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BOARD OF APPORTIONMENT PUBLIC HEARING
BENTONVILLE, ARKANSAS
August 5, 2021

CRIS M. BRASUELL, CCR
BUSHMAN COURT REPORTING

1 (Recording Begins)

2 JUDGE DICKEY: -- also -- is also from the
3 AG's office, attorney general's office, I'm
4 sorry.

5 Shelby Johnson, who is the head of
6 Geographic Systems, Geographic Information
7 Systems. I'm sorry.

8 To my immediate right is Kevin Niehaus,
9 who is from the secretary of state's office.
10 And to my far right is Nick Ortiz from the
11 governor's office.

12 These are the men who are able to answer
13 your hard questions or take your suggestions.

14 We are, excuse me, six months behind
15 schedule in redistricting because the census
16 has not been delivered. We hope that it will
17 be here in a format that Shelby and his tech
18 savvy people can interpret by August the 16th,
19 the date that the Census Bureau has said, in a
20 format we can all read, is September the 30th.

21 And our work is to be completed by
22 December the 31st. It creates a real challenge
23 and especially for the county clerks whose work
24 starts when we can come up with a fair,
25 reasonable plan.

1 The purpose of this meeting is for
2 comments and suggestions. There's a -- there
3 are forms outside we'd like for you to fill out
4 if you have a comment that you want the -- the
5 three different agencies that are represented
6 here to read.

7 PBS is video-streaming and videoing and,
8 I'm sorry, live streaming this hearing.

9 I want to talk to you about a few of the
10 criteria that are in front of us. And then
11 Shelby will talk to you briefly about the maps
12 and then we want to hear from you.

13 The legal basis for the redistricting is
14 Article 8 of our Constitution, the Voters
15 Rights Amendment of 1965 is amended in the
16 Equal Protection clause of the 14th Amendment.
17 The first one, one person, one vote, balancing
18 each of the legislative districts every ten
19 years after the Federal Census so that they are
20 substantially equal, which is generally a plus
21 or minus five percent deviation, unless there
22 is an impermissible violation of the other
23 criteria -- on another criteria.

24 As you know, there a hundred House seats,
25 and 35 Senate seats. We anticipate from the

1 American Community Survey, not ours, but the
2 American Community Survey's prediction of 2019,
3 which you'll -- Shelby will talk to you about.
4 We anticipate there will be 30,000 people per
5 district in the hundred House Districts. And
6 we hope to make them substantially equal. And
7 the 35 House Senate Districts about 85,000
8 persons per district.

9 Section 2 of the Voters Rights Amendment,
10 the second criteria here, Section 2 as the
11 Voters Rights Amendments, as amended, prohibits
12 the discrimination based on race, color, or
13 language minority. I'm sorry.

14 And then number three, the Equal
15 Protection clause of the 14th Amendment limits
16 the redrawing of district boundaries strictly
17 on the basis of race.

18 The next four are geographic principles.
19 Compactness is the first one. That is the
20 eyeball test, a round or square or district
21 that is -- doesn't look like a salamander.

22 As you may know, in 1812, Governor Gerry
23 of Massachusetts referred to the shape -- he
24 gerrymandered or salamandered the Boston
25 District. And this is where the word

1 gerrymandering came from.

2 The fifth one is contiguous, which means
3 having a common border, there are no islands or
4 partial districts.

5 Six is a core of existing districts. We
6 want -- we strive for whole counties, whole
7 cities, whole precincts. That is minimizing
8 the splitting of political subdivisions.

9 The seventh is communities of interest
10 with commonalities that are economical, social,
11 political, cultural, ethnic, or religious
12 interests.

13 The eighth one is continuity of
14 representation. You may ask why. Well, you've
15 elected the incumbents. And it's our goal not
16 to -- to try not to make incumbents run against
17 each other. That may or may not be
18 accomplished in this redistricting, but it is a
19 goal.

20 And then the ninth one is to minimize
21 partisanship, no targeting or giving
22 preferential treatment to someone because of
23 their political party.

24 Rucho versus The Common Cause was a 2019
25 case that now says that the federal government

1 or the federal courts will not hear those
2 cases, but opens the door for state courts to
3 hear any lawsuits that are based on drawing a
4 line as a political -- politically partisan
5 attempt.

6 I have hurried through these. If you have
7 questions, you can ask them later.

8 Shelby wants to talk to you briefly about
9 the maps.

10 MR. JOHNSON: Thank you, Justice Dickey.
11 Again, my name is Shelby Johnson and I serve as
12 the director of the Arkansas Geographic
13 Information Systems Office.

14 We're a part of the Department of
15 Transformation and Shared Services and we work
16 for you. One of our charges or our statutory
17 responsibilities is to maintain maps and
18 information of the electoral geography of
19 Arkansas. That includes election precincts,
20 county justice of peace districts, municipal
21 wards, school board zones, of course, our state
22 House and state Senate districts and our
23 congressional districts.

24 And one of our activities that we
25 undertake is to participate very closely with

1 the Census Bureau in rolling up all of that
2 information and furnishing it to the Census so
3 that Walnut Ridge or Cave Springs can have an
4 accurate count when the 2020 Census enumeration
5 takes place.

6 Unfortunately, as Justice Dickey mentioned
7 already, the census for 2020 is frustratingly
8 behind schedule. And unfortunately, the only
9 thing that we are able to currently show
10 constituents around the state is estimates.

11 And so what I'm going to walk you through
12 is just a quick series of three different maps.
13 We're going to first look at the counties of
14 the state and then we'll look at the House
15 Districts, the current House Districts and the
16 current Senate Districts.

17 The first map, which you seen on screen
18 right now, hopefully you can see that fairly
19 well, is just kind of a -- it's from the
20 American Community Survey.

21 That is a sampling, a statistical
22 sampling, that's done by the Census Bureau.
23 They conduct that sampling each year, so it's
24 not a full census. And then they use other
25 trend line data, such as mortality, births and

1 deaths and -- and some other information that
2 they use to generate that estimate.

3 And what you're looking at on this map is
4 just the raw numbers of population change at
5 the county level from the period 2010 to 2019.

