



## **Board of Apportionment Public Hearing**

### **August 8 ,2021 Meeting Minutes**

### **Helena, Arkansas**

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The Arkansas Board of Apportionment had a public hearing on August 8, 2021, in Philips County Community College Fine Arts Center in Helena, Arkansas. Public notice of this date was provided on July 15, 2021. This has been posted on the Board's calendar of events at: <http://arkansasredistricting.org/events-calendar/>.

Arkansas PBS streamed the meeting on its ARCAN platform. A recording of the meeting can be accessed at the following link: <https://www.youtube.com/watch?v=cPqyLf0h4dM>  
A transcript of the meeting will be prepared by Cris Braswell, a court reporter with Bushman Court Reporting.

The Board's Redistricting Coordinator, Betty Dickey called the meeting to order at 6:00 p.m. All three members of the Board had their representatives in attendance, which Eddie Joe Williams from Governor Hutchinson's Office, Josh Bridges from the Secretary of State's Office, Brad Nye from the Attorney General's Office, and Shelby Johnson State Geographic Information Systems (GIS) Officer

Justice Dickey began the meeting by introducing the representatives of the members of the Board and explained the meeting's agenda and redistricting timeline. Redistricting Coordinator Dickey explained that the Board is behind on their work and the Senate and House District maps were already completed at this time in 2011 and noted that the data will not be in usable format until September 30<sup>th</sup> and the Board has the deadline of December 31<sup>st</sup>.

Justice Dickey Dickey then stated that the purpose of the meeting was to get the input from the audience before the Board began the redistricting process. Coordinator Dickey proceeded to note the criteria and the goals which the Board of Apportionment will attempt to meet. First, that the criteria are based on the Equal Protection Clause of the 14<sup>th</sup> Amendment, then proceeded to state that it ensures one person, one vote. Coordinator Dickey proceeded to explain that there are 100 House Seats with 30,000 constituents per district and 35 Senate Seats with 86,000 per district. Coordinator Dickey noted that when districts are deemed illegal it is not in reference to a representative, but to the population amount within a district.

Justice Dickey then stated that the second criteria of the Voter's Rights Amendment of 1965 prohibits discrimination based on race, color, or language minority. Coordinator Dickey continued by stating the third criteria is the Equal Protection Clause of the 14<sup>th</sup> Amendment and noted that it limits drawing boundaries based on race. Justice Dickey proceeded to mention the rest of the fourth criteria is compactness or passing the eyeball test and referencing the shape of the district. The fifth one is contiguous, and it ensures there is no touching or common border. She noted that the sixth criteria are keeping counties whole. The seventh criteria are keeping together communities of interest of groups with economic, social, political, and cultural or

religious interests. The eighth criteria are the continuity of representation or avoid making incumbents run against one another. The 9<sup>th</sup> criteria are to minimize partisanship, no targeting or giving preferential treatment to someone because of their political party.

Justice Dickey then noted *Rucho versus common Cause*, a 2019 case that says federal courts will not handle that and noted that it does not preclude state courts from judging if there is a case based on partisanship.

Shelby Johnson stated his role at GIS and the technical support he provides to the Arkansas Board of Apportionment. Shelby noted that GIS also plays a statutory role in caretaking for the maps that represent the election geography of Arkansas, he noted that it includes municipal wards, county justice of the peace districts, school districts, school board zones, and the State House, State Senate and Congressional districts. He noted that if a county election commission were to change up the Census Bureau, it would eventually be incorporated into Census Geography.

Shelby Johnson noted that GIS does the same thing for municipal boundaries. He stated if a city does an annexation and that bring in new population to the city, we will also furnish that up to the Census Bureau so that, as the census occurs, the city can have that population counted as being party of the City. Shelby Johnson noted that the pandemic has wreaked havoc on the delivery schedule of the census data. He noted that in 2010, the census was delivered to all the states beginning in the early part of the year and in 2011, Arkansas received block file data in February of 2011 when their redistrict work began to begin.

Shelby Johnson noted that this decade, the Board is very much behind schedule. He noted that the actual raw data from the census was announced this afternoon at one o' clock and GIS is now in the process of being able to retrieve that information and begin to process it for use. Shelby noted that in absent of having the real numbers in advance, the only thing that we were able to do is illustrate the population change across the State to be able to show the public and the Board.

Shelby Johnson noted that there are three maps he will walk everyone through and are quick to explain. Shelby brought attention to the first map and noted that it is a product from the Census Bureau called the American Community Survey. He noted that the American Community Survey is a sampling of population across the United States, and it does not reflect an actual total or real household level census. Shelby noted that instead the Census Bureau uses a combination of mortality records, births, deaths, and other existing information that had on hand. He stated that they've tracked the model from year to year with sampling of these estimates.

