

1 **ARIZONA INDEPENDENT REDISTRICTING COMMISSION**

2
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4
5 Monday, August 22, 2011
6 9:13 a.m.

7
8 **Location**

9 DoubleTree by Hilton Hotel
10 445 South Alvernon Way
11 Tucson, Arizona 85711-4198

12
13 **Attending**

14 Colleen C. Mathis, Chair
15 Jose M. Herrera, Vice Chair
16 Scott Day Freeman, Vice Chair
17 Linda C. McNulty, Commissioner
18 Richard P. Stertz, Commissioner
19 Raymond F. Bladine, Executive Director
20 Kristina Gomez, Deputy Executive Director
21 Buck Forst, Information Technology Specialist
22 Mary O'Grady, Counsel, Osborn Maledon
23 Joe Kanefield, Counsel, Ballard Spahr

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Tucson, Arizona
August 22, 2011
9:13 a.m.

CHAIRPERSON MATHIS: Good morning. This meeting of the Arizona Independent Redistricting Commission will now come to order.

Today is Monday, August 22nd, and the time is 9:13 in the morning.

Let's all start with the Pledge of Allegiance. So if you will all please rise.

Thank you.

(Pledge was recited.)

CHAIRPERSON MATHIS: We'll start with roll call.

Vice Chair Freeman.

VICE CHAIR FREEMAN: Here.

CHAIRPERSON MATHIS: Vice Chair Herrera?

VICE CHAIR HERRERA: Here.

CHAIRPERSON MATHIS: Commissioner McNulty.

COMMISSIONER MCNULTY: Here.

CHAIRPERSON MATHIS: Commissioner Stertz.

COMMISSIONER STERTZ: Here.

CHAIRPERSON MATHIS: We have a quorum.

And I would like to introduce some of the

1 other people around the table today.

2 We have our legal counsel, Joe Kanefield
3 and Mary O'Grady.

4 Our mapping consultant, Ken Strasma and
5 Willie Desmond.

6 And we have some staff in the room. Buck
7 Forst is our chief technology officer. Our public
8 information officer is Stu Robinson.

9 And we have some folks in the back. Our
10 Executive Director, Ray Bladine, he's standing, and
11 Ray -- and then Kristina Gomez and Anna Garcia.

12 And all of these folks can help you. So
13 feel free to approach any of them if you have any
14 questions throughout the day or need anything.

15 That takes us to item II on the agenda,
16 presentation and discussion with Mr. Bruce Adelson,
17 Esquire, federal compliance consultant regarding the
18 Voting Rights Act, Section 5, DOJ submission
19 preclearance process and redistricting issues
20 relating to prison populations.

21 So a lot things that Bruce is going to be
22 talking to us about this morning -- and feel free to
23 add to the introduction about yourself, too, who you
24 are and where you come from.

25 BRUCE ADELSON: Thank you, Madame Chair,

1 and good morning, commissioners. It's my pleasure
2 and privilege to be here this morning.

3 And the information that you detailed
4 about me or about the items that we are going to be
5 talking about today are the complex underpinnings of
6 redistricting.

7 CHAIRPERSON MATHIS: Can everyone hear
8 him?

9 UNIDENTIFIED SPEAKER: No.

10 BRUCE ADELSON: Is that good? Can I take
11 this out?

12 How is that?

13 CHAIRPERSON MATHIS: Much better.

14 BRUCE ADELSON: Thank you.

15 Let me tell you a little bit about my
16 background.

17 I'm a former senior attorney for the
18 United States Department of Justice. My team is the
19 team that wrote the letter in May 2002 objecting to
20 the State's Legislative redistricting plan the last
21 time around.

22 We also wrote the letter that precleared
23 the Congressional redistricting plan and our team
24 reviewed the entire redistricting submission.

25 During my career with the Justice

1 Department, I was the Department's lead attorney for
2 voting enforcement in Arizona. In fact, during my
3 career, I had the pleasure to deal with your counsel
4 on many occasions during their lawsuit enforcement
5 careers with the state and I was a law enforcement
6 officer for the United States.

7 I had primary law enforcement
8 responsibility in nine Arizona counties for various
9 aspects of the Voting Rights Act, including the
10 minority language provisions of the Voting Rights
11 Act.

12 So I had thought that one thing that we
13 could do today is that I could give you some
14 examples of how the Justice Department reviews
15 redistricting submission from a Section 5
16 perspective, what the process actually looks like
17 from the inside. Talk a little bit about what we
18 did nine years ago. Discuss a little bit about the
19 law, and I understand that you've had a lot of
20 briefings about the legalities, so I don't want to
21 get into the technicalities of various cases and
22 supreme court decisions. And then, of course, be
23 available for whatever questions that I can answer
24 about the -- primarily the Section 5 standards. But
25 anything from a federal perspective.

1 As you know, Section 5 of the Voting
2 Rights Act requires all covered jurisdictions, which
3 includes the entire state of Arizona, to submit
4 voting changes such as redistricting for
5 preclearance approval by the United States Justice
6 Department or by the United States District Board
7 for the District of Columbia.

8 Once a submission to the Justice
9 Department is made and received, the Department has
10 60 days to render a decision. That decision could
11 be preclearance, which means approval of the plan,
12 it could mean objection or rejection of the plan,
13 which means the plan cannot be used.

14 It could also mean something called a
15 request for additional information, which means that
16 the Department feels that the jurisdiction
17 submitting the redistricting plan has not met its
18 burden of proving that it's not discriminatory.

19 That's a very important point. Under
20 federal law the State of Arizona, Pima County, Pinal
21 County, Maricopa County, City of Phoenix, any
22 jurisdiction within this state must prove that what
23 it's proposing does not discriminate.

24 You have the burden. The burden -- it
25 doesn't shift to the Department. You have to prove

1 it.

2 So in a way it's counterintuitive. You
3 have to show Justice or show the court that your
4 plan is not discriminatory. And under Section 5,
5 the discrimination is called retrogression.

6 Retrogression means that you cannot put
7 minority groups, both racial and -- racial minority
8 groups and also minorities by national origin and by
9 language -- in a position that worsens, weakens,
10 diminishes or reduces their opportunity to elect
11 whom they want.

12 Their catch-phrase is elect candidates of
13 choice. And as the Department of Justice said very
14 specifically in the guidance that its issued
15 recently, the ability to elect candidates of choice
16 either exists or it doesn't exist.

17 It may exist. If it doesn't exist, you
18 don't have to somehow create it to comply with
19 Section 5.

20 But the key is, that if it exists -- and
21 whether it exists is determined by a lot of
22 analysis -- then that right cannot be reduced,
23 diminished, or weakened.

24 Now, just referring very briefly to what
25 we did nine years ago when we sent out objection

1 letter in May 2002, we determined that the State had
2 retrogressed in three districts, meaning that the
3 State's redistricting plan took away or reduced the
4 right of minority groups in three districts to elect
5 whom they wanted.

6 Under Section 5, the key element that you
7 look at as you begin the mapping process is
8 something called a benchmark.

9 The benchmark is the last precleared plan
10 or the last plan that was approved by a federal
11 court that a state or a jurisdiction covered by
12 Section 5 is using.

13 The benchmark legislatively in Arizona is
14 that there are nine districts that we determined
15 nine years ago, or perhaps seven years ago, that
16 minorities had the right or had the opportunity or
17 the ability to elect whom they wanted.

18 So you start with that nine districts.
19 You can't go below that. You can't say, well, we're
20 not going to go with nine, we're going to go with
21 six or eight or seven. That's retrogression;
22 clearly prohibited by federal law.

23 You have the opportunity, given census
24 numbers and given the demographics and geography in
25 the state to increase that, depending on what the

1 population is. But by law, you can't go below it.
2 So that's the floor. You can't go below nine.

3 So let me go back to the track of what
4 does Justice do when you make the submission.

5 Well, right now the team that will be
6 reviewing Arizona has already been assigned. It's
7 likely to be two attorneys and somebody called a
8 Section 5 analyst who is a nonattorney, and that
9 will make up the team of people who will be directly
10 involved in reviewing the submission.

11 Justice is likely to assign teams to
12 review all statewide redistricting plans and all
13 states that are covered by Section 5. And there are
14 16 states that are covered all or in part by Section
15 5.

16 So let's say -- let's imagine today that
17 your plan is received by the Department of Justice.

18 First thing that Justice will do is they
19 will look at the plan, scan it into their computer
20 system. If it's nonelectronic -- if it is
21 electronic, they will put it into their system and
22 then begin printing out copies for many different
23 people to review, the team to review, the head of
24 the voting section of the Justice Department to
25 review, the Assistant Attorney General, who is the

1 head of the Civil Rights division to review. And
2 let me back up a little bit.

3 The entity that will be reviewing this
4 plan is called the voting section of the Civil
5 Rights Division of the Department of Justice.
6 That's a division that the Attorney General has
7 delegated with the responsibility to handle Section
8 5 enforcement and Section 5 obligations of covered
9 jurisdictions.

10 So the plan will go to the voting
11 section. Voting section will open it, scan it,
12 document it, docket it. Then within a couple of
13 days that plan will be distributed to the members of
14 the reviewing team.

15 What happened nine years ago, and my
16 presumption is the same thing will be true now, is
17 that for statewide submission, there's a very high
18 priority and a very high interest in the Department.

19 So within a week, we were told to come up
20 with a preliminary assessment of the plan, whether
21 it's retrogressive, whether there were issues,
22 whether we see potential problems.

23 And initially our initial report was that
24 we thought the plan, based on what the State was
25 saying, looked pretty good. We didn't see any

1 facial issues. We didn't see that there were maps
2 missing. We didn't see that there were a lot of
3 questions that we would have. So initially, we
4 thought everything looked okay.

5 Now, that report goes to the head of the
6 voting section, then reports to the Assistant
7 Attorney General, who represents to the Deputy
8 Attorney General of the United States. The Attorney
9 General and then I believe nine years ago that went
10 to the President, which may happen today. Again,
11 I'm just presuming that the same thing we did before
12 will happen again.

13 So then you're on the a 60-day clock. So
14 a week has already gone by and there is a tremendous
15 amount of work that goes into reviewing these
16 submissions, just as there is a tremendous amount of
17 work on your part in putting redistricting together.

18 One of the elements of redistricting that
19 I find that many people don't appreciate is that
20 redistricting is a lot more than moving people
21 around or renumbering districts.

22 Redistricting in a Section 5 state, like
23 Arizona, involves a tremendous amount of analysis.
24 Analysis to show whether there's retrogression or
25 not. We can talk a little bit about that later. A

1 lot of analysis.

2 So as we were reviewing the plan, Justice
3 has its own experts that it tasks to do the same
4 analysis that you're required to do.

5 So we gave your data -- or your
6 predecessor's data to our experts. The expert
7 was -- expert was statistical -- a statistician and
8 a historical demographer. And they did various
9 analyses and plots and they created various maps.
10 We had various time frames that we were operating
11 under.

12 One of the things that I think is very
13 important is that in the objection letter that we
14 sent and also the request for more information,
15 which was sent about a month after we received the
16 submission, those letters are very informative about
17 what we were looking at and frankly what the
18 Department will be looking at when you make your
19 submission because they are very much road maps of
20 the concerns that we had, the issues that we found,
21 what is retrogression, what is not retrogression.

22 And what I found particularly interesting
23 in looking at the request for more information last
24 night is that it really does highlight, and,
25 frankly, provide some very clear clues about what

1 our thinking was. Because we asked very specific
2 questions of your predecessor.

3 The question is going to the issue of
4 basically you made certain conclusions; we can't
5 really understand those conclusions based on the
6 what you've submitted. Explain that to us, please.
7 Because remember, you have the burden. If Justice
8 feels you have not met your burden, that can be the
9 basis of an objection.

10 But let's go back and talk a little bit
11 about time frame.

12 So the submission is Justice analyzing
13 the submission and let's go back nine years ago.
14 Within a month, we determined there were questions
15 that we could not answer.

16 We called the Commission's attorneys, we
17 spoke to people in the community, and that's
18 important to realize, too, Justice will speak to
19 dozens of people in the state, legislators, they
20 make speak with you, they will speak with your
21 counsel, they make speak with people in this room,
22 they will speak with election officials, dozens and
23 dozens of people.

24 That's all part of the Section 5 review
25 process, to understand what the submission is, to

1 get the reaction of people in the state, to get the
2 reaction of people in the minority community because
3 the Voting Rights Act is intended to protect people
4 who are minorities either by race, color, or
5 national origin, get their opinions.

6 And basically you put all of this
7 information together with the analysis that you do
8 and see where you are.

9 The information that we were getting
10 anecdotally corresponded with the questions that we
11 had that we couldn't figure out and we weren't
12 getting the information that we needed under the law
13 to make a determination.

14 So we sent out a request for additional
15 information in March 2002. And as I said, the
16 letter is very informative because it really does
17 give some very clear indications of what the
18 requirements are and what questions we have.

19 Justice can only send out one of these
20 letters. Justice is very careful about not sending
21 out a letter too quickly because if it does, that's
22 its only opportunity. It can't do it again.

23 Since this is a very time-intensive
24 process, Justice is very aware of the time
25 considerations.

1 We sent that letter out when we did to
2 give the State as much time as possible to respond
3 to our concerns because we were aware of the -- your
4 State deadlines, qualifying deadlines and other
5 deadlines that were relevant to elections in the
6 state. So we wanted to get that out quickly. Then
7 the State responded.

8 Now, under federal law, Justice can
9 decide -- Justice gives -- in these letters, the
10 jurisdiction gets 60 days to respond. The clock --
11 that initial 60-day clock that I talked about has
12 stopped. As soon as Justice sends out that letter,
13 the 60-day clock that Justice is on stops and it
14 gets punted over to the jurisdiction. So now the
15 jurisdiction is on the clock and has 60 days to
16 answer Justice's questions.

17 If the jurisdiction does not answer at
18 all, which does happen, in 60 days, then Justice by
19 law can object to whatever the voting change is to
20 the redistricting plan.

21 If the jurisdiction does respond within
22 the 60 days but the response is considered to be
23 unsatisfactory, the response doesn't satisfy the
24 burden under the Section 5 regulations, then Justice
25 can also reject.

1 In looking at the objection letter from
2 May 2002, we objected based on substantive issues
3 under federal law with some of the districts that
4 had been proposed.

5 We also objected because we determined
6 the State had been met its burden to provide us with
7 information to prove that the redistricting plan was
8 nondiscriminatory.

9 And one of the things that I recall very
10 well actually in coming back to Arizona this trip --
11 writing that letter -- we finished that letter at 5
12 o'clock in the morning on the date on the letter,
13 May 20th.

14 We went home, we went to sleep for a
15 couple of hours and then we came back and talked to
16 the Assistant Attorney General. The Assistant
17 Attorney General, his signature is on the letter as
18 to approve all objections to statewide plans, and I
19 think even to countrywide plans.

20 So we had to explain to him, well, why we
21 were -- why we had determined what we had
22 determined. We had a long talk with him. We had a
23 long talk with some deputy Assistant Attorney
24 General and -- Attorneys General, I'm sorry. And
25 then at the end of the conversation he said, "Okay,

1 let's finalize the letter, send it to me, we'll send
2 it out today." And that's basically what we did.

3 Now, as you know, we had also precleared
4 the Congressional plan, Congressional redistricting
5 one. We did that relatively quickly because we
6 didn't really see any -- we didn't see any
7 retrogression in there. And found that that -- we
8 didn't have any questions about retrogression on
9 that submission. We thought that submission laid
10 out what we needed to look at as far as our
11 obligations under Section 5.

12 My recollection is that there were two
13 benchmark Congressional districts that -- where
14 minority voters had the opportunity to elect their
15 candidates of choice, just as you have nine
16 benchmark Legislative districts. My recollection is
17 you have two Congressional districts where the same
18 issues will apply.

19 So then after that, there was obviously
20 some federal court intervention and we had
21 continuing interests in what was happening in the
22 redistricting.

23 I think we eventually did preclear the
24 Legislative lines I believe in 2004. That was after
25 the State had remedied the concerns that we had and

1 remedied the objections. And in the subsequent
2 review of the new plan, our concerns had been
3 satisfied.

4 So since we did not determine there was
5 retrogression and since we felt that the State had
6 satisfied its burden of showing no discrimination,
7 we precleared that plan. As I said, I think that
8 was in 2004.

9 That's kind of a very quick overview of
10 the Section 5 process. But one of the elements that
11 I really wanted to stress for you today is the
12 importance of analysis. That -- I could draw a map
13 right now of any state in the United States and
14 redistrict it. It's not difficult to do that.
15 Technology exists today that didn't exist ten years
16 ago to draw maps relatively easy.

17 The difficulty is, in a state like
18 Arizona and in other Section 5 states, is that you
19 have to do a regression analysis, for example. You
20 have to have various analyses to prove, okay, you
21 say you have nine benchmark districts. You say the
22 minority population is of a certain portion in each
23 one. Prove it. Show us. Show us the minorities --
24 voters in that district can elect whom they want.

25 One of the issues previously, which I'm

1 sure you will encounter because of the grid map
2 approach, is that there were Legislative districts
3 that were combined.

4 Let's say if you combined Legislative
5 District A and Legislative District B to create C
6 and you want -- that district is one of your
7 benchmark districts where minority voters have to be
8 able to retain that ability to elect. In A, A is
9 let's say 60 percent Latino voting-age population
10 and B is 20 percent. You combine them and there's a
11 diluted effect because that second District B is
12 overwhelmingly Anglo.

13 So you're combining two districts, one of
14 which is majority Latino, one of which is very
15 majority Anglo into one district where you are
16 making the point that this is a district where
17 minorities can elect.

18 My question would be, show me. Show me
19 the analysis that proved that. Show me that these
20 voters are citizens. Show me that these voters are
21 of voting age. Show me that these voters in their
22 previous district had the opportunity to elect.
23 Show me that they are registered to vote and that
24 they turn out. Show me the patterns that they -- of
25 elections over the last ten years. That's what you

1 have to do.

2 Without doing that, you run the risk of
3 an additional information request, and, of course,
4 eventually you run the risk of an objection.

5 Without the analysis to prove what you're
6 claiming, Justice will have a difficult time with
7 preclearance.

8 And I wanted to -- just as a matter of
9 illustration, I wanted to point to the letter we
10 wrote in March 2006 -- I'm sorry, March 22nd, 2002.

11 In one of the parts of the letter, we had
12 said, provide the factual basis, including
13 documents, data, studies, analyses that the State
14 relied on in reaching a certain conclusion that
15 minorities can elect in certain districts, and
16 that's what I'm talking about.

17 You can't under Section 5 create
18 districts and just leave the districts as they are,
19 perhaps as you can do in New Mexico or Nevada or in
20 Colorado. Those are not Section 5 states. In a
21 Section 5 state, you can't do that.

22 Now, frankly, I would say in other states
23 you should do something similar because you do have
24 other federal -- can you hear me?

25 UNIDENTIFIED SPEAKER: No, can't hear

1 you.

