



## MEMORANDUM

**To: Mayor Stodola & Members of the Board of Directors**

**By: Thomas M. Carpenter**  
City Attorney

A handwritten signature in blue ink, appearing to read "T. Carpenter", written over the printed name.

**Re: Legal and factual issues/  
Modification of size of the Board of Directors**

**Date: 19 June 2018**

---

When Director Hendrix announced that she would introduce an ordinance to modify the method of selection for the Board of Directors, several questions were asked about the history of the Little Rock Board of Directors. Director Richardson, for example, wished to have some history on the City's use of the city manager form of government, and also wanted information about persons who have served on the Board of Directors since 1957. Mayor Stodola was interested in legal issues as to the ordinance, and also if there were other cities that had the current 7-3-1 system.<sup>1</sup> This memorandum sets forth the questions that have been posed to this office and the responses.<sup>2</sup>

**1. *How the City arrived at the current form of governing, what other forms did Little Rock have, what where the changes, and why?***

At the beginning of the 20<sup>th</sup> century, a council-manager form of government became a possibility. The first municipality to adopt it was Staunton, Virginia in 1908. The first major city was Dayton, Ohio, in 1914. This plan has a professional city manager who carries out the policy directives and legislative actions of the elected city council. The city

---

<sup>1</sup> Throughout this memorandum, 7-3-1 refers to the current structure of an 11-member Board of Directors. The Mayor is directly elected; seven members are elected by district; three members are elected at-large.

<sup>2</sup> Information for this memorandum was supplied by Special Projects Administrator Scott Carter. His assistance is greatly appreciated and gratefully acknowledged here.

OFFICE OF THE CITY ATTORNEY

Memorandum to Mayor Stodola & Members of the Board of Directors  
Re: Legal and factual issues| Modification of size of the Board of Directors  
19 June 2018: Page 2 of 14

manager has a great deal of control over fiscal matters and serves as the head administrative officer for a municipality. Because the city manager is not an elected position, the tenure of the position is considered more secure than that of an elected official.<sup>3</sup> It appears that the City was initially governed by an elected mayor and an appointed city council.<sup>4</sup> The key is that the City operated under some form of mayor-council system until 1957. In 1957, there were four forms of municipal government in Arkansas: mayor-council; management; commission; and, administration.

Arkansas law has permitted the management form of government since 1921. 1921 ARK. ACTS 99. In 1956, the Little Rock City Council published a proclamation for an election to be held 06 November 1956 on whether to adopt the city manager form of government.<sup>5</sup> The successful election resulted in the current management form of government. The original Board of Directors took office on November 11, 1957. The new members, elected at-large were:

Position 1	Warren Baldwin	2424 South Louisiana
Position 2	Hardy L. Winburn	501 North Elm Street
Position 3	Lucy Dixon	615 East 21 <sup>st</sup> Street
Position 4 (Assistant Mayor)	G. W. Blankenship	4201 West 13 <sup>th</sup> Street
Position 5	Leo H. Griffin	38 Edgehill Road
Position 6 (Mayor)	Werner C. Koop	6 Ozark Point
Position 7	Letcher L. Langford	920 West 2 <sup>nd</sup> Street

<sup>3</sup> See, Osborne M. Reynolds, Jr., *Local Government Law* (2<sup>nd</sup> Ed.2001) § 22 at 63-64 (West 2001).

<sup>4</sup> See, Kiril Kolev, Jay Barth, Lora Adams & Brett Hill, *Governance in Little Rock, Arkansas: At-Large and District Elections and the Impact on Representation* at 3 (Arkansas Policy Program).

<sup>5</sup> See, Little Rock, Ark., Ordinance No. 10,329 (October 22, 1956). The election proclamation was issued on October 10, 1956.

