

ARIZONA INDEPENDENT REDISTRICTING COMMISSION

Monday, January 9, 2012
5:26 p.m.

Location

**Fiesta Inn (Fiesta Ballroom I - Conference Center)
2100 South Priest Drive
Tempe, Arizona 85282**

Attending

Colleen C. Mathis, Chair
Jose M. Herrera, Vice Chair
Linda C. McNulty, Commissioner

Ray Bladine, Executive Director
Buck Forst, Information Technology Specialist
Kristina Gomez, Deputy Executive Director
Stu Robinson, Public Information Officer

Mary O'Grady, Legal Counsel
Joe Kanefield, Legal Counsel
Bruce Adelson, Legal Counsel
Dr. Gary King (via teleconference)

Reported By:
Marty Herder, CCR
Certified Court Reporter #50162
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1 Tempe, Arizona
2 January 9, 2012
3 5:26 p.m.

4
5 P R O C E E D I N G S

6
7 (Whereupon, the public session commences.)

8 CHAIRPERSON MATHIS: Good afternoon -- evening.

9 This meeting of the Arizona Independent
10 Redistricting Commission will now come to order.

11 Today is Monday, January 9th. Happy New Year,
12 everyone. And the time is 5:26 p.m.

13 Let's start with the Pledge of Allegiance.

14 (Whereupon, the Pledge of Allegiance was recited.)

15 CHAIRPERSON MATHIS: Let's start with roll call.

16 Vice-Chair Freeman.

17 (No oral response.)

18 CHAIRPERSON MATHIS: Vice-Chair Herrera.

19 VICE-CHAIR HERRERA: Here.

20 CHAIRPERSON MATHIS: Commissioner McNulty.

21 COMMISSIONER McNULTY: Here.

22 CHAIRPERSON MATHIS: Commissioner Stertz.

23 (No oral response.)

24 CHAIRPERSON MATHIS: We have a quorum.

25 And we know that Commissioner Stertz can't make it

1 tonight, but we think that Commissioner Freeman may be able
2 to dial in for a portion, so we'll be listening in for him
3 to dial in.

4 Other folks at the table today include our legal
5 counsel, Bruce Adelson, Joe Kanefield, and Mary O'Grady.

6 Our mapping consultant, Willie Desmond and Ken
7 Strasma.

8 Marty Herder is taking an accurate transcript of
9 tonight's proceedings.

10 Our chief technology officer, Buck Forst, is in
11 the room, as is our executive director, Ray Bladine, and
12 executive deputy director, Kristina Gomez.

13 I think that's it for everybody.

14 And then we have a couple folks on the line. And
15 that gets us to our next agenda item actually.

16 We have Dr. Gary King and Ben, I believe, who have
17 dialed in and will be providing a report to us regarding the
18 voting rights analysis of proposed legislative and
19 congressional districts.

20 And it sounds like there's a big delay on the
21 phone, so I apologize for that.

22 But, Dr. King and Ben, can you hear us well?

23 DR. GARY KING: I'm here. Hello. We can -- it's
24 a little easier to hear through the, through the website
25 than the phone, but we just went.

1 CHAIRPERSON MATHIS: Great.

2 So was the idea then that Dr. King would be
3 presenting their results of his report first, or did legal
4 counsel have something to say first, or Ken?

5 MARY O'GRADY: I think we're going to start with
6 the presentation, unless Ken has something he'd like to add.

7 But there were written slides or written materials
8 that we've distributed to the Commission.

9 Since this was all prepared at direction of
10 counsel, it would be work product, but our recommendation is
11 that be provided to the public as well, as staff is now
12 doing.

13 So we wanted to make sure the Commission
14 authorizes that distribution as they have previously.

15 So if you could just agree that that should be
16 made public, the materials that we're going to be reviewing.

17 CHAIRPERSON MATHIS: Yes, I would agree that they
18 should be made public.

19 Ray is wiping his brow.

20 And I should also note Dr. King is from the
21 Institute for Quantitative Social Science at Harvard
22 University.

23 And, Ben, if you wouldn't mind saying your last
24 name. I don't have that in front of me. I would --

25 BEN SCHNEER: Sure. My name is Benjamin Schneer.

1 I'm a graduate student at Harvard University.

2 CHAIRPERSON MATHIS: Great. Thank you.

3 Okay. With that, I think, Dr. King, if you're
4 ready to roll, we're ready.

5 DR. GARY KING: Sure.

6 Okay.

7 Can you hear me now?

8 CHAIRPERSON MATHIS: We can.

9 DR. GARY KING: Maybe if somebody could move
10 the -- where the speaker is somewhere close to somebody in
11 case I ask questions, because it's pretty difficult to hear
12 unless I have the video on, and the video has got a delay.
13 So I don't know where -- I don't know -- I can see you, but
14 I don't know where the, where the telephone is.

15 Is that feasible?

16 CHAIRPERSON MATHIS: Yeah. Our chief technology
17 officer is moving the table closer. We'll see if that makes
18 a difference.

19 Can you hear me well?

20 Dr. King, just testing.

21 DR. GARY KING: That sounds a little better.

22 CHAIRPERSON MATHIS: Okay.

23 DR. GARY KING: Is that me in that little box that
24 moved closer?

25 RAY BLADINE: That's right.

1 CHAIRPERSON MATHIS: So we're ready.

2 DR. GARY KING: Are you ready to talk about this?

3 CHAIRPERSON MATHIS: Yes, please.

4 DR. GARY KING: Great. Terrific.

5 So, everybody has a copy of presentation in front
6 of them; is that right?

7 CHAIRPERSON MATHIS: Yes.

8 DR. GARY KING: Okay. All right. So, we'll
9 basically go through this -- these five pages.

10 The first one, I think, is self-explanatory, the
11 first five pages of the draft.

12 And we're going to do -- we'll do congress first.
13 And there will be two pages of congress, and then we'll have
14 the same two pages, same types of analyses for the
15 legislature. And then there will be another page for the
16 legislature a little more complicated.

17 If anybody has any questions, please stop me, and
18 make this a discussion, that would be really terrific.

19 Okay. So overall what we're going to do for
20 congress is first I'm going to -- we're going to talk about
21 racially polarized, the degree of racially polarized voting.
22 And then we're going to talk about the candidate of choice
23 and electability of candidate of choice.

24 So the first page is an analysis of racially
25 polarized voting. Supports do not -- if it turned out there

1 was no -- there were no racially -- there was no racially
2 polarized voting at all, then we wouldn't really have much
3 of a, much of an issue with the Department of Justice.
4 That's sort of a condition of going forward.

5 So, let's look at what the results are here.

6 On this page, as on all of the pages and the
7 graphs that I'm going to show you, there's five separate
8 graphs, one for each, one for each of the statewide offices
9 that we analyzed. And the sixth in the bottom right-hand
10 corner, which is basically just an average of the other
11 five graphs.

12 As you'll see on this page and on the other pages
13 the results for the different analyses, which I'm going to
14 explain. I haven't done that yet. From the different
15 statewide elections are going to be similar. Not the same
16 of course. They're different elections. But they're going
17 to be pretty similar, and therefore the average is similar
18 to all the five separations.

19 So, let me explain the first one to give you a
20 feel for it.

21 So, let's start with the top left-hand corner. So
22 the graph in the top left-hand corner, which we've mine
23 inspector 2010, just so you're oriented. This is Page 2.
24 Page number's at the bottom right-hand corner. And the
25 title is racially polarized voting in CDs or congressional

1 districts. And in parentheses it says CVAP or citizens
2 voting age population.

3 So let's start with the mine inspector graph at
4 the top left.

5 And what this, what this shows is two variables,
6 one on the horizontal axis and one on the vertical axis.

7 On the vertical axis, it's the main minority
8 group, which in this case congress is Hispanic, population
9 proportion, so you can see that number goes from zero on up
10 to one. One is 100 percent.