2 BRUCE ADELSON: Hello?

3 UNIDENTIFIED SPEAKER: Yeah, that's
4 better.

5 BRUCE ADELSON: Usually I don't have a
6 problem with people hearing me.

7 I think you have to do that analysis
8 regardless. Because there are other aspects of the
9 Voting Rights Act, like Section 2, for example, that
10 have their own requirements and their own dynamics.

11 Doing that analysis makes it likelier
12 that there will be a preclearance, makes it likelier
13 that your liability risk in federal court is lower
14 than for a jurisdiction that does not do analysis.

15 I have reviewed -- in my career with
16 Justice and in my current career in working with
17 jurisdictions around the country, I have reviewed
18 hundreds of redistricting plans, and I have seen
19 plans that look like this, it's just a sheet of
20 paper.

21 Now, under Section 5, that's really not
22 going to get you where you need to go. Section 5
23 submissions that have the best chance of
24 preclearance are going to have -- you know, I don't
25 like to use sports analogies but I will now. They

1 have grand-slam analysis. They have analysis that
2 after Justice looks through them over and over
3 again, they will say, looks good. Okay. Okay. And
4 Justice's experts will say the same thing. That's
5 what you want, because frankly, that's -- there's
6 really no choice. That's your obligation under
7 federal law.

8 So if it's okay with you, Madame Chair, I
9 would like to entertain any questions that you have
10 and I would be very happy to help you in any way I
11 can.

12 CHAIRPERSON MATHIS: Great. That was
13 very informative.

14 Did you also want to cover the prison
15 populations, too?

16 BRUCE ADELSON: Sure I would be happy to.

17 CHAIRPERSON MATHIS: Great.

18 BRUCE ADELSON: There's no specific
19 federal statute that says you should or should not
20 count prisons population as part of redistricting.

21 The difficulty with prison populations in
22 any state is that if a prison has a majority of
23 minority prisoners, you cannot take that prison
24 population and say, okay, that district we were
25 talking about before, District C, where minorities

1 can elect, well there's 55 minority population but
2 10 percent of them are in prison.

3 So what you've done is you've
4 artificially inflated the minority population from,
5 let's say, a theoretical 55 percent -- up to
6 55 percent so that it's really 45. Minority's
7 ability to elect at a 45 percent voting-age
8 population is much different than at 55.

9 During the last round of redistricting, I
10 saw several plans from other parts of the country
11 where jurisdictions had done that, where they would
12 say, oh, we have 70 percent minority population
13 here. We can -- the minorities can elect.

14 And a significant number of that
15 population, they were incarcerated. And under that
16 state's laws, they couldn't vote, even if they had
17 been released that day.

18 So the Voting Rights Act challenges you
19 cannot use prisons to create an artificial
20 majority/minority district or a minority-influenced
21 district or coalition district. You have to use the
22 population of people who are citizens and above 18
23 who can vote and who are not incarcerated.

24 Now, there's been no supreme court
25 decision and no federal statute that says you cannot

1 include prisons at all for purposes of population.
2 That's kind of a -- I don't want to say it's a gray
3 area, but it's a gap in the federal statutes and
4 it's something the supreme court has not clearly not
5 addressed because you could also make the argument
6 that prisons are part of the population and are part
7 of an elected representative's constituents.

8 That is an argument. There are equal
9 protection issues, too. But I think that from a
10 Voting Rights Act perspective, Section 5 as well as
11 Section 2, you cannot use prison populations to
12 augment a district's minority population.

13 And Justice will know the same as you.
14 They have access to the same amount of information.
15 They know where the prisons are in this state just
16 as you do. So if you create a district and claim
17 there's -- minority population is a certain
18 threshold but that threshold is only achieved
19 because of a prison, then you run a significant risk
20 of an objection. But before an objection of an
21 additional information question because Justice --
22 let's say you do that and Justice sends that letter
23 to you and says we understand that there's a prison
24 in District C. Please explain how your minority
25 population there can elect without the prison

1 population. But if you've artificially increased
2 the percentage, you won't be able to explain. That
3 means Justice will object.

4 So prisons are part of redistricting in
5 overall population but they cannot -- you have to be
6 very careful in making sure that prison populations
7 do not dilute minority voting strength under federal
8 law and don't augment artificially a district
9 minority population.

10 There will be less of an issue in a
11 district that is 75, 80 percent nonminority. From a
12 Section 5 perspective, Justice really won't care
13 about that. There may be other issues, but they are
14 not Section 5 objection issues. That's only going
15 to come when you're at the tipping point of
16 minorities in a given district being able to elect
17 whom they want.

18 CHAIRPERSON MATHIS: Thank you.

19 BRUCE ADELSON: You're welcome.

20 CHAIRPERSON MATHIS: Any questions for
21 Mr. Adelson from the other commissions?

22 VICE CHAIR HERRERA: Madame Chair.

23 CHAIRPERSON MATHIS: Mr. Herrera.

24 VICE CHAIR HERRERA: Thank you for your
25 presentation.

1 BRUCE ADELSON: Thank you.

2 VICE CHAIR HERRERA: You mentioned
3 retrogression, and my concern with retrogression
4 would be the other way around where you are packing
5 people into districts.

6 We hear a lot of individuals who -- some
7 and also politicians that seem concerned about the
8 current majority/minority districts and they want to
9 keep them at the way they are now or even increase
10 them.

11 What should we be looking out for when we
12 have people that are addressing the Commission and
13 are concerned about, you know, the Voting Rights Act
14 minority -- especially from those individuals that
15 typically in the past don't tend to really -- aren't
16 too concerned about minority issues, only when it
17 comes to redistricting and also politicians that
18 live in those areas that want to keep getting
19 elected.

20 BRUCE ADELSON: That's a very difficult
21 issue, and I'll give you an example of something
22 that happened in another state nine years ago.

23 Small southern community. Let's say 2 or
24 3,000 people, deep south. City council
25 redistricting.

1 One of the districts was 90 percent
2 African American, and I spoke with the council
3 member in that district who had voted to approve
4 this plan and he told me -- he was very defensive,
5 and he said, you know, that's just the way I wanted
6 it. I voted for the plan, I like the way the plan
7 it is.

8 Well, people in the community said, you
9 know, he doesn't need 90 percent of this particular
10 district, African-American population, to elect.

11 And using your point about packing,
12 packing is a term of art under Section 2 of the
13 Voting Rights Act and Section 5, to a limited
14 degree, where you are putting arguably too many
15 minority voters in a district that need -- that that
16 district needs to be able to elect candidates of
17 choice.

18 So in my 90 percent example, the analysis
19 we did was 90 percent was way, way too high. But
20 under Section 5, Justice doesn't look at that
21 particular issue. Under Section 5, Justice looks at
22 retrogression only. Can you -- can minorities elect
23 candidates of choice in the districts that you claim
24 they can.

25 The retrogression standard is purpose,

1 which means intentional discrimination, or effect,
2 which can be accidental.

3 Nine years ago, we found purpose,
4 intentional discrimination, in one district because
5 in that district, two plurality Latino towns had
6 been moved out, one town that was overwhelming Anglo
7 was moved in.

8 The Assistant Attorney General
9 determined -- and he said this in the phone call, he
10 said, "Bruce, this sounds like intentional
11 discrimination to me."

12 And my response was, "Yes, sir."

13 He made that determination and we did
14 because taking two towns out of a district that were
15 38 to 40 percent Latino, replacing them with one
16 that was, I think 85 percent Anglo, perhaps, diluted
17 the minority voting strength.

18 Going back in a little more to your
19 question in my example, determining what level of
20 support, what level of participation, what level of
21 population minorities need to elect candidates of
22 choice is done by analysis. You make a
23 determination. Let's assume that it's 53 percent.
24 Just take a number out of the air. 53 percent
25 voting-age population.

1 Okay. So if it's 53 percent, let's say
2 that's statewide, then you know that's the number
3 that you're dealing with.

4 If you're looking at 70 percent, maybe
5 that's packing. Maybe that's putting too many
6 minority voters in a district, because if do you
7 that, then are you diluting the ability of minority
8 voters in another district to elect. And that's
9 more of a Section 2 issue than Section 5.

10 Packing is something that happens in many
11 places around the country, but I think that often
12 happens because analysis -- good analysis isn't done
13 to determine, okay, we need 53 or 54 or 56 or 51.

14 Now, not surprisingly the rate at which
15 minority voters can elect candidates of choice will
16 vary within a state and arguably within a city.

17 One of the things that I remember from
18 nine years ago was there was a Legislative district
19 where minorities could elect in a proportion in the
20 30s. That was an anomaly. I was -- this happened
21 to be the district -- one of the districts I was
22 responsible for.

23 When I was told this by people in this
24 state initially, my response was, wow, really? That
25 doesn't seem like it can happen. But the analysis

1 we did showed that it could. So that informed other
2 analyses and other determinations that we made.

3 Doing county-level redistricting in this
4 state, I can tell you that there are supervisory
5 districts where minorities can elect in percentages
6 in the 30s. Now, that varies by county, it varies
7 by geography. So there's no, like, absolute you
8 must have 53 percent statewide. The analysis has to
9 go into more depth than that. Because if you don't,
10 then you leave yourself open to Section 2 liability
11 issues.

12 VICE CHAIR HERRERA: Madame Chair, just a
13 quick follow-up.

14 Mr. Adelson, you had mentioned that the
15 -- that in a majority/minority district, that the
16 minorities living -- living and voting in that
17 district need to elect a candidate of choice.

18 What does that mean exactly because I --
19 let me give you an example.

20 So there's high minority district, 53
21 percent voting age, Hispanic Latino, and they are,
22 let's just say in a Democratic area, there's a
23 Hispanic candidate running, there's a Caucasian
24 candidate running. It doesn't necessarily mean that
25 they need to elect a Hispanic candidate; is that

1 right?

2 BRUCE ADELSON: Not at all. It's the
3 race of the vote that goes into these
4 determinations. Candidate of choice can be anybody.
5 It can be Latino, African American, Native American,
6 Anglo, Asian American, anyone.

7 If the analysis goes to the point of
8 showing who that candidate is -- now, I've seen in
9 examining districts in other parts of the country,
10 I've seen minority voters elect Anglos, elect people
11 from every racial group you can imagine, whether or
12 not they were from that group. Because there's
13 something called coalescence and coalition voting.

14 So then let's say you have a district
15 that has Native Americans, African Americans, Asian
16 Americans and Latino and Anglos and there's one
17 group among those five, let's say Asian American
18 that's a plurality. Your analysis could show that
19 all portions of all five groups coalesce so that the
20 minority, the racial minorities are able to elect
21 whom they want. Let's just presume it's an Anglo.

22 So the race of the candidate is not part
23 of the analysis in this way. It's the race of the
24 voter. But the race of the candidate does come into
25 play in other parts of the analysis.

1 But I agree with your point,
2 Commissioner, absolutely. The candidate's race does
3 not determine exclusively whether or not that person
4 is the candidate of choice of that district minority
5 voting.

6 VICE CHAIR HERRERA: Thank you.

7 BRUCE ADELSON: You're welcome.

8 CHAIRPERSON MATHIS: Other questions from
9 other commissioners?

10 COMMISSIONER MCNULTY: I do have a
11 question, many questions, but let me ask one right
12 now.

13 So I understand you to be saying that we
14 will early in our process do an analysis of the
15 voting patterns of minorities in Arizona or we
16 should so that we understand as we are drawing these
17 districts where minorities have the ability to elect
18 a candidate of their choice and to ensure that we
19 don't retrogress that ability and that that
20 percentage may be different in different areas or
21 different districts and then it also may be the case
22 as Mr. Herrera was saying, that you could have a
23 minority group that makes up 60, 65 percent of a
24 district and our task -- when we think about a
25 benchmark, our charge is not to make sure that we

1 don't go below 65 percent, but that we don't
2 retrogress the minority's ability to elect a
3 candidate of choice, which could be -- could mean
4 based on the analysis that the percentage needs to
5 be higher or lower than 65 percent.

6 Is that right? It's -- the analysis is
7 whether they can elect their candidate of choice,
8 not whether the percentage of minority voters
9 remains 65 percent?

10 BRUCE ADELSON: Yes, Commissioner, that's
11 correct. It's -- the first level is can minorities
12 in a given district, in your hypothetical, do they
13 have the current ability to elect candidates of
14 choice.

15 If they do, the next level is what level
16 of population is needed to avoid retrogression.

17 Let's assume it's 65 percent. Let's say
18 your analysis shows in this particular district
19 minorities in order not -- they are not -- to be
20 retrogression, you need a 65 percent voting-age
21 population. Then you look at surrounding
22 demographics and surrounding facts on the ground.

23 Let's say in this particular district
24 that's a housing development that's being built
25 where the expectation is that the majority of people

1 living there will be Anglo and will that dilute this
2 65 percent?

3 Do you need to maybe raise 65 percent to,
4 let's say, 67 to avoid retrogression by effect
5 future retrogression in let's say two years after
6 this housing development has been completed? That's
7 a possibility.

8 But let's assume that doesn't exist, but
9 your point, if your analysis shows the minority
10 voters can elect candidates of choice and the level
11 that is needed to maintain that is 65 percent,
12 that's where you start.

13 So going below that -- I don't want to
14 say that you absolutely cannot do that. Your
15 analysis will inform where you go.

16 But what I think is also important to
17 realize is I understand very well having worked for
18 Justice and the work I do now, that there's a
19 tremendous anxiety, interest, eagerness, pressure to
20 have maps done and have them all precleared so that
21 everybody can move forward with elections. And I
22 know that all of the election officials in the state
23 that I talked to nine years ago and that I talk to
24 now, I know they all have their calendars and they
25 are very -- they have their concerns about balance

1 and process.

2 My concern is a little different. My
3 concern is -- I shouldn't say it's a concern. I
4 don't like risk from a legal standpoint.

5 To me, risk is what happened in the
6 jurisdiction in another part of the state that I
7 worked with. They had done their redistricting but
8 they had not done outreach to their local language
9 minority community and they wanted to make the
10 submission to the Justice Department. And I said, I
11 don't think it's worth it to take the chance that
12 they will punt it back and ask where is your -- in
13 this jurisdiction, where is your Spanish language
14 outreach? Where is proof that you had Spanish
15 language assistance, for example, in your meetings?
16 What's your proof that the Spanish-speaking
17 community approved that?

18 So what my suggestion was, let's have
19 some meetings, do some outreach and then we'll go
20 ahead. So they've done their meetings, they've done
21 their outreach and now we're moving forward with
22 submitting to Justice.

23 What that -- how that connects in a way
24 to what you're asking me is, the analysis is
25 ongoing. If you do all of your analysis today, you

1 won't be done. There will be other analyses that
2 you will need to do. And I see that -- I see that
3 regularly.

4 That's something that's very important to
5 realize in a Section 5 state because you really
6 don't have a lot of margin for error. We are not
7 talking about the Section 2 where you might have
8 liability if we pack a district. We're talking
9 about no preclearance, no election. No
10 preclearance, everything is pushed back.

11 Now, unfortunately, in this state, there
12 have been objections either in whole or in part to
13 the last three redistrictings. Justice has a file
14 of every state, and in that file is information
15 that's related to previous redistrictings, all of
16 the analysis of the Department and the analysis of
17 the jurisdiction.

18 So Justice looks at the file, the team
19 for Arizona has likely looked at the file by now and
20 is aware of our conclusions from nine years ago, the
21 conclusions from the '90s, and the conclusions from
22 the '80s. And that -- to them, that -- I don't want
23 to say it confirms what they will be looking at, but
24 they have an idea of what -- of the history of the
25 jurisdiction because the people who are going to be

1 reviewing your submission were not there nine years
2 ago. They weren't part of my team and they were not
3 -- have not been involved with redistricting
4 previously.

5 So in order for them to get up to speed
6 on the hundreds of issues involved in redistricting,
7 they've looked at this file, because that's what we
8 did nine years ago and I'm pretty confident they did
9 the same thing.

10 So I'm sorry if I kind of went astray
11 from your question, but your point -- I agree with
12 you. Determine ability to elect and then determine
13 that level that's needed and then see whether that
14 level should or can be reduced or increased.

15 CHAIRPERSON MATHIS: Questions from other
16 commissioners?

17 VICE CHAIR FREEMAN: Madame Chair.

18 CHAIRPERSON MATHIS: Mr. Freeman.

19 VICE CHAIR FREEMAN: Mr. Adelson, you
20 mentioned in your presentation that Arizona has nine
21 benchmark Legislative districts, two for
22 Congressional.

23 Would the Voting Rights Act require under
24 certain circumstances the creation of additional
25 minority/majority districts?

1 You also referenced minority-influenced
2 jurisdictions and how does the Voting Rights Act
3 apply as to those jurisdictions and would
4 retrogression also come into play with those?

5 BRUCE ADELSON: Thank you for the
6 question.

7 The nine is the floor. You're -- I take
8 your point, you could need to create more depending
9 on the minority population growth in this state over
10 the last ten years.

11 One of the things that we had noticed
12 nine years ago was the Latino population had
13 increased dramatically. I think at the time it was
14 six or seven points. I haven't looked at in detail
15 how the population has changed here in the last ten
16 years. Arguably, the increase has been about the
17 same and maybe even more.

18 So from a Section 2 perspective, it may
19 be necessary to have an additional district. Just
20 speaking hypothetically, let's say one Legislative
21 district and let's say one Congressional district,
22 and, of course, that's just hypothetical because I
23 don't know that.

24 That's -- your analysis will show that.
25 Your analysis will show where your population growth

1 is, what the population growth has been, because
2 just speaking, you know, in -- statewide, let's say
3 statewide has four Congressional districts, and of
4 those four, two can elect candidates of choice.
5 Their minority population has increased 25 percent.
6 So that population has been concentrated in one
7 particular area in one district where minorities can
8 elect now.

9 Given that hypothetical, my advice to
10 that jurisdiction would be you need to look at
11 creating a third district where minorities can
12 elect, because if minority population has increased
13 25 percent in that one district, you have a
14 one-person, one-vote issue under the Constitution
15 and you mostly have a vote-dilution issue, too.

16 So that -- all of those questions will be
17 answered through the analysis. So it is conceivable
18 that that could happen.

19 Influenced district is something -- is a
20 term that -- I like the term "coalition district"
21 better. The coalition district issue is something
22 that the supreme court really had -- has not
23 specifically ruled on from a Section 2 standpoint.

24 What a coalition district means is, let's
25 say there a district that is 35 percent minority.

1 There's no absolute numerical majority of a minority
2 group. But in that district, minorities can elect
3 the -- let's say that 35 percent is Native American
4 and let's say they are at 10 percent Asian
5 Americans.

6 Analysis shows that the Asian American
7 voters and the Native American voters' coalition or
8 coalesce and together, with the help of some Anglo
9 voters, they can elect candidate of choice.

10 Now, that's not a so-called
11 majority/minority district but it is a coalition
12 district where analysis reveals that minorities
13 clearly can elect whom they want.

