

The ACLU of Mississippi, League of Women Voters of Mississippi, Mississippi Center for Justice, Mississippi State Conference NAACP, Mississippi Votes, Southern Echo, Inc. and Southern Poverty Law Center (“Complainants”) submit this Complaint to the Mississippi Ethics Commission. The Standing Joint Congressional Redistricting Committee and the Standing Joint Legislative Committee on Reapportionment & Redistricting have violated the Mississippi Open Meetings Act by deliberating, making decisions and conducting public business outside a properly noticed open meeting.

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The Mississippi Legislature is set to redraw U.S. congressional and state legislative maps in the wake of the release of the 2020 U.S. Census data. The legislative committees tasked with developing procedures for redistricting and drawing these maps are the Standing Joint Congressional Redistricting Committee and the Standing Joint Legislative Committee on Reapportionment & Redistricting (together, the “Committee”).¹ The Committee’s work will have an enormous impact on Mississippians’ access to political representation over the next decade.

Critical to the Committee’s work and compliance with state and federal law is transparency in the redistricting process. However, the Committee has shirked its obligations under the Mississippi Open Meetings Act (“OMA”) by performing the bulk of its substantive work in private. The Complainants therefore request the Mississippi Ethics Commission to find that the Committee has violated the OMA and to require the Committee to comply with its transparency obligations moving forward.

I. Factual Background

A. The Committee is responsible for the complex task of redrawing Mississippi’s U.S. congressional and state legislative boundaries.

The Committee is entrusted with the responsibility of performing the complex and time-consuming task of U.S. congressional and state legislative redistricting. That responsibility requires Committee members to meet to deliberate and make decisions concerning a variety of topics, including, among other things, demographic shifts over the past decade in each of Mississippi’s 82 counties, analysis of the U.S. Census data, analysis of racially polarized voting in Mississippi, compliance with state and federal law, development of redistricting criteria to guide the Committee’s line drawing, and consideration of public input (including maps created by the public).

Once the Committee deliberates and makes decisions concerning these items, it must perform the process of drawing, considering, and deciding upon proposed maps. Committee members must meet to consider how to alter the boundaries of the existing map, what impact those alterations will have on the communities in Committee members’ districts, how to weigh comments and maps proposed by the public, whether proposed maps adequately meet state and federal legal requirements for redistricting, and which maps to propose to the full legislature. In states that

¹ Both Committees are comprised of the same members.

have redistricting bodies that are required to meet publicly, this process requires months of public meetings in which members deliberate and make decisions in view of the public.

B. The Committee has held almost none of its substantive deliberations or discussions in public.

The Committee, at the time of this Complaint, has held only three “deliberative” public meetings.² The first was held on June 30, 2021, to nominate and elect the leadership of the Committee and to address housekeeping items. The second was held on November 19, 2021, to vote on and adopt the criteria pursuant to which the maps will be drawn. The third was held on December 15, 2021, to formally adopt a U.S. congressional map to propose to the full legislature. At the December 15 meeting, the U.S. congressional map was first presented publicly. Before presenting the map Representative Jason White acknowledged that the Committee had done a significant amount of work on it stating, “Thank you Mr. Chairman, I have a plan of course that the Committee has worked on and certainly you have worked on a great deal.” After Representative White’s presentation, two Committee members asked questions about the map for around 5 minutes. The map was then voted on and adopted. The December 15 meeting lasted around 15 minutes before being adjourned.

Despite having met publicly only three times for a total of around 45 minutes, as Representative White acknowledged on December 15, the Committee has performed the various tasks, activities, and deliberations described above to redraw the U.S. congressional map for the entire state and has likely also held deliberations and discussions concerning state legislative redistricting. For example, in order to adopt a U.S. congressional map, the Committee considered redistricting plans offered by the public to the committee,³ including a potential U.S. congressional map offered by the Mississippi Chapter of the NAACP (“NAACP”).⁴ However, none of this work was done in public.

The extent of the redistricting work that the Committee has performed thus far makes it apparent that the Committee has performed public business in private. In fact, following its November public meeting, Chairman Jim Beckett invited the Committee’s members to his office to view the U.S. congressional map that would be, and was, offered, voted on and adopted by the Committee at the December 15, 2021 meeting.

² There have been nine non-deliberative, public hearings asking for comment from the public. *Rep. Jim Beckett to Members of the Standing Joint Legislative Committee on Reapportionment and the Standing Joint Congressional Redistricting Committee, the Legislature, and the Public*, Mississippi House of Representatives (July 12, 2021), <https://www.maris.state.ms.us/HTML/Redistricting/PUBHEARINGS2021.pdf>.

³ “Starting Oct. 10, the committee will open a public access office where individuals and groups may make appointments to use the legislative redistricting resources to develop plans for submission to the committee.” Bob Bakken, *Public comments heard on redistricting*, Desoto County News (Online). (Aug 10, 2021), <https://desotocountynews.com/desoto-county-news/public-comments-heard-on-redistricting/>.

