



November 19, 2021

VIA MAIL AND EMAIL TO: jbeckett@house.ms.gov, dkirby@senate.ms.gov

Representative Jim Beckett
P.O. Box 722
Bruce, MS 38915

Senator Dean Kirby
P.O. Box 54099
Pearl, MS 39288

Re: Meetings Concerning Redistricting are subject to the Open Meetings Act

Dear Chairs Beckett and Kirby:

The American Civil Liberties Union of Mississippi, American Civil Liberties Union, League of Women Voters of Mississippi, Mississippi Center for Justice, Mississippi Votes, Mississippi State Conference NAACP, NAACP Legal Defense and Educational Fund, Inc., One Voice, Southern Echo, Inc., and Southern Poverty Law Center write to remind the Standing Joint Legislative Committee on Reapportionment and the Standing Joint Congressional Redistricting Committee (together, the “Committee”) of their obligations under the Mississippi Open Meetings Act (the “OMA”) to make all Committee meetings concerning redistricting open to the public. Based on media reports that the Committee intends to adopt Congressional maps before the beginning of the 2022 legislative session in January,¹ we have significant concerns that the Committee is performing its official duties outside of the public eye, in contravention of the requirements of the OMA.

We also encourage the Committee to create additional, meaningful opportunities for all residents to engage in the redistricting process, both in person and remotely, prior to the proposal of maps to the full Legislature and prior to the Legislature’s consideration of any proposed maps. Many of the public hearings held thus far occurred before the release of U.S. Census data, preventing the public from offering input based on the data used by the Committee or on the actual maps proposed by the Committee. In order for public input to be more meaningful, the Committee must offer the public real opportunities to comment on the Committee’s maps before they are proposed to the Legislature.

¹ Harrison, Bobby, “Want to try your hand at redistricting? Come draw your own map,” *Mississippi Today*, Oct. 22, 2021, available at <https://mississippitoday.org/2021/10/22/want-to-try-your-hand-at-redistricting-come-draw-your-own-map/> (last accessed Nov. 18, 2021).

I. The OMA Requires the Committee to Make All of Its Deliberations, Decisions, and Business Open to the Public

In enacting the OMA, the Mississippi Legislature declared that it is “essential to the fundamental philosophy of the American constitutional form of representative government and to the maintenance of a democratic society . . . that citizens be advised of and be aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.”² In no context is the Legislature’s declaration more true than in redistricting. The Committee’s “deliberations and decisions” over the next several months will have an enormous impact on Mississippians’ access to political representation over the next decade.

The Committee is a public body subject to the statute’s requirements. The OMA requires that “[a]ll official meetings of any public body . . . are declared to be public meetings and shall be open to the public at all times.”³ The Act defines a “public body” to include “any standing, interim or special committee of the Mississippi Legislature.”⁴ Because the Committee is comprised of two standing committees of the Mississippi Legislature, it is subject to the transparency requirements of the OMA.⁵

The OMA requires the vast majority of meetings held by a public body to be made public. The statute defines a “meeting” as “an assemblage of members of a public body at which official acts may be taken upon a matter over which the public body has supervision, control, jurisdiction or advisory power.”⁶ The Mississippi Supreme Court has held that “[t]he philosophy of the Open Meetings Act is that *all deliberations, decisions and business*” of a public body must be open to the public.⁷ This includes “the deliberative stages of the decision-making process *that lead to* ‘formation and determination of public policy.’”⁸ “The Act carves out exceptions for only ‘chance meetings or social gatherings of members of a public body’ or executive sessions.”⁹

Taking the encompassing language of the OMA into account, the Committee must make all components of the redistricting process open to the public. This includes, but is not limited to, deliberations, discussions, and decisions concerning:

- Development of standards and principles to govern the drawing and adoption/rejection of maps, key among them compliance with federal law, including the Voting Rights Act of 1965, the U.S. Constitution, and state law;

² Miss. Code § 25-41-1.

³ *Id.* § 25-41-5(1).

⁴ *Id.* § 25-41-3(a).

⁵ *Id.* § 5-3-91 (“There is hereby created the *standing* joint legislative committee on reapportionment.....” (emphasis added)); *id.* § 5-3-121 (“There is hereby created a *standing* joint congressional redistricting committee.....” (emphasis added)).