11 And you can see there are four numbers there.
12 There is two numbers in orange squares. And that's the
13 previous districts. What we call baseline districts.

14 And then there's two numbers that don't have
15 squares around them, and those are the new districts.

16 And as you can see if you project them over to the
17 left, it's about 40 percent Hispanic for the new district,
18 the two new districts and the two old districts.

19 So the height of those four numbers is -- are all
20 at about .4 on the vertical axis. You can see it's about
21 40 percent.

22 So, in other words, no change there.

23 If we take the statewide votes for mine inspector
24 and break it down into the old two -- the two old
25 congressional districts that were minority districts and the

1 two new minority districts, so the same thing on that
2 vertical axis, pretty much the same thing.

3 On the horizontal axis, we have degree of racially
4 polarized voting, which is, which is in this case a specific
5 measure of racially polarized voting, which is the vote for
6 the minority -- excuse me, the minority vote that is the
7 Hispanic vote for the Hispanic candidate of choice.

8 And there's the majority vote for the Hispanic
9 candidate of choice.

10 If everybody was -- if both the majority and
11 minority were voting in the same way for this candidate,
12 in this case the Democratic candidate, then this would be
13 zero.

14 But instead we find that the numbers are between
15 about .3 and about .6. So that's a reasonable -- reasonably
16 high level of racially polarized voting, not at all
17 unexpected, not at all very different from other kinds of
18 states in the United States.

19 So, so that's the mine inspector graph.

20 Before I go into the others, does anybody have any
21 questions?

22 Any questions from anyone?

23 (No oral response.)

24 CHAIRPERSON MATHIS: You can go ahead.

25 DR. GARY KING: Okay. So, so that just gives us a

1 sense that the four districts it's about 40 percent Hispanic
2 and the degree of racially polarized voting is 30 percent.

3 The next thing is we can go over to the right.
4 And you can see the height of these four, these old two
5 districts and the two new districts, which indicates that a
6 Hispanic proportion is going to be about the same because
7 it's not going to change at all when we only change the
8 statewide election that we're going to evaluate.

9 So the degree of racially polarized voting in this
10 election, that is for U.S. president in 2004, is -- you
11 know, it's a little different than the one on the left. Now
12 it's around .2 or .3.

13 So it's similar.

14 If we go to the -- to the U.S. president, 2008, at
15 the middle left, you can see that it looks very similar to
16 the mine inspector election.

17 If we go over to the right it looks very similar.
18 If we go to the bottom left it looks very similar.

19 I think you're getting the, getting the pattern.

20 And you -- and we can average all these together
21 at the bottom right graph, and you'll see, you know, pretty
22 much the same thing.

23 So we presented this graph first because it was
24 simple and straightforward, and we're getting pretty of the
25 same kind of message. No matter how we analyze it, from

1 whichever statewide offices it was a measure of the voting
2 strength of those legislative districts we use.

3 So if everybody's okay with it, I'll go on to the
4 next page.

5 Unfortunately if you shake your heads, it's going
6 to be about 30 -- it's going to be about a minute and a half
7 before I see you shake your heads. So if somebody could go
8 uh-huh, that would be great, or unless you have any
9 questions.

10 CHAIRPERSON MATHIS: Any questions?

11 (No oral response.)

12 CHAIRPERSON MATHIS: Nope, I think we're ready.

13 DR. GARY KING: Okay. Great.

14 So if we turn the page to Page 3, it should say
15 electability of candidate of choice by congressional
16 district.

17 This is in a sense the key, the key graph.

18 I mean, all of the things are essential
19 components, but this is the one that everybody is focusing
20 on.

21 So, so, let me explain what this is.

22 I should mention, by the way, that these graphs
23 that we're showing you now are areal summaries basically of
24 tens of thousands of individual analyses that we've run.

25 We have detailed analyses of how uncertain each of

1 the estimates are.

2 We have, we have extensive reanalyses based upon
3 every -- on all the different proposed plans.

4 We have evaluated it in many, many different ways.
5 So this is basically a broad summary.

6 Okay.

7 So, on Page 3, we have -- let's look again at the
8 top left corner graph. Just give us a feel for it. So this
9 should say mine inspector 2010.

10 And along the horizontal axis, we'll have the
11 estimated main minority vote, which is in this case
12 Hispanic, for what we're -- what we believe is the candidate
13 of choice of, of the minorities, of that minority group,
14 which is Hispanic.

15 As you can see, the placement of the two districts
16 for mine inspector both to the old districts, which are the
17 ones in the squares, and the new districts, which are the
18 ones not in the squares but almost on top of the squares.
19 It's hard to see the difference.

20 Are both on the horizontal axis at about .9.

21 So that means about 90 percent of Hispanics are
22 voting for the Democratic or Hispanic candidate in that
23 district.

24 So, we see -- in that case we're quite confident
25 in being able to say that the Hispanic candidate, or the

1 Democrat candidate in that case is the candidate of choice
2 of the minority community.

3 So that's one, that's one judgment that's an
4 important judgment that we need to make, that who is
5 actually the candidate of choice.

6 Secondly, we want to figure out how well they do,
7 and that's the vertical axis.

8 So the vertical axis here is just the total vote
9 with the vote proportion for that candidate.

10 So you can see both of these candidates are above
11 a horizontal dashed line.

12 And so that indicates that both candidates won.
13 They got more than 50 percent of the vote. One of them
14 got about 60 percent. One of them got about 65 or
15 70 percent.

16 And so both, both, both districts, both under the
17 old plan and under the new plan, fall in the top right
18 quadrant.

19 So they're to the right of the vertical dashed
20 line, which means, again, that the candidate -- that it is
21 the candidate of choice.

22 And above the horizontal dashed line, which means
23 that that candidate is actually winning.

24 So candidate of choice and the candidate is
25 winning.

1 So that's, that's an analysis of those two, those
2 two questions for these, for these districts, using the mine
3 inspector election in 2010 as the -- as a measure of the
4 voting strength in the legislative district.

5 We can do the same thing if we go to the right,
6 which is the vote for U.S. president. And you can see again
7 that all four of those numbers fall -- fall in the same
8 spot, in the top right quadrant.

9 Same thing for U.S. president in 2008.

10 Same thing for secretary of state 2006.

11 Same thing for secretary of state 2010.

12 And you can see in the bottom right corner, it's
13 an average over all the elections. And no surprise, of
14 course, they, they -- the averages also fall in the top
15 right quadrant.

16 So, again, overall here, the old districts and the
17 new districts, it appears that we have correctly identified
18 the candidate of choice of the Hispanic community and also
19 their winning.

20 Okay.

21 So everybody follow this graph?

22 COMMISSIONER McNULTY: Yes.

23 Dr. King, there is Linda McNulty. I just have one
24 minor question.

25 At the bottom of the graphs where we say

1 estimate --

2 DR. GARY KING: I'm sorry. I can't, I can't quite
3 hear you. Maybe somebody -- whoever is asking the question
4 could go a little closer to the microphone or check that
5 there or something?

6 COMMISSIONER McNULTY: Is that better?

7 DR. GARY KING: I just hear echoing.

8 COMMISSIONER McNULTY: Is that better?

9 DR. GARY KING: Yeah, that's great.

10 COMMISSIONER McNULTY: Okay. I'll hold it farther
11 away.

12 The bottom note in each graph says estimated main
13 minority, by main minority we just mean the principal
14 minority which in the case of the congressional districts is
15 Hispanic; is that correct?

16 DR. GARY KING: Yes, exactly.

17 COMMISSIONER McNULTY: Thank you.

18 CHAIRPERSON MATHIS: And, Dr. King --

19 DR. GARY KING: We're going to use exactly the
20 same setup for the legislative districts, and that -- you
21 know, that more generic terminology will make more sense
22 since some of the districts are non-Hispanic.