14 So if they can elect whom they want,
15 retrogression then comes into play and you can't
16 reduce or weaken that ability.

17 My caution always with redistricting is
18 the possibility of having to increase minority
19 population in districts to avoid retrogression. So
20 that, in my example where you don't have a numerical
21 majority, I think the ability to elect is more
22 fragile than in a district where minorities make up,
23 let's say, 60 percent. And if you're at 60 percent,
24 your ability to elect is likely going to be stronger
25 than it is at 35 percent.

1 But the analysis will show that.
2 Analysis could even show that that group of
3 35 percent is -- turns out in such strength that 35
4 -- they are pretty strong at 35.

5 I would still -- my advice would still be
6 to bump that up a little bit. But analysis, good
7 analysis answers all of the questions. And these
8 are the types of questions that Justice will ask and
9 these are the analyses that Justice will perform.

10 VICE CHAIR FREEMAN: Thank you.

11 BRUCE ADELSON: You're welcome.

12 COMMISSIONER STERTZ: Madame Chair.

13 CHAIRPERSON MATHIS: Mr. Stertz.

14 COMMISSIONER STERTZ: Your presentation
15 was a small drop in a large ocean of information
16 that we are going to need to grasp from you as this
17 process moves forward.

18 Justice obviously has their own weighting
19 criteria of some of the analysis, analytic points
20 and data points that are going to be coming forth.

21 How does voter turnout come into play in
22 that analysis?

23 BRUCE ADELSON: Voter turnout can be an
24 element in the analysis. I know that's something we
25 looked at nine years ago. How in certain

1 districts -- let's say in my hypothetical district
2 with minorities that are not an absolute numerical
3 minority -- majority, we found in the district that
4 I mentioned earlier that in that district,
5 minorities turned out at a higher rate than let's
6 say in adjoining districts. That had to do with
7 reasons of demography and history but those are
8 things that Justice will look at.

9 Justice will look to see the political
10 history, not in a partisan way, not in an electoral
11 victory way, but more people being active in
12 community affairs, that's probably a better way to
13 look at it, in this particular district or this
14 particular area.

15 So turnout can come into play. It's not
16 dispositive, but it is one factor in the larger pool
17 of factors that's examined, and that's certainly
18 something that we looked at.

19 COMMISSIONER STERTZ: As a follow-up to
20 that, as a hypothetical or an actual example, voter
21 turnout in the two Congressional districts in the
22 state of Arizona is significantly lower than in the
23 other seven districts, and that would -- would that
24 be reason to actually increase the minority
25 population in those districts to offset the lower

1 voter turnout?

2 BRUCE ADELSON: It could be. It could be
3 and in relation to other potential factors. One of
4 the factors we haven't mentioned is something called
5 racially polarized voting, RPV.

6 Racially polarized voting analysis is the
7 cornerstone for many of the things we are talking
8 about.

9 If voting is polarized by race, what that
10 essentially means is that can voters choose
11 candidates based on the race of the candidates and
12 the race of the voter.

13 So let's say, taking myself as an
14 example, that I strongly prefer Anglo candidates and
15 I don't prefer non-Anglo candidates. That's
16 racially polarized voting.

17 If you have racially polarized voting,
18 which the vast majority -- I shouldn't say that.

19 Jurisdictions around the country have it.
20 That was prevalent in Arizona nine years ago. That
21 was the Commission's analysis revealed nine years
22 ago.

23 With racially polarized voting, there may
24 be more of a need, as you're suggesting, to increase
25 minority population to avoid the dilutive effect of,

1 let's say, Anglo voter. So that is -- is possible.

2 But racially polarized voting is
3 essential to the Section 5 analysis and also Section
4 2.

5 If there were no racially polarized
6 voting and there is -- that is true in parts of this
7 state and in parts of the country, then many of the
8 issues that we are talking about will be less
9 important because for minorities to maintain the
10 ability to elect, if voters don't choose candidates
11 based on race, then there will not be a difficulty
12 in having a larger Anglo population since in that
13 particular jurisdiction, Anglos support non-Anglos
14 at the same rate that non-Anglos also support Anglo
15 candidates and vice versa.

16 So I think we all learned in law school
17 that sentence that I know drives my wife crazy, "It
18 depends." And that's true here. It does depend,
19 but I take your point and I could see that that
20 could be -- it could very well be true, certainly if
21 the analysis works.

22 COMMISSIONER STERTZ: As a follow-up to
23 that and then I'll continue on with the other
24 commissioners, where we've got population transfer
25 that were isolated in a particular area where have

1 actually a population reduction because of movement,
2 and the movement to be able to create a
3 majority/minority district or to maintain the
4 position where we would not fall into retrogression,
5 would create a complex creation of a district by
6 jumping -- jumping over counties and counties to be
7 able to capture population. And I know that in
8 other states and other southern states I know that
9 I've read some interesting articles about what's
10 taking place in Louisiana right now as being a
11 challenge after Katrina because there's such a large
12 movement of the population.

13 There's been a -- how do we approach
14 something like that where we actually have some
15 population movement where they've gone from rural
16 districts into urban districts and those districts
17 are hundreds of miles apart and with counties in
18 between?

19 BRUCE ADELSON: As you suggest, that is a
20 very difficult issue and is a complex problem with
21 redistricting here and, frankly, in many other
22 places.

23 In Louisiana, one of the issues that I
24 had thought might come up which I don't believe did,
25 there's a -- an out, in a sense, for retrogression

1 if you can claim unavoidable retrogression.

2 Like in Louisiana, with the catastrophes
3 there, when you've had such a steep drop-off in
4 population, does that somehow relieve you of the
5 Section 5 obligation.

6 I'm not aware that Louisiana claimed that
7 in this round of redistricting.

8 In Arizona, I think that that might be
9 difficult to claim because the numbers would have to
10 be pretty high. You know, I'm talking about a
11 60 percent majority/minority district that's now
12 20 percent minority. I'm exaggerating, of course.

13 I think that what's -- what I find a lot
14 of people don't appreciate with redistricting, and
15 certainly this is something that we all know because
16 this is what we do, state considerations, county
17 lines, maintaining communities of interest, not
18 splitting municipalities, can all fall by the
19 wayside in order to comply with the federal ones.
20 Meaning one person, one vote and the Voting Rights
21 Act.

22 So that if, for example, you have to
23 divide a community of interest or divide a
24 municipality in order to comply with the Voting
25 Rights Act, that's what you have to do. That's what

1 federal law says.

2 I know we've all seen maps with
3 strangely-shaped districts which can raise their own
4 concerns, and I see it at the county level that
5 there have been situations where we've had to bring
6 minority population in to support various districts
7 that we had not expected to do initially because of
8 population laws.

9 But invariably, we've been able to do
10 that without, you know, having the city here and
11 another city 500 miles away that's in the same
12 district.

13 I don't want to say that you absolutely
14 won't be facing that or that's necessarily
15 problematic, but that is clearly -- I agree with
16 you, that is one of the challenges not just here but
17 really everywhere because you are such a rural state
18 outside your large municipalities, that's a
19 challenge. And I know that that was a challenge to
20 a certain extent nine years ago. I expect it will
21 be a challenge again.

22 COMMISSIONER STERTZ: Thank you.

23 VICE CHAIR HERRERA: Madame Chair.

24 CHAIRPERSON MATHIS: Mr. Herrera.

25 VICE CHAIR HERRERA: Let me use District

1 7 -- or Congressional District 7 as a example where
2 Representative Grijalva, majority/minority district
3 in 2010 barely won but previous elections he had won
4 easily.

5 Could we use that as an anomaly because
6 most Democrats lost -- you know, I think all
7 Democrats lost statewide and the safe seats were no
8 longer safe.

9 So instead of increasing the Hispanic
10 voting population, can we use the data that says
11 2010 was an anomaly, therefore, you don't need to
12 adjust the numbers to create -- to have more
13 Hispanic -- to increase the Hispanic voting
14 population?

15 BRUCE ADELSON: Well, that's a -- I
16 appreciate your question, Commissioner, because what
17 that leads into is something that's very important,
18 too, is you don't just look at one election.

19 In this state, you arguably start with
20 2004, which was the year I believe that you ran your
21 first elections under the precleared plan that you
22 currently have.

23 So when you're looking at Congressional
24 elections, Legislative elections, but you're going
25 to be looking at other elections, too. You can look

1 at supervisory elections, you can look at sheriff
2 elections, justice of the peace elections even
3 because these are all exogenous elections where
4 you're polling elections from outside the district
5 or the issue that you're primarily focused upon.

6 It could be that you're not -- if you're
7 not getting the data you need to have the analysis
8 to support what you have to do, then you go mine
9 elections.

10 I mean, I remember in an effort to
11 examine what the State had submitted nine years ago,
12 we looked at dozens of elections below the
13 Legislative level to make -- to try to figure out,
14 okay, the State is saying that District C is a
15 district where minorities can elect. They haven't
16 really given us what we need in a clear way. Let's
17 see if we can figure it out based on what we have.

18 So we would run election after election
19 and the statistician would keep coming back, Bruce,
20 I don't have a clear answer for you.

21 Okay. Let's go to the 2006 constable
22 election in precinct 5 and we would continue to do
23 analysis.

24 So taking your point, if you look at --
25 excuse me, if you look at one election, no matter

1 where it is, one election will not be enough.

2 You're going to be looking at dozens of
3 elections. State, county, below county, maybe
4 municipal. It really will depend on the location.

5 So taking your point, if one election is
6 an anomaly for whatever the reason is, the question
7 is why is it an anomaly. What happened that year?
8 Was turnout particularly low. In a presidential
9 general election, for example, turnout is very high.
10 That could skew results. So then you have to look
11 at other elections; Congressional, primaries.

12 You're looking at primary and general election.

13 So it's not just one election. You're
14 looking at a lot of elections.

15 VICE CHAIR HERRERA: A quick follow-up.

16 You talked about Louisiana and the -- and
17 after the disaster people leaving, the minorities in
18 that area. We have sort of the same -- I guess sort
19 of the same issue in Arizona, just not a natural
20 catastrophe. It's a politician-driven catastrophe
21 where we had SB 1070 and we had minorities leaving
22 the state.

23 How would that impact and can we make
24 that justification if we have retrogression in maybe
25 one district?

1 BRUCE ADELSON: Let's assume that you've
2 had a 15 percent drop in minority population as a
3 result of nonnatural issues. Let's assume that.

4 Would that be high enough to be
5 unavoidable retrogression? I don't know the answer
6 to that and I'm not going to say, yes or no, but I
7 will say the standard for unavoidable retrogression
8 is incredibly high.

9 My presumption is that's not applicable
10 here because I don't think it was applicable in
11 Louisiana.

12 So you may have additional challenges,
13 which I'm sure you -- just like your colleagues
14 across the country do, in basically finding the
15 population to avoid retrogression.

16 But I would -- my presumption would be
17 that unavoidable retrogression probably is not an
18 issue here. I could see intellectually it could be
19 in many different places, but that's something --
20 again, like we've been saying, you have to show me.
21 The analysis would have to show that. You would
22 have a big bar to jump over with Justice.

23 VICE CHAIR HERRERA: Just one more
24 follow-up question.

25 In areas where you have the non-Hispanic

1 voters coalescing or building a coalition with
2 Hispanic voters, could you decrease the Hispanic
3 voting population and increase the other voting --
4 so let's just say that the Hispanic voting
5 population is 56 -- 56 percent and the other larger
6 group is -- votes with the Hispanic population.

7 Could you either decrease the Hispanic
8 voting population slightly considering that they
9 vote for -- or formed a coalition with the
10 non-Hispanic group to elect a candidate of their
11 choice?

12 BRUCE ADELSON: As a general proposition,
13 I would say, yes. You have to be careful, though,
14 because the new regulations are stronger than the
15 regulations we used nine years ago, and they were
16 pretty strong.

17 I mean, there is -- you can't --
18 retrogression is no reducing, weakening,
19 diminishing. Those are pretty strong words. So if
20 you're looking at a minority district where -- let's
21 say a coalition district, let's say is 25 percent
22 Native American and 15 percent Latino and analysis
23 shows that minorities can elect whom they want in
24 that district but I decide to take 10 percent of the
25 Native American population, bump it down to 15 and

1 move the Latino population up by 5, I would say I
2 don't really have to see analysis for that. That's
3 retrogressive because the drop is too much.

4 If you're looking at dropping population
5 and maintaining the ability to elect without
6 retrogression, we're talking about very small
7 changes, 1, 2 percent, maybe 3 percent vary on the
8 district and it depends on the strength of the
9 minority community as it is now.

10 The margin of election -- let's say in
11 your hypothetical district, that minorities can
12 elect -- have elected for ten years by 20 points,
13 every single election. Okay. Then I might be more
14 comfortable with reducing the population beyond two
15 or three points. But the analysis will have to show
16 that.

17 I -- it's unusual for that to happen.
18 Frankly, I haven't seen that in any part of the
19 country. But analysis drives all of this. So if
20 the analysis shows that, okay, then that's something
21 we would look at. I've never seen that, though.

22 VICE CHAIR HERRERA: One last question.

23 In the -- so what if we were trying to
24 create another majority/minority district by simply
25 increasing the majority -- the majority/minority

1 district in a certain -- in a district that has
2 60 percent and maybe moving some of them to another
3 district to prove to the Department of Justice that
4 we could create another majority/minority district.
5 How would they see that?

6 BRUCE ADELSON: Well, I mean, you're
7 first going to have to -- let's assume that. Let's
8 assume that you're creating an additional district,
9 whether it's Legislative or Congressional where
10 minorities can elect.

11 At the starting point, you're going to
12 have to show that your population supports that. I
13 mean, if you had zero population growth, which
14 obviously you haven't, then you can't do that. If
15 you've had zero population growth in your minority
16 community, you can't do that.

17 If you have the population growth to
18 support that, then what you would do is you would
19 take -- you may have enough minority population in
20 the geographic area where you want to create another
21 district and you don't have to bring minority
22 population from elsewhere. Or if you do, then let's
23 say you have your 60 percent district and let's say
24 analysis determines that minorities in that district
25 can elect at 52 percent. Okay. Then maybe you take

1 2 or 3 percent from that district to the new
2 district.

3 Now, I wouldn't go from 60 to 52 because
4 that's just too -- you don't leave yourself a margin
5 for error.

6 But let's say you got from 60 to 58,
7 maybe, and you move that 2 percent into the
8 district.

9 One of the issues that came up nine years
10 ago, and I had a lot of conversations with people
11 about this, was let's move 10 percent. Well, we
12 have 60 percent here. Let's bring 15 percent.

13 And, you know, my comment was -- we were
14 talking about before, your state consideration for
15 redistricting or your state considerations, just as
16 every state has them, but they take a back seat to
17 the federal ones.

18 Unless you can show you're complying with
19 federal law and complying with one person, one vote,
20 all your state consideration don't matter. The
21 federal ones are paramount under our system. So
22 they must be complied with.

23 But I had conversations with elected
24 officials in the Legislature at the county level and
25 the municipal level nine years ago, and many of the

1 comments were can't we move 10 percent or why can't
2 we create this district and you're standing in the
3 way of being able to move these people from here or
4 there.

5 My comment always was, you know, the law
6 is the law. I mean, this the Voting Rights Act of
7 1965. It's been the law for 46 years.

8 So while I understand your local
9 priorities and preferences, that has to be addressed
10 first. If you can address it and still move
11 population, if that's your choice, then you have the
12 legal support and the analysis to do that.

13 But a lot of jurisdictions don't do it in
14 a way that you're suggesting. They just move and
15 then they figure that everything will just work out.
16 It doesn't work like that. And I had to tell many
17 jurisdictions nine years ago, sorry, this doesn't
18 work.

19 VICE CHAIR HERRERA: Thank you.

20 CHAIRPERSON MATHIS: Other questions from
21 other commissioners?

22 VICE CHAIR FREEMAN: I think I had one.

23 CHAIRPERSON MATHIS: Mr. Freeman.

24 VICE CHAIR FREEMAN: Mr. Adelson, I think
25 I know the answer to this. I think it's going to be

1 based on analysis performed on every area of the
2 state, but I think other states use their old maps
3 as a starting point and it's easy to sort of
4 conceptualize, at least for me, how using these
5 benchmarks would come into play.

6 In Arizona, not only do we wipe the slate
7 clean and start from -- draw new maps but we also
8 have a reapportionment to perform on the
9 Congressional level.

10 Can you --- and I'm not exactly sure how
11 to formulate the question, but can you kind of talk
12 about from our perspective starting purely from a
13 blank slate, how do we employ those benchmarks from
14 the old maps to create the new maps?

15 BRUCE ADELSON: Well, I think -- and
16 Commissioner, I think that your challenge is unique
17 nationally with the grid system, because I agree
18 with you, that your colleagues don't have that same
19 grid requirement. So they will look at the maps
20 they have now and then overlay what they are
21 proposing and it is a less complex task.

22 From a benchmark perspective, I think the
23 important thing is you start with the numbers, the
24 nine and the two. And again, my recollection is the
25 two, not two Congressional and nine Legislative.

1 If you -- and then look at where is your
2 population concentrated in the state. Pima County,
3 Pinal County, Maricopa County, for example.

4 So you're arguably going to have more
5 districts that -- more population concentration in
6 those areas. You probably don't have the same level
7 of population increase in some of the more rural
8 parts of the state.

9 From a retrogression standpoint, if --
10 let's say District D now can elect, the Justice
11 Department looks at retrogression across your
12 submission so that if instead of District D, you
13 have District E electing, that's not necessarily
14 problematic because District D doesn't but District
15 E does.

16 So as long as you're keeping that number
17 of nine or two, that's the important part. And I
18 think from a preliminary standpoint, doing analysis
19 or mapping to show where your population growth has
20 been highest will give you some good ideas about
21 where you will be concentrating your efforts.

22 Certainly when it comes to creating your
23 new Congressional district, for example, you may
24 look at areas of higher population growth because
25 that will relate to the vote dilution, the Section 2

1 issues, the cracking and packing issue that we
2 talked about.

3 So I appreciate that your challenges are
4 unique from the grid standpoint, but looking at the
5 numbers and then getting some maps and analysis to
6 show you where your population growth has been,
7 where it's been highest, can be very helpful because
8 I know that in my work, looking in -- at the county
9 level looking at jurisdictions and voting precincts
10 where you have a voting precinct that has
11 500 percent population growth, I know that we may
12 have to split that precinct to keep one person, one
13 vote. Or in a precinct that's lost 10 percent and
14 that precinct is majority/minority, I know we are
15 going to have to move minority voters into that
16 precinct from elsewhere.

17 So those dynamics will drive your further
18 process and drive your additional analysis.

19 VICE CHAIR FREEMAN: Thank you.

20 CHAIRPERSON MATHIS: Other questions?

21 Ms. McNulty.

22 COMMISSIONER MCNULTY: Mr. Adelson, I
23 have a couple of questions.

24 You mentioned that nine years ago the
25 Justice Department found intentional discrimination

1 here.