6 And I'm going to just briefly describe the
7 colors and walk you through those colors so
8 that, hopefully, all of that'll begin to soak
9 in and make sense.

10 And if you look at the darker hues or
11 darker shades of red, the darkest shade of red
12 indicates a county or an area which had
13 dramatic, fairly dramatic, population decline.

14 And so to kind of illustrate one of those,
15 I'll give you kind of the very bottom end of
16 that decline would be in Jefferson County,
17 Arkansas. Across that period in Jefferson
18 County, the county declined over the nine years
19 by about 10,600 in population.

20 Contrast that with our biggest increase,
21 at the other end of the spectrum, of course,
22 here we are in Benton County, which gained over
23 57,000 across the last nine years.

24 As we go down the shades of red, you'll
25 see Monroe County lost about 1,400. Cleburne

1 County, for example, lost about 1,000. Clay
2 County lost about 1,500.

3 And then you go to the next shade of red,
4 which is still a loss but not as much. And
5 then you'll drift into the very lightest
6 colors.

7 And that lightest color is indicative of a
8 county that may have had a little bit of
9 decline on the order of maybe less than 150 to
10 maybe 300 in decline.

11 And then the scale of coloring turns to
12 hues or shades of blue. And that shades of
13 blue indicates that the county grew over that
14 time period.

15 And some of that growth is very modest.
16 So, for example, Perry County, which is in
17 Central Arkansas, just west of our state
18 capitol, estimated they only grew by ten.

19 And then you scale up and you get to other
20 counties in the darker shades of blue that grew
21 more. And then the darkest shade of blue grew
22 the most.

23 And our -- in the -- in the eastern part
24 of our state, Greene County and Craighead
25 County both had pretty significant growth.

1 Across the last nine years, Craighead County
2 grew by about 13,000. Greene County grew by
3 about 3,200.

4 But if you look and let your eye drift
5 south of those two counties in Northeast
6 Arkansas, you'll see that most of Eastern
7 Arkansas and then Southeastern and South
8 Central Arkansas, those counties declined in
9 population.

10 And it shouldn't come as any great news to
11 you, but just bears repeating or bears mention,
12 population almost always follows opportunity.
13 Population tends to follow where there is
14 opportunity. And prosperity is usually the
15 dominate determiner of that.

16 And a really great example in American
17 History is the California Gold Rush where that
18 state's population grew immensely.

19 The other thing that can affect population
20 on the opposite end of the spectrum is if you
21 have a large employer in a small or rural
22 community in our state and that large employer
23 closes down that operation. And that can
24 cause, in a -- an area to have population
25 decline because there's not that opportunity

1 there.

2 So that's just a quick illustration of our
3 change across the counties in Arkansas. And
4 what we'll do next is we're going to move to
5 look at our current House Districts.

6 So again, the same sort of concept with
7 the colors and shades, but in -- in this
8 context, we did the analysis against our
9 current State House Districts.

10 And what this shows you is the county --
11 or not counties, but districts that are low are
12 in the darkest shades of red. And then
13 districts that are a little bit mild -- mildly
14 low or not -- not quite below the target are in
15 lesser shades of red. And then the scale turns
16 to the counties that are about on target.

17 And then we trend into the shades of blue,
18 which give you an indication that those darkest
19 shades of blue are where there's too much
20 population in a district to be substantially
21 equal.

22 So how do we do that? Well, we just take
23 the total statewide estimate of population and
24 divide that number by 100 House Districts. And
25 so what that tells us is that each House

1 District ought to have 29,900 in this
2 particular estimate scenario. And if we look
3 at far Southeast Arkansas, House District 11,
4 it's got 4,300 below that target figure or that
5 ideal figure.

6 And what that tells us is that that
7 particular House District is less populated;
8 and, therefore, it has to grow geographically
9 in order to grab additional population to
10 become more equal with its neighbors.

11 Now, if we contrast the other end of the
12 spectrum, we'll go to just a little to the
13 center left in Central Arkansas, House District
14 31, which is in Saline County. That's the
15 Benton and Bryant area in Central Arkansas.
16 And that House District has 5,822 persons
17 estimated to be over that target.

18 And those two examples, if -- if we were
19 to use those currently, those would be illegal.
20 They are not substantially equal with all of
21 the other districts.

22 We'll move on and we look at the same
23 analysis for the Senate. And in the Senate
24 you'll see the same sets of shading with the
25 darkest red being Senate Districts that need to

1 grow or reach out and grab additional
2 population to become more equal.

3 And then you'll see, at the other end of
4 the spectrum, darkest shades of blue, which are
5 districts that must contract. They must draw
6 in because there is too much population.

7 So as you draw or shrink or contract that
8 district in, it allows that area to share that
9 population with the neighboring districts.

10 And you might be, at this point, noticing
11 that there are some of the districts in
12 Arkansas that are right in the middle. They're
13 probably close to target. And you might think
14 to yourself, well, maybe those districts won't
15 change.

16 And my -- my analysis or my opinion on
17 that is probably not true. And the reason is
18 because of all of the dramatic change that
19 needs to occur elsewhere. And I think I can
20 illustrate it by drawing this quick analogy.

21 If you look at Senate District 26 in far
22 Southeast Arkansas, it's over 8,500 below
23 population. Well, I've already described to
24 you that it must grow geographically to gain
25 more population.

1 Unfortunately, it can't go across the
2 river and get that from Mississippi. And it
3 also can't go south and get that population
4 from another state like Louisiana.

5 That means that that Senate District has
6 to grow north or it has to grow east. And so
7 as it grows north or as it grows east, it grabs
8 other population from the other districts,
9 which then impact the rest of the districts.
10 And that results in the change.

11 So that's a quick tour of the maps that we
12 do have, which are your current House and
13 Senate Districts. And I'm very pleased to be
14 able to share that with you. And I look
15 forward to hearing your comments and supporting
16 the work of the Board.

17 JUSTICE DICKEY: Thank you, Shelby.

18 And now we'd like to hear the comments
19 from you. There are microphones on either
20 side. If you'll step up here or we've also
21 provided comment sheets, so if you don't make
22 comments tonight, we ask you for your help as
23 far as your suggestions.