23 But, anyway, go ahead.

24 CHAIRPERSON MATHIS: Dr. King, this is Colleen.
25 Just a question.

1 How -- can you comment on why these particular
2 races were chosen?

3 DR. GARY KING: They are the ones that the
4 Commission has designated as the majority-minority
5 districts.

6 So we -- we've actually done most of these
7 analyses for every district in the, in the plan.

8 So we're showing you the ones that we've met that
9 the Commission when it eventually passes the plan would go
10 to the Department of Justice and they would end up focusing
11 on.

12 CHAIRPERSON MATHIS: Right. These particular
13 districts.

14 Maybe I misspoke.

15 I mean why these particular races were chosen.

16 DR. GARY KING: Oh, I see.

17 Well, we wanted -- we don't mean to narrow the
18 races.

19 So our theory with respect to the Department of
20 Justice is if they have a different way of looking at the
21 things or therefore if we can think of a different way of
22 looking at things, we'll just do that also.

23 So if you can think of a relevant statewide
24 election that we haven't looked at that's not, you know,
25 unanimous or one candidate, that doesn't -- that isn't

1 complicated by maybe, you know, a very strong third party,
2 you know, that is very unusual.

3 You know, we'll use, we'll use that also.

4 So, and sometimes more -- the more the better.

5 CHAIRPERSON MATHIS: And, Madam Chair, I'll --

6 DR. GARY KING: We'll give you a summary of the
7 many, many analyses we've done.

8 CHAIRPERSON MATHIS: Thank you.

9 Mr. Strasma.

10 KENNETH STRASMA: Just to clarify further, we did
11 look at a number of different elections. We wanted one
12 statewide election with minority candidate for each year the
13 plan has been in effect.

14 We need statewide elections because obviously the
15 lines have changed, so we can't just look at past
16 legislative elections.

17 And we prefer to look at races where there was a
18 minority candidate, which we were able to find in every year
19 except 2004, statewide or a candidate.

20 So there we used president '04, where it indicates
21 that Grant Woods was the candidate of choice of the
22 minority.

23 CHAIRPERSON MATHIS: Thank you.

24 DR. GARY KING: That was a really good question.

25 We don't want to be cherrypicking our basis of

1 analysis, based upon what our results are. We want to use
2 all of the results.

3 As you can see, at least in these five, these
4 five statewide elections, again very similar kinds of
5 results.

6 Which is not really a surprise. That's the kind
7 of thing that happens in most states.

8 But, you know, it can be different, and so it's
9 important that we cast a broad net and look very wide.

10 CHAIRPERSON MATHIS: Thank you.

11 DR. GARY KING: I should, I should mention also
12 there's some of the analyses, these what we're showing you
13 here is a draft. It's the best we have right at the moment.
14 But things change.

15 There's a few numbers that even changed from this
16 morning.

17 So some others may change as well as we, as we
18 improve the analysis.

19 CHAIRPERSON MATHIS: Okay.

20 Ms. O'Grady.

21 MARY O'GRADY: Professor King, this is Mary. And
22 it may be clear to everyone based on what's been said so
23 far --

24 DR. GARY KING: Sorry, I can only -- I just hear
25 echoing.

1 MARY O'GRADY: Okay. Let me try it again.

2 Is this better?

3 DR. GARY KING: Yes, a small amount.

4 MARY O'GRADY: Okay.

5 The mission that we sent -- that we assigned to
6 Dr. King was to give us the analysis that was necessary
7 under Section 5 to analyze the performance of the districts
8 and answer the question do minority voters have the ability
9 to elect the candidate of their choice in at least the same
10 number of districts in the proposed map that we're
11 considering as they do in the benchmark districts.

12 In other words, is it retrogressive.

13 So, Dr. King, I wanted you to comment on the
14 answer to that question based on the charts that you've
15 presented, the analysis that you've completed on the
16 congressional districts.

17 DR. GARY KING: Okay.

18 Shall we, shall we turn to the legislative
19 districts?

20 MARY O'GRADY: I was hoping you could just sort of
21 answer that question just based on the charts, just
22 reiterate your conclusion with regard to whether the
23 congressional maps are retrogressive based on the analysis
24 that you've done and presented.

25 DR. GARY KING: I'm only getting about half --

1 half of the words, but I think I, I think I know what it is
2 that you're asking for.

3 So the Justice Department will ask is, is -- has
4 there been any retrogression; that is, have we gone
5 backwards in any sense in order -- in terms of the
6 probability of electing candidates of choice on average over
7 the -- across the state.

8 And, you know, I can't predict what the Department
9 of Justice would do. But if you look at these numbers, it
10 seems fairly evident that, that this situation is fair -- is
11 pretty much the same from what it was under the last
12 redistricting plan. So I think it would be pretty hard to
13 argue that there was retrogression in any way.

14 And I don't see how you would argue it at all from
15 these numbers, so. . .

16 Does that answer your questionnaire?

17 MARY O'GRADY: Yes, it does. Thank you.

18 DR. GARY KING: Okay.

19 CHAIRPERSON MATHIS: Any other questions?

20 Okay. Feel free to go ahead.

21 DR. GARY KING: Okay. I think you said to go
22 ahead, so that's what I'm going to do.

23 Okay. So, we're going to switch now from the
24 congressional races to the legislative seats.

25 And so if you turn to Page 4, we're now going to

1 do the same two kinds of analyses, and then one more, for
2 the legislative seats.

3 And so on Page 4, there's, there's more districts,
4 because there's more, there's more potentially
5 majority-minority districts.

6 But the basic heuristics are the same. We have
7 the same statewide offices in the six places of this graph.
8 And, and the same axes as the first draft I showed you.

9 So let's, let's go -- let's start with mine
10 inspector 2010 in the top left-hand corner again.

11 And we'll get a feel for what this is.

12 So, again, along the horizontal axis, this is a
13 degree of racially polarized voting.

14 So, the farther to the right, the more polarized
15 the racially polarized voting is. That is the more the
16 Hispanics voted differently from the majority, or in one
17 case the more the Native Americans voted differently than
18 the rest of the district.

19 On the vertical axis is the main minority
20 population proportion. So for most of those it's Hispanic
21 population.

22 Again, the squares designate the old districts and
23 the blue numbers designate the new districts.

24 So overall in the mine inspector election, you can
25 see that for most of the districts there's a fair degree of

1 racially polarized voting.

2 For a couple of them, 15 under the old plan, the
3 26 under the new plan, 26 being an important district that
4 we'll go back to, there's relatively low levels of racially
5 polarized voting.

6 So in that -- for that one race.

7 Everybody follow me so far?

8 CHAIRPERSON MATHIS: I think so, yes.

9 DR. GARY KING: Okay.

10 So, so the main message from the top left graph is
11 that the degree of racially polarized voting is, is, is
12 reasonable -- reasonably substantial.

13 You can see it, but in a couple of the districts
14 it's relatively low.

15 If you go to the right, under U.S. president 2004,
16 you see a fairly similar picture.

17 The degree of racially polarized voting now for
18 about four of the districts, two old and two new -- or
19 actually three new, are pretty close to zero. And the
20 others, the others are higher.

21 It's not, it's not a surprise that there would be
22 some variance across the state. There's some -- this
23 happens in most states.

24 There's some areas -- most areas where there's a
25 fairly healthy degree -- a fairly large degree of racially

1 polarized voting, and in other areas -- in some other areas
2 it would be lower.

3 It appears that in some -- around District 26 in
4 particular, there's a lower degree of racially polarized
5 voting.

6 So, it's pretty much the same message for all
7 five elections here, mine inspector 2010, U.S. president
8 2004, 2008, secretary of state, secretary of state, in 2006
9 and 2007.

10 Then we can just summarize it by going to the
11 bottom right graph, which is the average over all the
12 elections. It's just another way, another way of looking at
13 it.

14 Again, the degree of racially polarized voting for
15 most of the districts is between about .2 or -- to .6.

16 .6 is very high.