OFFICE OF THE CITY ATTORNEY

Memorandum to Mayor Stodola & Members of the Board of Directors  
Re: Legal and factual issues| Modification of size of the Board of Directors  
19 June 2018: Page 3 of 14

The Board of Directors appointed one member as the Mayor,<sup>6</sup> and another member as the Assistant Mayor.<sup>7</sup> The Board also took a number of steps to implement the new form of government. However, this could not occur until the Arkansas Supreme Court rejected a legal challenge to the election process. *Mann v. Lowry*, 227 Ark. 1132, 303 S.W.2d 889 (1957).<sup>8</sup>

This method of election of members of the Board of Directors, and the selection of the Mayor, continued without change for 30 years. However, some members of the public expressed a desire for the Mayor to speak for the City. An appointed Mayor did not seem to possess such authority..

In 1987, Act 840 was approved by the General Assembly. This Act authorized a municipality of 30,000 or greater with a city manager government to elect some members from wards, some at-large, and directly elect the mayor. The Board of Directors adopted Little Rock, Ark., Resolution No. 7785 (May 27, 1987) which indicated support of the options provided in Act 840.

On July 7, 1987, the Board passed Little Rock, Ark., Ordinance No. 15,311, to begin implementation of a new election scheme. This ordinance called for four wards, two directors elected at large, and one directed elected at-large who would be the Mayor. A challenge to the constitutionality of the statute was filed. Although upheld in the trial court, the Arkansas Supreme Court ruled that Act 840 was unconstitutional local legislation which violated Amendment 14 of the Arkansas Constitution. *Owen v. Dalton*, 296 Ark. 351, 757 S.W.2d 921 (1988).

---

<sup>6</sup> Mayor Knoop was selected unanimously to serve as Mayor during the November 11, 1957 meeting. Assistant Mayor Blankenship was selected at the November 18, 1957 meeting. MINUTES OF THE LITTLE ROCK BOARD OF DIRECTORS 1957-1960 at 198, 202.

<sup>7</sup> The position of Assistant Mayor is the nomenclature used in the state statute. It has been traditionally referred to as the "Vice Mayor," by this Board. Ark. Code Ann. § 14-47-117 (West Supp. Pamph. 2018), *the present codification of* 1921 ARK. ACTS 99, § 8 and 1957 ARK. ACTS 8, § 6, as later amended.

<sup>8</sup> The major question was whether 1957 amendments to the city manager statute which were approved by the General Assembly and the Governor *after* the election to adopt the city manager form of government, but *before* the election of the initial Board of Directors, required a separate election. The Arkansas Supreme Court rejected such an argument.

Memorandum to Mayor Stodola & Members of the Board of Directors  
Re: Legal and factual issues| Modification of size of the Board of Directors  
19 June 2018: Page 4 of 14

While the original city manager statutes called for a seven-member board of directors elected at-large (with an appointed Mayor), over the years there were certain modifications. One permitted a combination of ward and at-large positions. Another allowed a directly elected Mayor with a population in excess of 15,000 but less than 29,999. The third option, which was the purpose of Act 840, granted additional discretion.<sup>9</sup>

The Court found that the amendment in Act 840 really did not make any sense from a policy standpoint, so it only applied to the City of Little Rock. While it was possible that the City of Hot Springs might be able to take advantage of the statute in the future, there was still no rational basis behind the legislation except to benefit the City of Little Rock. As a result, in a 4-3 opinion the Court declared the statute unconstitutional local legislation in violation of Amendment 14 of the Arkansas Constitution. This amendment was approved in the 1920's as a ban on legislation that was intended to benefit only one area or one group.

At the first meeting of the Board in 1992, it was decided that a Goal Setting Steering Committee would be appointed.<sup>10</sup> After three special meetings to discuss this topic, the following individuals were appointed to the steering committee: Co-Chair Robert Johnston; Co-Chair Les Hollingsworth; Co-Chair David Jones; Co-Chair Gaston Gibson.<sup>11</sup> Two days later at a fourth special meeting a motion was made to create a community goal setting and strategic planning program called *FUTURE-LITTLE ROCK*. In addition to naming the heads of the program, it was also decided:

*to create a task force on governance of the City of Little Rock co-chaired by Director Lottie Shackelford and Director Hamp Roy with other members of the task force to be appointed by the Steering Committee.*

MINUTES OF THE BOARD OF DIRECTORS FOR JANUARY 17, 1992 at 1., [emphasis added].

