

Documents Previously Submitted
In Support of Application for
General Counsel Position



November 13, 2020

VIA EMAIL to Redistricting@Michigan.gov

Independent Citizens Redistricting Commission
c/o Secretary of State Jocelyn Benson
Richard H. Austin Building
430 W. Allegan
Lansing, MI 48918

Re: Application for General Counsel Position

Dear Commissioners:

Initially, I would like to thank the Commission for its consideration of my application for the Executive Director position. I also appreciate your comments suggesting that I would be better suited to serve as General Counsel.

Therefore, I am submitting my application to serve as your General Counsel.

I believe I am qualified for this position because I have extensive experience in working in and with state and local government, excellent communication skills, and in developing and implementing strategies on complex issues. In particular, I would like to highlight the following experience:

- Chief Legal Counsel for Voters Not Politicians (VNP). In this position I was one of the principal authors of Proposal 2. This involved assuring that the Proposal contained a coherent and workable process for the selection of Commissioners and operation of the Commission, and that it included language necessary to insulate it from legal challenges. I was also responsible for a variety of other legal matters including the drafting and review of contracts with consultants, compliance with regulatory issues, and labor issues, and establishing an organizational structure and appropriate policies. It also involved advising and managing the VNP Board of Directors.
- General Counsel of the Michigan Economic Development Corporation (MEDC). The MEDC is a unique organization, whose personnel are both state classified employees (paid for with state appropriated funds) and "corporate" employees (paid with casino gaming revenues). My position required that I develop a cooperative working relationship with the Attorney General's office and other state agencies, including primarily the then Department of Labor and Economic Growth (DLEG). I was responsible communicating with the Governor's office and DLEG Director Hollister

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on key legal issues facing MEDC. I also served as the Freedom of Information Act ("FOIA") officer, and advised the Corporation and various committees and programs MEDC administered on Open Meetings Act issues. It also involved a wide variety of issues including everything from drafting and negotiation the grant and loan agreements for the Michigan Technology Tri-Corridor to determining whether staff could bring alcohol at the company summer picnic.

- Dewitt City Council. I served as a member of the Council for approximately 20 years. When I was first elected in 1992 Dewitt was a largely rural community that was growing fast. The culture of the Council reflected this. There was initially resistance to take the steps necessary to accommodate this growth, such as: obtaining funding to a comprehensive pedestrian walkway plan, improving the storm water drainage to eliminate open drains, convincing my fellow Councilmember to raise taxes by 1 mill to pay for a \$1.1 million bond issue to implement a comprehensive parks plan, rewriting the City's land use ordinance, negotiating with nearby townships to enter into agreements to combine our resources to lower the cost of fire and recreation services. I also wrote the City's first ethics ordinance.
- Private Practice Experience. Much of my private practice experience included representing governmental entities. This includes representing several municipalities on matters as diverse as regulatory compliance, general contracting issues, intergovernmental agreements, and representing the State as a Special Assistant Attorney General.

I have attached copies of the letters of recommendation from retired Ingham County Chief Circuit Judge Peter Houk and VNP Nancy Wang that I had submitted with my application for the Executive Director position. Frankly, the only change that would have been made is reference to the position I was applying for.

I hope you will find that my experience makes me uniquely qualified to serve as the General Counsel of the Commission. I would appreciate the opportunity discuss this further with Commission members.

Respectfully,

A large black rectangular redaction box covering the signature of James R. Lancaster.

James R. Lancaster

Responses To Supplement Questions

1. Are you an active member of the State Bar of Michigan, in good standing?

Response: Yes

2. How many years of experience do you have in the practice of law?

Response: Approximately 33

3. How many years of experience do you have working in the public sector and/or Michigan state government?

Response: Approximately 20 years as a Councilmember in the City of Dewitt. 2 years with the MEDC.

4. Describe your leadership approach and explain how you have implemented this approach in your current/previous position(s)?

Response: I think this differs significantly depending upon whether I am in the role as a principal or as an attorney.