17 That's -- that means that Hispanics or
18 Native Americans are getting 60 percent more of the -- or
19 giving 60 percent more of their vote for the Hispanic or the
20 minority candidate of choice than the non-minorities are.

21 And then in some areas it's lower.

22 So, 26 is, as I mentioned, and as you all know of
23 course, is an issue. The question is whether it's really a
24 valid majority-minority district.

25 Well, one reason you're having trouble making it

1 an unambiguous majority-minority district is that the degree
2 of racially polarized voting there is very low.

3 So it's, as you can see in the next graph, it's
4 going to be a little difficult to figure out what the
5 candidate of choice is, because, because the Hispanics in
6 that district are not really voting differently from Whites.

7 So if that it were true across the whole state, it
8 really wouldn't be a Voting Rights Act issue at all.

9 But there is a -- you know, this is a distinct
10 area of the state.

11 Anybody have any questions on this page?

12 CHAIRPERSON MATHIS: No questions.

13 DR. GARY KING: Okay.

14 So that's racially polarized voting.

15 As we turn the page, we'll now go to the
16 electability of the candidate of choice by legislative
17 district. This is Page 5.

18 This, again, parallels what we did in congress.
19 Now applies to the legislative, legislative districts.

20 If we -- to get a feel for it, let's start in the
21 top left-hand corner. So this is, again, mine inspector
22 2010.

23 On the horizontal axis, we used a horizontal axis
24 to figure out whether we've correctly identified the
25 candidate of choice and it's the estimated main minority

1 vote for the candidate of choice.

2 So most of these is, is the estimated Hispanic
3 vote for the Hispanic candidate.

4 Okay.

5 Now, one thing I didn't mention, but just to make
6 it clear, we're estimating how Hispanics are voting.

7 Okay?

8 So there's a law in the United States, it's the
9 rule, which is the secret ballot. So the secret ballot says
10 you may not know how a particular people vote, but there's
11 another rule that says -- that the Justice Department says,
12 or the Voting Rights Act says, that we have to actually
13 figure out how they vote.

14 So there's a degree of uncertainty in figuring out
15 how any group votes, because of the secret ballot. If it,
16 if it weren't -- if you -- if it weren't for the secret
17 ballot, that would make our job a lot easier, at least one
18 aspect of our job easier.

19 So these are estimates.

20 They're using the best estimates possible, but it
21 was worth -- it's worth inserting in there that there's
22 uncertainty, of course, in estimating the -- it's something
23 that's not knowable for sure.

24 And I can describe that in more detail.

25 But in any event, most of these districts fall to

1 the -- in fact, all of the districts for the mine inspector
2 2010 fall to the right of the vertical dashed line, which
3 means that a majority of the vote for -- from the, from the
4 Hispanics or Native Americans are going to the candidate, to
5 the -- to their candidate of choice.

6 The vertical axis is the total vote for that
7 candidate, which is are they winning.

8 And most of the districts are above the horizontal
9 dashed line.

10 Now let's just look a little closer at the
11 specific districts.

12 So, again, the squares are the old districts.
13 Three of them fall below the line.

14 That's an interesting, an interesting point.

15 So three of the districts that previously had been
16 designated as Voting Rights Act districts under the old plan
17 are not electing according to -- at least according to the
18 statewide vote for that district.

19 So when we judge the grief partisan vote for one
20 candidate or another, three of the baseline districts are,
21 are not performing. They're not electing for the
22 candidate -- they're not producing votes for the candidate
23 of choice.

24 Even though those districts are very far to the
25 right of the vertical line, so that -- so the candidate of

1 choice is correctly designated, but they're just not --
2 they're not getting elected.

3 So, there's enough strength in the voting strength
4 of the district to elect.

5 So that's the baseline.

6 For the proposed districts, which are in blue, so
7 they're blue numbers with no squares around, those are all
8 above the line, which means they're being -- you know,
9 there's enough strength so that they can be elected.

10 Some of them are, you know, close to the line, but
11 they're all -- they're clearly all above the line.

12 And they're all to the right of the, of the dashed
13 vertical lines. So they're all in the top right quadrant.

14 It's worth mentioning two districts here, in
15 particular.

16 One is 26 again. So 26 is the closest to the --
17 to that -- that cross of the two dashed lines.

18 And we also have drawn on here District 8, which
19 is -- which -- in which we've clearly -- District 8 clearly
20 has the right candidate of choice, because 80 percent of
21 the -- 80 percent of Hispanics are voting for -- are voting
22 for the Hispanic candidate.

23 But, but District 8 is not above the dashed line.

24 So District 8 I realize you don't have it
25 designated a majority-minority district, but at least it's

1 close.

2 And it's -- it looks even a little better than the
3 three previous districts.

4 So that's just evaluating according to that one
5 election.

6 If we, if we go to the right, you'll see the
7 fairly similar pattern.

8 District 26 now jumps a little bit to the left, so
9 now it looks like, you know, we have really identified the
10 candidate of choice. But whatever candidate that is, it's
11 being elected or it's being elected because it's slightly
12 above the horizontal line.

13 District 8, again, is a little below all three
14 of -- 23, 24, 25, in the old plan, are all below the line.

15 And if you go -- if you look at the other
16 elections, you're going to find a fairly similar pattern.

17 Twenty-six, it's weak because it's -- it's not
18 always clear what the candidates -- who the candidate of
19 choice really is of the minority community.

20 In part because they're giving an answer as we saw
21 from the -- they're giving their preferences as we saw from
22 the previous graph in a similar way to what the non-parties
23 are.

24 So it's not quite clear that they've designated
25 a -- they have a self-identified candidate of choice that's

1 distinct from other groups.

2 And, again, eight is sort of just designated in
3 each of these cases.

4 If you look at the average in the bottom
5 right-hand corner, again, 26 is right there, right there in
6 the corner.

7 Eight is covered in the graph by 25. It's
8 basically in the same place.

9 So, so I think that's the basic setup here.

10 If you, if you -- I know Mary will ask me the
11 retrogression question, so let me answer that at the moment.

12 How would, how would I answer the retrogression
13 question?

14 Well, you look at the mass of the scatter of the
15 squares, and you look how close they are to the top
16 right-hand corner. And then compare that to the scatter of
17 blue numbers and how close they are to the top right-hand
18 corner.

19 And they're fairly similar.

20 Twenty-six is clearly weaker in one dimension.

21 In the -- under the old plan, 23, 24, and 25 are
22 weaker in a different dimension.

23 So, eight -- eight, remember again is sort of an
24 extra district. So, so if you count it with the others,
25 it's -- or if you -- if -- or -- and I guess overall,

1 there's -- it appears that there's the same kind of general
2 pattern as there was previously.

3 And, so, you know, is there retrogression? I
4 don't think there is overall.

5 Is it possible to make a case against the plan
6 based upon that?

7 You know, it's always possible to make an
8 argument.

9 And we can find out what the weak, what the weak
10 points in the, in the plan are.

11 There's a way to shore that up on the next page,
12 which I'll get to in one second. But why don't we just --
13 why don't I pause for a second and just see if anybody has
14 any questions.

15 CHAIRPERSON MATHIS: Thank you. Any questions?

16 (No oral response.)

17 CHAIRPERSON MATHIS: No, go ahead.

18 DR. GARY KING: Okay.

19 So let's, let's turn to the next page.

20 So, the next page is a new analysis. We did this
21 for congress also, but it just wasn't very interesting, so
22 we, so we are not presenting it to you.

23 But let me explain what this, what this is.

24 So, one of the things I imagined the Justice
25 Department will do, and actually the regulations say fairly

1 clearly that they will do, is look at alternative plans,
2 alternative maps, that have been proposed. And they may
3 draw their own maps to see what, what would be proposed.

4 And you all have -- you all have drawn a lot
5 of maps. And you've, you know, considered other
6 possibilities.

7 Well, one thing that they may, they may wonder
8 about is who could there be another map that would be better
9 on their dimensions than this map.