⁶ *Id.* § 25-41-3(b).

⁷ *Mayor & City Council & City of Columbus v. Com. Dispatch*, 234 So. 3d 1236, 1239 (Miss. 2017) (emphasis added).

⁸ *Id.* at 1240 (quoting *Bd. of Trustees of State Institutions of Higher Learning v. Mississippi Publishers Corp.*, 478 So.2d 269, 278 (Miss. 1985)) (emphasis added).

⁹ *Id.* (quoting Miss. Code §§ 25-41-7, 25-41-17).

- Procedures used to develop, consider, and adopt/reject maps;
- Development, consideration, and adoption/rejection of maps;
- Procedures used to solicit and receive public input;
- Consideration of maps proposed by the public or other legislators;
- Presentations and/or proposals of maps or other information;
- Data and analyses used to develop, consider, or evaluate maps;
- Communications with outside experts and/or counsel; and
- Timelines and scheduling.

Media reporting indicates that the Committee intends to adopt a Congressional map before the start of the 2022 legislative session in January.¹⁰ However, thus far, the Committee has only held one deliberative meeting in public—the introductory June 30, 2021 meeting to nominate and elect the leadership of the Committee and to address housekeeping items—and it has announced only one additional meeting which is being held today.¹¹ The Committee cannot perform the complex task of Congressional redistricting in the course of only two deliberative meetings, one of which was devoted primarily to procedural issues.¹² The signatories to this letter therefore have significant concerns that members of the Committee have met, deliberated, and decided issues regarding redistricting (or intend to do so) in private, despite the OMA’s requirement that such meetings, deliberations, and decisions take place in public.

Any such private meetings would flout the requirements of the OMA, even if a quorum were not present. The Mississippi Supreme Court has held that public bodies may not hold sub-quorum meetings in order to circumvent the requirements of the OMA.¹³ Likewise, members of a public body cannot use telephone or video conference calls between less than a quorum of members to evade public scrutiny.¹⁴ Therefore, even informal conversations regarding redistricting among members of the Committee that may lead to the formation of public policy must be held in view of the public.

The Committee must fulfill its obligations under the OMA in order to conduct a transparent redistricting process. Transparency is critical to achieving maps that are fair and equitable for all Mississippians. **We therefore request that the Committee respond to this letter by November 29, 2021 declaring whether it will comply with its obligations under the OMA and, announcing its public meeting schedule.**

II. The Committee Should Hold Additional Public Hearings

¹⁰ *Id.* at Harrison, Bobby, “Want to try your hand at redistricting? Come draw your own map,” available at <https://mississippitoday.org/2021/10/22/want-to-try-your-hand-at-redistricting-come-draw-your-own-map/> (last accessed Nov. 18, 2021).

¹¹ Mississippi Senate - Redistricting Committee Hearing, YouTube Live Stream, June 30, 2021, 3:30 P.M., available at <https://www.youtube.com/watch?v=i13Dj0xYp84> (last accessed Nov. 18, 2021). The Committee has also held nine hearings to solicit public input but did not conduct any deliberations of its own during those sessions.

¹² We focus on Congressional redistricting here because we understand the Committee will first focus on it, but the Committee’s obligations apply just as forcefully to state legislative redistricting efforts.

¹³ *Mayor & City Council & City of Columbus v. Com. Dispatch*, 234 So. 3d 1236, 1241 (Miss. 2017).

¹⁴ *Bd. of Trustees of State Institutions of Higher Learning v. Mississippi Publishers Corp.*, 478 So. 2d 269, 278 (Miss. 1985).

In addition to making its own deliberations public as required by the OMA, the Committee should also create more opportunities for all Mississippians to weigh in on redistricting-related issues.

The Committee has thus far held nine public hearings around the state to solicit public input on state and Congressional redistricting. These hearings were a good first step to ensuring the public's participation in the redistricting process. However, since many of the meetings were held before U.S. Census data was released on August 12,¹⁵ and all of them were held before any of the Committee's maps have been released, it is necessary for the Committee to hold additional public hearings so that the public has a meaningful opportunity to provide input.

