



AMERICAN CIVIL LIBERTIES UNION

Arkansas

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Arkansas Board of Apportionment
c/o Arkansas Secretary of State - Elections Division
Room 25, Arkansas State Capitol
500 Woodlane Street
Little Rock, AR 72201

Gov. Hutchinson, Sec. Thurston, & Gen. Rutledge:

The ACLU of Arkansas is a nonpartisan, nonprofit organization dedicated to preserving and defending the rights guaranteed to all Arkansans by the United States and Arkansas Constitutions and civil rights laws. We correspond today with yet another public comment concerning state legislative redistricting, in follow-up to our comment from November 24 and subsequent sharing of a house map shapefile and block equivalency file on November 26, upon request of the Governor. We were dismayed to learn that the Board's newly-adopted maps continue to dilute the voting power of Arkansans of color in violation of the Voting Rights Act of 1965 ("VRA") and would like to correct the record given the misimpressions Board members have about the ACLU's proposed state house map.

At its November 29, 2021 hearing, the Board claimed—without any evidence or elucidation—that the ACLU's proposed state house map included only 99 districts and 13 majority-Black districts. Contrary to the Board's misrepresentations, the ACLU's house map includes all 100 districts and 16 majority-Black districts. We are attaching identical copies of the files we sent to the Board on November 26 so that others from the public can verify this information. We are also including an Excel file that includes the basic demographic information for each of our proposed house districts, specifically:

- **House District Number** (roughly corresponding to the house district numbering in the 2011 BOA state house map)
- **Total Population** (raw numbers)
- **Deviation** (how much each district is over- or under-populated in raw numbers)
- **% Deviation** (the percentage deviation of each district from perfect equality)
- **18+_Pop** (the district's adult population)
- **% 18+_Pop** (the percentage of the district population of voting age)
- **18+_AP_Bl** (number of district residents who are "Any Part" Black and of voting age)
- **% 18+_AP_Bl** (percentage of district residents who are "Any Part" Black and of voting age)
- **NH18+_Wh** (number of district residents who are Non-Hispanic White and of voting age)
- **% NH18+_Wh** (percentage of district residents who are Non-Hispanic White and of voting age)

As shown in these enclosures, the map that the ACLU submitted to the BOA on November 26 plainly contains 100 total districts, and not 99 as the BOA falsely claimed. Further, the ACLU's proposed house map contains 16 majority-Black districts, and not 13 as the BOA falsely claimed. To avoid any confusion, the majority-Black districts in our proposed map are: HD 5, HD

11, HD 12, HD 16, HD 17, HD 29, HD 30, HD 33, HD 34, HD 36, HD 37, HD 42, HD 48, HD 50, HD 51, and HD 55. All of these 16 districts have at least 50% “Any Part” Black voting age population, and all are expected to perform; that is, they all provide the Black population in those districts the opportunity to elect their preferred candidates.

We are dismayed that rather than engaging in good faith with our proposed house map, the Board chose instead to mischaracterize it. More importantly, we denounce the Board’s refusal to draw additional majority-Black districts, as required by Section 2 of the VRA. Governor Hutchinson openly stated during the November 29 hearing that even though the ACLU had demonstrated that it is possible to draw additional majority-minority districts, the Board’s final house map purports to include only 12 such districts.

In reality, the Board’s new HD 9 is still not likely to allow that district’s Hispanic population to elect the candidates of their choosing, meaning that the revised BOA maps include only 11 majority-minority districts. We appreciate the Board’s apparent acknowledgement that it was incorrect to rely on total population when drawing this proposed district. However, while HD 9 now has a Hispanic voting-age population percentage (“HVAP”) of 50.2%, the district’s Hispanic citizen-voting age population percentage (“HCVAP”)—that is, the percentage of adult citizens in the BOA’s proposed HD 9 who are Hispanic—is just 29.9%. As we noted in our November 24 comment, HCVAP is a far more probative figure than HVAP because non-citizens are not eligible to vote. The touchstone of Section 2 compliance is whether or not the district’s minority group has the opportunity to elect the candidate of their choice. By this metric, the revised HD 9 does not meaningfully qualify as a majority-Hispanic district.

Consequently, the revised BOA maps again include just 11 majority-Black districts, which, as we noted in our November 24 comment, substantially underrepresents the population of Black Arkansans statewide. By contrast, our proposed map contains 16 majority-Black districts, which is roughly proportional to the population of Black Arkansans statewide.

Remarkably, the Board at its November 29 meeting declined to even address the fact that its proposed house map so starkly underrepresents Black Arkansans. As we noted in our November 24 comment, we reiterate the importance under the VRA of ensuring that there is “rough proportionality” between the number of majority-minority districts and the size of the population of Arkansans who belong to racial minorities. Despite ample opportunity, evidence, and illustrative examples pointing in the correct direction, the Board of Apportionment has voted to adopt state legislative redistricting plans that are certain to dilute the voting power of Arkansans of color for the remainder of the decade.

Finally, Governor Hutchinson at the Board’s November 29 meeting appeared to suggest that the ACLU’s proposed House map was insufficiently compact as compared to the BOA’s proposed map. Under the prevailing compactness metrics, the ACLU’s proposed house map and the BOA’s proposed house map are comparably compact. The Board cannot hide behind its claim about compactness to avoid honoring its obligations under federal law.

For ease of reference for the Board and the public, we are again enclosing the identical files we sent the Board on November 26, as well as an Excel file that includes the demographic information for all 100 of our proposed districts. While we appreciate this opportunity to correct the record about the ACLU’s proposed house map after the Board’s numerous misrepresentations on November 29, we regret that the Board’s revised maps still do not adequately represent all Arkansans.

Respectfully,



Gary Sullivan