10 And so, so, you know, we don't know that until we
11 actually draw the, draw the districts.

12 And, of course, even if there is one better than
13 this map on this dimension, it may violate other principles
14 that we would like to achieve. And that's, that's one of
15 the things that that the Justice Department pays attention
16 to.

17 And so really it's still worth asking the
18 question, what would happen if you were relatively
19 unconstrained in drawing the districts. How far could you
20 go in shoring up these districts.

21 Okay.

22 And so, so what we did is we conducted the
23 following kind of hypothetical analysis, or counterfactual
24 analysis.

25 We took each of the actual legislative districts,

1 and we, and we estimated, as I showed you at the previous
2 graphs, how Hispanics vote, how Whites vote, et cetera.

3 And then what we did is we took the district and
4 we said, well, how could we change the voting, the -- excuse
5 me. How could we change the number of Hispanics and the
6 number of Whites in each district in order to produce a vote
7 of 55 percent for the, for the candidate of choice.

8 Fifty-five percent is arbitrary. And we've done
9 this for other percentages as well. But just as a way to
10 start and a summary of the kinds of things that we've seen,
11 we can use 55 percent, because that would, that would
12 probably be considered a reasonable -- reasonable district.

13 And I want more, but that's a, that's a -- that's
14 the way to start.

15 So, so, in this -- in some districts in which
16 they're getting more than 55 percent of the vote, in which
17 the candidate of choice is getting more than 55 percent of
18 the vote, we would, we would remove Hispanics from the
19 district.

20 In other districts in which the Hispanic candidate
21 is not getting as many as 55 percent of the vote, we would
22 add Hispanics to the district.

23 So what we were able to do is we were able to do
24 that without actually drawing a map.

25 Okay.

1 So what we do is we, is we go through the
2 following procedure.

3 If there are too many -- if the vote for the
4 Hispanic candidate of choice is below 55 percent, we take an
5 Hispanic from the neighboring districts, that is the ones
6 that are contiguous to the district that we're considering,
7 but not the Voting Rights Act district, and we imagine that
8 we're going to move that Hispanic -- we're going to draw
9 that Hispanic into the present district, and we're going to
10 take one of the Whites or non-Hispanics and move them out of
11 the district.

12 So we're going to make that change.

13 We do that for one voter and then the next voter
14 and then the next voter.

15 And we're going to keep doing that until we --
16 until we end up with 55 percent of the, of the vote for the,
17 for the Hispanic candidate of choice.

18 And we don't know actually how people will really
19 vote in the real election. So when we talk about 55 percent
20 of the vote, we're talking about the voting strength based
21 upon one of these statewide offices.

22 Everybody see what we're shooting for before I
23 show you what we actually found?

24 CHAIRPERSON MATHIS: We think so.

25 DR. GARY KING: Okay.

1 Well, let's go one more step.

2 So, so, let's look at the -- let's take the top
3 right graph, which is U.S. president in 2004.

4 Okay.

5 So the top right graph, there's two axes.

6 The horizontal axis is the Hispanic population
7 change required to meet this 55 percent threshold.

8 So, in districts that received fewer than
9 55 percent of the vote for the Hispanic candidate of choice,
10 which is the Democrats, we're going to add, we're going to
11 add Hispanics.

12 Okay.

13 So how many Hispanics do we need to add until the
14 vote -- until we estimate the vote would be 55 percent.

15 So if you look at District 29, which is, which is
16 there sort of in the middle, that's to the right of zero, to
17 the right of the vertical bar -- the vertical dashed line.

18 What that means is we have to add about 25 percent
19 more Hispanics in order for District 29 to have a 55 percent
20 vote share of U.S. presidential vote in that, in that
21 district.

22 So that -- so -- and that's a fairly sizable
23 change in that district.

24 And could you, could you achieve it?

25 Yes, you could, you could achieve it, at least in

1 principle.

2 You may, however, be violating other kinds of
3 criteria.

4 So if you want -- so the actual vote in
5 District 29 according to, according to U.S. president 2004
6 isn't as high, isn't as high as this.

7 And, and we could achieve a 55 percent vote for
8 the candidate of choice, but you would have to move
9 25 percent more Hispanics into the district.

10 Now, we know it's possible to move 25 percent more
11 Hispanics into the district, because there are enough
12 Hispanics in the neighboring districts.

13 However, a 25 percent change in that district is
14 quite substantial.

15 And so it seems likely that you would -- but
16 not for sure, but it seems likely that you would be
17 violating other kinds of redistricting criteria, like you'd
18 have to draw some crazy lines or violate communities of
19 interest or possibly one person, one vote. None of which
20 need to be violated in order to satisfy these particular
21 criteria.

22 And so this gives you a feel of how much change in
23 the Hispanic vote you would need to do and then how big it,
24 how big it is and whether it's worth doing.

25 Another way of evaluating that same thing is we --

1 is to look at the vertical axis.

2 So the vertical axis is the ratio of the
3 population change that we looked at on the horizontal axis
4 to the vote share change.

5 So if we were up at one, up at one, what that
6 means is that if you move one Hispanic into the district,
7 there's one more vote for the Hispanics.

8 But that's not what typically happens.

9 With District 29, that's at about .2. .2 is
10 20 percent.

11 So what that means is if you moved 100 more
12 Hispanics into the district, you'd only get 20 more votes
13 for the Hispanic candidate.

14 This is citizen voting age population.

15 So when we move people, we move them based upon
16 people, not based upon votes for a particular candidate.

17 And so the leverage here in terms of producing an
18 outcome is relatively low. And it's low on the vertical
19 axis.

20 That means that in order to effect a change, if
21 you're low on the vertical axis, that the map would have to
22 be fairly massively changed.

23 And the more massively changed -- the more you
24 have to change the map, the more likely it is that you have
25 to make other changes.

1 So a key district here is District 26. So if you
2 see, for U.S. president 2004, District 26 is actually in
3 red.

4 Red here means something different.

5 What red here means is that, first of all, we're
6 way over on the right, which means you'd have to -- you have
7 to find almost, you know, 85 percent of the vote -- excuse
8 me, you have to find almost 85 percent more Hispanics to
9 stick in that district before they ended up with 55 percent
10 vote share in the 2004 election.

11 But moreover it's red, which means that you
12 wouldn't even get to 55 percent.

13 And I mean there aren't enough Hispanics. There
14 aren't enough Hispanics in the districts that neighbor 26,
15 other than -- that are not Voting Rights Act districts, in
16 order to make the vote for the Democrat 55 percent. That is
17 impossible to do that, at least with those neighboring
18 districts.

19 So that means that it doesn't matter how long you
20 jiggle those lines, as long as you're starting with that,
21 District 26, you're not going to get there.

22 So that seems like a relevant, a relevant fact if
23 you're trying to defend District 26, that you know,
24 District 26 has an interesting characteristic. There isn't
25 much racially polarized voting.

1 In order to move -- in order to increase the vote
2 for -- for the, for the Hispanic candidate of choice, it is
3 actually their candidate of choice, which is not so clear,
4 you'd have to massively change things.

5 And, and the neighboring districts don't even make
6 it possible, at least according to the U.S. president 2004
7 votes standard, for you to even get there.

8 So you see similar stuff in the other elections.
9 So, although not exactly the same.

10 So, you know, this is for, for mine inspector
11 2010, in, in, in that election, it looks like 26 is right at
12 zero, which means they got about 55 percent of the vote.

13 In secretary of state 2006, you couldn't move
14 enough Hispanics into the district. It's still red. It's
15 over on the right-hand side.

16 So there's a little bit of variability around,
17 around 26.

18 It's not following standard patterns.

19 You know, it's not clear -- it's not a clear,
20 standard, classic case of a Voting Rights Act district.
21 It's just operating a little differently.

22 So this -- the point of this graph is to see how
23 much effort you could -- you would have to go through to
24 change things and what the likelihood is of, of violating
25 other constitutional criteria as a result.