The Government Task Force reviewed the three systems of municipal government permitted in Arkansas: (1) Aldermanic (mayor-council); (2) Administrator; (3)

---

<sup>9</sup> See *Owen v. Dalton*, 296 Ark. 351, 365, 757 S.W.2d 921, 929 (1988) (Glaze, J., concurring).

<sup>10</sup> MINUTES OF THE BOARD OF DIRECTORS FOR JANUARY 7, 1992 at 1.

<sup>11</sup> MINUTES OF THE BOARD OF DIRECTORS FOR JANUARY 17, 1992 at 1

OFFICE OF THE CITY ATTORNEY

Memorandum to Mayor Stodola & Members of the Board of Directors  
Re: Legal and factual issues| Modification of size of the Board of Directors  
19 June 2018: Page 5 of 14

Management. While Arkansas has a statutory Home Rule statute, it is not really a home rule state. Despite language that appears to provide autonomy to local governments, the Arkansas Supreme Court does not hesitate to rein in such autonomy when it desires.

Eventually, it was concluded that the City should maintain the management form of government. Two questions arose: (1) How should be Mayor be selected; (2) How should members of the Board of Directors be elected. On the latter question, there was a strong belief that greater geographic representation was important. So, agreement was reached that there would be ward directors. However, there was also concern that there should be some at-large representation to assure that each voter in a ward knew they had a direct interest in more than one Board member and the Mayor.

For the Mayor's position the question was what needed to be done to assure that the person elected as Mayor could effectively speak on behalf of the City. Since 1957, plurality elections were all the City required and there was great interest in maintaining that approach. Finally, a decision was made that a person could be elected Mayor without a runoff if they received 40% of the vote in the general election. If not, there would be a runoff election between the top two candidates. This plan – the 7-3-1 plan – was the recommendation made by Future-Little Rock and accepted by the Board of Directors.

On June 1, 1993, Little Rock, Ark., Ordinance No. 16,435 was passed which set forth the selection of this new government. The election called for in the ordinance was held on July 27, 1993. As a result, the size of the Board of Directors expanded from seven to 11 with a directly elected Mayor. Pursuant to statute, a special election was held to select the four additional members from wards. The successors of the sitting at-large Directors would be selected from positions chosen by lot. So, if At-Large No. 4 drew Ward 3 by lot, the successor would be elected from Ward 3.

It was concluded that the Mayor and as many ward representation as possible should be selected in the first general election under the new 7-3-1 system. Six wards, and the directly elected Mayor, were elected on November 16, and took office on December 7, 1993. This left three at-large positions and one ward position to be elected two years later.

The question of the power of the Mayor arose again in 2007. Legislation was introduced that became Act 689 of 2007. This Act provided the Mayor with the same powers as the City Manager, allowed the Mayor a salary that was commensurate with that of the highest paid municipal official, and clarified that the position is a full-time position. While Mayor

Memorandum to Mayor Stodola & Members of the Board of Directors  
Re: Legal and factual issues| Modification of size of the Board of Directors  
19 June 2018: Page 6 of 14

Jim Dailey had treated the position as such, there was no requirement that any future Mayor do so. On June 12, 2007, after numerous public meetings, Little Rock Ordinance No. 19,761 was passed and called for an election to approve the modifications for the duties of the Mayor. This successful election was held on August 14, 2007.

The 7-3-1 with a directly elected Mayor who has the same powers as the City Manager in a full-time position is the current governance situation within the City. The proposal offered by Director Hendrix decreases the size of the Board of Directors from 11 to eight (8). Seven Directors would be elected by ward; the election of the Mayor would not change.

