

February 14, 2012

Kimball Brace
Rhode Island Reapportionment Office
82 Smith Street #B-5
Providence, RI 02903

Dear Mr. Brace:

With Rhode Island's latest decennial redistricting plan on the verge of becoming law, we are writing to express our deep distress that your office has failed to make certain basic voting district information public, despite explicit provisions in your contract with the State of Rhode Island to do so. As a result, despite the Governor's approval last week of legislation redrawing new House and Senate district lines, both General Assembly members and members of the public remain in the dark – months after this process began – about the actual effectiveness of the majority-minority districts that the new lines have created.

On a number of occasions at redistricting commission and legislative commission hearings, various community groups raised questions and concerns about the public unavailability of two key pieces of redistricting data: political information and a racial breakdown of voting bloc data. At a House committee hearing last month, you finally acknowledged the compilation of political data (although the exact extent of its use was not explained). To this day, however, we have been unable to access racial breakdown data that is critical for analyzing the plan's success in providing effective representation for the state's growing minority population. The potential consequences are significant: despite an increase in the minority population since the last census, both the House and Senate, under the newly-approved plan, have the same number of majority-minority districts as they did ten years ago. Further, the analysis we have been able to perform from the limited racial data that *has* been made available raises numerous questions as to the true viability of some of these districts, questions that cannot be answered without the data that has never been released.

In order to better explain the reasons for, and depth of, our concerns, we have divided this letter into three parts: a brief review of some of the publicly available majority-minority data, an examination of the contractual provisions regarding analysis of this data, and a look at some of the discussions that took place at Redistricting Commission meetings about this matter.

1. Majority-Minority District Data

In your presentations to legislators and the Commission, you pointed out that, looking at total population, the plan for the House has 11 majority-minority districts, and the Senate plan has 7 – that is, each of those districts has a combined minority population of 50% or greater. In and of itself, the fact that this represents no change from the current makeup of our districts is of concern. It becomes more troubling when one takes a closer look at the data:¹

¹ Because your presentations on majority-minority districts relied on population data, rather than voting population data, we do the same here. We would only note that if voting population data were used, the problems we cite would be even more pronounced. The data we are using for this analysis is the information posted on the Redistricting Commission's website as of February 3, 2012.

In the House, only six of the 11 minority districts have a 50% or greater percentage of a single minority group, Hispanics. In two districts, the white population is dominant but less than 50% (39.65% and 45.81%, respectively). In three districts, the Hispanic population is dominant but less than 50% (42.33%, 40.29%, and 42.72% respectively). District 59 is a good example of why more data is necessary – the combined minority population is 54.19%, but the white population is 45.81%. This is more than double the Hispanic population of 21.92%, and of the black population, which is 18.27%. Even if all black and Hispanic voters generally vote as a bloc, they would still need at least 5.63% of the “other” population to elect the candidate of their choice.

In the Senate, only two of the seven majority-minority districts have a 50% or greater percentage of a single minority group, Hispanics. In four of the remaining districts, the Hispanic population is dominant but less than 50%, while in one district the Hispanic and white populations are nearly equal. Here, District 1 is a good example of why data is necessary, although for a different reason than the House example. In District 1, the total minority population is 63.70%. The Hispanic population is highest in this district, at 36.48%. Whites, however, comprise 36.30% (the black population is 17.35%). If black and Hispanic voters do not vote together, this is in no way a true majority-minority district.

It is for this reason that racial voting bloc data is so crucial. Unless one knows that African-American and Hispanic voters are generally likely to support the same candidates, the numbers that have been made available provide only an illusion of true majority-minority districts in some instances. It is our understanding that racial bloc voting analysis was an important component of the ultimately-successful lawsuit filed against the last decade’s Senate redistricting plan.

2. The RFP and the Contract

The state’s RFP identified “studies of voting behavior (e.g. racial bloc voting)” as an expected deliverable, and required the redistricting database to include an election database containing “election results and voting statistics for selected contests for all general elections conducted in the state of Rhode Island from 2002 to 2010.” The RFP also specified: “The bidder should be able to provide studies on racial bloc voting and the definitions of communities of interest,” as called for by the U.S. Supreme Court for the defense of adopted redistricting plans. While there are many reasons why election results might be detrimental to a good redistricting, such as being used for purely political gerrymanders, any evaluation of the effectiveness of majority/minority districts makes its use necessary.

Your response to the RFP outlined how you would create race data: “For political data to be available for the racial bloc voting analysis and other studies, Election Data Services, Inc. proposes first to geocode a statewide registered voter file and then allocate votes for candidates and voter registration and turnout statistics among census polygons in the TIGER/Line files based on the number of registered voters in each polygon. As soon as the 2010 PL 94-171 data file is released in March 2011, the election data will be disaggregated again, this time based on the voting age populations (VAP) of the census blocks in TIGER. Results of the two methods will be compared, and the General Assembly will be able to choose which type of disaggregated data to use for plan modeling.” You specifically included among your proposed studies and consulting services, “Racial bloc voting analysis for plan modeling and litigation support, if necessary, to determine if voting in Rhode Island is polarized by race.”