24 Any questions, comments? Yes, sir? And
25 if you will, state your name before and what

1 county or district you live in.

2 DUSTIN SETON: Dustin Seton from
3 Washington County.

4 Are projected growths factored into the
5 redistricting maps that are forecasted out in
6 the like projected numbers of population for
7 the next ten years looking at that -- just this
8 last year election cycle, some districts had
9 27,000 over in the Senate seat or 8,000 over in
10 the House District seat.

11 Are projections factored in the
12 redistricting maps?

13 MR. JOHNSON: No, sir. The data that the
14 Board of Apportionment will use will be the
15 2020 Census figures. And the reason is because
16 that's what our Constitution says.

17 It's the -- it's the latest decennial
18 census. And so that latest decennial census
19 number, once we have that, that is a fixed
20 number and it does not account for any
21 projected growth.

22 That number is what it is. And that will
23 be the number that the Board of Apportionment
24 would use. Thank you for your question.

25 JUSTICE DICKEY: Yes, sir?

1 ALAN KITTERMAN: My name is -- my name is
2 Alan Kitterman, Benton County.

3 I'll have a question and then a follow-up
4 on it. The first question is, is the criteria
5 listed in order of importance or are they all
6 co-equal?

7 JUSTICE DICKEY: Neither. I mean, it's
8 listed. It -- it's not -- you have to start
9 with the first one --

10 ALAN KITTERMAN: Got it. Right.

11 JUSTICE DICKEY: -- and so we have to have
12 that substantially equal amount of people in
13 each district. So that is an absolute.

14 Then the next two are legal commitments.
15 You can't discriminate against someone because
16 they're black, nor can you draw a district just
17 as a black district or Hispanic district or
18 whatever.

19 ALAN KITTERMAN: Okay.

20 JUSTICE DICKEY: And then the next start
21 to deal with the geographic principles.

22 So they all -- excuse me. They all are
23 goals. And -- and as I've said and will say
24 again, we can't meet all of those.

25 ALAN KITTERMAN: Okay.

1 JUSTICE DICKEY: We can't make, you know,
2 strictly urban or rural communities --

3 ALAN KITTERMAN: Okay.

4 JUSTICE DICKEY: -- necessarily.

5 We can't -- we'll have to divide some of
6 the counties. And -- but these are our goals.
7 So they may be of lesser importance, but
8 they're all important.

9 We'll be sued if -- if we draw a line to
10 draw somebody in or out of a district or for
11 partisan reasons.

12 ALAN KITTERMAN: In our specific area, we
13 have a very unusual situation that we have a
14 school district that covers two -- that is in
15 two counties.

16 So would the -- it says that the core of
17 existing districts, whole counties and then
18 communities of interest.

19 My suggestion and question at the same
20 time would be that a school district be
21 considered also a community of interest
22 together as --

23 JUSTICE DICKEY: Yes. And --

24 ALAN KITTERMAN: -- well as the county --

25 JUSTICE DICKEY: -- you know, in some

1 cases, as in the one you suggested, may not be
2 as significant --

3 ALAN KITTERMAN: Okay.

4 JUSTICE DICKEY: -- that we have a whole
5 counties --

6 ALAN KITTERMAN: Right.

7 JUSTICE DICKEY: -- especially when a
8 school board --

9 ALAN KITTERMAN: Or a county line, yes?

10 JUSTICE DICKEY: -- or a county line.

11 ALAN KITTERMAN: Okay. Thank you very
12 much.

13 JUSTICE DICKEY: Certainly. Yes, sir?

14 JOHN MORAN: My name is John Moran. I'm
15 from Benton County. I have some familiarity
16 with this process, having been familiar with it
17 from ten years ago.

18 Looking at the map up there with the
19 obvious population drain from certain areas of
20 the state, the maps were drawn ten years ago
21 with a zero percent variance.

22 I know that the court allows for a five
23 percent variance one way or another. And I
24 know ten years ago there -- there was a
25 population drain problem just like there is

1 now.

2 How is the Board looking at that? Are you
3 going to try draw closer to zero or are you
4 going to have to unavoidably go to those five
5 percent variances on either side?

6 JUSTICE DICKY: Brad?

7 MR. NYE: Thank you for the question,
8 John. I -- I think the answer is we're going
9 to strive for as close to a -- we're going to
10 strive for as close to a zero percent variance
11 as we can get.

12 You know, that five percent plus or minus
13 the courts talk about isn't necessarily a safe
14 harbor. They also consider the other factors.

15 MR. NYE: I apologize. So the plus or
16 minus five percent variance that we talk about
17 is -- is something that is not considered a --
18 a safe harbor by the courts, if you fail to
19 meet some of the other factors.

20 So, to our mind, getting as close to a
21 zero percent variance as we can is important in
22 the decision-making process, yes. And thank
23 you for that question.

24 JUSTICE DICKY: Yes, sir?

25 LARRY WELMS: Larry -- Larry Welms with --

1 in Benton County.

2 My -- my question would be is that, when
3 you create the boundary lines, I'm assuming
4 that your unit of measure is a census block; is
5 that correct?

6 So you either add the census block or you
7 take the census block away and move it here or
8 there. So that's -- really becomes the unit of
9 measure that you shift around to make the
10 balancing out of this whole map process; is
11 that correct? So that's -- that's really the
12 shuffleboard that you're moving?

13 JUSTICE DICKEY: One of them. Precincts.
14 We --

15 LARRY WELMS: When you say a precinct,
16 what's -- how -- how does that -- how does that
17 relate to a census unit?

18 MR. JOHNSON: The census blocks in their
19 design are composed of physical features like
20 roads, streams, railroads.

21 And then layered on top of that would be
22 our other administrative boundaries, like the
23 boundary between Bentonville and Rogers, for
24 example.

25 So that administrative boundary is kind of

1 an invisible line, but it's bro -- it's in the
2 block file.

3 Layered right on top of that are our
4 election precincts. And the election precinct
5 is a really vital part of the redistricting
6 process because it's bigger than -- it's bigger
7 than a block. It's usually smaller than a city
8 and smaller than a county.