2 My question is, is there a carryover from
3 that that we need to be cognizant of in particular
4 with regard to -- are there any particular
5 geographic, you know, locations that we need to be
6 paying special attention to given that that finding
7 was made nine years ago or are there other things
8 that we need to be cognizant of as a result of that?

9 And a completely unrelated question I
10 think is would you talk a little bit about citizen
11 voting-age population, how that -- how that
12 extrapolation is done and how it fits into our
13 analysis.

14 BRUCE ADELSON: Let me start, if I could,
15 with the last part of your question about citizens
16 voting-age population or CVAP. That is a
17 census-driven dynamic in that -- in the sense that
18 is data that is retrievable.

19 If you have a district that is 55 percent
20 minority voting-age population but the citizen
21 voting-age population is 30 percent, now there won't
22 be that big of a disparity. But if there is, then
23 that district is not going to go able to elect
24 arguably candidates of choice because the percentage
25 of people who can vote are very low.

1 Now, we did look at CVAP in Arizona.
2 That is something that Justice does look at as part
3 of its redistricting submission -- redistricting
4 analysis. In a way, it's a corollary to prison
5 population.

6 If you're creating districts without
7 regard to citizen voting-age population, you're
8 flying blind, in a sense. You're just assuming that
9 various districts have the population to elect
10 without knowing age, without knowing turnout,
11 without knowing registration possibly, and without
12 knowing whether or not they are citizens.

13 Nine years ago, we did determine that we
14 didn't know, based on the data that we were given,
15 whether some of the populations had the requisite
16 percentage of people who could and are qualified to
17 vote. So that is a data set that is available.
18 That is a data set that Justice does look at.

19 Going back to your first question, and
20 for all of my friends in Washington who may be
21 watching me, I'm not going to make any presumptions
22 about whether there's carryover for them. But I
23 will tell you that there are certain realities in
24 the environment that we live in today. The Justice
25 Department is conducting at least two civil rights

1 investigations in Arizona right now that I know
2 about.

3 Justice monitored elections in Arizona
4 last year. Justice will be monitoring elections in
5 Arizona next year. Justice is aware of the
6 controversies that have occurred in Arizona
7 concerning various policies in this state.

8 Justice also is aware of your
9 redistricting history. I mean, as I said, your last
10 three redistrictings have either been objected to
11 completely or in part, '80s, '90s, and 2000.
12 Justice knows that. And as I said, there is
13 literally a file on every state. Justice has the
14 file and has read through the file about the
15 dynamics that are here.

16 Now, are they going to prejudge your
17 redistricting because of observing an election in
18 Navajo County last year? No. But as part of their
19 research into preparing for redistricting, they are
20 aware of what has happened in redistricting over the
21 last 30 years in Arizona and they are aware of their
22 own investigations and their own enforcement efforts
23 in the state.

24 So I think that they are not going to
25 prejudge your redistricting. I won't say it informs

1 the redistricting, but they certainly are aware of
2 it. I think it's important that everybody
3 understands that that is a live issue and something
4 Justice knows about.

5 A lot of jurisdictions that I've worked
6 with around the country have suggested to me, oh,
7 you know, well, we had this happen. Well, we don't
8 have to tell them that, do we?

9 And my point is, yeah, you do. Because
10 all of the times that I talk to Justice and all of
11 the times that I worked with Justice on behalf of my
12 clients, and I do this fairly frequently, they tell
13 me one thing, and they always say, "Bruce, we know
14 you know this, but this is for your clients. Don't
15 hide things from us. Be straight with us. If
16 there's a problem, tell us, we'll work through it
17 with you." They don't like surprises.

18 Nine years ago, we were surprised because
19 we found things in the redistricting submission that
20 we didn't expect to find that we weren't told about,
21 but we were told this by people in the state,
22 Legislative -- by elected officials, by voters, by
23 people who would just call us and say, Bruce, that
24 district in XYZ county is a real problem and here is
25 why. Those were all things we had to investigate

1 and all things that Justice will investigate again.

2 So Justice, just as we all bring, you
3 know, whatever our -- our own research into
4 anything -- we bring to the table for any matter
5 that we're dealing with, Justice does the same
6 thing. They have the folder. They know what's
7 happened here the last three redistrictings. They
8 know what we did nine years ago.

9 So that's background information that
10 they take very seriously.

11 CHAIRPERSON MATHIS: Thank you.

12 BRUCE ADELSON: You're welcome.

13 CHAIRPERSON MATHIS: Any other questions
14 for Bruce -- for Mr. Adelson?

15 COMMISSIONER MCNULTY: I have one more.

16 CHAIRPERSON MATHIS: Ms. McNulty.

17 COMMISSIONER MCNULTY: So you're our
18 lawyer now, right?

19 BRUCE ADELSON: Yea, I am a lawyer.

20 COMMISSIONER MCNULTY: So we are going to
21 be turning to you for some advice and perspective on
22 this issues over the next weeks and -- over the next
23 weeks as we draw these maps?

24 BRUCE ADELSON: I'm very helpful to work
25 with you and assist you in any way that I can. And

1 I appreciate that. Thank you.

2 CHAIRPERSON MATHIS: Any other comments?

3 COMMISSIONER STERTZ: Yes. Madame Chair.

4 CHAIRPERSON MATHIS: Mr. Stertz.

5 COMMISSIONER STERTZ: I want to go back
6 to the question of voter turnout because over the
7 last ten years in the nine Legislative and two
8 Congressional districts, there's been an increase
9 and a decrease of voter turnout on an ongoing basis,
10 including going through the last 2010 election.

11 When you're looking at those particular
12 districts, and again as Commissioner Freeman had
13 pointed out, we are going back to now going back to
14 a clean slate, so we are going to use benchmarks
15 that don't exist based on voter turnout as we're --
16 as we're isolating that.

17 How do we cull together that data to be a
18 firm representation of analytical data points that
19 will prove both Commissioner Freeman's question and
20 Commissioner Herrera's concerns about, you know, do
21 these -- how do these pieces fit together in this
22 puzzle in a clean slate such as what we are doing
23 here?

24 BRUCE ADELSON: Well, I think if you look
25 at -- first you do a racially polarized voting

1 analysis to get an idea of statewide where things
2 are at the state level. Then you'll drill down a
3 little bit and look perhaps county by county. You
4 look at turnout in, let's say, all federal elections
5 since 2004, primary and general, see how they vary
6 in different parts of the state.

7 Turnout, as I said, is a factor but it's
8 not dispositive. Your plan, as you formulate it,
9 will not be based solely on turnout.

10 But you're -- if I was still with Justice
11 and you are presenting me a district which you say
12 is a district where minorities can elect, let's say
13 53 percent and the turnout in that district has
14 varied over the last eight years in federal, state,
15 and local elections and your analysis shows that
16 minorities can elect in the range that I'm talking
17 about, my analysis will show the same thing.

18 The fact that turnout has varied won't
19 distract from the bottom line analysis that
20 minorities can elect in the percentages that we are
21 talking about.

22 However, you may find that if turnout has
23 fluctuated wildly, and by "wildly," I mean -- let's
24 say in the 2008 presidential election in District A,
25 turnout was 55 percent. Turnout in the 2000

1 election was 35 percent. Why would there be such a
2 tremendous swing?

3 Frankly, it's unusual for a swing like
4 that to exist. If it did, frankly, you would have
5 analysis that would answer the question of why.

6 So there are many different metrics and
7 levels of analyses that could answer virtually every
8 question that we are talking about.

9 Turnout -- if redistricting were just
10 based on turnout, we would be here for years because
11 that would be so incredibly difficult to get to. but
12 while it is a factor, it's not a depositive factor.
13 And even in looking at the clean slate grid system,
14 it will be one factor that you will need moving
15 forward in seeing how turnout may vary from La Paz
16 County to Pinal County in the Congressional primary
17 in 2006, for example. Maybe it varies because there
18 was a candidate who was running who was from Pinal
19 County.

20 Those are all factors that go into this,
21 which is why, you know, I always have that -- the
22 questions and the concerns from people about why --
23 let's just draw the maps right now. Let's -- we
24 could do it. We draw -- I could draw a map in 20
25 minutes right now. It's not going to get

1 precleared. And that in the end is our burden, and
2 the burden of 16 like states around the country. Is
3 in order to get the preclearance, we have to do --
4 drill down maybe further than New Mexico does.

5 But, frankly, the analysis that we do
6 also insulates you and insulates the State and the
7 taxpayers from liability in federal court from the
8 challenges that are already happening in other parts
9 of the country.

10 I think at my last reading, there were
11 twenty -- have been 20 lawsuits filed in Texas
12 challenging redistricting. There have been about 5
13 lawsuits in Illinois challenging redistricting. So
14 those are expensive.

15 UNIDENTIFIED SPEAKER: What about the
16 ones in Arizona?

17 BRUCE ADELSON: Those are expensive.

18 And I think doing the analysis supports
19 preclearance and also insulates folks from there not
20 being -- not being like what's happening in Texas.

21 COMMISSIONER STERTZ: Madame Chair, as a
22 follow-up to that, the -- and again, as we drill
23 down, I think we are going to be hitting lava by the
24 time that we drill down to what we are looking for.

25 One of the goals I believe out of the

1 Voters Rights Act was to eliminate
2 disenfranchisement as well. And when voters stop
3 turning out because there is an increase of voter
4 apathy because the belief of a -- no longer having
5 competitiveness in a particular district, the --
6 that seems to me to be counterintuitive to the goals
7 of the Voting Rights Act.

8 Could you extrapolate on that for me for
9 a bit?

10 BRUCE ADELSON: Well, I agree. I mean,
11 the voter apathy is an issue throughout the country,
12 and I think that in this country in contrast to
13 other western democracies, we don't criminalize not
14 voting. Not voting is a First Amendment freedom of
15 speech decision.

16 There are parts of this country where
17 voter turnout varies widely depending on the state,
18 county, or city you're living.

19 So I agree with you, Voting Rights Act
20 clearly is about enfranchisement. And I've seen
21 situations where apathy consistently has driven down
22 turnout.

23 I've also seen situations where
24 discrimination has driven down turnout. Whether
25 it's discrimination that's national-origin based or

1 race-based.

2 And one of the stories that I like to
3 tell about Section 5 in a jurisdiction that's not
4 here, on the East Coast, on the eve of the 2004
5 election, the local election officials had moved a
6 polling place one mile down a rural road from one
7 building to another. And at the time, didn't really
8 think that this was a big deal.

9 The attorney who was involved in the
10 submission came to me and said, "Bruce, there's
11 something weird about this. I want you to tell me
12 what you think I should do."

13 He had gotten some phone calls from older
14 voters. The place they moved the polling to had
15 been a Ku Klux Klan headquarters in the '70s. So
16 voters were starting to oppose the change.

17 And voters that he talked to said we're
18 just not going to vote there. And we are -- we are
19 very interested in voting in this community. We are
20 not going to vote if it's there. And in the end,
21 this particular county withdrew this change and
22 decided to move the polling place elsewhere.

23 So I've seen apathy, I've seen
24 discrimination. I've seen that in many different
25 parts of the country, and I take your point that

1 redistricting is not going to be informed by low
2 turnout because voters just don't care.

3 That's why turnout is not the only
4 factor. It is a factor. It may be a significant
5 factor depending on the jurisdiction, depending on
6 the county, depending on the district, but it's not
7 the sole factor it's a factor.

8 COMMISSIONER STERTZ: Mr. Adelson, this
9 is my last question, and thank you for your
10 indulgence.

11 The reason I was asking was because of
12 actually opposite of the way that you were
13 presenting that, is that in the two Congressional
14 districts and the nine Legislative districts, that
15 the apathy is driven down so that voter turnout is
16 quite low because there is a presumption of election
17 results. And the presumption of election results
18 have actually created disenfranchisement not by the
19 majority/minority but by the overall population
20 because there is a predetermination of results.

21 And, for example, in the state of
22 Arizona, we have close to 50 percent voter turnout
23 in the last election. Just slightly under
24 31 percent turned out in Congressional District 4
25 and because of the assumption of a predetermination.

1 I don't think that's the goal of the
2 Voters Rights Act and I don't think that that's the
3 goal of what our Commission Redistricting wants to
4 be.

5 BRUCE ADELSON: No, I take that point. I
6 think that I can -- whether it's here or in my own
7 state of Maryland or in Mississippi, Montana or
8 North Dakota, they are in exactly the same
9 situation, that voters don't turn out at certain
10 rates but perhaps because of a presumption of an
11 election result.

12 To the extent that that is an issue that
13 can be reconciled with the requirements of the
14 Voting Rights Act, I applaud your point and the
15 importance of that.

16 If that issue, voter interest and voter
17 apathy, can be reconciled and voter presumption of
18 result can be reconciled with the Constitution of
19 one-person, one-vote requirement, Section 5 and
20 Section 2, to that extent, I think that that's a
21 very laudable goal to be working towards. Whether
22 it does or not, of course, will depend upon your
23 work, on what the analysis shows and what the
24 demographics are in this state.

25 COMMISSIONER STERTZ: Thank you.

1 BRUCE ADELSON: Thank you.

2 CHAIRPERSON MATHIS: Thank you.

3 Ms. O'Grady.

4 MARY O'GRADY: If Ms. McNulty has a
5 comment, I can wait until the commissioners are
6 done.

7 COMMISSIONER MCNULTY: I do have one more
8 question.

9 Would you talk a little bit about what
10 our -- what we need to do to outreach, whether you
11 have any advice for us for what Justice is going to
12 want to see in that file about how we've done our
13 outreach?

14 BRUCE ADELSON: Yes. Thank you.

15 One of the issues that came up nine years
16 ago is that I got a lot of calls from minority
17 voters and Indian nations and community
18 organizations giving me information about various
19 issues. You should look at this or look at that.
20 We have a problem with this. They didn't do that.

21 One of the paramount issues is that
22 Arizona, under the Voting Rights Act, is covered by
23 something called Section 4(f)(4), which means that
24 every bit of information that you provide that's
25 related to elections and voting has to be in English

1 and Spanish. That's statewide. Every jurisdiction
2 in this state that holds public elections has to do
3 that.

4 There are also various counties, like
5 Pima County, has various language obligations for
6 Native American language. Like in Pima County
7 there's the O'odham requirement and the Yaqui
8 requirement. In Navajo County is Navajo, Apache,
9 and Hopi.

10 So I think that reaching out to the
11 Native American communities, to the tribes, to the
12 Intertribal Council, for example, working with
13 Latino organizations, Latino community-based
14 organization is important.

15 You're required to do that. The Voting
16 Rights Act regulations require that you show Justice
17 this is what we did. This was our outreach.

18 Outreach can be very challenging because
19 you're talking to a lot of people. And in addition
20 to your obligations of doing the analyses that we
21 are talking about and the map drawing and having
22 meetings like this, doing outreach is also a
23 component of that.

24 So one of the things that I looked at
25 nine years ago was as part of my checklist,

1 outreach. Let's see what happened. Whom did the
2 Commission speak to. What groups are -- am I
3 talking to. What are the groups saying. Is that
4 consistent with what the Commission has said?

5 Doing out- -- no outreach is very
6 problematic. How much outreach you do is really --
7 there's no threshold where you have to have X number
8 of meetings and speak with X number of people.

9 But bringing as many people into the
10 tent, to the redistricting tent about what you are
11 doing, what your requirements are, what the federal
12 legal obligations are is helpful to you and the
13 State because it eliminates an issue for Justice.
14 It eliminates a potential liability issue in federal
15 court, it also brings more people in the state into
16 the process to understand what it's all about.

17 One of the comments that I always get
18 about redistricting nationwide is many people look
19 at redistricting, if they have -- you know, I voted
20 for Joe Smith in the last election; he lost and I
21 want to have redistricting so he will win.

22 So the concerns that they have are very
23 real and very valid but they are not necessarily
24 consistent with what the legal requirements are.
25 And I find that -- I spent a lot of time this summer

1 just talking to people about the Voting Rights Act
2 and about enfranchisement issues and
3 disenfranchisement issues, about the one person, one
4 vote, what does that mean.

5 A lot of people think that the Voting
6 Rights Act guarantees the ability to elect people.
7 It doesn't. A lot of people think that one person,
8 one vote means you have to have an absolute at the
9 Legislative level -- each district has to be
10 completely equal. Doesn't mean that.

11 So I find that the more outreach you do,
12 whether it's voting -- voter rights outreach and
13 outreach generally like this, explaining to people
14 what's involved, what we are talking about, the
15 process, the very significant requirements that you
16 have to operate with, what preclearance is all
17 about, the more people hear that and understand
18 that, the more they appreciate the process
19 generally.

20 And going to your core point, the easier
21 your path is as you move down the road, because
22 Justice has only looked at two state's submissions
23 so far, Louisiana and Virginia. I don't know that
24 any other state -- I should say have precleared.
25 I'm not sure that other states have gotten -- have

1 even gotten to the point of having submitted their
2 plans yet.

3 So we are still very early in the
4 process. This is going to be going on nationwide
5 for a long time.

6 The more you can do to ease your process,
7 in my mind, the better it is for everyone.

8 COMMISSIONER MCNULTY: Thank you.

9 CHAIRPERSON MATHIS: Other comments?

10 Ms. O'Grady.

11 MARY O'GRADY: Madame Chair,
12 commissioners and, Bruce, this is sort of a proc- --
13 in terms of getting through all of this and in a
14 reasonable way, recognizing at the end of the road
15 what we want is a map that is not retrogressive and
16 that we have the analysis to support that and that
17 we've also weighed and considered all of the other
18 constitutional criteria in the process of coming to
19 that map.

20 And also kind of accepting that there
21 often are multiple ways to draw districts that don't
22 have a retrogressive affect. There's not just one
23 nonretrogressive map.

24 And so to a large extent, it's not like
25 we will simply, because the Voting Rights Act

1 compliance is an absolute, it's not like you ignore
2 the other constitutional criteria and just draw a
3 voting rights district and set those aside. It's a
4 very fluid process, I think, like we are starting
5 out.

6 So we've started out with some what-ifs
7 based on public input. And into those what-ifs, we
8 fed don't split Indian reservations as a -- in terms
9 of modifying our grids -- and we started out, like
10 with Congressional, we know that we have two
11 districts with an opportunity to elect. We know
12 that we have two majority Hispanic districts.

13 So that's in our what-ifs, maintain those
14 two majority Hispanic VAP districts. That doesn't
15 mean we are doing that deeper analysis and we are
16 not done with that analysis, but it also seems what
17 we're sort of in that fluid what-if phase, we
18 don't -- we shouldn't do that drill-down analysis on
19 every what-if that's parsed out, because as you
20 said, you could say -- you can see right off the bat
21 that sometimes you get a district that the drop is
22 just too much or when they try and create some
23 what-if scenarios, that -- and still maintain two
24 Hispanic districts, it may get really ugly or cause
25 a lot of -- or cause some other things that in terms

1 of our State constitutional criteria they look at it
2 and say, well, let's see if there's another way.