Shelby Johnson pointed out to the first map with counties in the darkest shades of red and that they are indicative of the overall population change that occurred between 2010 and 2019. Shelby noted that if you see the darker shade of red it is indicative of population decline and scales or shades of red that are lighter colors show minimal population decline. Shelby noted that trending in the middle hues or middle colors indicates some loss, but not as much because modest colors indicate the modes to no loss.

Shelby then pointed out to the shades of blue, with lighter blues indicating that a population gain in county and the darkest shades of blue indication dramatic population gain. He noted that if you look at Jefferson County, Arkansas had the most substantial population loss across the nine years. Shelby noted that if we look at the population, he believes that figures is over 10,000 across the last decade. Shelby pointed out to the other end of the state in Northwest

Arkansas in Benton County and noted that across the last nine-years, that county has gained an additional 57,000 in population above its existing population. Shelby then pointed out the American Community Survey data for House Districts in the State. Shelby noted that the map uses the same color scale, the darkest shades of red are indicative of House Districts where the total population in the House District has declined. Shelby noted that and the other end of the scale the darkest shade of blue is indicative of House Districts that have gained population and are at the other end where there is too much population in that district.

Shelby Johnson noted that at both ends of the extremes, is that current districts are illegal, they either have too few persons represented or too many. Shelby noted that in this case, where a house district or Senate district does not have enough population, that means that it must geographically grow larger to reach out and grab additional population from the surrounding area. Shelby Johnson pointed out that if there is too much population, those districts must contract or get geographically smaller to share that additional population with the surrounding areas.

Shelby noted that in the House configuration, the House district with the most decline is within the West Memphis area where the district is below 4,800. He noted that that it needs to be and should be configured in a way to bring it up to more substantially equal population. Shelby noted if you look at Central Arkansas, Saline County, House district 31 is a darker shade of blue and is indicative of a district where it has too much population and it needs to shrink by about 3,800 to become more balanced with its neighbors. Shelby noted that these trends indicate that rural areas are becoming less populated and more urban areas are becoming more populated.

Shelby Johnson pointed out to the Senate Districts and noted the same trends. He noted in Southern and Eastern Arkansas, you have districts that are going to need to grow larger in size to gain additional population. He pointed out that districts that are in darker shades of blue and noted that they need to contract in size to share that population with the surrounding area.

Shelby Johnson noted that one thing he would like to point to is in Eastern Arkansas, along the Mississippi River, it should be clear that if a district is too small in population, you cannot reach across the river and grab population from a neighboring State and that means that a district in this part of Arkansas must grow to the West, or it must grow north or south. Shelby noted that the same analogy is also true for the districts along the northern part of the State and the Western part of the State. Shelby noted that eventually you will see is that those districts that are too large in population will shrink and those districts that need to gain in population will have to grow.

Shelby noted that numbers are printed, and the maps are exhibited and are out in the hallways. Shelby invited that when you have an opportunity, to look at the exhibits.

Justice Dickey opened the floor to the audience.

Clark Hall and the Phillips County Judge asked a question that was partially inaudible - - he noted that the Board keep in mind that Phillips county - - inaudible. 3,000 to 4,000 population. He stated that the county is still the largest county in this area. Clark Hall noted that the Board needs to make sure that their county is whole to enhance our opportunities to create economic development and stabilize the population for this county. Clark Hall noted that if not doing so, we are going to continue to lose population and he is asking the Board to keep the House seat whole and Phillips County one.

Justice Dickey thanked him for his question.

Robert Lawson from Wynne, Arkansas, Cross County stated he is there on behalf of everyone in Wynne and Cross County for District 49 and 50. He noted that 10 years ago there was a clear gerrymander and Wynne was taken out of the rest of Cross County and placed in another district. He stated that the rest of Cross County does everything in Wynne, Arkansas which is the County seat, and they are separated. Robert stated that he would ask that with the state Senate is fine but wanted their House seat made whole. He finished by noting that Wynne and Cross County go hand in hand and would like to be in the same House District.

Justice Dickey thanked him for that commend and aske him to write it down and send it in.

Mayor Kevin Smith noted that he is the editor of the paper, the reporter, the mayor, and a little bit of everything that night. Mayor Smith commented that as the Board goes forward throughout the State, he thinks that it is important to show and tell mayors, county judges and other officials, as well as the public what you can do to get a recount. He stated that he has seen several censuses and been part of these things and there has always been an undercount in poor areas.