9 And if you're able to do the redistricting
10 process in assigning population at the election
11 precinct level, that streamlines or it makes it
12 a little bit easier on the election
13 administrators and the county election
14 commissions and the county clerks who will be
15 reassigning voters after the redistricting
16 process so that, to the degree possible, if you
17 can assign a whole precinct, versus splitting
18 that precinct, you're avoiding extra --
19 potentially unnecessary work on the county
20 clerk.

21 So that precinct level assignment is ideal
22 until it runs afoul of too much variances or
23 too excessive in one direction or another with
24 the population. Hopefully that helps.

25 DR. BETHANY ROSENBAUM: Good evening.

1 JUSTICE DICKEY: Good evening.

2 DR. BETHANY ROSENBAUM: My name is Dr.
3 Bethany Rosenbaum. I'm from Lowell in Benton
4 County.

5 So I don't have a question, I have a
6 suggestion, which, I guess, is part of the
7 public comment. So Lowell, like all of Benton
8 County, has experienced tremendous growth.

9 But Lowell is currently divided by two
10 districts. So we have District 90 and District
11 96. And they're not equal. They don't equally
12 divide Lowell.

13 And, as you know, those two districts are
14 bursting at the seams. So, as Mr. Johnson
15 said, they would need to be contracted.

16 Now, southern Rogers and Lowell have seen
17 tremendous growth. And the cities share a lot
18 of commonalities. These are, as your
19 terminology, communities of interest.

20 So this includes things like sharing the
21 Lowell/Rogers Chamber of Commerce. They share
22 what's called the Historic Old Wire Road.
23 There's also administrative boundaries and --
24 and other interests that would link southern
25 Rogers, Lowell, the whole -- the whole of the

1 City of Lowell and even what was formerly
2 Bethel Heights that's now Springdale.

3 So my recommendation is that this portion,
4 this southern portion of -- so it's like
5 southeastern Rogers, all of Lowell and the
6 annexed portion of Bethel Heights as a
7 community of interest should be represented as
8 a new district due to population growth and the
9 other reasons I presented. Thank you all.

10 JUSTICE DICKY: Thank you. Will you
11 reduce that to writing?

12 Now, you are video -- videoed and live
13 streamed, but for us to communicate that to all
14 the parties concerned and it put it on the
15 website, we ask for your comment in writing or
16 -- or you can go on the website and put it.
17 Very good suggestion. Thank you.

18 Yes, ma'am?

19 LOU REED SHARP: Yes. My name's Lou Reed
20 Sharp and I'm from Washington County. And I'm
21 represented by House District 80, which I live
22 on the northern edge of it. It takes me one
23 hour to get to Crawford County. So we're
24 splitting two counties.

25 If you're a re -- and 60 percent of our

1 land mass in House District 80 is the Ozark
2 National Forest, which is not very well
3 populated.

4 But if you're a citizen in Lincoln,
5 Arkansas, which is -- is very rural and it's
6 the only whole city in House District 80, our
7 current Senator lives in Benton County.

8 Our current House of Representative lives
9 in Crawford County. Our only representative in
10 Washington County is our Justice of the Peace
11 right now.

12 So I really, really hope that -- you know,
13 until I got involved in politics, I really
14 didn't understand continuous, contiguous, and
15 compactness. But if -- it's very unfair, I
16 think, to the citizens to not have a
17 representative on a House or a Senate level;
18 but, if you're a candidate trying to represent
19 all the people, it's very difficult, very, very
20 difficult to go to multiple county court
21 meetings in different counties when it's an
22 hour apart.

23 So I really, really hope you consider that
24 because all of us want to get to know the
25 residents of those counties.

1 I live in northern Washington County. My
2 neighbors across the creek, their House of
3 Representatives is from Springdale, Arkansas.

4 So my neighbors couldn't vote for my
5 current representatives, even though I can look
6 across the creek and see them.

7 So I do hope you consider this when you're
8 looking at all the populations.

9 JUSTICE DICKEY: Thank you.

10 LOU REED SHARP: They're very distinct.
11 Thank you.

12 JUSTICE DICKEY: We are writing it down,
13 videoing it and live streaming it, but --

14 LOU REED SHARP: I will write it down.

15 JUSTICE DICKEY: -- if you will write it
16 down and send it, we will circulate that.

17 LOU REED SHARP: Because I just want to
18 make it fair.

19 JUSTICE DICKEY: And that's --

20 LOU REED SHARP: Or heard.

21 JUSTICE DICKEY: -- that's our goal.
22 Fairness --

23 LOU REED SHARP: Thank you.

24 JUSTICE DICKEY: -- and transparent --
25 transparency.

1 Yes, sir?

2 JEFF HAWKINS: My name's Jeff Hawkins.
3 I'm the Director of the Northwest Arkansas
4 Regional Planning Commission.

5 We have done most of the redistricting for
6 cities, boards, quorum court districts for
7 counties, schools, all the school districts
8 that needed it done in Northwest Arkansas.

9 And I think Betty's probably the only
10 person here that knows that I'd been involved
11 in redistricting since --

12 JUSTICE DICKEY: For 40 years or more,
13 yes.

14 JEFF HAWKINS: -- the '80s, yeah.

15 JUSTICE DICKEY: Since he was in Pine
16 Bluff, where I was. Yes.

17 JEFF HAWKINS: Obviously, all -- you all
18 are very familiar with -- with the purposes and
19 the principles and all that for redistricting.

20 But there's a few things, for whatever
21 it's worth, that -- that I think are important
22 that you should also consider.

23 Where possible, I think efforts should be
24 made for House and Senate boundaries to follow
25 the same lines. Sometimes that's possible,

1 sometimes it's not.

2 There were instances where ten years ago
3 that that didn't happen. There's no
4 consideration at all. There were instances
5 where House lines followed a road. The Senate
6 line was 60 feet away following a creek,
7 creates a situation where -- where the -- there
8 has to be a -- a precinct established.