The maps that the Legislature will consider will likely be in place for at least the next decade. They will be foundational to residents' access to political representation and to eligible voters' access to the right to vote for candidates of choice for congressional, legislative, and local governing bodies. No one is more qualified than the public to discern which maps allow (or do not allow) communities to have an audible voice and a meaningful choice in the process of electing their representatives. Accordingly, any maps that the Committee proposes or otherwise considers must reflect Mississippi in all its diversity. We share the below recommendations to assist the Committee in meeting this significant responsibility.

The Committee should hold additional public hearings. While the nine public hearings held thus far were constructive, they were insufficient for the public to have a meaningful opportunity to provide input into the redistricting process. The public must have the opportunity to provide testimony and propose maps based on the U.S. Census data released on August 12, 2021. In addition, the public must have the opportunity to respond to the maps the Committee considers before the Committee adopts those maps and proposes them to the Legislature. It is essential for the Committee to take into account public input on the maps it is considering, evaluate alternatives to the Committee's proposals that are submitted by the public, and engage in a robust discussion with the public about proposed maps. Without additional public hearings, the public will have *zero* opportunity to provide input on the actual maps being considered by the Legislature.

The Committee should provide adequate notice for each public hearing. The public should be granted sufficient and accessible notice of hearings at least 7-10 business days to allow communities to prepare meaningful testimony and supporting materials, including proposed maps. To ensure that the voices of voters of color in particular are heard, this Committee should proactively post notice of public hearings in media outlets that serve communities of color and utilize social media platforms that reach a wide range of Mississippi residents.

¹⁵ On August 12, 2021, the U.S. Census Bureau released data from the 2020 decennial census pursuant to Public Law 94-171. U.S. Census Bureau. *Decennial Census P.L. 94-171 Redistricting Data* (Aug. 12, 2021) available at <https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files.2020.html>. The release of this data allows all states, including Mississippi, to conduct legislative redistricting. The U.S. Census Bureau released the same redistricting data on September 16, 2021 in a format for user-friendly for the public. U.S. Census Bureau, *Census Bureau Delivers 2020 Census Redistricting Data in Easier-to-Use Format* (Sept. 16, 2021), available at <https://www.census.gov/newsroom/press-releases/2021/2020-census-redistricting-data-easier-to-use-format.html>. These August 12 and September 16 data sets, although packaged differently, contain the same redistricting numbers.

Public hearings should allow Mississippians to participate remotely. Members of the public who cannot travel or take time off to attend Committee hearings should be permitted to testify remotely at public hearings. None of the public hearings held thus far has permitted remote testimony. This limits participation by several groups of Mississippians, including individuals who work non-traditional hours, individuals with child-care responsibilities, students, the elderly, individuals with disabilities, and individuals living in rural areas. Remote participation is something that the Committee can easily provide, particularly in the current era where video conferencing is the norm rather than the exception due to the pandemic.

Model best practices for local government redistricting. This Committee's work in performing state-level redistricting sets the standard and tone for local redistricting in Mississippi. Over the coming months, therefore, this Committee should serve as an exemplar for other governing bodies charged with redistricting, particularly at the local level. It should model transparency and an openness to public input by complying with its obligations under the OMA and facilitating the public's involvement in the redistricting process. As with state-level representative bodies, the Voting Rights Act also requires that voters of color be provided equal opportunities to elect representatives of their choice to city and county councils, school boards, and other elected local bodies. To prevent racially discriminatory vote dilution at the local level in the current redistricting cycle, consistent with its authority, the Committee should model best practices and urge all local entities charged with redistricting responsibilities to commit to following similar best practices.

The Committee faces the consequential task of redrawing district lines that will determine the access to political representation for every Mississippian for the next decade. There is no doubt the Committee appreciates the significance of this responsibility.

In order for the Committee to fulfil its responsibility in a fair and equitable manner, it must comply with its obligations under the OMA by holding all of its meetings in public. We request that the Committee provide a response to this letter by November 29, 2021 and, to the extent it has not done so already, make arrangements to hold public meetings, with appropriate teleconferencing capabilities. Further, the Committee should provide additional public hearings, with adequate notice and the opportunity to participate remotely, so that Mississippians have a say in how their political power will be impacted for the ten years.

If you have any questions, please feel free to contact Jarvis Dortch at jdortch@aclu-ms.org, (601) 354-3408, P.O. Box 2242, Jackson, MS 39225.

Sincerely,

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