1 Anybody have any questions?

2 CHAIRPERSON MATHIS: Ms. McNulty.

3 COMMISSIONER McNULTY: I have a hundred questions.

4 DR. GARY KING: Let's start with number 63.

5 COMMISSIONER McNULTY: So the first question is
6 when the Department of Justice looks at this graph, what --
7 do they draw a conclusion? Do they draw many conclusions?
8 What conclusions do they draw?

9 And I guess the second question is how do we use
10 this, this -- these graphs in our submittal? Do we do a
11 narrative? And is that a district-based narrative, based on
12 what this information shows, or is it a more global
13 narrative about the difficulty of shoring up the districts?

14 DR. GARY KING: Okay.

15 So, the -- what conclusions does DOJ draw. And so
16 I think your two questions, if I heard them right, is what
17 conclusions -- what kind of conclusions does the Department
18 of Justice draw, and secondly what do we put in the report
19 to the Department of Justice.

20 Is that right?

21 COMMISSIONER McNULTY: Yes, that's, that's
22 correct.

23 DR. GARY KING: Okay.

24 So, so they, of course, get to make the decisions
25 so they can draw whatever conclusion they like.

1 We hope to narrow down the possible choices that
2 they have by giving them all the facts and narrowing, you
3 know, narrowing it down that way.

4 They ask for facts. And we try to take legal
5 questions and make them factual questions.

6 You know, in a sense, in a sense there's
7 three types of interests here.

8 There's, there's the folks like me who are
9 supposed -- who think that they're just doing the facts, the
10 empirical facts.

11 Then there's folks that are just doing, just doing
12 the legal questions.

13 And then there's the folks who are just doing the
14 political questions.

15 But, of course, everybody is really doing
16 everything.

17 And in the end the Justice Department will have to
18 make a decision among these.

19 We hope -- we all hope that we can take the
20 political and legal questions and turn them into
21 straightforward, factual questions. So as much as possible
22 just try to answer every question that they have.

23 So the Commission will have to decide what goes in
24 the report.

25 My recommendation would be to put everything in

1 there, to make this the best report that they've ever seen.

2 To analyze every contingency. To consider --
3 consider every possible alternative plan. So that they
4 don't think to themselves, you know what, we don't trust
5 these guys, we're going to, we're going to, we're going to
6 go and draw some maps ourselves.

7 We want every thought that they would have had to
8 have been considered.

9 At least that's a -- that would be my, that would
10 be my suggestion.

11 What do they conclude at the end?

12 You know, we hope that they conclude at the end
13 that they approve the plan, but they have the authority to
14 do a lot of things as well.

15 COMMISSIONER McNULTY: Madam Chair, Dr. King,
16 thank you. That helps me refine my question a little bit.

17 If you're at the Department of Justice and you
18 look at this graph, just in simple terms, is your
19 conclusion, yes, I see it would be difficult for them to
20 have drawn something in which the majority performance
21 percentage was higher?

22 Or is your perspective, looking at this graph,
23 well, they could have -- they might have been able to do
24 this or that or this or that, I think I want to draw my own
25 map?

1 But I'm just asking your perspective.

2 Or, or is that --

3 DR. GARY KING: The thing about this is the
4 vertical axis here is how hard you have to try.

5 And, you know, we've been following of course the
6 plans all along. And, you know, as you, as you strengthen
7 the district, the efforts that you would have to go through
8 to prove to them even further according to our measures
9 drop, or increase. Basically they visually drop on the
10 graph.

11 So, in other words, as you improve the districts
12 and make them harder and harder to find other ways of
13 improving them.

14 So we think we can shore up some of the
15 conclusions that you have.

16 In some sense this analysis -- or this analysis on
17 the last -- this last page here hasn't been done before.

18 It is, however, a direct answer to the question
19 that I think that the Justice Department is asking in their
20 regulations.

21 They want to know what would happen if we drew a
22 different plan.

23 Well, you've drawn a lot of plans. You can draw
24 more. You should draw as many as you possibly can draw.

25 Citizens can draw others.

1 The Commission can consider all of those.

2 And then when you're done with that, there is
3 almost an infinite number of other possible things you can
4 consider.

5 So we have here one way of considering a very,
6 very large number of possible alternatives. And that should
7 give them some confidence that we looked much more widely
8 than one could look if you were only sitting and physically
9 drawing maps.

10 Because it takes such longer -- it takes a much
11 longer time to draw a map than it does through this kind of
12 hypothetical for us.

13 So in some sense we've -- so what we want to show
14 the Department of Justice is that we've gone, you know, way
15 beyond the extra mile. We've gone way farther than anybody
16 else has.

17 So what will they globally conclude substantively,
18 which I think also what you're asking, as a procedural
19 question, I think, I think they'll conclude, or at least for
20 somebody familiar with these districts, most of these
21 districts, that, that according to the previous graphs, the
22 districts meet their criteria, and according to this one, it
23 would be very difficult to make the districts -- to
24 strengthen the districts and to also meet other essential
25 redistricting criteria.

1 VICE-CHAIR HERRERA: Madam Chair.

2 CHAIRPERSON MATHIS: Mr. Herrera.

3 VICE-CHAIR HERRERA: Dr. King, this is Jose. Can
4 you hear me?

5 DR. GARY KING: I'm sorry, I know you're talking,
6 but I don't know what it is you're saying.

7 VICE-CHAIR HERRERA: Can you hear me now?

8 DR. GARY KING: Yeah, that's better.

9 VICE-CHAIR HERRERA: I think you have to put the
10 microphone a way -- a certain angle.

11 Glad it works.

12 I have a question. We've had a -- you know,
13 obviously a couple states that have gone through
14 redistricting, they submitted the plans to the Department of
15 Justice. Some have not been approved.

16 Have we learned anything from those states, the
17 mistakes that have been made or things they have done well
18 that are similar to what we're going to be facing?

19 DR. GARY KING: Is that a question for me, or --

20 VICE-CHAIR HERRERA: Well, actually that question
21 is for anyone who wants to answer.

22 MARY O'GRADY: Yeah, Madam Chair,
23 Commissioner Herrera, that is not a question that we had
24 asked Dr. King to focus on.

25 We had him focus on the analysis, statistical

1 analysis of our districts.

2 DR. GARY KING: Yeah, I'm sorry, I can't --

3 MARY O'GRADY: Oh, I'm sorry.

4 DR. GARY KING: I can only hear, I can only hear
5 an echo.

6 I think it's because of the massive temperature
7 differential in the two cities that we're in. Sound waves
8 just stop when they come here, and they fall to the floor.

9 MARY O'GRADY: I was trying to explain -- this is
10 Mary -- that that wasn't a question that -- we really have
11 not asked you to focus on that issue, Dr. King, but if you
12 like --

13 DR. GARY KING: I see. Okay.

14 We -- so I haven't followed exactly what the DOJ
15 has done, you know, in the last few months, but as far as
16 the analysis we're doing are the kinds of things that they
17 look for, and, you know, when I've -- when I've worked in
18 other states, when I've helped out the Department of Justice
19 specifically, these are the kinds of things that they're
20 interested in.

21 I think they'll be specifically interested in the
22 kind of analysis we've done here, because I think it's
23 pushing the state of the art a little beyond what, what
24 other states will, will have had the opportunity to present
25 to them.

1 So, they seem to be interested in, in those kinds
2 of, you know, advances.

3 JOSEPH KANEFIELD: Madam Chair.

4 CHAIRPERSON MATHIS: Go ahead.

5 JOSEPH KANEFIELD: Madam Chair,
6 Commissioner Herrera, to answer your question with respect
7 to counsel, we have been monitoring what the Department of
8 Justice has been doing in other states. Specifically the
9 Texas redistricting process has been very informative in
10 terms of learning about the Department of Justice's approach
11 to this round of redistricting specifically in light of the
12 reauthorization of the Voting Rights Act about six.

