

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

THE ARKANSAS STATE CONFERENCE NAACP, *et al.*,

PLAINTIFFS,

v.

Case No. 4:21-cv-01239-LPR

THE ARKANSAS BOARD OF APPORTIONMENT, *et al.*

DEFENDANTS.

DECLARATION OF ANDY DAVIS

I, Andy Davis, am competent to testify and have personal knowledge regarding the statements contained in this declaration and under the penalty of perjury, do hereby state and verify the following:

1. I am an Arkansas Registered Professional Engineer and former four-term Arkansas State Representative for District 31, which includes portions of western Pulaski County and northern Saline County, Arkansas. A true and correct copy of my resume and biography is attached to this declaration and is incorporated by reference.

2. In 2021, I was retained by the Arkansas Attorney General's Office as a statistical consultant to assist the Arkansas Board of Apportionment with the redistricting process for the Arkansas General Assembly, which includes 100 districts for the House of Representatives and 35 Senate districts. My primary responsibilities were to assist the Board with district line drafting based on U.S. Census Bureau data provided to the State of Arkansas.

3. Beginning in January, 2021, the redistricting staff retained by the Governor, Attorney General, and Secretary of State (and occasionally other representatives from each office, such as the respective Chiefs of Staff) began to review the Secretary of State's website that hosted the Board of Apportionment of 2010-2011. Redistricting staff reviewed and revised the material on the website to reflect changes in the law since 2011. Additionally, redistricting

staff reviewed and agreed upon the goals and criteria for the Board, which would be published on the website.¹

4. The Board staff settled on the following criteria and goals in drawing the legislative district maps:

1. Draw districts with populations meeting the one person, one vote requirement;
2. Comply with the Voting Rights Act;
3. Comply with the limits of the Equal Protection Clause as to redrawing boundaries based on race;
4. Compactness;
5. Contiguous/continuity;
6. Minimize splitting political subdivisions (cities, counties, and precincts);
7. Maintain communities of interest;
8. Continuity of representation (avoid pairing incumbents);
9. Minimize partisanship.²

Redistricting staff worked very hard to balance these often competing interests. Beginning in April, 2021, before we had the necessary data from the Census Bureau to begin drawing maps, staff members began gathering the relevant information needed to draw maps with these criteria in mind. For example, we gathered the names and addresses of incumbents and worked to determine which legislators were intending to run for reelection. Discussions and meetings between staff occurred prior to the first formal meeting of the Board on May 24, 2021. The Board held a total of four public meetings (which included the Board members themselves), as well as eight public hearings at which the Board staff presented information to citizens, answered questions, and received public comments.

5. In August, 2021, the Census Bureau released some data in a format that could be used with our redistricting software. However, this data was not certified (and upon review we noticed

¹ <https://arkansasredistricting.org/about-the-process/redistricting-criteria-and-goals/>.

² See <https://arkansasredistricting.org/about-the-process/redistricting-criteria-and-goals/>.

multiple errors in it), so staff members could not use it to build the proposed maps. It was used for staff members to familiarize themselves with the software, however.

6. On September 16, the Census Bureau released the full redistricting toolkit with data that was certified as accurate. With this, we could begin drawing maps in earnest. We started with the Senate maps first, because there are fewer districts and we had better information about incumbents. Due to the higher number of districts, the House maps were more difficult.

7. Around the week of October 14, 2021, staff members for the Board met to compare map proposals and vote to reach a consensus map by the October 29 deadline the Board set for publishing a map for public comment. Initial map drafts were completed in the week prior using the nine agreed-upon criteria. At that point, staff began to overlay race data from the Census Bureau onto the drafted maps to make sure they complied with the VRA. From this review, staff concluded that an additional majority-minority district could be added in Central Arkansas, along with a majority-Hispanic district in Northwest Arkansas. The Board considered whether additional majority-minority districts could be added in Northeast and South Arkansas, but we determined that it could not be done without illegally gerrymandering on the basis of race. *Id.*

8. After Plaintiffs filed this lawsuit challenging the reapportionment plan for the Arkansas House of Representatives, the Attorney General's Office also asked me to offer my opinions regarding Plaintiffs' proposed districts as set forth in the preliminary report of Anthony E. Fairfax (*see* Doc. No. 2-7, starting at page 39), which I offer in the paragraphs that follow.

District 5

9. Plaintiff's Illustrative Plan for Arkansas State House District 5 appears at Doc. 2-7 at page 43.

10. Plaintiffs' proposed District 5 is overpopulated by 2.97% or 894 people, and the adjacent districts are all underpopulated as follows: District 2 (-4.64%), District 6 (-2.64%), and District 7 (-4.55%). Why not balance the numbers to achieve one vote one person? Other surrounding districts, including Districts 3, 8, 16, and 19, are all also underpopulated. District 5 appears to be an anomaly in the southeast area of the State in being the only district that is overpopulated.

11. *Municipal Boundaries:* The cities of Magnolia, El Dorado, and Camden are all split. The boundary of El Dorado is split into three different districts: Districts 6, 5, and 7.