3 So this whole thing is sort of a fluid
4 process recognizing that at the end of the road,
5 what we want is a map that's retrogress -- that is
6 not retrogressive and has the analysis to support
7 it, but we are not necessarily going to analyze
8 doing statewide racially polarized voting analysis.
9 Because what you really need to do is analyze it in
10 the context of the district that you are creating
11 when you get to that drill-down analysis.

12 And so that's sort of the what I'm
13 saying, kind of a fluid process that I don't think
14 we need to stop and sit back and do nothing until --
15 let's have this abstract analysis of the state
16 because you need to look at it in the context of the
17 districts that you are creating and you also don't
18 need to ignore all of the other State constitutional
19 criteria. It's all part of one big fluid process at
20 the end of the road we have maps we can preclear.

21 BRUCE ADELSON: Well, I think that your
22 point that this is one big fluid process and just as
23 with jurisdictions that I'm working with where we
24 have maps but we've had to go back and do additional
25 analysis because issues came up, maybe prison

1 populations, for example.

2 So that, yes, they are not mutually
3 exclusive where you do racially polarized voting
4 analysis but then you're not at the same time
5 looking at the grid issues that we've been talking
6 about and not drawing maps and moving forward.

7 But it is like it's -- this is a very
8 fluid, complex, time-consuming process. And all of
9 the things that we are talking about can -- will
10 happen. They are obviously all not going to happen
11 today, but moving forward with your maps and your
12 considerations as you are charged under State law is
13 an ongoing process.

14 But there will be -- it's not a straight
15 line. It's going to bump, because you're going to
16 find things that we don't know about yet. You're
17 going to discover issues because of population or
18 other concerns or community concerns we just don't
19 know about them. And the jurisdictions that stick
20 to that, we will not vary from this, our strategy,
21 those are the jurisdictions that get those letters.
22 Those are the jurisdictions that have problems with
23 their elections. Those are the jurisdictions that
24 get objections because it's maintaining that
25 fluidity, maintaining that awareness that this is an

1 ongoing process.

2 It's very important just because all of
3 the things we talked about today are involved and we
4 haven't discussed every possible issue. We've
5 discussed a lot of them and there will be more as
6 you continue to move forward.

7 VICE CHAIR HERRERA: Madame Chair.

8 CHAIRPERSON MATHIS: Mr. Herrera.

9 VICE CHAIR HERRERA: Two quick questions.

10 When we submit our plans to DOJ, we have
11 60-day review period. I was wondering if the
12 Department of Justice were to send us a letter
13 making -- recommending a change, does the 60 days
14 start all over again?

15 BRUCE ADELSON: Well, if the Justice
16 Department sends you a letter -- this is March 26th,
17 2002, this is our request for additional
18 information. We sent this about a month after we
19 received the submission. That 60-day clock stopped
20 when this letter was signed and put in the mail.

21 Then you get a 60-day clock -- or your
22 predecessor had a 60-day clock to get us information
23 in 60 days, which they did.

24 Well, we determined that the information
25 was insufficient under federal law, so the trap,

1 though, is if you don't respond at all in 60 days,
2 Justice can object just for that. If you respond
3 but your response is not sufficient under federal
4 law, Justice can object, which is what we did nine
5 years ago for some of the districts.

6 So to me, I think this request for more
7 information can be even worse than an objection
8 because then you have 60 days to answer.

9 We had a lot of questions and a lot
10 detail because, remember, Justice gets one letter.
11 They want to put every conceivable thing they can in
12 that letter. And when we were drafting that letter,
13 we were told, "Are you leaving anything out? Make
14 sure you don't have any other questions because this
15 is it."

16 So Justice is very aware of that. They
17 get one. They are not going to just send a
18 one-sentence request for information. It's going to
19 be big.

20 So I think that this is something that
21 can be even worse than an objection.

22 VICE CHAIR HERRERA: My other question is
23 Mr. Stertz brought up the issue about the voter
24 apathy and disenfranchisement, and I think in
25 general but also what I to focus on, are those

1 majority/minority districts where lower voter
2 turnout could easily be explained when people
3 have -- the majority has this preconceived notion
4 that they already know who is going to win the
5 election. For example, I'm going to use District 4
6 as an example, Congressional District 4, Pastor.

7 Those people will assume whether he has a
8 competitor or not, he will win the election,
9 therefore, people may not want to go vote.

10 How do you -- without retrogressing, how
11 do you address that issue as competition to make it
12 more competitive or what? How do you address that
13 issue?

14 BRUCE ADELSON: Well, you look at --
15 remember, we talked about exogenous elections. You
16 look at other elections.

17 So let's assume in a Congressional
18 district the turnout is relatively low. Let's
19 assume it's because that voter presumed what the
20 outcome would be.

21 But I would bet you that if you look at,
22 let's say, a supervisory election at the county
23 level, perhaps a Legislative election, maybe even a
24 sheriff election, perhaps the turnout is higher
25 because there is not that same level of presumption

1 of a certain result.

2 That's why if you're looking at one
3 election -- in the 2010 election you mentioned
4 before, can be anomalies for whatever reason.

5 If in one particular race turnout is low
6 because there's a view that, well, we know who is
7 going to win and that person always wins by a
8 significant amount, then you look at other
9 elections.

10 That's why looking at various elections
11 over time, looking at various types of elections is
12 part of this analysis. So it's not just one
13 election, one snapshot in time. It's a move -- over
14 a fair amount of time so that you can meet your
15 burden under federal law. Without doing that, you
16 don't. So that's why you look at it as a continuum.

17 VICE CHAIR HERRERA: Thank you.

18 CHAIRPERSON MATHIS: Ms. McNulty.

19 COMMISSIONER MCNULTY: I would like to
20 follow up on that.

21 Is this working?

22 Following up on Commissioner Herrera's
23 question, let's assume, and I don't know if this is
24 true, but let's assume that we look at those
25 exogenous elections and the conclusion that we reach

1 is that people aren't voting. How does that then
2 bear on the effective voter rate for purposes of a
3 Section 5 analysis?

4 BRUCE ADELSON: Thank you.

5 Let's assume you look at ten elections
6 and the turnout, participation rate is basically the
7 same in all of them but minorities in that district
8 can't elect. What that's likely telling you is you
9 can't reduce the minority population.

10 Maybe you have to punch it up a couple of
11 points, maybe, but you certainly can't reduce it
12 because if turnout is low but minorities can still
13 elect, you can't possibly reduce that even -- I
14 would say even by a point or two because it arguably
15 if -- the ability to elect is precarious.

16 But again, if the minorities in that
17 district are a numerical majority, 55, 60, 65
18 percent, even with turnout being low, I think there
19 might be -- still be some play there about the
20 percent of the minority.

21 If it's 38, 39, 41 percent, I would
22 caution very vigorously against reducing that. If
23 it's 60 percent, all right, I could certainly see
24 that there would be analysis that could show, all
25 right, maybe we could reduce that. But the analysis

1 will show that.

2 This is analysis that shows -- it
3 typically shows pretty definitively what the rate --
4 the population rate needs to be to maintain the
5 ability to elect and avoid retrogression. And so
6 that -- this is something that is often not
7 speculative.

8 So it's really just going to depend,
9 again, on what that percentage is so that even if
10 turnout is low, higher the percentage, more play,
11 the lower the percentage, less play, as far as
12 reducing or changing the number.

13 CHAIRPERSON MATHIS: Other questions or
14 comments?

15 Okay. Mr. Adelson, thank you very much.
16 This was super helpful and we are grateful that
17 you're part of the retention of Ballard Spahr to
18 join our legal counsel and helping us through these
19 preclearance and Section 5, Section 2 navigation.
20 This is not the end. And we've already gone over 40
21 minutes than what we had intended initially for your
22 presentation. So thank you for indulging us.

23 VICE CHAIR HERRERA: And, Madame Chair, I
24 apologize, I do have one question real quick, and
25 this might be a silly question, but I still want to

1 ask it.

2 In the previous Commission there were no
3 minorities that served on the Commission. There
4 were five Caucasians.

5 This Commission is a little different.
6 They have me, but I think I represent everyone,
7 including Hispanics, Blacks, Native American, White,
8 doesn't matter, but I am the minority and we have a
9 mapping consultant who has a good reputation with
10 minority issues and making sure they are
11 well-represented.

12 How much of an impact does that have with
13 the Department of Justice?

14 BRUCE ADELSON: It's something that --
15 Justice certainly knows, you know, who is part of a
16 body, a commission. Is that going to make the
17 difference? No.

18 I mean, we knew who was part of the
19 Commission nine years ago. Something -- okay, it's
20 this person, this person, this person, they come
21 from this part of the state, that part of the state.
22 Okay. Now let's move on. So it's something that's
23 noted but it's not in any way part of the analysis
24 or the eventual determination.

25 CHAIRPERSON MATHIS: Thank you. And with

1 that, I think we'll release you and I'm sure we'll
2 be asking for questions as time goes on. So thanks
3 for being here today with us.

4 BRUCE ADELSON: Thank you, Madame Chair,
5 and thank you members of the Commission.

6 CHAIRPERSON MATHIS: So it's 10:57 now
7 and we'll go ahead and take a five-minute recess.
8 So if everyone could plan to be back after that,
9 that would be great.

10 (A recess was taken from 10:57 a.m. to
11 11:11 a.m.)

12 CHAIRPERSON MATHIS: We'll enter back
13 into public session now. The recess is over. The
14 time is one 11:11 a.m., and we'll move to agenda
15 item III, which is presentation and discussion of
16 issues concerning redistricting databases.

17 I think Mr. Strasma is going to speak.

18 KEN STRASMA: Thank you, Madame Chair.
19 The timing of this is good. I apologize if it's
20 fairly dry and technical information, but it's
21 important to go through Mr. Adelson's presentation.
22 I don't know how many times he mentioned the
23 analysis will tell us the answer to this.

24 The analysis for voting rights issues and
25 also for competitiveness can't be done unless we

1 have an accurate database of past electoral results.

2 It's been brought to the Commission's
3 attention, I know I saw Mr. Tony Sissions spoke a
4 couple of times at different meetings and we've been
5 working with him on this issue. Also the Maricopa
6 County JS manager had contacted the AIRC staff about
7 issues with scrambled names on precincts and
8 electoral results.

9 There are a number of different issues
10 that we have to deal with in matching the election
11 results from the individual counties to the census
12 geography. Some of them are obvious and -- which
13 makes them reasonably easy to fix.

14 For example, if a county has 20 precincts
15 and they are numbered 1 through 20 but on the census
16 they have written out names rather than numbers,
17 that clearly doesn't match; we have to call the
18 counties to figure out what does precinct 1
19 correspond to.

20 A much more dangerous problem is when the
21 names match but refer to different precincts. And
22 that turns out to be the case in a number of
23 counties in Arizona.

24 There may be precincts 1 through 20 in
25 the census, precincts 1 through 20 in the election

1 results but they actually refer to different
2 geographic areas.

3 We've been going through a project since
4 our start with the Commission of identifying
5 documenting and fixing these issues. We wanted to
6 make sure that we presented the process here to the
7 Commission so that it's on the record and that we
8 make our documentation available to the public.

9 When DOJ is doing their analysis, when
10 other interested groups are doing their electoral
11 analysis, it would be very easy for them to reach
12 the wrong conclusion if they assume, in this case,
13 that precincts 1 through 20 matching precincts 1
14 through 20.

15 So we want to make sure that all of our
16 fixes and the documentation for those fixes is
17 available publicly and that everyone has a chance to
18 look over them to let us know if there are any
19 issues that we haven't caught or that they disagree
20 with and that everyone be working off of the same
21 electoral database that we've prepared. We've been
22 working through it since up until yesterday
23 afternoon.

24 We expect that there will probably be
25 some more changes, although we hope that they will

1 be minor.

2 I'm going to turn it over now to
3 Mr. Desmond who has been heading our team who has
4 been working on the VTD matching issue to go through
5 some of the more technical details.

6 WILLIE DESMOND: Thank you.

7 Can everyone hear me?

8 All right. So today we'll be presenting
9 exactly the process and the reasoning behind our
10 match of the census voter tabulation districts,
11 which we'll be referring to as VTD throughout this
12 process, to the Arizona election results and every
13 county's own precinct maps and files.

14 All right. What are VTDs?

15 As I mentioned, they are voting
16 tabulation districts. They are the level of census
17 geography at which election results are supposed to
18 be reported.

19 They are based on each county's own
20 precinct. So they are not something that a census
21 assigns and then the counties go off them.

22 The counties create their own precinct
23 maps and then the census bases its VTDs off of those
24 precinct maps. They are intended to allow election
25 results to be matched to the census easily.

1 In Arizona there are 2,224 VTDs and 2,224
2 precincts in the 2010 census and for the last two
3 elections.

4 Why do we have to worry about VTD?

5 Well, as we've gone through extensively
6 today, the Voting Rights Act needs to have accurate
7 election information to do analysis on regression.

8 Under Section 5, Arizona redistricting
9 plans cannot be retrogressive. The plans cannot
10 weaken or reduce minority voters' rights. And the
11 presence of discrimination can be determined by
12 analyzing population data and election results.

13 So this is all part of getting the
14 election results in a format where we can say with
15 confidence that they are matched to the correct
16 census locations. Also, competitiveness needs
17 election results in order to be analyzed.

18 Proposition 106 established
19 competitiveness as one of the criteria for redrawing
20 Arizona's Congressional districts. And there are
21 many measures of competitiveness that use past
22 election results in their formulas.

23 I think at some point we'll be presenting
24 on competitiveness and Ken will emphasize more how
25 past voter history is important for those.

1 All right. How are the election results
2 matched to the census?

3 Well, the census VTDs are supposed to
4 match every county's precinct from the last two
5 election cycles, 2008 and 2010.

6 Counties were asked not to change the
7 precincts during these times and no counties did
8 change their precincts. However, once they --
9 counties are set in -- before the 2008 election,
10 they are shipped off to the census and they cannot
11 be changed.

12 Unfortunately, the original submission
13 had many scrambled precinct names, as you will see
14 in this presentation and is documented in some of
15 the supporting documentation that we'll be
16 releasing.

17 The census VTD, it's important to know,
18 are comprised of the census blocks so that we will
19 know the exact numbers of people that reside in each
20 one of the VTDs.

21 The way we take voting results and match
22 them to the census block is by disaggregating those
23 results to the block level.

24 So if a precinct or a VTD is comprised of
25 ten census blocks, the result from that VTD is doled

1 out to each one of those census blocks based off of
2 how large of a -- how large of a percentage that
3 block is to the overall voting-age population.

4 I'm sorry if I'm unclear here. Please
5 anyone on the Commission let me know if I need to
6 clarify.

7 So each block is allocated a percentage
8 of the voter's based on the proportion to the VTD's
9 voting-age population.

10 What issues are?

11 Well, the census VTDs are wrong in some
12 places. Of the 2,224 VTDs in Arizona, we found that
13 many cannot be easily matched to the election
14 results.

15 If the correct election results are not
16 assigned to the correct geographic area, it will be
17 impossible to perform correct Voting Rights Act and
18 competitiveness analysis.

19 Okay. There are several methods for
20 matching the VTDs to county precincts, the first of
21 which is unique codes.

22 Every census VTD comes with a VTD code.
23 It's comprised of the county's five-digit FIPS code,
24 which is unique to every county in the United States
25 and a unique precinct number.

1 The example I have is Maricopa's Alta
2 Vista precinct is FIPS code 04013 and precinct
3 number 15. So the VTD code is 0401315.

4 However, there are some counties where
5 the VTD code uses 0 fill, so that a 15 will actually
6 be 015 or 0015. An example of that is Yavapai's
7 Castle Hot Springs 1 precinct, VTD code is 04025015.

8 If it was in Maricopa, it would have just
9 been 15 at the end. So even among the VTD codes in
10 Arizona, there is an internal inconsistency. It's
11 just consistent among the different counties.

12 Another method for matching census VTDs
13 to county precincts is based off of the name. All
14 of the census VTDs come with a name field. Counties
15 also have names for their precincts. Sometimes
16 there are minor differences that prevent matching
17 but are pretty obvious when you're looking at it.
18 Those include things like Villa La Paz and Villa De
19 Paz, Santan Heights, Santan spelled as one word or
20 San Tan Heights spelled as two words.

21 Apache Junction NW or Apache JCT NW or
22 Kearny or Kearney spelled with and without an E are
23 all examples taken from the election results and the
24 census that don't quite match, but it's pretty
25 apparent what they were talking about there.

1 The last method that we used for matching
2 these two things would be the location and shape of
3 each VTD in each county precinct.

4 Each one occupies a unique spot on the
5 map. And so by overlaying maps of the census
6 precinct -- or the census VTDs and the county
7 precincts, you can see that these two are -- you
8 know, these two line up and match and they are in
9 the same area. So it's obvious that these two
10 shapes are referencing the same thing. They could
11 have different names, they could have different
12 codes, but they are talking about the same thing.

13 Another way to kind of easily do that
14 would be just to look at the area that -- the total
15 square feet or total square miles of the census VTDs
16 and the county precinct shapes. And as you'll see
17 when we go through some of our workbook, you'll see
18 that we used area commonly and it was a good check.

19 All right. How was the match done?

20 Strategic Telemetry called to every
21 county and requested maps of their precincts. When
22 available, we preferred to use .shp, which is an
23 ESRI file that can be loaded up directly into
24 Maptitude. It's pretty standard. So any of the
25 larger counties that had a GIS department or an

1 elections person who specializes in GIS, usually had
2 shp files available.

3 Some of the counties, and especially some
4 of the smaller ones, don't have a dedicated GIS
5 person, so we worked with pdf maps or else also like
6 JPEGs that we were able to pull from county-run
7 voting result sites or, you know, different county
8 mapping sites.

9 The match was conducted by one person,
10 primarily myself, and then independently verified by
11 another person in our office. All identifiable
12 features were used. So name, code, area, and, you
13 know, location on the map were all used to conduct
14 the match.

15 So for the census VTDs, we had county, we
16 had VTD code, we had VTD name, and we had area of
17 each precinct or VTD in square miles. The square
18 miles is important because the counties that came
19 with area were often in square feet. So we had to
20 convert it and there was not an exact perfect
21 conversion because when you're calculating something
22 in square miles, it's, you know, two or three
23 decimal places. When you multiply that by hundreds
24 of thousands, it doesn't necessarily meet a
25 square-foot calculation.

1 So there you'll see some variation. We
2 accepted anything that was plus or minus 3 percent
3 as a valid match. And I feel comfortable that
4 that's fine.

5 And then to the census VTDs, we created a
6 brand-new unique precinct code that we were able to
7 add to all three stages so that they could all be
8 easily matched in the future. We call that the IRC
9 precinct code and it was a 12-digit code that was a
10 combination of three things.