***2. Impact if an election is held on the proposed ordinance.***

***a. Implementation of the election results***

A question has been asked about the impact of passage of the ordinance Director Hendrix proposes, and the holding of an election. There are really two questions: (1) How would a successful election be implemented; (2) Does this election have any impact upon future elections as to the governance of the City.

The implementation of the results of a successful election is governed by statute. The implementation takes place at the first meeting of the Board of Directors once the results are certified. Because the proposed ordinances decreases the size of the Board of Directors, the following provision applies:

If an option is selected that decreases the existing size of the board of directors, including the position of mayor, *then at the first meeting after the results of the election have been certified*, the mayor shall prepare slips of paper for each member of the board of directors, upon which will be imprinted the designation of the director positions that will remain after the decrease, whether at-large or ward positions, or a directly elected mayor. The remaining slips of paper shall remain blank.

The members of the board of directors shall draw one (1) slip of paper, and *the words imprinted on the slip drawn by each member shall determine the position for which that member's successor will be selected.*

Memorandum to Mayor Stodola & Members of the Board of Directors  
Re: Legal and factual issues| Modification of size of the Board of Directors  
19 June 2018: Page 7 of 14

*Directors drawing a blank slip of paper shall not be succeeded upon the expiration of their terms of office.*

Ark. Code Ann. § 14-61-117 (4)(A)(i)(ii)(iii) (West 2004)[emphasis added]. The size of the Board of Directors will definitely decrease in 2020. It is not clear exactly how that will be accomplished. For example, if At-Large Positions 8, 9 and 10 and Ward 4 draw the blank slips, then the reduction is complete in 2020 since no replacements will be selected. However, if three ward positions, other than Ward 4, draw blank slips. While the reduction will still be complete in 2020, the incumbents in the four selected wards either have to run for reelection if their ward position is up for election, or will have to step down because there is no seat available for them to seek.

***b. Impact on future elections.***

If an election is held, regardless of the outcome, the Board of Directors cannot immediately offer a different option for consideration.

Notwithstanding any other provision, the board of directors in a city operating under the management form of government may, by a two-thirds (2/3) vote of all the members, including the mayor, refer to a special or general election, for approval by a majority of the qualified electors voting on the issue, one (1) of the options set forth in § 14-61-107, *provided no election on a board-referred option has been held within the previous two (2) years.*

Ark. Code Ann. § 14-61-114 (a)(1) (West Supp. 2018) [emphasis added].

As to the adoption of another form of municipal government, if the proposal of Director Hendrix proceeds to election and fails, there cannot be an election for two (2) years. However, if it passes, there cannot be an election for four years.

(4) Once the election has been held pursuant to the provisions of any act that results in a change in the manner of selecting the governing body of a city with the manager form of government or seeks to reorganize a manager-government city under any other form of government, then none of the options presented by this chapter or any act concerning the

Memorandum to Mayor Stodola & Members of the Board of Directors  
Re: Legal and factual issues| Modification of size of the Board of Directors  
19 June 2018: Page 8 of 14

organization of the government under any form of municipal government may be submitted to the voters for a period of four (4) years from the date of the election; and

(5) ...if an election held pursuant to the provisions of any act fails to result in a change in the manner of selecting the governing body of a city with the manager form of government or fails to reorganize such a city under any other form of government, then no other petitions seeking to adopt any of the options presented by this chapter or to reorganize the city under any form of municipal government may be submitted to the voters for a period of two (2) years from the date of the selection.

Ark. Code Ann, §§ 14-61-113 (4) (5) (West Supp. 2018).

### ***3. Racial and Gender composition of the Board of Directors***

Attached as exhibits to this memorandum is information that identifies the various members of the Board of Directors since 1957. Also included is a breakdown by gender and race of the persons who have served on the Board of Directors. The terms of the various members of the Board of Directors has been provided, as well as the addresses at which the Director lived when elected to the Board.