⁴ “The Mississippi chapter of the NAACP has developed a congressional redistricting plan that it hopes the Legislature will adopt in the upcoming 2022 session.” Bobby Harrison, *NAACP offers redistricting plan for Legislature’s consideration*, Mississippi Today (Dec. 6, 2021), <https://mississippitoday.org/2021/12/06/naacp-mississippi-redistricting-plan/>.

C. The Committee has refused to respond to requests for transparency.

Because of the lack of transparency in the redistricting process thus far, on November 19, 2021, ten civil rights organizations⁵ sent the Committee a letter reminding it that it is subject to the OMA and encouraged it to create additional, meaningful opportunities for the public to engage in the redistricting process. The Committee never responded.

On November 22, 2021, the ACLU of Mississippi sent a public records request to the Committee asking for records related to the Committee's deliberations and decisions during the redistricting process. The Committee via its staff counsel, Ted Booth, denied this request in its entirety and produced only records that had already been made public. In his letter Mr. Booth stated, the Committee "as a legislative body has chosen to make the documents and files in its possession confidential and not subject to disclosure under the Public Records Act."⁶

II. The Committee Has Violated the Open Meetings Act.

A. The Committee is subject to the Open Meetings Act.

The Mississippi Supreme Court has stated unequivocally that "[t]he Open Meetings Act was enacted for the benefit of the public and is to be construed liberally in favor of the public."⁷ The OMA defines a "public body" to include "any standing, interim or special committee of the Mississippi Legislature."⁸ Because the Committee is comprised of two "standing" committees of the Mississippi Legislature, it is a public body subject to the OMA. The Committee's Public Access Policy acknowledges that the Committee is subject to the OMA.⁹

⁵ The organizations were the ACLU of Mississippi, the ACLU Voting Rights Project, League of Women Voters of Mississippi, Mississippi State Conference NAACP, Mississippi Votes, NAACP Legal Defense and Educational Fund, One Voice, Southern Echo, and Southern Poverty Law Center.

⁶ It is the policy of the Committee that its documents are confidential: "[a]ny documents, files, electronic mail, or other communications in possession of the staff, its contractors, or members of the Joint Committees generated in the course and scope of carrying out redistricting activities shall be deemed confidential." Public Access Policy, Standing Joint Legislative Committee on Reapportionment and the Standing Joint Congressional Redistricting Committee, at 4 (June 30, 2021) (attached as Ex. A).

⁷ *Hinds Cty. Bd. of Sup'rs v. Common Cause of Mississippi*, 551 So. 2d 107, 110 (Miss. 1989).

⁸ Miss. Code Ann. § 25-41-3(a).

⁹ Public Access Policy, Standing Joint Legislative Committee on Reapportionment and Standing Joint Congressional Redistricting Committee, at 4 (June 30, 2021) ("All meetings of the Joint Committees shall be subject to the Open Meetings Act.") (attached as Ex. A).

B. The Committee’s conduct of official business after its public meeting on November 19, 2021 violated the OMA.

Any “meeting”¹⁰ held by the Committee, and any discussions, deliberations and decisions, that involve redistricting must follow the OMA.¹¹ This includes “the deliberative stages of the decision-making process *that lead to* ‘formation and determination of public policy.’”¹² The Committee may vote to enter executive session to discuss public business, but such an executive session must first begin as an open meeting.¹³

The Committee violated the OMA on November 19, 2021, when it reviewed the prospective U.S. congressional map *after* its public meeting.¹⁴ The Committee adjourned that meeting without entering executive session.¹⁵ Chairman Beckett invited members of the Committee to his office to view the U.S. congressional map that would be, and was, offered to the public, voted on and adopted by the Committee on December 15, 2021. The map viewing, and any deliberation thereof, was public business and should have occurred in an open meeting or, at least, in a properly executed executive session.

The viewing of this map was not exempt from the Open Meetings Act as a “‘chance meeting[] or social gathering[] of members of a public body’ or executive session[].”¹⁶

All deliberations and discussions, including those that *lead to* the Committee’s final decisions, are subject to the OMA, and the Committee must notice and hold open meetings. The Committee failed to do so when it viewed a potential Congressional map after the adjournment of its November 19 public meeting.

¹⁰ A “meeting” is “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, including an assemblage through the use of video or teleconference devices that conforms to Section 25-41-5.” Miss. Code Ann. § 25-41-3(b).

¹¹ “The philosophy of the Open Meetings Act is that *all* deliberations, decisions and business of *all* governmental boards and commissions, unless specifically excluded by statute, shall be open to the public.” *Hinds Cty. Bd. of Sup’rs*, 551 So. 2d at 110 (Miss. 1989). (citing Miss. Code Ann. § 25-41-1) (emphasis included).

¹² *Mayor & City Council & City of Columbus v. Com. Dispatch*, 234 So. 3d 1236, 1240 (Miss. 2017) (quoting *Bd. of Trustees of State Institutions of Higher Learning v. Mississippi Publishers Corp.*, 478 So.2d 269, 278 (Miss. 1985)) (emphasis added).