For example, when I was on the City Council my role was to be more of a leader in coming up with policy proposals and finding solutions to problems, and then trying to convince my fellow Councilmembers to vote for my initiatives.

If I were chosen as General Counsel for the Commission my role would be to address questions presented, providing alternatives, leaving the decisions to the Commission. I could take more of a leadership role if the Commission asked me to do so; but without specific authorization I would not step over that line. And one area where I would not feel it would be appropriate to undertake is trying to convince Commissioners to vote for a particular plan.

5. Do you have experience with the Open Meetings Act and parliamentary procedure by Robert's Rules of Order for meetings?

Response: Yes.

6. How many years of experience do you have advising public boards, commissions or governing bodies?

Response: Approximately 18 – 22.

7. Describe your experience with litigation and/or managing litigation counsel?

Response: I have been on both sides. As a City Councilman, General Counsel at the MEDC and counsel to VNP, I was responsible for drafting RFPs and identifying attorneys to solicit proposals from. In private practice I was often selected to serve as outside counsel.

8. Do you have experience with the implementation and/or enforcement of federal redistricting law, including the Voting Rights Act of 1965?

Response: No, not on the federal level.

9. Provide a writing sample.

Response: A writing sample is attached.



James R. Lancaster

Lancaster Associates PLC

lancaster-law@comcast.net

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Lansing, Michigan 48901

Profile

Applies over 30 years of legal, government and political experience, in both the private and public sectors, as former General Counsel for an independent governmental agency and in private practice, to help private and public sector clients in a variety of matters.

Uses legal, government and political experience to advise private sector clients on how best to develop relationships with elected and appointed government officials and coordinate political involvement with business goals.

Draws on both legal expertise and practical experience as an elected and appointed government official for over 16 years, to advise clients on municipal law, land use, construction and related matters.

Legal Experience

Lancaster Associates, PLC, Lansing, Michigan
Principal: 2008 - Present

Miller, Canfield, Paddock & Stone PLC, Lansing, Michigan
Principal: 1998 - 2004, 2006 - 2008
Associate: 1992 - 1998

Michigan Economic Development Corporation, Lansing, Michigan
Senior Vice President and General Counsel: 2004 - 2006

Special Assistant Attorney General
Served as Outside Counsel to the State Affairs Division (2006 - 2008), Treasury (2006 - 2008) and Transportation (1996 - 2000).

Loomis, Ewert, Ederer, Parsley Davis & Gotting, Lansing, Michigan
Associate: 1989 - 1992

Frank & Stefani, Troy Michigan
Associate: 1987 - 1989

Civic and Community Service

City of Dewitt
City Council Member: 1992 - 2004, 2006 - 2015
Mayor Pro Tem: 2002 - 2004
Planning Commission Member: 1992 - 2002

University of Michigan Law School Fund
Class Agent: 1986 - Present

Education

**University of Michigan
Law School**
JD, 1985

Albion College

B.A. Mathematics, 1982
Honors College
Phi Beta Kappa
Gerald R. Ford Institute for Leadership
in Public Policy and Service

Honors + Awards

Best Lawyers in America
Environmental Law
Government Relations Law

Bar Admissions

Michigan

Court Admissions

U.S. Supreme Court
U.S. Court of Appeals, 6th Circuit
U.S. District Court, Eastern and
Western Districts of Michigan

October 12, 2020

Independent Citizens Redistricting Commission
c/o Secretary of State Jocelyn Benson
Richard H. Austin Building
430 W. Allegan
Lansing, MI 48918

Re: Recommendation for James Lancaster for Executive Director Position

Dear Commissioners:

I am writing to you to recommend that you strongly consider hiring Jim Lancaster for your Executive Director position.

Perhaps the most compelling reason for you to hire Jim is that he was the General Counsel for Voters Not Politicians ("VNP"), and was one of the principal authors of Proposal 2. While others contributed to the drafting of this constitutional amendment, Jim was the person who we trusted to be the final decision maker on the language that ultimately became Proposal 2. I think it is safe to say that no one understands this amendment better than Jim.