The make up of the initial Board was all Caucasian. There were six men and one woman. This was the basic make-up from 1957 through 1964. However, from 1965 to 1977, there were no women on the Board.

In 1969 Mr. Charles Bussey became the first elected African-American male. In 1973, Mr. Bussey was joined by Mr. Perlesta A. "Les" Hollingsworth to increase African-American membership to two males. In 1977, two females – Myra Jones and Lottie Shackelford – were both members of the Board of Directors, so the Board had one Caucasian and one African-American female. Mr. Bussey returned to the Board in 1979 and served with Ms. Shackelford and Ms. Jones until January, 1985.

From January 1985 through 1986, both Mr. Bussey and Ms. Shackelford were African-American representatives on the Board. They were joined as minority representatives in January, 1987, by Ms. Sharon Priest, a Caucasian female. The Board maintained this level



Memorandum to Mayor Stodola & Members of the Board of Directors  
Re: Legal and factual issues| Modification of size of the Board of Directors  
19 June 2018: Page 9 of 14

of diversity through 1990. In January, 1991, the Board included three females – Ms. Priest, Ms. Shackelford, and Ms. Meredith Catlett – and one African-American male – Mr. John Llewellen – through the end of 1992.

The year 1993 is when the City expanded the Board of Directors to eleven members under the 7-3-1 system. In January 1993, before implementation of the 7-3-1- system, the seven member Board included two Caucasian females, and two African-American males. In December, 1993, after implementation of the 7-3-1 system, six of the 11 members of the Board of Directors were minorities. The Caucasian females included Ms. Priest, Ms. Adcock, and Ms. Linda Joyce. An African-American female – Ms. Erma Fingers Hendrix – was elected to a position from Ward 1. Two African-American males – Mr. Llewellen and Mr. Mason – continued to serve.

The Mayor became a directly elected position in 1995. Mayor Jim Dailey initially served in this position. Minority membership on the Board of Directors included three African-Americans – Ms. Gloria Wilson, Mr. Willie Hinton, and Mr. Mason – and three females – Ms. Adcock, Ms. Wilson, Ms. and Ms. Joyce. Denoting females, regardless of race, as minorities for purposes of election law, the Board of Directors has had at least five minority members ever since. There has also been minority male participation throughout this period.

The current make-up of the Board of Directors includes three African-Americans, and six females (two of whom are African-American). In short, a majority of the Board of Directors is a member of a group that has been treated as a minority for election law purposes; two of these members qualify as a minority in terms of both race and gender.

#### ***4. Possible legal challenge to the current 7-3-1 system.***

The final question to be addressed asked is whether the current 7-3-1 system is subject to successful legal attack if the proposed eight (8) wards and directly elected mayor is not adopted. A review of the law and the cases that have interpreted the federal Voting Rights Act (“VRA”) suggests not. There were essentially two challenges available pursuant to the VRA – under Section 2, or under Section 5. Section 5 was a statutory mandate for federal preclearance of any change in a previously approved election scheme, and it applied only

Memorandum to Mayor Stodola & Members of the Board of Directors  
Re: Legal and factual issues| Modification of size of the Board of Directors  
19 June 2018: Page 10 of 14

to governments expressly identified in the VRA.<sup>12</sup> Neither Arkansas, nor Little Rock, was made subject to this provision.