9 And in that case, it was a long, skinny
10 precinct and it had little, if any, population
11 in it.

12 In fact, in Washington County, there were
13 like 20 something precincts that were
14 established that had no population. They had
15 to be established because if you put all these
16 boundaries of all these districts on one map,
17 all these islands that are left over, if
18 absolutely everything was on the ballot,
19 there'd be at least one question different.

20 So even though there wasn't anybody there,
21 there may be a year from now. And there'd be
22 one thing different on that ballot.

23 In Forest City, there was a House -- House
24 lines went down one street, Senate line went
25 down a block over. There wasn't 16 people

1 involved, no reason they couldn't follow the
2 same one. County had to go in, had to -- had
3 to create a precinct that was one block wide
4 and four blocks long.

5 And that problem was, as I said, it's
6 widespread and it creates a tremendous amount
7 of work on the county clerks and the election
8 directors.

9 County clerks sometimes, after
10 redistricting is done, has -- they have to do
11 thousands of new precinct assignments. They've
12 got to send notifications out to every
13 registered voter that's affected.

14 And historically, the State Board of
15 Apportionment hasn't been sensitive to the --
16 to the effects of the boundaries that they
17 approve on those key officials.

18 As you know, Northwest Arkansas has a
19 significant population that needs to be
20 considered from the Voting Rights standpoint;
21 in particular, the Hispanic and the Marshallese
22 populations. So we hope that you bear that in
23 mind.

24 Also, regarding Voting Rights, I would
25 point out that, ten years ago, the number of

1 minority/majority districts in Arkansas was
2 reduced from 13 to 11 and it ended up,
3 unnecessarily probably, in court. And I'm sure
4 there's several groups watching for fairness in
5 that regard as well.

6 County lines should be followed where
7 possible, keeping in mind, of course, that
8 we've got about 25 cities, correct me if I'm
9 wrong, Shelby, about 25 cities that share --
10 that are in more than two or more counties.

11 And I know it's not always possible, but
12 keeping cities and counties whole is a good
13 goal to shoot for.

14 I'd also recommend following boundaries
15 that we know are always going to be a precinct
16 line. In particular, county lines are always
17 going to be a precinct line. Township lines
18 are always going to be a precinct line, and so
19 are school district boundaries.

20 Given the generally accepted ten percent
21 deviation for equal protection compliance, the
22 Board will have a little discretion, I think,
23 to create districts in fast-growing portions of
24 the state that have populations totals that
25 those pre -- those districts could be on the

1 lower end.

2 This goes back to the -- to the slides
3 that Shelby showed about how out of whack they
4 are. You can take some of that into
5 consideration as you develop your plan.

6 And you know places are growing and have
7 for 20 years. Those should be on the low end.
8 Those districts, when they're established, will
9 be valid for a longer period of time than if
10 you'd have just ignored it. But I urge you to
11 take that into consideration.

12 So growth is relevant and -- and should be
13 taken into consideration.

14 And lastly, a little bit off the
15 redistricting trail, I would hope that the
16 Board immediately advises the state treasurer's
17 office of the new city and county populations
18 when they are released next Thursday.

19 This is the same information that's going
20 to be released, but in a less user-friendly
21 format, but it's going to be released next
22 Thursday, the 12th. The -- those population
23 figures, they're -- they're prominent in gas
24 turn back, general turn back formulas; and, in
25 many counties, population is a key factor in

1 determining sales tax revenue distribution.

2 And, you know, if there's less delay in
3 that, the -- the better.

4 I'd also say that -- just -- I just wanted
5 to throw in that the Board is very fortunate to
6 have the state GIS office. They'll help you
7 get your work done. I hope you get it done as
8 soon as possible, so we can do ours. Thank
9 you.

10 JUSTICE DICKEY: Jeff, we'd appreciate
11 your notes for free or do we need to pay you
12 for them? Excellent suggestions. And, you're
13 right, the GIS can -- can map anything you want
14 to map.

15 And to be able to draw Senate and House
16 lines that lineup together is one of our goals.
17 But tremendous help you are. And we will look
18 forward to your advice and your evaluation
19 after we prepare the maps. Thank you for your
20 comments.

21 Anyone else?

22 JENNIFER STANDERFER: I'm Jennifer Waymack
23 Standerfer. I'm from Benton County.

24 I want to thank you all for your service
25 because I know this is no small task and you're

1 on a tight timeline too, so thank you first.

2 I do have a couple of questions. My first
3 is, with regard to the overlay maps that you're
4 talking about a moment ago that show the
5 physical boundaries, the administrative
6 boundaries, and the -- and the election
7 precincts, are those publicly accessible and is
8 it something we can view through a state
9 website or through our Benton County Assessors
10 GIS? Or where do we find those overlays?

11 MR. JOHNSON: Yes, ma'am. I -- I do think
12 that the Benton County government has a website
13 that has some of those maps. And then we also
14 have them available as well.

15 And you can access those by visiting
16 GIS.Arkansas.gov and then look for the menu tab
17 that says map viewers. And then pick one that
18 you like.

19 JENNIFER STANDERFER: Then would the new
20 proposed -- or when the proposed maps for the
21 new proposed districts come out, and I know
22 you're kind of behind the ball because you're
23 still waiting on the data, but what is -- what
24 is your expected time line between when you
25 have them drawn and when they're ready to be

1 adopted? And what opportunity for public
2 comment is there going to be or public viewing
3 is there going to be?

4 JUSTICE DICKEY: Simple answer is we don't
5 know. But, you know, as soon as we can get the
6 maps drawn, and it'll -- it -- it should be
7 easier this time because of GIS and because,
8 you know, we are committed to transparency and
9 fairness and just, you know, justice, as far as
10 doing this right.

11 So as soon as we have them, they will be
12 online.

13 JENNIFER STANDERFER: Is there any reason
14 to expect that the timeline that you're looking
15 at right now and progressing forward on would
16 conflict with effectuating the May primary?