13 So we have been -- obviously why I brought Bruce
14 Adelson on board my team to tap into his expertise to keep
15 track of these developments, not only with statewide
16 redistricting, but with the thousands of other redistricting
17 commissions that Department of Justice has been considering.

18 So to answer your question, yes, we have been
19 monitoring developments.

20 MARY O'GRADY: And in terms of what those
21 developments are, some of them -- they have not yet objected
22 to a statewide plan that I'm aware of.

23 They've reviewed 11 and have no objection to 11.

24 They have objected to other things that states
25 have done. They objected, for example, recently to

1 South Carolina's voter ID act.

2 My understanding in the last decade, and I
3 apologize, Dr. King, if I'm messing up the mic again,
4 they -- reports I've heard that they had three objections
5 last calendar year, one of which was the South Carolina
6 voting issue.

7 But they still have a lot in process in terms of
8 redistricting plans, both statewide and local.

9 And I don't know, Bruce, if you have things to add
10 in terms of any objections to redistricting.

11 I know they have done requests for information
12 to -- on redistricting plans, and so if states can't satisfy
13 them or counties can't satisfy them, they may draw an
14 objection.

15 It's all a work in progress at this point.

16 BRUCE ADELSON: Madam Chair, in picking up on what
17 Ms. O'Grady said, one of the interesting developments in
18 this redistricting round is that in the last month the
19 Department of Justice issued ten requests for additional
20 information to counties or cities.

21 When during my Justice Department career, we never
22 issued that many in one month.

23 If you read the letters, the department is asking
24 very pointed questions, clearly within its jurisdiction.
25 Many of them going beyond some of the things that we were

1 looking at previously.

2 So I think that the -- that's an important
3 consideration in moving forward.

4 I also think that where we are in the process now
5 is about where things were ten years ago.

6 There was an objection ten years ago in Arizona.
7 There was an objection ten years ago in Texas. And there
8 was an objection ten years ago in Georgia.

9 But at this point in the process ten years ago,
10 nothing else had occurred.

11 There have been no objections in January, 2002.

12 So, the process now, as far as objections basic --
13 the state of things, now, compared to ten years ago, is
14 about the same given the calendar.

15 The change, which is a significant one, is these
16 requests for additional information.

17 Because, as you know, when those are sent, a
18 60-day review clock that the department operates on stops
19 and it's flipped to the jurisdiction, which has 60 days.

20 If the jurisdiction doesn't satisfy Justice within
21 those 60 days, Justice can object.

22 So if there is a change in the sense as far as
23 where the process is, that's a significant one.

24 Plus also, as Ms. O'Grady said, the objection to
25 South Carolina's voter ID law, that's the first department

1 objection to a Section 5 state's voter ID law.

2 So I think that that's also part of the equation.

3 I also wanted to comment briefly when Dr. King was
4 talking about the counterfactual analysis and the ability to
5 change districts.

6 I think it's important to emphasize that in his
7 analysis, as he said, his analysis does not include removing
8 minority population or moving minority population from the
9 benchmark majority-minority districts.

10 Those are the strongest districts as far as where
11 minority population is.

12 So I think that's important too.

13 And as far as how the department would view this,
14 as Dr. King knows, we had talked about this earlier, we
15 didn't see anything like this ten years ago.

16 The department is always interested in additional
17 analysis, additional explanations.

18 But what is important as far as the alternative
19 plan piece, unless you're going to argue unavoidable
20 retrogression, the department holds jurisdictions to a very
21 high standard as far as coming up with an alternative that
22 fixes a problem as the department finds a problem.

23 So unless you argue unavoidable retrogression,
24 which is a very high standard, the jurisdiction essentially
25 is going to have to come up with a map that addresses the

1 department's concerns and fixes the problem.

2 So, with Section 5 the standard is very high.

3 There's really not much give there, unless you can
4 prove unavoidable retrogression.

5 And that's something -- I've never seen that done
6 successfully.

7 So the ability to do that, that's a very high
8 standard to meet.

9 Thank you.

10 COMMISSIONER McNULTY: Dr. King.

11 Dr. King, can you hear me?

12 Dr. King?

13 Dr. King?

14 DR. GARY KING: Yes.

15 COMMISSIONER McNULTY: Can you hear me?

16 DR. GARY KING: Yeah. I was just switching to the
17 website. There was a little delay.

18 I can hear you.

19 COMMISSIONER McNULTY: If it were, if it were the
20 case that it would be easy to improve the districts, where
21 would the numbers cluster on these graphs?

22 DR. GARY KING: If it were, if it were easy to
23 improve the districts, they would, they would be higher,
24 because then every, every -- if they were way up at one,
25 then that would mean that you move one more Hispanic into

1 the district and you get one more vote.

2 In addition, you would want the Hispanic
3 population change required to meet the threshold that is a
4 horizontal axis to not be that far from zero.

5 If it were at zero, there wouldn't be -- it
6 wouldn't have changed at all.

7 But if it were just a little bit off zero and it
8 was pretty high, then that would mean that without doing --
9 without using much effort you could produce that 55 percent
10 votes for the candidate of choice.

11 So, you know, when somebody looks at the highest
12 one of these is secretary of state 2006, District 27.

13 Okay.

14 So, so that one they're already getting 55 percent
15 of the vote. So you actually have to take some out.

16 That doesn't seem like that would be an important
17 thing to do.

18 You can see that, that what happens here is that
19 districts that are to the left of the line, like if you look
20 at the mine inspector 2010, they also follow an L shape.

21 So, so, there's a lot of districts clustered just
22 to the left of that line.

23 And when you see District 8, which it's, it's,
24 it's lower. So the same thing, just lower for
25 U.S. president, 2008.

1 There's a bunch of districts just to the left of
2 the line. That's not -- B is to the left of the line is
3 sort of not a surprise. It's not unintentional. I'm sure
4 it's intentional when you drew up the districts. So you
5 want to get that, you know, at least that much of the vote.
6 And keeping it away from the right.

7 So, so, I think, Mary, to answer your question,
8 you would see them high, closest, closest to zero, but to
9 the right of zero.

10 We don't really see any in that region.

11 That doesn't mean that you shouldn't try to
12 improve some of these other districts. You might.

13 There's some, there's some obvious ones where you
14 might want to see what you could do. You know, some kinds
15 of things you can do by adjusting -- adjusting the
16 districts.

17 We were only -- our hypothetical is that, I think
18 as Ken mentioned, we're, we're not, we're not moving from
19 one minority-majority district to another. Hypothetically.

20 We're also only moving from the adjacent
21 districts. So we're not redrawing larger, larger pieces of
22 the map.

23 But, you know, if you, if you suspect that it
24 might be possible to do that, and, you know, then I -- you
25 know, then it's all -- it's highly likely that the Justice

1 Department will suspect the same thing and wonder why you
2 didn't do it.

3 So if there's some area where you think it might
4 be possible to, to redraw the maps to improve one of these
5 districts, particularly if they're not meeting the threshold
6 at the moment, then you should probably do it before they
7 get there.

8 COMMISSIONER McNULTY: And if we don't think there
9 is?

10 DR. GARY KING: I'm sorry?

11 COMMISSIONER McNULTY: And if we don't suspect
12 that there's something that we should redraw based, for
13 example, on the prior chart that shows everything in the
14 upper right quadrant.

15 DR. GARY KING: Well, let's -- let me -- if it's
16 all right, all right with you, let me rephrase that.

17 So it's not only if you don't suspect, but if you
18 actually conclude that there's nothing else you can do, then
19 that's a very strong -- and that's what they want to know.

20 Right.

21 They want to know that if they went to the extra
22 effort of drawing a map themselves -- I mean, I'm guessing
23 what they want to know. All right?

24 So, but this is what they say. I don't mean to
25 say guessing.

1 But, all right, based on what they say, it appears
2 that, that what you want to do is make it so that they don't
3 think that if they put the effort into drawing districts
4 themselves that they would do any better.