Any VRA challenge would have to allege and prove that the 7-3-1 plan has a disparate impact upon access by minorities to the political system. In other words, does the 7-3-1 system impair the opportunity of minorities “to participate in the political process and to elect representatives of their choice.” See *Thornburg v. Gingles*, 478 U.S. 30, 34 (1986). This is a Section 2 results oriented examination based upon a statute that reads as follows:

A violation...is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of [protected] citizens in that its member have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.*

52 U.S.C. § 10301 (b) [emphasis added]. Another term used for this type of legal challenge is “vote dilution.”

In *Thornburg v. Gingles*, the U.S. Supreme Court expressly held that at-large election systems “are not *per se* violative of minority voters; rights.” 478 U.S. at 48. For a successful challenge to any at-large election scheme, the plaintiffs must prove that use of such elections minimizes or cancels out the ability of the minority to elect its preferred candidate. *Id.* To do so, the plaintiffs must prove:

---

<sup>12</sup> Section 5 provision required federal preclearance – prior approval -- of any modification of a state or local election scheme. Its scope was limited to certain jurisdictions expressly found by the U.S. Congress to have been racially discriminatory in the past. However, the U.S. Supreme Court essentially set aside a Section 5 challenge and held the provision unconstitutional. *Shelby County v. Holder*, 570 U.S. 529 (2013).

Memorandum to Mayor Stodola & Members of the Board of Directors  
Re: Legal and factual issues| Modification of size of the Board of Directors  
19 June 2018: Page 11 of 14

- (1) Under the totality of the circumstances, the at-large elections results in unequal access to the electoral process;
- (2) This must be shown by more than a lack of proportional representation; and,
- (3) It is proven that there is racial bloc voting.

*Id.* at 46. In short, the mere fact that at-large elections have not resulted in the election of more minorities since the 7-3-1 system was implemented is not determinative.

***a. Unequal access to the political process.***

The unequal access to the electoral process prong is clearly not present. There is no partisan nominating process that could be used to block access to the slate of candidates. To be nominated for a position on the Board of Directors – at-large, or by ward – requires merely 50 signatures of qualified electors on a petition. Ark. Code Ann. § 14-47-110 (a)(3) (West Supp. Pamph. 2018). There is no filing fee involved.

***b. More than a lack of proportional representative is established.***

The current Board of Directors includes seven females and four males:

FEMALE	MALE
Director Hendrix (Ward 1)	Mayor Stodola
Vice-Mayor Webb (Ward 3)	Director Hines (Ward 5)
Director Peck (Ward 4)	Director Kumpuris (At-Large)
Director Wright (Ward 6)	Director Fortson (At-Large)
Director Wyrick (Ward 7)	
Director Adcock (At-Large)	

According to rough estimates from the U.S. Census Bureau<sup>13</sup> as of July 17, 2017, the female population in Little Rock was 52.1%. The voting age female population is grossly

<sup>13</sup> This illustration is in no way intended to be statistically accurate. The 63.3% membership of the Board of Directors by females is determined simply by dividing 7 by 11. The 52.1% estimated female population

OFFICE OF THE CITY ATTORNEY

Memorandum to Mayor Stodola & Members of the Board of Directors  
Re: Legal and factual issues| Modification of size of the Board of Directors  
19 June 2018: Page 12 of 14

estimated to be 40.1%. So, the 63.6% female make-up of the Board of Directors is in excess of its percentage within the City voting age population.

Using data only for the white alone population, and Black or African-American alone population, the white population is 46.3%, and the African-American Population is 41.9%.<sup>14</sup> The current Board of Directors has three African-American members and eight white members. All of the African-American members are currently elected from wards.

AFRICAN-AMERICAN	WHITE
Director Hendrix (Ward 1)	Mayor Stodola
Director Richardson (Ward 2)	Vice-Mayor Webb (Ward 3)
Director Wright (Ward 3)	Director Peck (Ward 4)
	Director Hines (Ward 5)
	Director Wyrick (Ward 7)
	Director Kumpuis (At-Large)
	Director Fortson (At-Large)
	Director Adcock (At-Large)

At present, 27.2% of the members of the Board of Directors are African-American. Again, using a rough estimate of the voting age population and assuming an equal distribution between white and African-American voters, the voting age African-American population is only 29.9% of the population. Under this scenario, it may not be possible to prove a significant differential.<sup>15</sup>

---

in Little Rock is taken from *U.S. Census Bureau Quick Facts: Little Rock city, Arkansas*, [www.census.gov/quickfacts/fact/table/littlerockcityarkansas/PST045217](http://www.census.gov/quickfacts/fact/table/littlerockcityarkansas/PST045217) (last accessed June 19, 2018). The female voting age population is determined by taking the percentage of females and subtracting 12% to note the 23.7% under-18 population); however, this does not take race of the female into consideration.