Justice Dickey asked him to clarify about the Census.

Mayor Smith acknowledge and stated that data from the Census Bureau should be used according to the constitution and stated which has got to be the worst data in the history of the Republic. He stated that as an office that coordinated close with the US Census Bureau, between COVID, politics from Washington DC, etc is why the Board is behind schedule. Mayor Smith stated that all other issues the Board is away of, but his area is unrepresented because its typical in rural areas, especially poor areas.

Mayor smith asked this his comments be made available to the public and elected officials and noted what options he has when you feel if you feel severely undercounted and asked how it can be remedies. He then stated that the Board has taken the numbers they have been given, but that's its job, and it needs to be pointed out to folks that these numbers represent the census, and the census was bad.

Justice Dickey stated that he understood.

Mayor Smith stated that it was terrible and the public needs to understand that. He stated that there is power being diminished because of this and the census made it very difficult to count people. Mayor Smith stated that the whole state will suffer, not only his little area.

Justice Dickey thanked Mayor Smith and introduced Brad Nye with the Attorney Generals Office.

Brad Nye appreciated the mayor's comments and noted that there are concerns with the response rate from the Census Bureau. Brad Nye noted that Mayor smith pointed out that the Arkansas Constitution limits the Board from using data that the get from the U.S. Census Bureau. Brad stated that any form of recount would have to come from the Federal government, and he stated that there is not an appetite for Washington to do that right now. He noted that he would be happy to investigate that a little bit more.

James Valley noted that he wanted the Board of apportionment to start in Eastern Arkansas with District number 1 and to adjust the tweak along the Eastern border before you started

trying to accommodate districts that will take up more people. James noted that Benton County and Northwest Arkansas should be left alone, but they are numbered 90-95. He stated that otherwise, Eastern Arkansas will lose more district than that have lost over in Northwest Arkansas.

James Valley said secondly the Board should keep counties whole to the extent it can, and Phillips County needs to be whole and Cross County should, as well. Thirdly, he noted the Senate, specifically Crittenden County is whole, but would rather Phillips County be a whole Senate seat. James said there is quite a bit of distinction between what goes on in Crittenden County and what goes on in Phillips County because of the proximity to Memphis. He reiterated that they would like access to a State Senate seat because they do not like being divided between Crittenden County and Jefferson County, which are both larger than Phillips County. James stated that their Representative in Crittenden County and he is a fine person and a lady in Jefferson County, but they are urban folk and Phillips County is not urban.

Justice Dickey thanked Mr. Valley and asked the Board Staff if they want to respond to that. She noted to Mr. Valley that the Board is limited to the Equal Protection Clause of the 14<sup>th</sup> Amendment to make these districts population equal. Justice Dickey noted that counties with less population will unfortunately be grouped together.

James Valley noted that he understood, on man, one vote, Baker V. Carr and other case law. He noted that why he stated if the Board starts with the larger areas with the drawings, the Board will have to suck up more districts and won't have anything left by the time the drawings get to the other side of the State. James noted that if you start on the Eastern side of the border, where Mississippi County has lot 10,000 people and Phillips County has lost the numbers its lost, they will lose fewer because of the plus and minus the Board can have.

Justice Dickey agreed and thanked Mr. Valley.

Maddie Allison from Lee County noted that she has been through so many different things with these elections with the last census when the lines were being drawn. She stated that a lot of people don't get a chance to find out about how the lines are being drawn, and when they are drawn, they would have a line between a - - person living one side of a street and another person on another side of the street. She noted that she is in two different districts and two different wards regarding JP and City Council.

Maddie noted that it confused the people because they were not informed before the election time that those boundaries have been changed making them quickly change to different polling places. She noted that she wanted to be in the beginning of this process so she could understand how the Board is going to be drawing these lines when the counties have lost people and how it will make them up. She also asked if the Board would consider the race, gender, etc. and stated gerrymandering can happen easily.

Justice Dickey noted that the reason for the meeting is to show you what criteria or goals that will give the public ideas of the problems the Board faces. Justice Dickey stated that when the Board starts drawing the proposed map will be shown.

Maddie Allison acknowledged.

Justice Dickey proceed by noted that there will be a 30-day period for input, so you have a chance to see and hold the Board to her concerns. Justice Dickey noted that she will avoid splitting up precincts, counties, cities, and communities of interest to the best she can.

Maddie Allison noted that she is the Democratic Central Committee Chairwoman and stated she will be going to Little Rock to be involved in all the redistrict process. She noted that she wanted to be sure that – inaudible -- perspective rather than just small.