11 The first three characters of the letters
12 IRC. The next five are the county FIPS and then the
13 final four are a four-digit unique precinct number
14 that was zero filled. So if it was precinct 1, it
15 was 0001 so that every one of the IRC codes is 12
16 characters long, just to make it a little easier to
17 sort and stuff.

18 The county precinct maps, when they came
19 with a .shp and shape file, they often had the
20 precinct's name, the precinct's number, and the area
21 in square feet.

22 Now, these weren't always the case, but
23 by and large they had these three fields. If we
24 just received a pdf, all we really had was the shape
25 of the district and the name to go along with it.

1 And again, we added the IRC precinct code to these.

2 Finally there was the precinct election
3 results that we got from the Secretary of State's
4 website and aggregated. These include fields unique
5 precinct's code. This was assigned at the county
6 level so that there was in many cases several, you
7 know, precinct 1's because every county had their
8 own first precinct and the unique precinct's name
9 also assigned at the county level. So it's possible
10 that there's two precincts that are named courthouse
11 or some other common type of precinct name. And
12 again, we added the IRC precinct codes so these
13 three pieces can all be matched together for future
14 analysis.

15 Okay. Issues that we determined during
16 the match.

17 As Ken mentioned, probably the most
18 dangerous and most common were the VTD names that
19 don't match the precinct name. So if you'll indulge
20 me, I know this may be a bit small for members of
21 the audience, I apologize. This PowerPoint will be
22 available on the website and you will clearly see
23 what we are talking about.

24 But if you look right here, it's census
25 VTD named Tempe 24 and that shape on the county

1 precinct file is Tempe 25. Next to it, this is
2 what's called census 25 and this is what's called
3 census -- or county 26.

4 So if you were just taking the two files
5 and you were matching 25 to 25, you would actually
6 be talking about two different areas on the map.

7 So anyone who does an initial analysis
8 just using the precinct and census VTD names would
9 encounter this type of problem. And as I said, this
10 was fairly widespread in some counties. As you can
11 see just from this little cutout of the map, nearly
12 all of these are scrambled so that the county uses a
13 precinct name, Tempe 19, that there is a census
14 precinct 19, Tempe 19 but they are not the same
15 shape on the map. They are not referring to the
16 same area. They are not referring to the same
17 people that comprise that area.

18 So this is what initially inspired us to
19 do a much more in-depth match and really go through
20 the process of ensuring that every census VTD
21 matches the correct precinct and the correct
22 election results.

23 Other issues were VTD codes that don't
24 match precinct codes. This was much less common.
25 It only happened in Gila County. Unfortunately,

1 this doesn't display it that well but there was an
2 issue where Claypool 1 on the census VTD was the
3 same area as Claypool 1 on the county precinct file;
4 however, they had different unique codes. So that
5 if you matched 10 to 10, you were matching the wrong
6 names. And if you matched the name to name, you
7 were matching the wrong number.

8 So it was clearly scrambled just the
9 opposite of the other one. Instead of the names
10 being scrambled, it was the numbers being scrambled.
11 So anyone who tried to match on numbers only would
12 have these precincts backwards.

13 Another problem, only this time only in
14 Navajo County was split VTDs. So that the census
15 comes with 54 VTDs in Navajo County. Precinct
16 election results for Navajo County, that's 70. So
17 there's 16 times when the election result is only
18 half of a VTD. So you couldn't do a one-to-one
19 match there either because you would be losing 16 of
20 the 70 election results.

21 So we had to go through and find
22 instances where there is a census VTD that's split
23 and then find the two election results that comprise
24 that split and assign them both to that VTD.

25 The last type of problem that we found

1 was unaligned precincts. As you can see, these two
2 lines clearly are meant to capture roughly the same
3 area; however, they are just slightly unaligned.

4 I can't say definitively why this would
5 be. I imagine its something where if you are
6 drawing lines based off of roads, the census uses
7 the centroid of the road, it uses the very center as
8 the line, whereas counties might use one side or the
9 other. So it could be slightly shifted like that.

10 We did pay attention to areas where these
11 were particularly egregious and verified that there
12 was no whole census blocks that were in one VTD or
13 another as opposed to the precinct.

14 In many cases, when you saw, you know,
15 big clumps that seemed to be missing, you know, not
16 huge, but if you zoomed in it would look big, those
17 were over areas that were like a mountain range or,
18 you know, there was no population in that area. So
19 it was -- it just got drawn different probably based
20 off of geographic features.

21 The counties where we found really no
22 issues were Apache, Coconino, Greenlee, Mohave,
23 Santa Cruz and Yuma.

24 The first county where we found some
25 issues was Cochise. There's 64 total precincts.

1 I'm sorry, I butchered that. I apologize.

2 The total issues were 3. The VTD -- the
3 issue was that the VTD area didn't match the
4 precinct area. So this was one of our internal
5 verifications.

6 Again, this is very small but this is a
7 screenshot from a workbook that will be made public
8 on the IRC website either today or tomorrow that
9 goes through each set of information.

10 So it starts with the census information
11 and then in the middle of the green and red is the
12 match and then next is the information received from
13 the county and then finally the election results
14 precincts.

15 If you pay attention, the first set of
16 columns is the code match. So these -- where it's
17 green -- it means that there was a perfect match.

18 The next is the name match. So there
19 were good name matches.

20 Then finally, there is the area
21 percentage match, and the area match is a yes-or-no
22 field.

23 So there were three cases where the
24 percentage was slightly more than 3 percent off.
25 And the first case it was 3 and a half and the other

1 two -- yeah, it was about 3 and a half both times.

2 So in these cases, we then went
3 through -- we looked at these precincts and we
4 verified that they were referring to the same place.

5 As you can see, this was a case where
6 there was slightly misaligned precincts and they
7 were referring to the same areas. There wasn't any
8 population that would have been shifted. It was
9 probably just the case that some were slightly more
10 misaligned than others and it was enough to flag us
11 that these two shapes don't share the same area.

12 Gila County, there was 39 precincts.

13 And again, I apologize that we're going
14 to go through every one, but I think it is important
15 that we make this part of the record so people that
16 want to independently verify, have the opportunity
17 to look at what we have done and can confirm or
18 hopefully alert us if there's any issues.

19 So there's 39 precincts. There were 4
20 issues we identified. And this was the county where
21 the VTD codes didn't match the precinct number.

22 So again, I'm sorry this is small, but if
23 you look at the sheet Claypool 1 matches Claypool 1
24 in name; however, one of them has the VTD code
25 ending in 15 and one of them has it ending in 18.

1 Then the next three following that are similarly
2 scrambled.

3 So once we sorted that out, we were able
4 to look at the map and we could see that each one of
5 the sorted districts was referring to the correct
6 geographic area. We were comparing apples to
7 apples, the same precinct -- from the county it was
8 matched to the same precinct from the census.

9 All right. Graham County, there's 19
10 total precincts and we found 4 issues. There was
11 one case where the VTD code didn't match the
12 precinct number and there was 1 case -- or 4 cases
13 where the VTD names didn't match the precinct names.

14 This is a good example of, you know,
15 minor name match issues. So -- for -- by and large,
16 Fort Thomas didn't match Thomas. Let's see.
17 Stafford 15B didn't match Stafford 15 B with a space
18 between the 15 and the B.

19 There was 1 case where we believe and we
20 verified that the precinct name that came from the
21 county was just mislabeled. So for whatever reason,
22 they have two Jackson 18s. We believe that the
23 first one should actually be Cactus 17. And when
24 you look at the map, you know that that first
25 Jackson 18 is referring to the correct shape, which

1 is the Cactus 17. And you can see that right in the
2 middle here, that shape is Cactus 17 and the County
3 calls it Jackson 18.

4 La Paz County, there's 12 precincts,
5 there were 3 total issues. In this case, it was all
6 issues where the VTD area didn't match the precinct
7 area. This is very similar to the previous example
8 where they are just outside of our tolerances for a
9 match, so slightly more than 3 percent deviation.

10 As you can see, this is one of those
11 times when there's, I guess, a big zig when it
12 should have zagged.

13 I do want to point out this is very
14 zoomed in. If you were to look at the county as a
15 whole, it would look like just a tiny little
16 deviation.

17 But it's hard to see here, but if you
18 can, there is census blocks showing underneath the
19 population there. You'll notice that all of those
20 census blocks have zero population.

21 So the fact that this doesn't match isn't
22 really affecting us because there's no people there
23 that would need to be switched from one precinct to
24 another.

25 All right. Maricopa, there's 1,142

1 precincts. There was 367 total issues, by and
2 large, the bulk of our issues.

3 In 4 cases, we had VTD codes that didn't
4 match the precinct number. These turned out not to
5 be to much of an issue. For whatever reason, some
6 of the VTD codes had the letter B at the end. So
7 when you're looking at it, it was obvious that 17B
8 matched 17.

9 There was 281 cases where the VTD names
10 didn't match the precinct names. There was 47 cases
11 where the areas didn't line up.

12 All right. So this is, you know, just
13 showing some of the name match issues that we had.

14 Laveen Meadows didn't match Cash. This
15 is a case where there wasn't -- in the precinct file
16 from the County, there wasn't another Cash. They
17 just had different names for whatever reason. So
18 using the number, they were talking about the same
19 areas they just had different names.

20 There's a case here where it says Shadow
21 Mountain and Shadow Mtn. Those don't match because
22 mountain is abbreviated in one. And those all make
23 sense. When you look at that intuitively, you get
24 that those two should be talking about the same.
25 Bethany and Bethany Park, for instance.

1 All right. In areas such as Chandler,
2 there was large swaths of scrambled precincts. As
3 you can see from the red, all of these names didn't
4 match and that's because they were -- they were
5 different. They were scrambled. Chandler 16 is
6 referring to something else or a different name.

7 And then finally, in Gilbert and Mesa,
8 there was also large swaths of nonname matching.

9 So this slide we used earlier, but it
10 does illustrate places where in Tempe the codes were
11 just scrambled so that 31 is referencing two
12 different areas depending on whether or not you're
13 using census or you're using the County's precinct
14 file.

15 Here is a unique case in Maricopa, this
16 is the only instance of this we found. If you look,
17 the County called this area St. Moritz and it has a
18 code of 0822 and then the census calls this St.
19 Moritz and it has a code of 0822.

20 So if we are using either code or name,
21 these would match. However, when you look at them
22 on the map, when you compare their areas, that's the
23 only red flag you would have.

24 So these two are flipped. They both have
25 consistent names and consistent codes but are

1 referring to different areas on the map. So you
2 couldn't even do -- you couldn't just use name and
3 code, you would have also put these on a map or
4 compared the areas or perimeters or something.

5 There was a few other cases like this
6 that were particularly tricky to find. And so as a
7 result, if -- there is potential that we missed one
8 or missed two. So if there are any that arrive --
9 arise, we'll deal with them accordingly. I don't
10 think there is, but I can't say for certain.

11 All right. Navajo County, as we
12 discussed before, the census has 54 VTDs and the
13 County has 70 precincts. So there was 12 issues on
14 the census, 2 of which were VTD codes that didn't
15 match and then 10 of which were areas that didn't
16 match.

17 And the reason the area wouldn't match is
18 because the census is referring to a big area and
19 the counties are only talking about a portion of
20 that VTD. So there was 16 extra or split county
21 precincts.

22 I'll just, you know, pick one of these
23 and read it to you. So for Forest Lake, it matched
24 initially to the election result Forest Lake number
25 2 but it also contains Forest Lake number 1. So you

1 have to assign the unique IRC code to two of the
2 election results in order to do a perfect match,
3 which may cause problems to someone who is trying to
4 do analysis because for every precinct, there will
5 be two results for president and two results for
6 senate, et cetera.

7 So just anyone who is going through --
8 would want to pay particular attention to that
9 issue.

10 And again, Navajo County was one of the
11 ones we were not able to get a shp file, so in this
12 case we took a pdf map and did what's called a
13 rubber sheet in Maptitude where we kind of pinned it
14 to certain locations on the map and were able to
15 verify that the precincts did match. But you can
16 see that black line running down the middle, that is
17 a split census VTD where these two precincts -- two
18 County precincts or election results.

19 Pima County, there's 417 total precincts,
20 there was 45 total issues. There was 2 cases where
21 the VTD code didn't match the precinct number and 2
22 cases where the names don't match the precinct's
23 names and then 44 areas where the area was outside
24 of our deemed acceptable match percentage.

25 The 2 name and code matches -- the name

1 ones I would like to just call out. Precinct number
2 12 is actually referring to precinct number 365 and
3 vice versa. So this is a case where the name and
4 the code matched but they are referring to two
5 different areas in the census and county thing.

6 The bulk of the area matches were very,
7 very slight, just outside of the 3 percent threshold
8 we had set.

9 When you look at the map, you can see
10 why. The lines, again, don't match up perfectly in
11 Pima County with the census VTD lines. Again, it
12 was in areas where there was zero percent
13 population, but you can see why you might have an
14 area that doesn't quite match because it is slightly
15 different -- different sizes.

16 This is the particular case of 365 2.
17 Census calls this area VTD number 365. Well, the
18 county calls this precinct number 365 and vice
19 versa.

20 Pinal County, there was 88 total
21 precincts and there was 43 total issues. The VTD
22 names that didn't map was 38 of the issues and the
23 VTD areas that didn't match were 6.

24 Some of the names were flipped, so there
25 is a Thunderbird Farms from -- in the election

1 results and -- from the county and there is a
2 Thunderbird Farms in the census VTDs but they are
3 not referring to the same areas.

4 And what's helpful is that all of the
5 codes did match, so it was pretty obvious where
6 those names did get flipped. And we did go through
7 and manually look at -- so in this case, there's a
8 column that's called name match and that's just the
9 exact name, do they match, and then there's a manual
10 name match.

11 So in the cases where it's a manual name
12 and places where the census calls it Hidden Valley
13 and the county calls it Thunderbird Farms, places
14 where there is a manual name match and we said it
15 was yes and there's cases where it's Casa Grande W
16 and Casa Grande West. So it's pretty obvious there
17 was just abbreviations on a bunch of these.

18 One thing I do want to point out is at
19 the end of the county file -- or at the end of --
20 the county file was two split precincts that showed
21 up in the map that they had sent us. This is kind
22 of a unique case. The only place this split occurs
23 is in the county precinct file. I think it's a new
24 split that happened just recently, so it's not
25 reflected in either the census VTDs or the election

1 results.

2 When we look at it, we can see that it's
3 just taking an existing district, in this case,
4 Maricopa precinct is split into Maricopa and
5 Maricopa X.

6 So fortunately, when you look at the
7 census VTD and the election result for Maricopa,
8 those are a one-to-one match. It's only when you
9 introduce that middle step, which was verifying from
10 the counties that you have a problem.

11 I did want to flag this, but there's
12 really nothing to be alarmed about here. It's just
13 they've added these -- they've split these two
14 precincts. And so going forward, that might be
15 something you have to pay attention to, but for
16 right now, there's really nothing we could or would
17 need to do about it.

18 And so you can see one of those right
19 here where just for whatever reason, now it's split.

20 All right. Yavapai County, there's 112
21 precincts, there's 19 total issues, 14 of which were
22 names that didn't match and 6 of which were areas
23 that didn't match.

24 Again, these were all pretty
25 straightforward. Prescott Valley number 1 is not an

1 exact match with Prescott Valley number 1/Navajo.
2 And again, the areas were all very, very slight,
3 just outside of the 3 percent threshold we had set.

4 And again, that was just an arbitrary
5 threshold that we set for us to easily scan and look
6 for major problems to look at.

7 And as you can see, some of those area
8 matches, again, are the result of just slightly
9 off-centered lines. In this case, all of the
10 vertical lines seemed to match up very well but all
11 of the horizontals didn't, for whatever reason.

12 All right. That's all of the issues by
13 county that we found. Not all of them, but at least
14 identified the types.

15 I do want to say the workbook that --
16 it's an Excel document that has a tab for every
17 county that we used to kind of go through and
18 manually do this match and show our work will be
19 available on the website either today or tomorrow.
20 It's listed here. It's called Census VTD to County
21 Precinct Verification Worksheet.

22 I would encourage anyone who is
23 interested or who plans on doing their own election
24 result analysis to look at this. Let us know if you
25 find any problems. I hope it's of help to you

1 because it's -- there is a real danger of just
2 assuming that two precincts that are named the same
3 thing are referring to the same area.

4 Additionally, the IRC precinct code that
5 we created, there is a census to IRC precinct key
6 that we'll be putting on the website also. So
7 you'll be able to do -- if you just assume that our
8 work is correct and you just want to use that match,
9 you'll be able to do that also.

10 And these are available on
11 azredistricting.org.

12 I just would like to encourage anyone
13 interested to take a look at this. You know, check
14 our work. We've tried to lay it out as explicitly
15 as possible.

16 If you have any questions, let us know.
17 The more people we have looking at this, the safer
18 we'll be in our assumption that each census VTD
19 corresponds to each precinct.

20 So thank you very much.

21 CHAIRPERSON MATHIS: Thank you,
22 Mr. Desmond. That was a lot of work, I have a
23 feeling.

24 Do commissioners have questions on what
25 Mr. Desmond just presented? Comments?

1 COMMISSIONER MCNULTY: I have one quick
2 question.

3 So my understanding would be that will be
4 part of our preclearance submission so that the
5 Justice Department will be able to use that key and
6 that works from Mr. Adelson's perspective?

7 He's nodding.

8 BRUCE ADELSON: May I?

9 Yes, and also in listening to this, I
10 recall in our more information letter, one of the
11 things that we asked about was something similar to
12 this because the data that we received nine years
13 ago was not fully accessible or fully
14 understandable.

15 So we asked not the same questions but
16 data-related questions in our letter and those
17 questions were not answered. So that was part of
18 the objection.

19 So making sure the data is clear,
20 understandable, glitch-free, and explaining whatever
21 issues there are, yes, it's a very important part of
22 the submission.

23 Thank you.

24 COMMISSIONER STERTZ: Madame Chair.

25 CHAIRPERSON MATHIS: Commissioner Stertz.

1 COMMISSIONER STERTZ: Mr. Desmond, in the
2 data -- give me a description of where the data
3 moves. It moves from the county, who designs its
4 precincts, going -- and it goes to the Census
5 Bureau; is that correct?

6 WILLIE DESMOND: That's correct. So the
7 counties all draw their own precinct boundaries, and
8 that's just for their ease of conducting elections.

9 They are asked to lock those in for 2008
10 and 2010 to kind of ease this analysis, and they
11 submit those to the census and then the census VTDs
12 are based off of those county submissions -- or
13 those submissions from the state.

14 COMMISSIONER STERTZ: So the mapping
15 that's now been -- the analysis that you've done has
16 been -- has been more two-dimensional. This isn't a
17 GIS mapping analysis; is that correct?

18 WILLIE DESMOND: That's correct.

19 COMMISSIONER STERTZ: Okay. Is it
20 incumbent upon -- since this work has been paid for
21 by this Commission, other than for the use of our
22 submission for the use of the counties now tying
23 these data points together, is there anything that's
24 going to send this data back to the individual
25 counties to correlate the discrepancies that were

1 20 percent, approximately, of every precinct had
2 some correlation issue statewide?