<sup>14</sup> ID.

<sup>15</sup> ID. Again it is necessary to caution against any reliance on these figures. There are not statistically determined and are not the kind of information that would be admissible in evidence to establish a fact. These figures also do not consider whether there is racial bloc voting, or what percentage of votes from a voter of another race any candidate would receive.

Memorandum to Mayor Stodola & Members of the Board of Directors  
Re: Legal and factual issues| Modification of size of the Board of Directors  
19 June 2018: Page 13 of 14

These figures, as has been noted, should not be relied upon for any evidentiary determination that there can be no finding of a significant disparity in the percentage of voters by race, and the percentage of members of the Board of Directors by race. In fact, the ability to make the statistical analysis is quite time-consuming, requires expert witnesses, and considers a variety of factors. *See, e.g.,* KATZ, ELLEN, *Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982* (2005); POWERS, JOHN M., *Statistical Evidence of Racially Polarized Voting in the Obama Elections, and Implications for Section 2 of the Voting Rights Act*, 102 Geo. L. J. 881 (1988).

It is also clear that one election will not be sufficient to make a determination of any Section 2 results violation. The inability to win a particular election does not meet the Section 2 test. *See Thornburg v. Gingles*, 478 U.S. at 30. The concern is not the defeat of any certain individuals, but the subordination of a minority group. *Id.*

The all at-large process formally used by the City was unsuccessfully challenged under the VRA. *Leadership Roundtable v. City of Little Rock*, 499 F.Supp. 579 (E.D. Ark. 1980), *aff'd*, 661 F.2d 701 (1981)(per curiam). The District Court reviewed the issue from numerous viewpoints and anticipated the standard that was eventually adopted by the U.S. Supreme Court in *Thornburg*. As the various exhibits show, there has been minority representation on the Board of Directors continually since *Leadership Roundtable*. If women are included as a minority for election law purposes, this representation has been significant.<sup>16</sup>

On this point, then, there is nothing to suggest that the City is clearly in violation of the VRA. There is also nothing to suggest that the City would be found in violation of the VRA if it does not accept a proposal to abolish the at-large positions. Even so, as briefly outlined above, if challenged the City will be involved in an expensive legal battle. The issues in a VRA case have to consider housing patterns, living patterns, voting patterns, and numerous other issues besides a simple differential between the percentage of the race or gender of elected officials, or of defeated candidates. Not discussed here is whether there is proof of racial bloc voting, particularly when there is more than one candidate of a particular race;

---

<sup>16</sup> Ironically, five of the seven wards on the present Board of Directors are female. Yet, research tends to show that ward elections favor males over females. TROUNSTINE, JESSICA & VALDINI, MELODY E., *The Context Matters: The Effects of Single-Member versus At-Large Districts on City Council Diversity* (2008).

OFFICE OF THE CITY ATTORNEY

**Memorandum to Mayor Stodola & Members of the Board of Directors**  
**Re: Legal and factual issues| Modification of size of the Board of Directors**  
**19 June 2018: Page 14 of 14**

if not, then another prong of the elements of proof the U.S. Supreme Court and the U.S. Congress have established is not met.

As a result, how to proceed with the vote in this matter is strictly a policy question for the Board of Directors. It is not an overt legal issue.

TMC:ct

cc. Bruce T. Moore, City Manager  
James E. Jones, Assistant City Manager  
William C. Mann, Chief Deputy City Attorney  
Scott Carter, Special Projects Administrator  
Lamor L. Williams, Communications & Marketing Manager  
Debbie Wisdom, Law Office Coordinator