¹³ “Any public body may enter into executive session for the transaction of public business; however, *all meetings of any public body shall commence as an open meeting*, and an affirmative vote of three-fifths (3/5) of all members present shall be required to declare an executive session.” *Id.* § 25-41-7(1) (emphasis added).

¹⁴ “Otherwise, discussions or deliberations among a quorum of councilmembers outside a properly noticed open meeting, whether physically or electronically assembled, can violate the Mississippi Open Meetings Act, when such deliberations concern matters over which the public body has supervision, control, jurisdiction or advisory power.” *Burrell v. City of Bay St. Louis*, Open Meetings Cases M-21-003 & M-21-004 (Consolidated) (May 25, 2021) (citing *City of Columbus v. The Commercial Dispatch*, 234 So.3d 1236,1240 (Miss. 2017) (citations omitted) (“If deliberations that ‘go into making’ or ‘lead to’ public policy occur at a gathering of board members, the Act unequivocally states that those gatherings are ‘public business and shall be conducted at open meetings.’”); *Board of Trustees of State Insts. of Higher Learning v. Miss. Publishers Corp.*, 478 So.2d 269, 278 (Miss. 1985). (“[T]his Court holds that all the deliberative stages of the decision-making process that lead to ‘formation and determination of public policy’ are required to be open to the public.”).

¹⁵ *Legislative Redistricting Committee - Room 216, 19 November 2021 10:00 A.M.*, YouTube, Mississippi Legislature, 19 Nov. 2021, <https://www.youtube.com/watch?v=PhQAS6o3jXM&t=168s>.

¹⁶ *City of Columbus*, 234 So. 3d 1236, 1240 (Miss. 2017) (quoting Miss. Code §§ 25-41-7, 25-41-17).

C. The Committee's other deliberations outside of properly noticed open meetings violated the OMA.

The redistricting process is complex and time-consuming as described more fully above. There have been no discussions, deliberations, or decisions in any public meeting so far, be it the three “deliberative” meetings mentioned above, or the nine public hearings held in 2021 that would allow the Committee to engage in this process fully or in any meaningful way.¹⁷

Considering the purpose and text of the OMA, including its interpretation by the courts, the Committee must make all components of the redistricting process open to the public or hold them in properly executed executive sessions. This includes, but is not limited to, deliberations, discussions, and decisions concerning:

- The standards and principles that 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;
- The development, consideration, and adoption/rejection of maps, including those proposed by the public or other legislators;
- Presentations and/or proposals of maps or other information; and
- Communications with outside experts and/or counsel.

It defies belief the Committee could reach the point of adopting a U.S. congressional map in such a short window without more discussion, deliberation, and decision, especially considering the Committee has solicited congressional plans from the public and only recently at the November 19 meeting adopted the criteria from which the U.S. congressional map was drawn. The NAACP has also created a U.S. congressional map to submit to the Committee. In short, there are several maps to be considered and decided upon by the Committee. Furthermore, Representative White admitted on December 15 that the Committee had done significant work on the U.S. congressional map, little if any of which was in a public meeting.

The Committee voted to adopt a U.S. congressional map on December 15, 2021. In order to reach this stage, it deliberated outside of properly noticed open meetings. This is a violation of the OMA.

¹⁷ There is cursory mention, at the November 19, 2021, meeting, of there being “a meeting on the congressional plan” in early December. However, there is no discussion, deliberation or decision made on which map will be voted on, or even that a vote will take place. It is simply said to be a “meeting on the congressional plan.” *Legislative Redistricting Committee - Room 216, 19 November 2021 10:00 A.M.*, YouTube, Mississippi Legislature, 19 Nov. 2021, <https://www.youtube.com/watch?v=PhQAS6o3jXM&t=168s>.

III. Request for Relief.

- 1. The Complainants request that the Ethics Commission find that the Committee violated the Mississippi Open Meetings Act (i) when it viewed the prospective U.S. congressional map outside a properly noticed open meeting, and (ii) by deliberating on official business, including the U.S. congressional map, outside of properly noticed open meetings.**
- 2. The Complainants ask that the Ethics Commission require the Committee to, in all respects, comply strictly with the OMA.**
- 3. Given the importance of redistricting to Mississippi over the next decade, and because the Committee is engaging in deliberations over it currently, the Complainants ask that a hearing officer be designated as soon as possible, should the Executive Director choose not to exercise authority as hearing officer. The Committee is now discussing and will finalize in the coming weeks the maps for state legislative districts. Time is of the essence in ensuring the Committee complies with the Open Meetings Act as soon as possible. Due to the urgent nature of this action, the Complainants ask the hearing officer to direct the parties to a pre-hearing conference in order to resolve this matter expeditiously.¹⁸**

¹⁸ R. M.S. Ethics Comm. 4.2.