Jim was hired by VNP in March 2017. At that time, we were a very small group. We had all responded to a Facebook post by VNP founder Katie looking for people who wanted to end gerrymandering in Michigan. But otherwise we did not know each other.

Our first step in getting organized was hiring Jim. He worked to get us organized with a governing structure and drafted policies for our operations. He then turned to working with me on drafting the proposal. Once it was finalized, he led VNP through the process of getting the language approved by the Board of State Canvassers. At this point our army of volunteers had grown to 6,000. As soon as the language was approved, our dedicated volunteers began gathering signatures. Meanwhile, Jim was taking care of the business end of the organization: drafting requests for proposals and contracts for consultants, assuring compliance with campaign finance and election laws and answering the many questions our volunteers had. Once we had collected the required signatures, Jim once again led the charge to get our proposal certified for the 2018 general election ballot.

At this point the contracting and human resource issues became more complicated. Jim handled them with ease.

Looking back on this process, Jim played a critical role in guiding a group of idealistic political novices to achieve something that had never happened before in Michigan: lead a successful all volunteer petition drive with no special interest or institutional support.

I suspect that many of you may feel somewhat like we did back in early 2017. You want to effect change, but may have some trepidation about what the future is going to look like. Once the 2020 General Election is over, and you start to work in earnest, there will undoubtedly be an army of lawyers, lobbyists and special interest groups who will try by any means to influence the decisions you will be making. In my opinion, Jim is the right person to help you navigate this process. He has knowledge and experience that you will find valuable. In my experience, he was always honest and forthright, and consistent with VNP's guiding principles, acted in a non-partisan manner.

And, as stated at the beginning of this letter, I don't think there is anyone in this state who understands Proposal 2 (now Article 4, Section 6 of the Michigan Constitution) better than Jim.

Respectfully,

A handwritten signature in black ink, appearing to read 'Nancy Wang', with a long horizontal flourish extending to the right.

Nancy Wang
Executive Director
Voters Not Politicians

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Lansing, Michigan 48933
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Douglas J. Austin	Jennifer Utter Heston	Jean E. Kordenbrock	Retired
Michael E. Cavanaugh	Marlaine C. Teahan	Melisa M. W. Mysliwiec	Donald A. Hines
Gary C. Rogers	Mark E. Kellogg	Emily M. Vanderlaan	John J. Loose
Michael H. Perry	Ryan K. Kauffman	Amanda S. Wolanin	David E. S. Marvin
Thomas J. Waters	Paula J. Manderfield		Mary M. Moyne
Michael S. Ashton	Paul V. McCord	OF COUNSEL	Archie C. Fraser
H. Kirby Albright	Brian T. Gallagher	Stephen L. Burlingame	(1902-1998)
Graham K. Crabtree	Jonathan T. Walton, Jr.	Mark A. Bush	Everett R. Trebilcock
Michael P. Donnelly	Laura S. Faussie	David S. Fry	(1918-2002)
Edward J. Castellani	Norbert T. Madison, Jr.	Max R. Hoffman	James R. Davis
Jonathan E. Raven	Aaron L. Davis	Darrell A. Lindman	(1918-2005)
Peter D. Houk	Paul C. Mallon, Jr.	Thomas L. Sparks	Ronald R. Pentecost
Elizabeth H. Latchana	Jared A. Roberts	Brandon W. Zuk	(1932-2008)
Thaddeus E. Morgan	David J. Houston		Mark R. Fox
Brian P. Morley	Shaina R. Reed		(1953-2011)
			Peter L. Dunlap, P.C.

Phouk@fraserlawfirm.com
(517) 377-0842

October 14, 2020

Independent Citizens Redistricting Commission
c/o Secretary of State Jocelyn Benson
Richard H. Austin Building
430 W. Allegan
Lansing, MI 48918

Dear Commissioners,

I am writing to recommend James Lancaster for your consideration as Executive Director of the Commission. As first a volunteer, then lead litigation counsel for Voters Not Politicians ("VNP"), I have worked closely with Jim for nearly two years shepherding ballot Proposal 2 from its inception in the winter/spring months of 2017, through his continued presence advising Voters Not Politicians during this transition period. He has demonstrated several valuable skills that believe make him uniquely qualified to serve as Executive Director of the Commission.