17 JUSTICE DICKEY: Now, you'll have to ask
18 the legislature about that.

19 JENNIFER STANDERFER: That's a trick
20 question. I'm sorry about that.

21 JUSTICE DICKEY: Well, you know, we have
22 to have everything turned in by December the
23 31st --

24 JENNIFER STANDERFER: Okay.

25 JSUTICE DICKEY: -- but --

1 JENNIFER STANDERFER: But you're not
2 seeing any issues with -- with meeting your
3 deadlines that you're supposed to have --

4 JUSTICE DICKEY: Not ours, no. Whether or
5 not that changes when the elections are, you'll
6 have to ask them.

7 JENNIFER STANDERFER: Thank you very much.

8 JUSTICE DICKEY: Thank you.

9 Yes, ma'am?

10 GLADYS TIFFANY: Jennifer asked -- the
11 other part of it was, will there be a chance
12 for public comment later on?

13 JUSTICE DICKEY: Yes. If you'll -- if
14 you'll state your name and what county --

15 GLADYS TIFFANY: Sorry. I'm Gladys
16 Tiffany from Washington County.

17 JUSTICE DICKEY: Thank you. And the
18 question is?

19 GLADYS TIFFANY: The question was, will
20 there be opportunity for public comment later
21 on?

22 JUSTICE DICKEY: Absolutely.

23 GLADYS TIFFANY: Okay.

24 JUSTICE DICKEY: There will. There's a 30
25 day period after -- after the Board of

1 Apportionment votes, a 30 day period.

2 But we hope before that to be able to show
3 you what we're considering and ask for your
4 input.

5 Now, whether all that works, but it --
6 there's a 30 day period before it becomes
7 effective after the Board of Apportionment
8 votes. Any other questions?

9 Yes, sir?

10 RICHARD TIFFANY: Yeah, I'm Richard
11 Tiffany from Washington County. And just --
12 I'm new to -- to looking at this.

13 But people talking about precincts made me
14 wonder that there's county divisions like JP
15 districts and State divisions. And I'm
16 assuming that you all here are working on the
17 state divisions and the county has to do their
18 own job.

19 And so I was wondering, does the county
20 draw their districts first and then you try to
21 incorporate that or do you draw yours first and
22 they try to incorporate what -- what you've
23 done? Or -- or kind of what's the priority?

24 JUSTICE DICKEY: Well, I think we have
25 priority.

1 RICHARD TIFFANY: Okay.

2 JUSTICE DICKEY: Now, we don't draw
3 anything except the Senate and the House
4 boundary lines. Then the county clerks get to
5 start their work and the other entities.

6 DUSTIN SETON: Dustin Seton, Washington
7 County.

8 Talking about the criteria for number
9 eight of the incumbency, is there -- is it safe
10 to say that y'all don't expect any of the 135
11 to be redrawn into districts or potentially
12 having to compete against each other?

13 JUSTICE DICKEY: I didn't say that.

14 DUSTIN SETON: Okay.

15 JUSTICE DICKEY: And, you know, in fact, I
16 think I said that that is our goal because
17 these people were elected. But we're not going
18 to be able to meet that in every instance --

19 DUSTIN SETON: Okay.

20 JUSTICE DICKEY: -- most likely, you know?
21 I'm still -- I don't know.

22 We don't think that -- we think there will
23 be incumbents who have to run against each
24 other.

25 DUSTIN SETON: Okay. And I guess a

1 comment would be, looking just at the
2 population maps between House District 93 and
3 House District 17, it was like a 15,000
4 different variance based on the last election
5 or the -- the numbers.

6 So I -- I worry that, if were using
7 incumbency as a factor, that that's further
8 perpetuating the next ten years of inequity;
9 because there is an 80 percent -- studies show
10 there is an 80 percent plus re-election rate
11 for incumbents.

12 And I feel -- fear that that continuity of
13 representation without factoring in where they
14 are, just because like looking at Southeast
15 Arkansas, you most likely will have to have
16 something looking somewhat gerrymandered to try
17 to factor in that continuity of representation.

18 And so I worry about that as a -- as a
19 constituent.

20 JUSTICE DICKY: That's a legitimate
21 question. But we -- you know, our goal is not
22 to either show favoritism nor target them. And
23 it -- it will be whatever the population
24 indicates should be drawn. And if you see any
25 that are, like in the election ten years ago,

1 that are either -- where they've intentionally
2 drawn someone out of her district, so she just
3 moved, or you see some strange fingers or
4 gerrymandered or what we talked about in a
5 seminar recently, dummymandering, that just
6 invites a lawsuit, I don't anticipate you'll
7 see that.

8 We're not -- we're not favoring
9 incumbents. We are -- but we are recognizing
10 that the voters elected them.

11 DUSTIN SETON: Thank y'all for your work.

12 ANNA GOODE: Hello. I'm Anna Goode. I
13 live in Benton County.

14 And, first of all, I want to say that you
15 guys have done an amazing job putting these
16 maps together. The data is so fascinating.
17 And it's really interesting to see where the
18 different growth areas are in our state.

19 And I know that you are doing this late.
20 I saw -- I came across a last -- a map from the
21 last census and you guys were done by this
22 point in time last year. So I understand
23 you're under a crunch.

24 JUSTICE DICKEY: We are.

25 ANNA GOODE: I'm wondering though, the

1 reason that you're under a crunch is partially
2 due to the coronavirus pandemic that we're
3 still fighting now, and has there been much
4 discussion about whether or not your census
5 results from this year has been as accurate as
6 it's been in the past?

7 And are you concerned that there's
8 populations that we've missed because of lack
9 of being able to be accessed, either because we
10 know our broadband isn't the best in some of
11 our more rural areas, so their ability to
12 report online might not have been as good as
13 they are in some of the more urban areas?

14 And also the lack of the staff to be able
15 to go out in the traditional manner, to go out
16 and go door to door, to be that friendly face
17 and discuss the importance of the census door
18 to door as it's been done in the past as well.

19 This year we saw a lot less people being
20 willing to even open their door because of the
21 fear of, possibly, who's this at my door, where
22 in the middle of a global pandemic, I don't
23 know them, I'm not opening it.

24 So has there been discussion about whether
25 or not our results are accurate enough to be

1 able to go forward?

2 JUSTICE DICKY: Those are all legitimate
3 questions and legitimate concerns. And, yes,
4 we have talked about that. But let me ask you,
5 what is the alternative?