3 WILLIE DESMOND: We haven't made any
4 plans to resend our data back to the individual
5 counties. Part of that is that we -- just until,
6 you know, this weekend were finalizing all of this
7 work.

8 If you wanted us to or we're directed to,
9 we would be more than happy to share this with
10 anyone. We would encourage anyone to use this
11 information. It will be made public on the IRC
12 website and we'll -- but we can, you know, go back
13 and ask for independent verification from the
14 counties where we flagged issues also.

15 Like I said, there are some counties with
16 GIS departments who are, you know, ready to handle
17 these types of queries and there's some that just
18 have a paper map hanging in an election's office and
19 we kind of got a copy of that.

20 So we can do whatever you would like us
21 to do with this information.

22 COMMISSIONER STERTZ: Madame Chair, it
23 seems to me that if we're -- that when -- if it's
24 moving from the county level up to the Census Bureau
25 and the Census Bureau is coming back and there's

1 correlation issues, that there's a bust in the data
2 somewhere and it would be incumbent upon the state
3 to -- and the counties and the Census Bureau to sort
4 of tie all of these pieces together or this is going
5 to be -- this process is going to continue the next
6 time around.

7 KEN STRASMA: If I may, Madame Chair and
8 Commissioner Stertz, we'll definitely follow up on
9 that suggestion to make sure this is available to
10 all of the county GIS managers and flagged for them.

11 I should point out that in the areas
12 where it's a major problem, they are very much aware
13 of it already and oftentimes were the ones who came
14 to us to flag the issue, as was the case in Maricopa
15 County.

16 COMMISSIONER STERTZ: And the last
17 question, as I saw some of those overlaps taking
18 place, I'm assuming that there haven't been any --
19 you said in the one that you pointed out there was
20 zero population that was affected by a lost piece.

21 Did you -- were you able to look at that
22 statewide in each precinct to make sure there wasn't
23 a lost population in any voter districts?

24 WILLIE DESMOND: For the purpose of our
25 analysis, the only precincts that we particularly

1 zoomed in and looked at were the ones where we had
2 more than a 3 percent deviation in the area.

3 I should mention that there were some
4 counties where we did not receive a shp file and
5 thus did not have the square feet or square miles of
6 every precinct. So it's possible that there would
7 be, you know, clumps that are missing from one or
8 the other.

9 We did, you know, look at every map. We
10 overlaid the lines and, you know, that example that
11 I showed was unique in that there weren't that many
12 cases when that happened. And when it did, we did
13 zoom in and verify that it was a nonpopulated area
14 that there was a difference.

15 COMMISSIONER STERTZ: So for the purposes
16 of your analysis, you've created a new numbering
17 system that's pertinent to this particular work
18 product, is that correct, the IRC numbering system?

19 WILLIE DESMOND: That's correct. And
20 what that is is just a way for us to link the census
21 VTD to the election results.

22 So I should say that the county precinct
23 maps that we received were more of like a middle
24 party. We used those to translate. So we matched
25 census to the county maps and then the county maps

1 to the election results because we couldn't go
2 straight from election results right to census.

3 COMMISSIONER STERTZ: So when I look at
4 an IRC number that was -- that had a -- had a
5 variance of plus or minus 3 percent, is there going
6 to be a variance analysis line item or a note that's
7 going to correlate with that.

8 WILLIE DESMOND: Well, as it currently
9 stands in the workbook that we are making public,
10 those are flagged. So that's where you would have a
11 red "no" there where it says that this did not meet
12 the 3 percent criteria for a match. So you could go
13 through and see those.

14 As far as how are we going to document
15 this as part of our submission, I hadn't really
16 considered that yet. I'm sure we will need to go
17 through and do a substantial amount of write-up to
18 describe what each one of the columns is, what they
19 each mean, and how the match was conducted. But we
20 haven't begun that process yet.

21 KEN STRASMA: If I may add, I don't know
22 if this helps with the question, but one of the
23 columns in the spreadsheets is the percent deviation
24 on the area. So if someone did want to look up the
25 deviation for any one of these precincts, they

1 would.

2 Also jumping back to one of your previous
3 questions about the zero population, I'm not sure if
4 this speaks to your question or not, but all
5 population in the state is now accounted for. There
6 is no population for which we do not believe we know
7 their correct voting precinct.

8 COMMISSIONER STERTZ: Very good. That is
9 -- that was the follow-up to the question.

10 Thank you.

11 CHAIRPERSON MATHIS: Other questions?
12 Comments?

13 Mr. Strasma.

14 KEN STRASMA: One additional note.
15 Mr. Adelson had referenced some of the problems in
16 the request for clarification from the DOJ last time
17 around. One of those issues involved voter
18 registration data. So far we've only been talking
19 about past electoral results. We are proceeding a
20 parallel tract with getting voting registration
21 data.

22 We are working with the Secretary of
23 State's Office. They are still waiting for
24 information from two counties with FO history issues
25 that they have flagged and we want to make sure we

1 get that right before any of that is loaded up
2 because that was one the issues with active versus
3 inactive voters that caused delay last time. So
4 that is still in the process.

5 COMMISSIONER STERTZ: Madame Chair.

6 CHAIRPERSON MATHIS: Mr. Stertz.

7 COMMISSIONER STERTZ: As a follow-up to
8 that, Mr. Strasma, the cells, the data cells that
9 are now integrated into the Maptitude software that
10 we are using or that you are using for forecasting,
11 is that -- that is all census-based, correct?

12 KEN STRASMA: Correct.

13 COMMISSIONER STERTZ: So will we be
14 having the new precinct correlation numbering system
15 tied into those data cells?

16 KEN STRASMA: Yes. As of yesterday
17 afternoon, that is ready to be loaded on our laptops
18 and the commissioners'.

19 COMMISSIONER STERTZ: So I'll be able to
20 see an IRC-040130015 number?

21 KEN STRASMA: Well, I should clarify.
22 The IRC code isn't loaded as part of Maptitude.
23 It's used for moving the election results.

24 So what you will be able to see for any
25 census block, block through tract, VTD, city,

1 county, et cetera, election totals. So if you want
2 to go back and see, you know, votes cast for McCain
3 for Senate, 2010, that is now all tied into the
4 geography on Maptitude.

5 COMMISSIONER STERTZ: But not tied into
6 the precinct?

7 KEN STRASMA: It is. One of the layers
8 on Maptitude being the census VTD, so the election
9 results are tied into that.

10 If I'm understanding your question
11 correctly, would you like to be able to see the IRC
12 code in addition to the VTD code?

13 COMMISSIONER STERTZ: I'm trying to
14 figure out -- I want to make sure that we've got a
15 baseline tracking device, and it seems like you guys
16 have created an IRC tracking mechanism that is an
17 amalgamation that follows census that cleans up or
18 clears up some questionable issues between
19 precincts, state, county, et cetera, and at least
20 would allow us to follow what precinct design and
21 what votes were taken place in that precinct by the
22 new name.

23 KEN STRASMA: Okay. That makes sense.
24 We will follow up on that suggestion and add IRC
25 code to the VTD layer so you will be able to see the

1 names and codes as defined by the census. Also the
2 IRC code in addition to the election results that
3 are available now.

4 COMMISSIONER STERTZ: Thank you.

5 CHAIRPERSON MATHIS: Other questions?

6 Okay. Hearing none -- Mr. Herrera.

7 Okay. Thank you very much for all of
8 that analysis and walking us through it.

9 Our next item on the agenda was something
10 that I had requested at the last meeting, but given
11 the fact that we are already at noon and we have a
12 big agenda ahead of us, I was thinking that we might
13 cover agenda items IV and VI, which is something
14 we've also -- it's kind of a recurring agenda item
15 that we are covering each time, the definitions, to
16 a later time and going straight -- taking advantage
17 of our mapping consultants while they are here and
18 going into agenda item V.

19 I'm not sure if that's an easily
20 dividable agenda item. This agenda item V, it says
21 60 minutes. That would take us to 1 o'clock, which
22 is when people would break for lunch at that point
23 or not.

24 VICE CHAIR HERRERA: Madame Chair, is
25 there any way we can delay that until after lunch?

1 It's already 12 o'clock and I would like to eat.

2 CHAIRPERSON MATHIS: Okay. We have a
3 hungry commissioner.

4 VICE CHAIR HERRERA: I'm looking at some
5 of the -- if you're okay with -- some of the agenda
6 items that are little that would take less time,
7 starting with X, discussion of future meetings and
8 future agenda items and possibly IX and VIII. So
9 VIII, IX, and X.

10 CHAIRPERSON MATHIS: Okay. I'm open to
11 that.

12 Anybody -- is that okay with you guys,
13 that we would after lunch cover the Congressional
14 and Legislative what-ifs and then the other items
15 that are on the agenda after that.

16 But, yeah, that sounds reasonable.

17 So our next item would be number VIII,
18 action to reaffirm contract with Strategic
19 Telemetry.

20 COMMISSIONER STERTZ: Madame Chair.

21 CHAIRPERSON MATHIS: Mr. Stertz.

22 COMMISSIONER STERTZ: I had requested
23 this item to be brought back on to the agenda after
24 the release of the last set of meeting minutes in an
25 effort to close the gap on any loose ends that there

1 may be on the affirmation on whether or not there
2 is -- there was authorization to actually enter into
3 a contract by our executive director. And there was
4 a question that I had had regarding the -- his
5 authority at that time and I had suggested to you
6 that we put this on the agenda for today.

7 CHAIRPERSON MATHIS: That's true.

8 Thank you for that background.

9 Mr. Bladine, would you want to come up
10 because I think he did some research since our
11 last -- when this first came up and since our last
12 meeting. He can tell us what he discovered.

13 RAY BLADINE: Madame Chairman, Commission
14 members, I did provide you some information from
15 the -- I'm going to have this trouble.

16 I did provide information to you from the
17 transcripts that lay out the basis upon which I felt
18 that I had been given direction to enter into a
19 contract and negotiate and sign it.

20 I think that is -- it's now up to you to
21 decide whether want to proceed to reaffirm that or
22 take whatever action you would like.

23 CHAIRPERSON MATHIS: Okay. Thank you,
24 Mr. Bladine.

25 Yeah, I think Mr. Bladine sent around

1 excerpts from transcripts from the relevant
2 meetings.

3 VICE CHAIR HERRERA: Madame Chair.

4 CHAIRPERSON MATHIS: Mr. Herrera.

5 VICE CHAIR HERRERA: Just for the record,
6 I don't know if you have -- Mr. Bladine, do you have
7 the transcripts in front of you?

8 RAY BLADINE: Yes, I do.

9 VICE CHAIR HERRERA: Could you read them
10 to, I think, confirm what we did and then we did
11 give you the authority to enter and execute a
12 contract with Strategic Telemetry?

13 RAY BLADINE: At the meeting on the 29th,
14 the specific wording of the authorization, and it
15 was made by Commissioner McNulty, was to negotiate a
16 contract for providing us with mapping services with
17 Strategic Telemetry.

18 And then I repeated back, "To negotiate a
19 contract for mapping services with Strategic
20 Telemetry?"

21 Then you voted on that. And at that
22 point, one of the commissioners asked for
23 clarification, "To be clear, then, there is no
24 additional steps for this Commission to make with
25 respect to retention of mapping consultants?"

1 And our attorney answered, "That is
2 correct."

3 Then on the 30th, the following day, we
4 had a meeting and ended up getting into a discussion
5 about whether or not the contract would be
6 authorized or had been. And again at that meeting,
7 one of the commissioners mentioned that,
8 "Mr. Bladine was given authorization to enter into
9 the contract with that company."

10 There was further discussion on that day
11 and then Commissioner McNulty commented back,
12 "Mr. Bladine, Counsel, I think our vote is that
13 Mr. Bladine have the authority. He was directed to
14 enter into contract negotiation with the consultant
15 and contract with the consultant."

16 I then talked about the fact that unless
17 someone objected or I hear differently, that once
18 approved by the lawyers -- or by legal, we'll go
19 ahead and post them on our website.

20 Again, there was a recollection by a
21 commissioner that, "Yesterday Mr. Bladine was
22 authorized to enter into a contract. Basically the
23 authority has been given yesterday, but I also want
24 to see the final product and perhaps it's
25 irrelevant, but at least I would like to have the

1 opportunity to review it."

2 Our legal counsel then also commented, "I
3 guess the Executive Director has the authority to
4 execute the agreement but you just want to be sure
5 and be aware of the final product; is that right?"

6 And that was correct.

7 And our legal counsel said, "So we may
8 execute the contract."

9 And basically, after reviewing all of
10 those, I felt that your intent was for us to proceed
11 to execute the contract, so I did so.

12 CHAIRPERSON MATHIS: Thank you,
13 Mr. Bladine.

14 We just received the transcript -- the
15 pertinent passages from the June 29th and June 30th
16 meetings where this was discussed.

17 Did anyone have any comments or questions
18 on that?

19 VICE CHAIR FREEMAN: Madame Chair.

20 CHAIRPERSON MATHIS: Mr. Freeman.

21 VICE CHAIR FREEMAN: Mr. Bladine, I have
22 never taken issue with anything that you have done.
23 I do think that the motion that was voted upon was
24 to, as the transcript says, to negotiate a contract,
25 which to me, has distinct legal meaning than

1 negotiate and execute a contract that's binding on
2 the Commission.

3 I may disagree from counsel upon that.
4 There are two different distinct things.

5 I think basically -- I did vote against
6 the contract. I wanted to have a say in how the
7 contract looked. If three commissioners were in
8 favor of it, hoping to add additional terms that
9 perhaps would allay, I would hope, some public
10 concerns.

11 We did have over that long holiday
12 weekend, we had some back and forth about some
13 contract terms but because of some various
14 scheduling issues, we never really could close the
15 loop on that.

16 And the ultimate contract that you did
17 negotiate, which then you did execute, had some of
18 those terms in it. And I think an initial agenda
19 item on today's agenda is to address some further
20 modifications that I thought would be helpful.

21 I think basically while I would stand by
22 everything I have said in the past, I think given
23 where we are in the process, the ship has sailed on
24 this issue and I want to thank the chair for putting
25 that agenda item on the agenda because I think it

1 would be helpful if we really put this issue to bed.

2 I believe this is an action item that the
3 Commission can take. I would certainly -- I would,
4 given my reservations and not any way detracting
5 from positions I've taken in the past, I would
6 support a ratification of the contract that you
7 negotiated with the additional modifications that
8 were discussed at the last hearing and then
9 reappeared on today's agenda as agenda item, I
10 believe, IX.

11 RAY BLADINE: Yes.

12 VICE CHAIR HERRERA: Madame Chair.

13 CHAIRPERSON MATHIS: Mr. Herrera.

14 VICE CHAIR HERRERA: I would like to make
15 a motion, if that's okay.

16 I move that we reaffirm that on
17 June 29th, we authorized Executive Director Ray
18 Bladine to both negotiate and execute a contract
19 with Strategic Telemetry.

20 CHAIRPERSON MATHIS: Is there a second?

21 COMMISSIONER MCNULTY: Second.

22 CHAIRPERSON MATHIS: Any discussion?

23 COMMISSIONER MCNULTY: Yes, I would like
24 to make a couple of comments.

25 Mr. Bladine, I made the motion for you to

1 negotiate the contract. I do that all of the time
2 in my practice. What I intended was that you close
3 the deal.

4 If I had intended to reserve the need for
5 this Commission to ratify your contract, I would
6 have explicitly said so. And we didn't do that, and
7 I think it was clear from all of the facts and
8 circumstances surrounding that hearing that what we
9 intended for you to do was to go ahead.

10 I think you were justified in acting in
11 reliance on what appear- -- would have appeared to
12 you and certainly would have appeared to the vendor
13 to be our authorization to proceed with the
14 contract.

15 And for all of those reasons, I would
16 support Mr. Herrera's motion.

17 CHAIRPERSON MATHIS: Okay. Other
18 comments?

19 COMMISSIONER STERTZ: Madame Chair.

20 CHAIRPERSON MATHIS: Mr. Stertz.

21 COMMISSIONER STERTZ: Thank you again for
22 bringing this back on to the agenda.

23 This is not meant to be of any disrespect
24 to Mr. Bladine, and given the authority that you've
25 had, I've got the highest level of respect for you

1 and what you are doing, but I do know that there is
2 a significant difference in legal terms between
3 negotiate and enter into. And I felt that it was
4 important and incumbent upon us that subsequent to
5 the actual motion being put into the record at the
6 last vote that we clear that last piece up. And I
7 appreciate you bringing it on for the agenda.

8 CHAIRPERSON MATHIS: Thank you.

9 Other comments.

10 Okay. All in favor?

11 CHAIRPERSON MATHIS: Aye.

12 COMMISSIONER MCNULTY: Aye.

13 VICE CHAIR FREEMAN: Aye.

14 VICE CHAIR HERRERA: Aye.

15 CHAIRPERSON MATHIS: Any opposed?

16 COMMISSIONER STERTZ: I'll vote present.

17 CHAIRPERSON MATHIS: Okay. We have four
18 ayes and Stertz voting present.

19 Thank you, Mr. Bladine.

20 And that takes us to a related topic,
21 which is agenda item IX, discussion and possible
22 action regarding contract modification with
23 Strategic Telemetry to clarify possible clients and
24 documentation of contacts regarding the
25 Redistricting Commission.

1 And I remember Mr. Freeman did raise this
2 a while back. I can't remember if it was the
3 June 30th meeting or sometime back then. And I know
4 legal counsel spoke with our mapping consultant
5 about some of those suggested modifications and they
6 have come up with, I think, some draft language that
7 might be available.

8 VICE CHAIR HERRERA: Madame Chair.

9 CHAIRPERSON MATHIS: Yes, Mr. Herrera.

10 VICE CHAIR HERRERA: One of the reasons
11 we brought it back up, because it was approved at
12 the last meeting when we had -- it was the meeting
13 where we had Sandra Day O'Connor. I just remember
14 it was the meeting where we had Sandra Day O'Connor.

15 CHAIRPERSON MATHIS: Right.

16 VICE CHAIR HERRERA: The issue of
17 excluding the media, including bloggers, because I
18 think that would make sense. I really do feel
19 that -- I don't think we were intending to include
20 the media in this, including bloggers. I think they
21 should be able to contact Strategic Telemetry
22 without having to feel like -- that they are being
23 lumped in with lobbyists and people that are trying
24 to persuade Strategic Telemetry. So I feel like
25 they should be excluded.

1 CHAIRPERSON MATHIS: Okay. Thank you.

2 Ms. O'Grady -- oh, Mr. Kanefield.

3 JOSEPH KANEFIELD: Madame Chair, members
4 of the Commission, at the last meeting the question
5 -- legal question was raised and counsel was
6 directed to follow up on -- as I understood, the
7 question was the proposed amendment to the contract
8 that requires the -- Strategic Telemetry to log
9 contacts from outside -- others outside the
10 Commission, including contacts with the media,
11 raised any legal issues.