12. *Schools:* District 5 splits multiple school districts. Most notable is the El Dorado School District is also split into three different House districts, Districts 6, 5, and 7.

13. *Community Narrative:* The illustrative map District 5 includes portions of three major south Arkansas cities, but not all of any of them. All three cities are split into multiple House districts. In terms of representation, this means that none of the cities have a single representative to be their champion in the capitol. Rather, all three cities will have one representative that will need to try and balance the issues of constituents in each city even if they are different. Each city will also have a second or third representative who primarily represents the more rural portions of their county and two other counties.

14. Magnolia is currently split and is represented by two incumbents, one Republican and one Democrat. The city of El Dorado is currently home of their incumbent representative. While the illustrative map does not pair the El Dorado Representative (the current Speaker of the House) with another Representative, it would remove him from the district that contains most of

his current voters and the city where he lives, El Dorado. Therefore, this map does not maintain the core of the existing districts for El Dorado.

15. One goal of the Board of Apportionment was to minimize new ballot creation by county clerks, recognizing the amount of effort that takes, the reduced time to work due to the delayed data release, and the changes the electorate must adjust to (new voting precinct, for instance). It is notable that to reach El Dorado and include parts of it in District 5, the map splits three precincts in Union County outside of the El Dorado Municipal Boundary. The precincts have populations of 362, 674, and 1,689. It is especially egregious in the two smaller populated districts.

16. The area of Union County and El Dorado included in District 5 has a VAP Black of 50.07%. This includes the three rural precincts that have been split on census block lines as well as a split of a precinct that is entirely in the El Dorado municipal boundary. A precinct split in a municipal boundary may be necessary to adjust population numbers. However, in this case, it is the only split in the city. If this split is eliminated, then the VAP of the Union County precincts in District 5 falls from 50.07% to 49.53% based on the Board's data. Eliminating this split would be preferable because it would reduce the House seats in El Dorado from 3 to 2, make the municipal boundaries more whole, and improve the compactness of the districts. Removing any or all of these precinct splits would improve compactness, better maintain existing political

boundaries, better maintain existing districts, and reduce ballot styles in future elections. It would also, however, reduce the Black citizen VAP to less than 50% for the district.

District 16

17. Plaintiffs' Illustrative Plan for Arkansas State House District 16 is at Doc. No. 2-7 at page 54.

18. Plaintiffs' proposed District 16 is underpopulated by 1,293, or -4.29%. Most unusual, Plaintiffs' proposal combines the cities of Arkadelphia and Pine Bluff into one district.

19. *Municipal Boundaries:* Splits Arkadelphia by assigning the two southernmost precincts to District 16. Splits Pine Bluff by assigning a random-looking, non-compact shape of precincts to District 16. The population of Pine Bluff has been split into six House districts. As discussed above with regard to Plaintiffs' proposed Illustrative Plan for District 5, in terms of representation, this would mean that none of the cities would have a single representative to be their champion in the capitol.

20. *Schools:* Splits Pine Bluff and Arkadelphia school districts among others in the unincorporated areas. Overall, the map splits the Arkadelphia School District into three House districts.

21. *Community Narrative:* Most any Arkansan would say that Arkadelphia and Pine Bluff are dissimilar communities. Pine Bluff is considered the metropolitan capital of the Arkansas southeast, a hub for the row crop industry in much of the Arkansas Delta. On the banks of the Arkansas Delta, it is suited for barge traffic of commodities coming up from the Mississippi. Arkadelphia, by contrast, is considered a central town of the Arkansas southwest, sitting on I-30 halfway between Little Rock and Texarkana. Arkadelphia is in timber country on the banks of the Ouachita River that is more suited for anglers, boaters, and tourism. Arkadelphia is the lake

region of the southwest, just south of the Ouachita Mountains and Lake DeGray, Lake Ouachita, and Lake Hamilton. There is not a geographic feature or highway connecting the two cities.

There is not a major east west route that would enable a representative from one town to easily traverse to the other. Google Maps shows both the most direct *and* the fastest routes between the two cities to be *outside* of the district, and the drive would take an hour and a half, which is a lot for one district in a State with 100 of them, especially in light of the fact that the two farthest points in the entire State from each other (diagonally opposite corner to opposite corner) are only 5 hours apart..

22. I offer the following statistics on the racial composition of the Arkadelphia precincts

District 16 stretches west to include:

Precinct 1: (Arkadelphia)
1,990 total population
1,018 black
51.15% VAP

Precinct 2: (Arkadelphia)
1,871 total population
726 black
38.66% VAP

Precinct 3: (Clark County)
872 total population
295 black
33.85% VAP

23. The Pine Bluff precincts included in Plaintiffs' proposed District 16 are 76.47% black voting-age population, or BVAP.

24. I evaluated what the population of the district would be if Arkadelphia and Clark County (the three precincts most extreme west of the district) were removed. This results in a population that is too low -15%. Let us add population in Cleveland and Jefferson Counties where the district already shares a split with other districts and is more like the southeast Arkansas

community. Many more precincts are needed in Cleveland and Jefferson counties (the parts of Jefferson County currently in their District 11), including most precincts around the City of Pine Bluff, all of the City of Rison (Cleveland County), and all the precincts in Cleveland County east of Rison. The result is a variance of -3.16% and a VAP Black of 47.15%.