Even more particularly, your proposal included a separate section on racial bloc voting analysis, in which you stated: “The racial bloc voting analysis will be conducted by Kimball Brace and Dr. Bill Rives, participating in the study as a subcontractor. The analysis will produce a series of

reports that will be provided to the General Assembly along with conclusions of the study team. Because the analysis requires demographic data from the 2010 census, the team's conclusions cannot be presented before May 2011." Your proposed timetable had the racial bloc voting analysis as taking place between January and August 2011, and estimated the cost of the analysis at \$67,385. While the contract does make clear that E.D.S., in providing "all services in a professional and timely manner," would "not be held responsible for any delay beyond their reasonable control," no explanation has been given as to why this part of the analysis was never done, much less not presented by August of last year. We cannot conceive of any "reasonable" basis for its absence.²

3. Redistricting Commission Hearings

We have not attempted to set out a comprehensive review of discussion at the many redistricting meetings that were held last year, but simply wish to point out a few highlights from the last few months where the issue of racial bloc voting data was raised. Although proponents of the final plan have made many references to the many public hearings that the Commission held around the state to receive public input, that input largely remains meaningless if the data necessary to provide an informed analysis is kept unavailable from the public. That is precisely the situation our groups were faced with.

We are not aware of any discussion by you at these meetings as to why the racial bloc data, which would have been expected by August 2011, was never made available. But the absence of this data was regularly mentioned from the November 28, 2011 meeting of the Commission onward. At that meeting, for example, you informed the commission that you were "endeavoring to pull out" various citizenship data from the American Community Survey" and that you had "concentrated on getting the data set more exact and more together as opposed to just creating minority districts."

At the December 7 meeting, Sen. Pichardo inquired as how determinations about majority-minority districts were made: You noted that the "courts have generally said in their court cases that you could look at percent non-white if it could be demonstrated that the various racial groups that make up the non-white vote similarly, and if they don't vote similarly then it's not possible to look at them as a potential majority in the district because they're going to vote differently ... We have not studied that completely as it relates to the city of Providence and the state, but that's something that could be looked at. But that's a much more in-depth analysis of the election results." Later in that hearing, the RI ACLU, Common Cause RI, and the Urban League of RI all testified that no further decisions should be made until the necessary data was provided to the public and the Commission. John Marion from Common Cause specifically referenced the contract and the \$67,385 contained in it for racial bloc voting analysis. You replied that this analysis takes a long time, that you had not billed the state for that yet, and that you would strive to make that available.

At the Commission's December 12th meeting, Mr. Marion again asked for the racial bloc voting data. As noted in the minutes, you responded, "We are continuing to strive to make it available. I will say, that in terms of all of these districts, that information is good when you have a lot of districts so you can evaluate as you're balancing between districts whether one is effective or not."

² We note, as you have, that Rhode Island inexplicably decided not to participate in Phase 2 of the 2010 Census Redistricting Data Program, which would have directly provided more detailed geographic electoral data that could have been useful in this regard. But that decision was made very early in the process, so it cannot excuse E.D.S.'s later failure to prepare or provide the data that was part of the RFP and agreement with the state.

On December 15, 2011, the three organizations continued to raise concerns about the missing racial voting bloc data, pointing out that a useful and complete assessment of the new maps could not be made without this data. Indeed, in light of the seriousness of this lack of data, Mr. Marion called on the commission to suspend taking any further action until the information was provided.

In sum, the RFP and contract were premised on the availability and use of racial bloc voting data to draw district lines and ensure proper representation of racial minorities in the state in the drawing of those lines; the limited data available suggests that proper representation has not been ensured; and no explanation has been provided for this extraordinary lapse. Although, regrettably, it is too late to make use of this data to draw the district lines to better protect minority voters, we believe it is incumbent upon you to make that data available for review in accordance with the contract and to explain why it was not done in the timeframe expected.

Your prompt attention to this request is appreciated. In responding to this letter, for purposes of simplicity, you can contact John Marion at Common Cause [245 Waterman Street, Suite 400A, Providence 02906; 861-2322] or Hillary Davis at the ACLU [128 Dorrance Street, Suite 220, Providence 02903; 831-7171], who will share your response with all the signatories.

Sincerely,

John Marion
Common Cause Rhode Island

Steven Brown and Hillary Davis
Rhode Island Affiliate, American Civil Liberties Union

Tish DiPrete
Urban League of Rhode Island

Nick Figueroa
Univocal Legislative Minority Advisory Coalition

Jim Vincent
NAACP, Providence Branch

Gertrude Jones
National Coalition of 100 Black Women, Rhode Island Chapter

cc: The Hon. Gordon Fox
The Hon. Teresa Paiva Weed
The Hon. Michael McCaffrey
The Hon. Stephen Ucci
Thomas Falcone