6 ANNA GOODE: True.

7 JUSTICE DICKY: We have a census.

8 ANNA GOODE: These are the numbers that we
9 have, is there anything that we could -- have
10 you been able to -- sorry. I'll talk closer to
11 the mic.

12 Have you been able to -- how are our
13 response rates this year compared to previous
14 years when it comes to -- have you been able to
15 disclose that information? Have you reflected
16 it in previous censuses?

17 JUSTICE DICKY: We haven't gotten it yet.

18 ANNA GOODE: Ah, okay.

19 JUSTICE DICKY: So, I mean, I -- but I
20 don't know how it will change the outcome. And
21 if you have an idea --

22 ANNA GOODE: I mean --

23 JUSTICE DICKY: -- do we throw this out
24 and start again?

25 ANNA GOODE: Ah, I mean --

1 JUSTICE DICKEY: Like the Olympics? Do we
2 wait until next year?

3 ANNA GOODE: If the results were that
4 incomplete --

5 JUSTICE DICKEY: I think the --

6 ANNA GOODE: -- wouldn't that be an
7 option?

8 JUSTICE DICKEY: I don't think so.

9 ANNA GOODE: Don't think so?

10 MR. JOHNSON: So we -- we can get the
11 response rates. So we -- we can know that
12 figure for Arkansas.

13 But -- but, to your point, valid points,
14 but I just want to reiterate that the Arkansas
15 Constitution requires that we use the census
16 data that we get from the U.S. Census Bureau.

17 Although we hear you, there's not an
18 alternative for us in -- in building the maps
19 and putting this together.

20 JUSTICE DICKEY: Yes, sir?

21 DAN WHITFIELD: Hi. Good evening. My
22 name is Dan Whitfield. I'm a resident of
23 Benton County. And I actually have a comment
24 followed by a question.

25 And I was referring to the criteria number

1 nine. And I wanted to make it clear that you
2 don't have to have the shape of the salamander
3 or an odd sized shape of a district in order
4 for it to be gerrymandered. You can
5 gerrymander a square.

6 Now, where it says, minimize
7 bipartisanship, I'm concerned, especially as a
8 Democratic voter. There are two million voters
9 that are not Republicans here in Arkansas.

10 Now, we know that there was an independent
11 panel that could have been chosen to do this
12 redistricting process. That initiative
13 received over 100,000 signatures and the
14 Secretary of State, John Thurston's office,
15 threw that off of our ballot last year.

16 JUSTICE DICKY: What is your question?

17 DAN WHITFIELD: My question is -- I have
18 one more quick comment to go with my question,
19 if I may.

20 The next part of my comment is that it
21 says minimize bipartisanship, but the committee
22 is 100 percent partisan. It's led by Jason
23 Rapert, who is very partisan. The Board is the
24 Secretary of State's --

25 JUSTICE DICKY: What is your question?

1 DAN WHITFIELD: Yes, ma'am. I believe
2 there were at least seven other people who have
3 comments before they're questions so
4 (inaudible) much longer --

5 JUSTICE DICKY: I understand. But they
6 weren't lobbying for or against someone --

7 DAN WHITFIELD: I am not lobbying --

8 JUSTICE DICKY: -- or targeting or
9 showing preferential treatment.

10 DAN WHITFIELD: I will -- would you like
11 me to ask my question before I finish my
12 comment?

13 JUSTICE DICKY: Absolutely.

14 DAN WHITFIELD: My question is, how can
15 you alleviate the worries and concerns of
16 Arkansas voters that are not Republicans that
17 this will not be done in a partisan way when
18 the committee is partisan, the Board is
19 partisan, and the director, even your son, his
20 -- his name is on Tom Cotton's mortgage, who
21 donated to all of these different people, how
22 can --

23 JUSTICE DICKY: What does this have to do
24 with anything?

25 DAN WHITFIELD: My question is, how can

1 you alleviate the concerns that this isn't a
2 partisan process?

3 JUSTICE DICKY: Let me refer you to the
4 Rucho versus Common Cause case of 2019 where
5 the Federal Court was somewhat befuddled by the
6 challenge and says that partisan gerrymandering
7 represents a political question that is not
8 justiciable in Federal Court because there is
9 no credible way to define and measure fairness
10 in a political context.

11 The U.S. Constitution doesn't guarantee
12 proportional representation of political
13 parties. It doesn't preclude state courts from
14 hearing cases based on partisanship.

15 That, in part, may answer your question.
16 But I think -- I'm not sure when you say that
17 those of us are partisan in what -- how we draw
18 something, that's a skewed, unfair statement to
19 begin with.

20 DON WHITFIELD: Is there one Democrat
21 standing in front of me?

22 JUSTICE DICKY: I don't -- I don't want
23 to get into --

24 DON WHITFIELD: I under -- no problem.

25 JUSTICE DICKY: No. I --

1 DON WHITFIELD: A very easier question
2 that's not so partisan.

3 JUSTICE DICKEY: No, no, no. That's a --
4 that's a -- that's a cheap shot.

5 DON WHITFIELD: That's not my intention,
6 ma'am.

7 JUSTICE DICKEY: You're assuming that
8 because we belong to one political party or
9 another, and I've been in both, in both
10 parties, so I don't -- you know, they're both
11 flawed.

12 DON WHITFIELD: I was a registered
13 Republican --

14 JUSTICE DICKEY: But -- no. I mean --

15 DON WHITFIELD: -- for 12 years. I
16 understand.

17 JUSTICE DICKEY: -- no. You state -- I'm
18 not -- I'm not through talking.

19 DON WHITFIELD: Okay. Yes, ma'am.

20 JUSTICE DICKEY: To assume that these
21 people can't be fair or transparent and make
22 their recommendations to the three people who
23 vote is an unfair and prejudicial statement.

