991, designed to be independent of the city manager and staff and accountable to the city council, but paid for by the city.

Never in 27 years has a city council asked for an audit of 30 city departments and the two utilities, City Auditor Carrie Stokes told The Texas Monitor in an interview earlier in the week.

Stokes, who has spent her nearly 20-year career in the auditor’s office, the last three as head of the department, said “If the citizens want an audit, perhaps there should be an audit.”

While her office might be capable of doing such an audit its purview, historically, has been audits of specific departments or problems, Stokes said. The department performs 18 to 20 audits a year and every year creates a list of 12 to 15 that need attention, she said.

The last major review of a single department, Planning and Zoning, was [completed in 2015](#) by an independent external auditor, Zucker Systems, at a cost of \$250,000. The report — highly critical of the department and [still controversial](#) — is 814 pages long.

The Zucker Report has Stokes concerned that trying to do the same thorough review of all city departments might be asking a lot.

“It seem like a very broad task, seems like it would be very challenging. It’s not something we’ve ever been asked to do,” Stokes said. “But there’s also something to be said for someone outside giving it a fresh look.”

The circumstances that led to the threat of a lawsuit make it nearly impossible for a fresh look not to be colored by politics. Before the vote was cast, Adler asked Searle to reveal the names of

the donors who provided \$137,000 for Searle's political action committee to conduct the petition drive. Searle, under no legal obligation to do so, declined.

Several council members expressed concerns about a lack of transparency in Searle's funding. A citizen, David Butts, told the council that lack of transparency was by design, "a spear directed at this city, by people who don't like this city."

Butts said he welcomed the opportunity for a community-wide debate on the ballot question, to expose what he identified as the politically conservative backers of the audit.

Butts has been for at least 20 years one of the most frequently called upon political advisors, lobbyists and donors for progressive political candidates.

Butts was [instrumental](#) in Adler's first mayoral campaign in 2014. He has advised for the campaigns of at least half of the city council, Greg Casar, Ora Houston, Ann Kitchen and Leslie Pool.

A two-page ad taken out by political opponents during the 2014 municipal election campaign referred to Butts as ["The Invisible Man,"](#) controlling the city council behind the scenes.

A longtime ally and [donor](#) to her campaigns, [Butts teamed up with Kitchen](#) in 2016 to help defeat Proposition 1, the ballot question that drove ridesharing companies Uber and Lyft out of Austin.

Houston challenged her old advisor, saying residents on her district could benefit greatly from the millions that might be saved through an efficiency review. Who funded the petition, she said, was beside the point.

"Are we saying the petitions are invalid?," Houston asked Butts. "Are we saying the people who signed those petitions are invalid? Is there something wrong with an efficiency audit?"

Tab J

Austin City Charter art IV

Available at:

https://library.municode.com/TX/Austin/codes/code_of_ordinances?nodeld=CH_ARTIVINRERE

§ 1. - POWER OF INITIATIVE.

The people of the city reserve the power of direct legislation by initiative, and in the exercise of such power may propose any ordinance, not in conflict with this Charter, the state constitution, or the state laws except an ordinance appropriating money or authorizing the levy of taxes. Any initiated ordinance may be submitted to the council by a petition signed by qualified voters of the city equal in number to the number of signatures required by state law to initiate an amendment to this Charter.

Amendment note: Section 1 appears as amended at the election of November 6, 2012.

§ 3. - FORM AND VALIDATION OF A PETITION.

A petition under Section 1 or Section 2 of this article is subject to the requirements prescribed by state law for a petition to initiate an amendment to this Charter, and shall be in the form and validated in the manner prescribed by state law for a petition to initiate an amendment to this Charter.

Amendment note: Section 3 appears as amended at the election of November 6, 2012.

§ 4. - COUNCIL CONSIDERATION AND SUBMISSION TO VOTERS.