5 And so, so how you do that?

6 Obviously they can do anybody they want once they
7 get the districts.

8 But you do that by making sure, not only, not only
9 not suspecting that there isn't anything there, but actually
10 actively concluding that you couldn't improve the districts.

11 So I think that's, that's really what you have to
12 actively conclude.

13 Is that helpful?

14 COMMISSIONER McNULTY: Thank you.

15 CHAIRPERSON MATHIS: Any other questions for
16 Dr. King?

17 (No oral response.)

18 CHAIRPERSON MATHIS: Anything from legal counsel?
19 Or mapping?

20 (No oral response.)

21 CHAIRPERSON MATHIS: Okay. Well, Dr. King and
22 Benjamin, thank you very much for all the hard work on this.

23 And we appreciate this, that you were able to
24 participate this evening, and give us this update during a
25 meeting.

1 MARY O'GRADY: Madam Chair, if we could keep them
2 on the line, if we have time to, just for a little longer to
3 the extent that we continue the discussion of the districts.

4 CHAIRPERSON MATHIS: Great. It's fine by me.
5 Can you two stay on for a little while?

6 DR. GARY KING: Yeah. I'll be listening online,
7 if that's okay.

8 I will stay online.

9 CHAIRPERSON MATHIS: Great.

10 Thank you.

11 DR. GARY KING: Okay.

12 CHAIRPERSON MATHIS: How are we on time?

13 It's 6:30.

14 Marty, do you need a little break or anything?

15 Okay.

16 We'll keep rolling then, to number three on the
17 agenda, which is discussion, direction to mapping consultant
18 and possible action regarding adjustments to the approved
19 final tentative legislative districts map to address
20 technical or legal issues. Commission may vote to go into
21 executive session, which will not be open to the public, for
22 the purpose of obtaining legal advice and providing
23 direction to counsel in regard to mapping legal issues.

24 JOSEPH KANEFIELD: Madam Chair.

25 CHAIRPERSON MATHIS: Mr. Kanefield.

1 JOSEPH KANEFIELD: At this point counsel would
2 recommend that the Commission go into executive session to
3 receive legal advice with respect to the voting rights
4 analysis and legal recommendations.

5 CHAIRPERSON MATHIS: Okay. We would need a motion
6 to do that, if others have anything to discuss first.

7 COMMISSIONER McNULTY: I'll move that we go into
8 executive session to receive and discuss legal advice and
9 give direction to counsel.

10 VICE-CHAIR HERRERA: I second that motion.

11 CHAIRPERSON MATHIS: And just a point of
12 clarification, would this be for legislative and
13 congressional, or just --

14 JOSEPH KANEFIELD: Madam Chair, we would recommend
15 that you go into executive session to receive legal advice
16 for both congressional and legislative tentative draft map.

17 CHAIRPERSON MATHIS: Thank you.

18 Any discussion?

19 (No oral response.)

20 CHAIRPERSON MATHIS: All in favor?

21 COMMISSIONER McNULTY: Aye.

22 VICE-CHAIR HERRERA: Aye.

23 CHAIRPERSON MATHIS: Aye.

24 Any opposed?

25 (No oral response.)

1 CHAIRPERSON MATHIS: Okay. The time is 6:34 p.m.
2 We'll go ahead and enter out of public session and
3 enter back into executive session once the public has
4 cleared the room.

5 Thank you.

6 (Whereupon, the public session recesses.)
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10 (Whereupon, the public session resumes.)

11 CHAIRPERSON MATHIS: Okay. We'll enter back into
12 public session.

13 The time is 10:00 p.m.

14 Thank you all for your patience, those of you are
15 who are still here.

16 The Commission just was in executive session
17 getting legal advice on -- and providing direction to
18 counsel regarding mapping legal issues for both the
19 congressional and legislative maps, items three and four on
20 the agenda.

21 Is there anything else on these two agenda items,
22 either for congressional or legislative, that we want to
23 cover?

24 COMMISSIONER McNULTY: Madam Chair.

25 CHAIRPERSON MATHIS: Ms. McNulty.

1 COMMISSIONER McNULTY: I would ask Strategic
2 Telemetry to look at LD 8, draft LD 8, and look at whether
3 it would be possible to move San Tan Valley, Gold Canyon,
4 the highly racially polarized voting areas in the northeast
5 part of that district, north perhaps into 23. And then
6 equalize the population in the north Phoenix districts with
7 minimal changes to the districts.

8 Move the Gila River Indian community, the portion
9 that's in Maricopa County, into eight.

10 And then move, to the extent we can do it without
11 diluting 19, a couple of high performing precincts down into
12 eight, again with the goal towards improving the performance
13 index on -- of the Cruz index for eight, up to 50 percent,
14 but not in excess of 50 percent, with as few splits as
15 possible, and with as few changes to -- with changes to as
16 few districts as possible.

17 Thank you.

18 CHAIRPERSON MATHIS: Did you get that, mapping
19 consultants?

20 WILLIE DESMOND: Yes.

21 CHAIRPERSON MATHIS: Okay.

22 Any other direction for our mapping consultants?

23 (No oral response.)

24 CHAIRPERSON MATHIS: Okay. We still have a number
25 of items left on the agenda, but it's late.

1 So -- and we're meeting tomorrow. I believe we
2 start at 4:30 p.m.

3 And it's in the Fiesta Inn again. So we could --
4 and this is the same agenda tomorrow as it was today, so all
5 of these items can be carried over tomorrow.

6 Is there anything anyone wanted to cover tonight?

7 And I don't know, is there -- I should also see if
8 there's any public comment.

9 I don't have any request to speak forms, but --
10 none. Okay.

11 No one wants to speak to us tonight.

12 So, any other agenda item anyone felt strongly
13 about in terms of wanting to cover tonight?

14 VICE-CHAIR HERRERA: Madam Chair.

15 CHAIRPERSON MATHIS: Mr. Herrera.

16 VICE-CHAIR HERRERA: Just quickly I notice that
17 there's a map on that screen. Is there -- are we going to
18 discuss it? Is there a reason why it's up?

19 CHAIRPERSON MATHIS: Yeah, we don't have to leave
20 items three and four on the agenda if given what Ms. McNulty
21 just directed the mapping consultant to explore, I don't
22 know if you wanted to do anything here tonight, we can do
23 that, or they can do that in their own free time.

24 Any preferences from anybody? I'm happy either
25 way.

1 COMMISSIONER McNULTY: I have an 8:00 a.m. meeting
2 in Tucson, and I think I would like to get home pretty soon.

3 CHAIRPERSON MATHIS: Mr. Herrera?

4 Okay. Well, given that, if you guys are
5 comfortable with the direction Ms. McNulty gave, you can
6 work on that, and we can talk about it tomorrow when we get
7 to that agenda item, that would be great.

8 Okay. Anything from legal counsel for us tonight?

9 MARY O'GRADY: No.

10 CHAIRPERSON MATHIS: Okay.

11 I think with that, we'll cover all the agenda
12 items that we didn't cover tonight tomorrow. And, again, we
13 start at 4:30 p.m.

14 The time is 10:05 p.m., and this meeting is
15 adjourned.

16 Thank you, everyone.

17 (Whereupon, the public session adjourned.)

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1 STATE OF ARIZONA)
)
2 COUNTY OF MARICOPA) ss.
3

4 BE IT KNOWN that the foregoing proceeding was
5 taken before me, Marty Herder, a Certified Court Reporter,
6 CCR No. 50162, State of Arizona; that the foregoing 60 pages
7 constitute a true and accurate transcript of all proceedings
8 had upon the taking of said meeting, all done to the best of
9 my skill and ability.

10 DATED at Chandler, Arizona, this 19th day of
11 January, 2012.

12

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C. Martin Herder, CCR
Certified Court Reporter
Certificate No. 50162

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