He was instrumental in working with a diverse group of people and drafting the actual document that became our ballot proposal and is now enshrined in Michigan's Constitution. He initially faced the challenge of working with the volunteers who responded to Katie Fahey's Facebook post in November 2016, none of whom knew each other prior to that post, to create a cohesive organization capable of carrying out a major statewide campaign. He was then faced with the task of working with a diverse group of lawyers and academics to draft a solid proposal. This required an intimate knowledge of the constitutional case law that affects whether proposals will pass muster with the courts. His work in that regard clearly passed the test. Importantly, he was able to integrate the ideas of many people into a document that earned the support of all involved. He provided excellent, mature and seasoned political insight to the organization from its earliest stages.

Independent Citizens Redistricting Commission

October 14, 2020

Page 2

As the organization matured, Jim's role evolved from being a utility infielder playing several positions to general counsel for a newly-emerging, rapid-start organization. In that role he was called upon to draft contracts, deal with employee and volunteer relations, potential claims, and keep the organization in compliance with campaign finance laws.

After our law firm was selected as litigation counsel for VNP, Jim worked and integrated closely with our law firm in drafting our briefs and arguments to the Michigan Court of Appeals and the Michigan Supreme Court. His legal research and strategies, developed during the drafting phase of the proposal, became the cornerstone of our litigation strategy. His counsel was welcome and valuable. Jim didn't let his ego overrule the collective judgment of those he was working with.

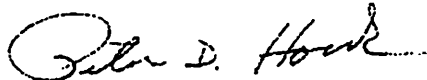
While my immediate experience with Jim focused primarily on election law and campaign finance matter, I am aware of his previous involvement in representing governmental entities while he was with Miller Canfield. I have no doubt that the skills Jim displayed while I was working with him would translate well in your department. His knowledge of government and his ability to master complex legal issues is outstanding.

My recommendation of Jim is without reservation.

Thank you for your consideration.

Very truly yours,

Fraser Trebilcock Davis & Dunlap, P.C.

A handwritten signature in black ink, appearing to read "Peter D. Houk". The signature is fluid and cursive, with a large initial "P" and a long horizontal stroke at the end.

Peter D. Houk



MEMORANDUM

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

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

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

DATE: August 9, 2017

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Responses To Supplement Questions

1. Are you an active member of the State Bar of Michigan, in good standing?

Response: Yes

2. How many years of experience do you have in the practice of law?

Response: Approximately 33

3. How many years of experience do you have working in the public sector and/or Michigan state government?

Response: Approximately 20 years as a Councilmember in the City of Dewitt. 2 years with the MEDC.

4. Describe your leadership approach and explain how you have implemented this approach in your current/previous position(s)?

Response: I think this differs significantly depending upon whether I am in the role as a principal or as an attorney.

For example, when I was on the City Council my role was to be more of a leader in coming up with policy proposals and finding solutions to problems, and then trying to convince my fellow Councilmembers to vote for my initiatives.

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5. Do you have experience with the Open Meetings Act and parliamentary procedure by Robert's Rules of Order for meetings?

Response: Yes.

6. How many years of experience do you have advising public boards, commissions or governing bodies?

Response: Approximately 18 – 22.

7. Describe you experience with litigation and/or managing litigation counsel?

Response: I have been on both sides. As a City Councilman, General Counsel at the MEDC and counsel to VNP, I was responsible for drafting RFPs and identifying attorneys to solicit proposals from. In private practice I was often selected to serve as outside counsel.

8. Do you have experience with the implementation and/or enforcement of federal redistricting law, including the Voting Rights Act or 1965?

Response: No, not on the federal level.

9. Provide a writing sample.

Response: A writing sample is attached.