When the council receives an authorized initiative petition certified by the city clerk to be sufficient, the council shall either:

- (a) Pass the initiated ordinance without amendment within ten (10) days after the date of the certification to the council; or
- (b) Order an election and submit said initiated ordinance without amendment to a vote of the qualified voters of the city at a regular or special election to be held on the next allowable election date authorized by state law after the certification to the council.

When the council receives an authorized referendum petition certified by the city clerk to be sufficient, the council shall reconsider the referred ordinance, and if upon such reconsideration such ordinance is not repealed, it shall be submitted to the voters at a regular or special election to be held on the next allowable election date authorized by state law after the date of the certification to the council. Special elections on initiated or referred ordinances shall not be held more frequently than once each six (6) months, and no ordinance on the same subject as an initiated ordinance which has been defeated at any election may be initiated by the voters within two (2) years from the date of such election.

Amendment note: Section 4 appears as renumbered by Ord. 20121213-004. The section had previously been amended at the election of May 7, 1994. A former § 4, which concerned the filing, examination, and certification of petitions, was repealed at the election of November 6, 2012.

§ 5. - BALLOT FORM AND RESULTS OF ELECTION.

The ballot used in voting upon an initiated or referred ordinance shall state the caption of the ordinance and below the caption shall set forth on separate lines the words, "For the Ordinance" and "Against the Ordinance."

Any number of ordinances may be voted on at the same election in accordance with the provisions of this article. If a majority of the votes cast is in favor of a submitted ordinance, it shall thereupon be effective as an ordinance of the city. An ordinance so adopted may be repealed or amended at any time after the expiration of two (2) years by favorable vote of at least three- fourths of the council. A referred ordinance which is not approved by a majority of the votes cast shall be deemed thereupon repealed.

***Amendment note:** Section 5 appears as amended at the election of November 6, 2012, and later renumbered by Ord. 20121213-004. As former § 6, the section had previously been amended at the elections of May 7, 1994, and April 1, 1967.*

Tab K



CERTIFICATE OF SUFFICIENCY OF INITIATIVE PETITION

I, Jannette Goodall, City Clerk of the City of Austin, Texas, hereby certify that:

The initiative petition proposing an ordinance “requiring a City Efficiency Study conducted by an independent third party entity with extensive experience in government efficiency” was filed with the City Clerk on July 12, 2018.

At the time of filing, the petition was comprised of 2,927 pages containing 30,895 signatures.

In accordance with the City of Austin Charter and state law, the number of signatures required for a sufficient initiative petition is 5% of the qualified voters of the city or 20,000, whichever number is the smaller.

Based on verification against the voter registration rolls obtained from Travis County, Hays County, and Williamson County, I have determined the following facts regarding this petition:

The raw-count number of signatures filed with the petition was 30,895. The required number of signatures is 20,000. The Texas Election Code authorizes the use of random sampling to verify petitions of large size, and the City has used the same random sampling method since 2002. Under that method, and in accordance with law, 25% of the total number of submitted signatures on this petition were verified, which equates to a sample size of 7,724.

Based on the analysis of the random sample results, it has been determined that the petition meets the requirement for the minimum number of signatures of valid voters, based on the required minimum of 20,000. Of the 7,724 submitted sample lines checked under the sampling method, 2,114 of the sample lines were disqualified on account of bearing signatures of persons not on the voter list (2,070), or of being duplicate signatures of registered voters who signed more than once (44). The remaining 5,610 sample lines were validated as bearing signatures of qualified voters.

Based on the above, the petition is determined to be sufficient; please see attached report on the statistical analysis.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Austin on this the 3rd August, 2018.




Jannette Goodall, City Clerk
City of Austin, Texas

Tab L

of the City, all departments and all units...
in government efficiency. The or...

Audit Ballot Language

#113

Mayor Adler

Without using the existing internal City Auditor or existing independent external auditor, shall the City Code be amended to require an efficiency study of the City's operational and fiscal performance performed by a third-party audit consultant, at an estimated cost of \$1-\$5 million?