District 12

25. Plaintiffs' Illustrative Plan for Arkansas State House District 12 appears at page 50 of Doc. No. 2-7.

26. Plaintiffs' proposed District 12 has a population variance of -4.98%, which is high in my opinion and may be outside acceptable limits. It stretches from the Mississippi River to the border of Pulaski County without following a major highway or navigation system. Also, particularly egregious, proposed District 12 splits the municipal center of Phillips County out of the unincorporated areas of Phillips County (assigning Helena-West Helena to District 48) and assigns that unincorporated area to a district dominated by Pine Bluff, which is three counties away with little community connection.

27. *Boundaries:* This splits the municipal boundaries of Pine Bluff and the school district boundaries for Pine Bluff Dollarway, Helena-West Helena, and DeWitt, among others.

28. *Mapping & Community Notes:* This district also splits Pine Bluff. However, the district population inside of the incorporated boundary of the city is 10,320, or approximately one-third, of the voting power of the entire district that spans three counties in addition to Jefferson County, which is the home county of Pine Bluff.

29. Observations on population:

Population in Phillips County: 6,703

Population in Arkansas County: 3,025

Population of unincorporated Jefferson County: 6,566

Population of all Jefferson County on District 12: 16,886 or 56% of the district.

This disenfranchises Arkansas, Phillips, and one Precinct in Monroe County.

District 48

30. As stated, the way Districts 12 and 48 (Doc. No. 2-7 at 86) are drawn split the county seat and city center of Phillips County out of the district with the unincorporated area of the county and pair them with a much larger population in Jefferson County.

31. Also very egregious is the lack of reasonable connection from Helena-West Helena to the rest of District 48. While the district is all contiguous in colors on the map, there is no highway connection from Helena to District 48 that does not exit District 48. A representative of District 48 from Helena would have to travel through District 12 to get access the remainder of their district.

32. Also notable in District 48 is the population base. Helena-West Helena is in a separate county from all other precincts in District 48; however, at 9,589, it has a greater population than all of Lee County to the north. The VAP Black in Helena-West Helena alone is 72.77% (Black only data). The population of Helena (9,589) is also larger than the population of Marianna, Clarendon, and Augusta combined. Each of these cities is the county seat of their respective counties. But their combined vote could be lower than the vote of a city (Helena) that is not even in a district with its own county. The population of Helena-West Helena is even greater than the population of those three counties and Brinkley combined.

33. Lastly, the current representative of Helena-West Helena is resident of Marvel, Arkansas. Under Plaintiffs' proposed plan, he would be drawn into District 12, therefore removing him from the core of his district and placing him in a district which has a population center that is closer to Little Rock than it is to his home county.

District 55

34. District 55 in Plaintiffs' Illustrative Plan (Doc. No. 2-7 at 93) is an extremely oddly shaped district. It is only one precinct wide nearly the entire length of the district that runs from Missouri to Mississippi. The east boundary is the Mississippi River. And the west boundary is a jagged line following precinct lines.

35. In this area of the State, the most and maybe only geographic feature recognizable to all voters is I-55. The District 5 boundary crosses back and forth across I-55 in a manner that voters will not be able to follow, and for nearly its entire length, is simply a narrow strip.

36. The most egregious shape in District 55 is its most northern point, which nearly cuts two precincts of District 54 from itself. Only one highway connects these two separate sections of District 54. The distance from the northern edge of District 55 to the state line is 1.25 miles. There are three census blocks across that span with a total population in those blocks of zero people. District 54 sits both east and west of District 55. In other words, the really thin piece of District 54 that stretches over District 55 to grab the precincts to its east is only 1.25 miles wide, and no one lives there.

37. Considering that District 55 is underpopulated by 1,072 with a -3.56% variance, and District 54 is overpopulated by 1,462 with a 4.85% variance, it begs the question why isolate these two precincts of District 54 to the east of District 55? The combined population of these two precincts in question is 1,875. If these two precincts are moved into District 55, then 55 has an improved variance of 2.67% and 54 has improved variance of -1.37% and no longer has two nearly disconnected precincts. This improves compactness.

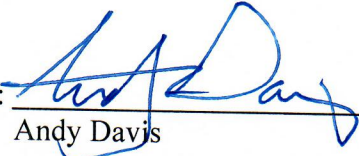
38. However, the VAP Black of District 55 falls to 47.51% from 49.99%, or 2.48%, based on our available data. The illustrative map has a VAP Black of 51.41% based on their data. If assigning these two precincts to District 55 would lower the VAP by even only 2%, then the VAP Black would be below 50%.

Conclusion

39. This declaration contains a true and accurate summary of my opinions to date and the bases for my opinions. I reserve the right to amend or supplement my opinions as the case progresses and additional or different information is provided to me.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 19, 2022.

By: 
Andy Davis