Justice Dickey thanked her.

Jerome Turner stated that he is the Phillips County Democrat Chairman, and he supported the efforts of former speaker Mr. Valley and what he offered up to the Board regarding the eastern side of the state. He stated that if the Boards starts drawing somewhere else, they might cut off that portion of the State and they would lose districts in Phillips County and asked the Board to keep that in mind. He also said he supports Ms. Allison and her efforts from Lee County and asked her to present she would propose before putting it into the law.

Mayor Smith noted that he has another question for the board, stated he might know the answer, and apologized in advance. He noted that when he was in the Senate in 1992, the Supreme Court had ruled that gerrymandering for super majority districts based on race was unconstitutional, then it was challenged. He stated that the question is the board allowed to legally concentrate racial group demographically or any other demographic group for purpose of political gerrymandering.

Justice Dickey turned it over to Brad Nye.

Brad Nye noted that gerrymandering generally is a bad word. He stated that the Board is looking at doing is to create one person on vote as best as possible and that is his number one criteria and then they will factor in the other criteria on the Board. Brad noted as to racial minorities, it is allowable to have minority/majority districts and stated that he believes there are 11 in Arkansas still, and stated the point is not to dilute anyone's vote. Brad noted that the point of that is so there is an opportunity for someone chosen by that racial minority, that majority in that district to have the representation in the legislature.

Brad noted that political gerrymandering is still an issue. He stated that federal courts have said that they will not hear those issues anymore because its hard to come up with criteria of what political gerrymandering looks like. He noted that in a nutshell, the Board is looking at raw data, trying to get as close to zero on the standard deviation as it can, and it will factor in other criteria as its able to. Brad noted that includes communities of like interests whether that county like Cross county or Phillips County, etc.

Justice Dickey asked to add and stated people could probably gerrymander based on gender, she noted that she does not know if the courts decided that, but it can't be based on race. She noted that race cannot be the only factor as the third criteria points out and noted that you cannot redraw criteria based on race, and you cannot discriminate against minorities based on race. Justice Dickey stated that you can gerrymander or be partisan regarding your political preference either and noted that it will be a State Court matter this year.

Justice Dickey said that Gerrymander is based on what Governor of Massachusetts drew a salamander around Boston. She stated to be aware of anything that you see that draw that has either someone draw in or out of a district, as was done in 2010. She noted to be aware of odd

shape fingers and ask about it. She asked the audience to take the Board to task on that because it is the Board's intention to be transparent and fair to everyone and not discriminate based on anything.

Sharon Lawson from Cross County and Chairman of the Election Commission of Cross County asked will the population of the prison be counted in Forrest City, the federal prison.

Justice Dickey asked if she had another question.

Sharon Lawson stated that she has a question about school districts and asked if it was under the board's purview.

Justice Dickey stated it was not and said she would ask the knowledgeable person on that.

Brad Nye noted that the prison is considered congregate Housing under the rules, and it does count towards total population for a prison.

Shelby Johnson stated regarding school districts, there are two mechanisms by which school districts would become zoned or elect their school board members based on election geography or zoning. He noted that there was one instance where an Arkansas school district consolidated into a larger district and the Arkansas Board of Education established some criteria where they said we want the smaller district to have an opportunity of representation. He noted that school districts in the past, recent past, have consolidated and were then required to draw up zones and elect their members by zone.

Shelby Johnson noted that the other trigger is in the law threshold, he noted that the total population in the school district exceeds ten percent, that district then is required to draw up election zones for the school board.

Unidentified Speaker asked ten percent of what.

Shelby Johnson noted ten percent of total minority population in the school district.

Sharon Lawson stated in her county there are two school districts, and one may drop below minority number. She followed up by asking will they fall back or are they held responsible for population change, she stated the school is not certain what to do.

Brad Nye stated he would need to look back at the statute, and that he believes that statute says once a school district is drawn and elects by zones, then they would have to elect by zones in the future, regardless of whether that minority population fluctuates up or down.

James Valley asked the board if anyone can tell the audience how many majority/minorities State Senate Districts they do have not in the State of Arkansas.

Justice Dickey stated that there are currently four majority/minority Senate Districts, and she believes that we have 11 minority/majority House Districts.

James Valley asked if that number has decreased over the years.

Justice Dickey noted that one was lost last year.

Shelby Johnson stated he did not know the answer how they changed over time, but to his understanding there was one representative district lost, but he does not have that information in front of him.

Justice Dickey thanked the audience and adjourned the meeting.