24 Now, unless there's something else for you
25 to say, we're live streaming --

1 DON WHITFIELD: Yes, ma'am.

2 JUSTICE DICKEY: -- we're videoing, you're
3 videoing --

4 DON WHITFIELD: I'm live streaming as
5 well.

6 JUSTICE DICKEY: -- I don't, you know --
7 if there's -- if there's nothing else, we're
8 through.

9 DON WHITFIELD: You referred earlier to
10 having another 30 day period --

11 JUSTICE DICKEY: No.

12 DON WHITFIELD: -- after the maps are
13 drawn that will have public comment.

14 JUSTICE DICKEY: Is that a question?

15 DON WHITFIELD: Yes, ma'am.

16 JUSTICE DICKEY: Yes. Yes.

17 DON WHITFIELD: Will you be doing the same
18 thing, touring the state to give the population
19 kind of --

20 JUSTICE DICKEY: We will give people who
21 want input a chance. Now in what format --

22 DON WHITFIELD: Will it only be available
23 online?

24 JUSTICE DICKEY: -- whether it will be a
25 PBS interview of us --

1 DON WHITFIELD: Okay. No problem.

2 JUSTICE DICKEY: -- or not --

3 DON WHITFIELD: And I appreciate you
4 taking the time with my hard question.

5 JUSTICE DICKEY: It's not a hard question.

6 DON WHITFIELD: Would you consider --

7 JUSTICE DICKEY: It's a partisan question.

8 DON WHITFIELD: -- touring the state again
9 once the maps are drawn so we can see the
10 different drawings during that 30 day period?

11 JUSTICE DICKEY: I hope that we will have
12 the time to do it.

13 We will show it, whether it's online, on
14 PBS or in some format, yes, the public will
15 have a chance to look at it and have more
16 input.

17 DON WHITFIELD: Okay. I will be looking
18 forward to it. Thank you, Justice Dickey.

19 JUSTICE DICKEY: Any other questions?

20 CHRIS LATTERER: Good evening.

21 JUSTICE DICKEY: Good evening.

22 CHRIS LATTERER: How are you guys?

23 JUSTICE DICKEY: Doing great.

24 CHRIS LATTERER: Looking good. You guys
25 are doing a great job, by the way.

1 JUSTICE DICKY: Okay.

2 CHRIS LATTEER: My name is Chris
3 Latterer. You guys are doing a great job.
4 Appreciate you.

5 JUSTICE DICKY: Thank you.

6 CHRIS LATTEER: I really don't have a
7 question. It's more -- more of a statement.
8 Mr. Whitfield stated a second ago that he was
9 unhappy with the lines.

10 If he would recall ten years ago, it was
11 Democrats that drew the lines 100 percent. So
12 I just wanted to thank you guys for that, for
13 being bipartisan, for being fair, taking this
14 in a fair manner.

15 JUSTICE DICKY: Thank you.

16 Anything else? We're glad you came.
17 We're glad you made comments. We have one
18 more.

19 Yes, ma'am?

20 UNIDENTIFIED SPEAKER: I'm new to this
21 process too. And --

22 JUSTICE DICKY: So am I.

23 UNIDENTIFIED SPEAKER: So I -- and so, you
24 know, I learned a lot tonight. And it's been
25 very helpful. Thank you.

1 JUSTICE DICKEY: Thank you.

2 UNIDENTIFIED SPEAKER: The question in my
3 mind though is like, you know, how -- what is
4 the process like that -- like you -- you're
5 doing work in the background and I'm seeing the
6 way -- it's -- it's reassuring to me to kind of
7 see the way that it's not just three people
8 making a decision for the state, that --

9 JUSTICE DICKEY: Yes, ma'am.

10 UNIDENTIFIED SPEAKER: -- they have a lot
11 of support in the background trying to help
12 them put all the pieces together, do all this
13 public comment periods and stuff.

14 So what happens then between now and the
15 time that they are actually making their
16 decision? What -- is there a trajectory that
17 maybe that -- that's explainable?

18 JUSTICE DICKEY: We have the eight
19 meetings that I think you -- you can see over
20 there and -- and get input from all parts of
21 the state and post it online.

22 After we get the information in a format
23 we can understand it, or some of us can,
24 whether it's August the 12th, the 16th, or some
25 time between then and when it is in a

1 formatable, understandable form that most
2 people can see it and understand it, September
3 the 30th, when the -- the Federal Census
4 results are in.

5 Then we immediately start working on
6 drawing the lines with the comments, with the
7 consideration from the people in the -- the
8 different areas.

9 Hopefully, that's done in a month or two.
10 We don't know. I mean, it depends on how many
11 arguments we get into, I guess, over, you know,
12 which line should prevail. But then we'll get
13 it to the Board of Apportionment to vote on.

14 There's a 30 day waiting period and we
15 have to have all this done by December 31st.
16 So that's the time frame we're working under.

17 UNIDENTIFIED SPEAKER: Finished by
18 December 31st. And the legislature doesn't
19 really weigh in on this.

20 JUSTICE DICKEY: Well, they're the ones --
21 no. They don't get to weigh in on this because
22 we're drawing the lines that determine where
23 they run for office.

24 You're welcome. Anything else?

25 Again, you've been very helpful as far as

1 things that we need to consider, especially
2 Jeff Hawkins has been helpful. So -- thank you
3 all though.

4 And we look forward to more input from you
5 before and after we post the maps, the
6 suggestions. Thank you very much for coming.

7 (End of Recording)

8 * * * * *

STATE OF ARKANSAS)
COUNTY OF PULASKI)

I, CRIS M. BRASUELL, Certified Court Reporter and Notary Public do hereby certify the proceedings which appear in the foregoing pages contain a true and correct record of the testimony given by said witness held to the best of my ability, along with all items of evidence admitted hereto.

I FURTHER CERTIFY, that I am not a relative or employee of any attorney or employed by the parties hereto, nor financially interested or otherwise, in the outcome of this action, and that I have no contract with any parties within this action that effects or has a substantial tendency to affect impartiality, that requires me to relinquish control of an original transcript or copies of the transcript before it is certified and delivered to the custodial attorney, or that requires me to provide any service not made available to all parties in the action.

WITNESS MY HAND AND SEAL this 4th day of October,
2021.

Cris M. Brasuell
CRIS M. BRASUELL, CCR
Arkansas State Supreme Court
Certified Court Reporter No. 742

My Commission Expires:
August 16, 2031