12 My team did the research on this over the
13 weekend and the conclusion, we determined that there
14 are no legal issues associated with -- the manner --
15 the language in which has been proposed to amend the
16 contracts.

17 CHAIRPERSON MATHIS: So in other words,
18 the language that you supplied at the August 17th, I
19 think -- well, the meeting where Sandra Day O'Connor
20 spoke is -- stands as is.

21 Okay. Did others have questions or
22 comments on that?

23 VICE CHAIR FREEMAN: Madame Chair.

24 CHAIRPERSON MATHIS: Mr. Freeman.

25 VICE CHAIR FREEMAN: Certainly the

1 language that was presented to me, I thought
2 included all contacts. And in approving it,
3 approving that language, I was approving all
4 contacts. It was not my intent to exclude bloggers
5 or members of the media.

6 So I think we should -- well, we approved
7 it last time and I think it should stand as a
8 contract modification as is.

9 VICE CHAIR HERRERA: Madame Chair.

10 CHAIRPERSON MATHIS: Mr. Herrera.

11 VICE CHAIR HERRERA: I would like to
12 revisit this and change the -- that amendment that
13 excludes members of the media, including bloggers.
14 I just don't think -- we want these individuals,
15 members of the media, to be able to exercise their
16 right to provide the public with information. And I
17 think having them to -- subjecting them to this,
18 that does bother me. I don't think that we intended
19 to do this.

20 I mean, I completely understand when
21 there's people that are trying to persuade Strategic
22 Telemetry or lobbying them for maybe three border
23 districts or four or whatever the case may be, they
24 should be writing down the information on who they
25 spoke to but not members of the media. I really

1 don't think that that's necessary. They are there
2 to do a job and they shouldn't be subjected to this.

3 I wouldn't -- I would vote that we -- or
4 at least consider rewriting the amendment excluding
5 the media and bloggers.

6 CHAIRPERSON MATHIS: Other comments or
7 questions?

8 VICE CHAIR FREEMAN: Madame Chair.

9 CHAIRPERSON MATHIS: Mr. Freeman.

10 VICE CHAIR FREEMAN: Frankly, the
11 exclusion for a blogger is a loophole you could
12 drive a Mack truck through. I don't know exactly
13 how a blogger is defined.

14 We as a Commission can create this
15 requirement and ask our consultant to abide by it,
16 provide us that information, and have it be made
17 public, if we so chose.

18 I think that goes to our transparency and
19 openness and people should have some assurance that
20 the consultant is being open and transparent with us
21 at all times, and I think this contract modification
22 serves that.

23 CHAIRPERSON MATHIS: Other comments?

24 Ms. McNulty.

25 COMMISSIONER MCNULTY: Yes, I agree with

1 Mr. Herrera. It just doesn't feel comfortable to
2 me. I don't think we intended when we did this to
3 require all of the same disclosure on behalf of the
4 First Amendment press as we do of lobbyists.

5 I understand that we are really trying
6 here to come together on things wherever we can, but
7 my sense of this is that we didn't think about that
8 when we entered into the contract, and I'm with
9 Commissioner Herrera on this issue.

10 VICE CHAIR HERRERA: Can I make a motion
11 to amend the amendment to exclude members of the
12 media? And members of the media would be Arizona
13 Republic, Capitol Times, the New Times, Phoenix New
14 Times, any blogger that blogs on this topic I think
15 should be excluded.

16 I think that these individuals should be
17 able to approach Strategic Telemetry without having
18 to worry about do I need to -- you know, if I call
19 ten times, are people going to wonder why is this
20 individual calling ten times. They have a right to.

21 I don't think having this amendment
22 really means that we are having -- whether we have
23 it or not doesn't mean we are not having
24 transparency. I think we are having transparency by
25 bringing them here, Strategic Telemetry, by having

1 people voice their concerns here in public, having
2 them -- I don't think proves that we are having
3 transparency.

4 COMMISSIONER MCNULTY: Madame Chair,
5 Mr. Herrera, I think part of having transparency is
6 allowing the press to do their job.

7 VICE CHAIR HERRERA: I agree.

8 COMMISSIONER MCNULTY: This may be a
9 bigger issue than our little Commission can take on,
10 but I agree with you.

11 CHAIRPERSON MATHIS: Is there a second to
12 Mr. Herrera's motion?

13 COMMISSIONER MCNULTY: I second it.

14 CHAIRPERSON MATHIS: Discussion?

15 COMMISSIONER STERTZ: Madame Chair.

16 CHAIRPERSON MATHIS: Mr. Stertz.

17 COMMISSIONER STERTZ: It was my request
18 to legal counsel to do an analysis of this -- of the
19 amendment to the contract. Our legal counsel has
20 recommended to us that the terms -- the conditions
21 as outlined in the amendment that were voted on
22 unanimously by this Commission, including the maker
23 of the motion and the second of the motion, to
24 accept this with my abstention to be an amendment to
25 this contract. It would also give me the

1 opportunity to say I am now a blogger and --

2 COMMISSIONER MCNULTY: No, it wouldn't,
3 Mr. Stertz.

4 COMMISSIONER STERTZ: See, this is the
5 Mack truck argument that Mr. Freeman has just
6 brought forward.

7 So I'm going to encourage my fellow
8 commissioners to continue going down the path of
9 openness and transparency and to -- and as we move
10 forward, if this motion that you are making does
11 hold, that we be more cautious going forward in not
12 reading or not being clear and concise of what the
13 underlying components of motions -- when you are
14 making them, they have -- they are being made for a
15 reason and we shouldn't be continually going back
16 and revisiting things.

17 VICE CHAIR HERRERA: Madame Chair.

18 CHAIRPERSON MATHIS: Mr. Herrera.

19 VICE CHAIR HERRERA: That is funny you
20 bring that up, Mr. Stertz, because we just brought
21 up a motion -- we discussed the motion that we
22 discussed in terms of allowing the -- our executive
23 director to proceed with -- proceed and also enter
24 and execute the contract with Strategic Telemetry.

25 So this has happened numerous times that

1 we have -- a couple commissioners have been bringing
2 things up that have been discussed and been
3 approved.

4 So I don't think that that should stop us
5 from bringing things up. You guys have done that
6 and I'm okay with that, as long as we are able to
7 make a decision and then move forward and not bring
8 this up again.

9 I think this issue is important. I
10 believe in freedom, and I believe that the people
11 that are reporting on the work of the Commission
12 should be able to do so without having to register
13 their names as -- every time they call. I don't
14 think that's necessary. I think that creates a
15 burden and I want to do away with that.

16 CHAIRPERSON MATHIS: Mr. Freeman.

17 VICE CHAIR FREEMAN: Madame Chair, I
18 would like to know, then, what procedure is proposed
19 for Strategic Telemetry to take in identifying the
20 credentials of people who contact them and claim to
21 be a blogger and I would like to know who they have
22 assigned or categorized as bloggers and free to
23 contact them at will. How am I going to know? Like
24 Mr. -- Commissioner Stertz just said, he is now a
25 blogger. I'm not a blogger; maybe I am. I'll have

1 to think about it.

2 I think it's an unworkable exception that
3 creates a huge loophole and I cannot support it.

4 VICE CHAIR HERRERA: I just don't see the
5 need for -- first of all, just to clarify, I never
6 saw a need for that amendment. I thought it was
7 just creating more burden on Strategic Telemetry and
8 also the people calling in.

9 I mean, if somebody wants to call in to
10 us, to me, will I eventually have to be doing that
11 as well?

12 I think people should be able to feel
13 free and open to be able to call myself or anyone on
14 the Commission, including the staff, without them
15 having to log the name of the person they spoke to,
16 whether it be they met them in a grocery store, if
17 someone who runs into Ken or Willie at the grocery
18 store and asks them a question about the job they
19 are doing in Arizona, do they have to log that as
20 well?

21 That just seems burdensome and really
22 unnecessary. Again, I want to create more freedoms
23 and not restrict people. And I think that's what we
24 are doing by correcting this amendment, is
25 restricting the people and being that big brother,

1 that watchdog that people sometimes in this
2 Commission and this -- when they attend meetings,
3 they talk about that and I don't want that to be
4 created. I don't want that perception that we are
5 doing a big-brother type of amendment to oversee who
6 is contacting the -- our mapping consultant and
7 watch over them. That's just completely
8 unnecessary.

9 CHAIRPERSON MATHIS: Mr. Freeman.

10 VICE CHAIR FREEMAN: Commissioner
11 Herrera, you're a little different, though. You're
12 a commissioner and Strategic Telemetry is a
13 contractor that works for us. And the Commission is
14 supposed to conduct itself in a way that builds
15 public confidence in the process. It is supposed to
16 be an open and transparent process.

17 There has been a lot of concern raised by
18 members of the public about the Commission's hiring
19 of Strategic Telemetry and the perception of
20 political bias out there.

21 The purpose of this -- the contract
22 modification was try to allay some of those
23 concerns, some, perhaps not all. And this amendment
24 would serve that end, because it would give the
25 public an opportunity to see who is contacting

1 Strategic Telemetry and to see if there is an issue
2 of influence or bias there.

3 I think it's a good amendment, I think we
4 should stick with it.

5 VICE CHAIR HERRERA: Madame Chair, just
6 one quick --

7 CHAIRPERSON MATHIS: Mr. Herrera.

8 VICE CHAIR HERRERA: I guess I'm still
9 not understanding what you are planning to do with
10 that information.

11 Let's just say Steve Muratore calls Ken
12 and Willie ten times in the span of two days. What
13 does that mean to you? I mean, if you look at that
14 information, they log it in and we get those logs.
15 What will that mean to you? I guess I'm not
16 understanding how you will use that information.

17 VICE CHAIR FREEMAN: Madame Chair.

18 CHAIRPERSON MATHIS: Mr. Freeman.

19 VICE CHAIR FREEMAN: Well, it's perhaps
20 not as important as what it will mean for me, it's
21 what it will mean for the public because then we'll
22 have the opportunity to make that information public
23 and the public will know what's going on.

24 And that's the reason, not my own reason,
25 not what Scott Freeman, commissioner, thinks, but

1 what the public thinks.

2 CHAIRPERSON MATHIS: Thank you.

3 Other comments?

4 Ms. McNulty.

5 COMMISSIONER MCNULTY: I think we know
6 who the -- we can easily determine who the people
7 are who are writing diligently about this process.

8 I guess we could have, you know, some
9 sort of procedure where any new blogger coming in
10 who, you know, hasn't demonstrated a record on this
11 case, and we know who it is that has already
12 demonstrated a record, could, you know, sort of
13 register with us. And this whole discussion makes
14 me wonder, do lobbyists who are coming before us and
15 lobbying us, do they need to register in some way?

16 VICE CHAIR HERRERA: It hasn't happened
17 with us.

18 COMMISSIONER MCNULTY: So we're having --
19 just a question that came to mind as we're having
20 this conversation.

21 I think it's pretty clear we know who is
22 blogging about this, and I think it's great that
23 they are. You know, there's the Arizona
24 Eagletarian, there are a couple other -- there's
25 Blog for Arizona, that's Sonora Alliance or

1 something like that. Maybe one or two more.

2 I mean, we know who those folks are and
3 they are doing a service of getting this information
4 out to the people. And I think that's what the free
5 press is about and I don't want to be a part of
6 getting in the middle of that. I don't think that's
7 right.

8 COMMISSIONER STERTZ: Madame Chair.

9 CHAIRPERSON MATHIS: Mr. Stertz.

10 COMMISSIONER STERTZ: In regards to
11 keeping a log of contacts, are you -- this is a
12 question for Ken, Mr. Strasma.

13 Are you keeping a log of all of the
14 contacts that are being made to you at this time?

15 KEN STRASMA: Since the vote on
16 Wednesday, we have not logged any contacts, other
17 than commissioners and staff and other outside of
18 meetings, which to my understanding -- and also a
19 further classification was brought up, if it was
20 intended to exempt family and significant others.
21 And we were advised that there was some level of
22 common sense to be applied to that.

23 I guess I would appreciate that
24 clarification so it's not me doing the level of
25 common sense, but if it could be reaffirmed that we

1 are accepting families and significant others.

2 So with those exceptions, families,
3 significant others, members of the Commission, and
4 staff, yes, we have been logging contacts since last
5 Wednesday.

6 COMMISSIONER STERTZ: Madame Chair.

7 CHAIRPERSON MATHIS: Mr. Stertz.

8 COMMISSIONER STERTZ: Mr. Strasma, is
9 there any undue burden that's been put on you by the
10 logging of the staff?

11 KEN STRASMA: Not at all.

12 COMMISSIONER STERTZ: Madame Chair, Mr.
13 Strasma, do you believe that in adding to the record
14 of -- that you are going to be preparing, that it's
15 going to be something that's advantageous to you in
16 building the credibility of the record that you are
17 going to be presenting as part of this overall
18 package to the DOJ?

19 KEN STRASMA: Madame Chair, Commissioner,
20 I had not thought about it in those terms. I --
21 generally speaking, I do believe anything that adds
22 to the transparency is advantageous to the process,
23 including for DOJ submissions.

24 COMMISSIONER STERTZ: Thank you,
25 Mr. Strasma.

1 CHAIRPERSON MATHIS: That's a good point.
2 I hadn't thought of that one.

3 Mr. Kanefield, I would like to hear from
4 you more about the analysis you did just to
5 understand -- you know, I don't know enough about
6 logs and how other logs get handled and if press is
7 typically excluded or included or how it shakes out.
8 So if you could just expound a little bit.

9 JOSEPH KANEFIELD: Madame Chair, as I
10 understood, the question was whether the contract --
11 the proposed contract amendments raised any kind of
12 First Amendment issue with respect to the members of
13 the media or bloggers, it would require Strategic
14 Telemetry to log contacts from those individuals.

15 So we researched the general First
16 Amendment case law and other precedents that might
17 raise questions about whether that infringed on
18 anyone's right, and we were not able to identify any
19 legal issue associated with requiring Strategic
20 Telemetry, through its relationship with this
21 Commission, to log those contacts, simply indicating
22 on a log that a member of the media has contacted
23 them regarding the subject matter. It doesn't pose
24 any First Amendment issue that we were able to
25 identify in our analysis.

1 COMMISSIONER MCNULTY: Mr. Kanefield, did
2 you find any cases in which public bodies did, in
3 fact, log their contacts with the media and that was
4 addressed by a court?

5 JOSEPH KANEFIELD: Madame Chair,
6 Commission McNulty, we weren't -- we weren't looking
7 for that, those types of cases.

8 CHAIRPERSON MATHIS: Mr. Herrera.

9 VICE CHAIR HERRERA: Madame Chair, I have
10 one more point.

11 When we -- you know, even though you
12 didn't look at the public bodies doing this type of
13 thing, is it possible that we could be entering into
14 a situation where it we might be infringing on
15 somebody's rights and we might be facing a lawsuit,
16 kind of like the way we did with the issue of the
17 mapping software. The individual who wrote us that
18 letter, I'm not saying the person threatened us, but
19 there was that possibility of being sued or entering
20 into a lawsuit.

21 Do we have a possibility here? Because
22 that was a concern with -- when we -- with the
23 mapping software. I just want to see if there's
24 that concern here with this.

25 JOSEPH KANEFIELD: Madame Chair,

1 Commission Herrera, there's always a risk of the
2 lawsuit. We can't prevent anyone from suing the
3 Commission or raising legal challenges. So all we
4 can do as counsel is do our best to review the law,
5 to assess the risk and determine whether or not
6 there is an actionable claim, whether we can defend
7 a claim. And this was, to me, a very narrow
8 question.

9 And we can expand the research if the
10 Commission so directs, but this seemed to be a
11 narrow question whether or not there would be any
12 legal issue or constitutional issue associated with
13 requiring a member of the media -- or sorry,
14 required Strategic Telemetry to keep a log of
15 contacts from -- received from the media during this
16 process. We just weren't able to identify any
17 significant risks.

18 So I'm not saying that that's not going
19 to prevent someone from raising the question or
20 making a legal argument or bringing a lawsuit, but
21 we believe based on our analysis that we would be
22 able to defend that decision if one was brought.

23 CHAIRPERSON MATHIS: Other comments,
24 questions?

25 UNIDENTIFIED SPEAKER: Madame Chair, will

1 you take public comment on this agenda item?

2 CHAIRPERSON MATHIS: Let's see. We've
3 got -- what I would like to do, and I want to see if
4 this is first possible.

5 Is it -- can we expand the scope of the
6 research a little bit just to find out what other
7 public bodies have instituted logs and what they do,
8 what the common practice is, which I don't know what
9 that means for the agenda -- for the motion that
10 Mr. Herrera has put forth and has been seconded.

11 Can it be held until our next meeting as
12 a continuing agenda item or how would that work
13 because I would like more explanation, frankly.
14 That's part of the problem.

15 JOSEPH KANEFIELD: Madame Chair, I'm
16 happy to continue the research. I can have my team
17 look to see if this issue has ever come up with
18 respect to another public body in another
19 jurisdiction perhaps, and if there were any legal
20 issues associated with it.

21 I'm confident that my team would have
22 identified those in doing the research, even though
23 they were looking at a narrow issue. If the issue
24 had come up in the context of a public body logging,
25 keeping a log of media contacts as public record, I

1 think my team would have flagged that. But we can
2 go back and double-check to see if there was any
3 more specific case.

4 CHAIRPERSON MATHIS: Ms. O'Grady, are you
5 aware of any? I'm just curious if you've come
6 across this issue at all.

7 MARY O'GRADY: Madame Chair, I haven't
8 done the research, so I haven't seen that.

9 I am aware of public entities who don't
10 permit media contacts throughout the organization.
11 Often they channel it through like the public
12 information officer and that sort of thing. But
13 that's just -- but that's not the same issue that
14 you are talking about.

15 CHAIRPERSON MATHIS: Okay.

16 VICE CHAIR HERRERA: You know, I do think
17 this is an issue that's important to at least two of
18 the commissioners and that two of them feel that
19 amendment is -- change to the amendment is not
20 needed.

21 So I'm looking for a compromise. I mean,
22 I'm not looking to -- even though I did not support
23 the amendment, I didn't think it was necessary, I'm
24 willing to negotiate with you. If you look at the
25 amendment, it's there, but then adding a change that

1 I think is important to at least two of us.

2 And so I'm looking for all five of us to
3 come up with an agreement, and that agreement would
4 be a compromise where you added solely for the
5 purpose for those members of the media and not drop
6 the entire amendment, which I would prefer to do.
7 Again, I'm willing to hopefully listen to some
8 compromise and make that change.

9 COMMISSIONER STERTZ: Madame chair.

10 CHAIRPERSON MATHIS: Mr. Stertz.

11 COMMISSIONER STERTZ: In light of
12 Mr. Herrera's comment of not supporting an amendment
13 that he voted for, I'm going to call the question on
14 this motion.

15 CHAIRPERSON MATHIS: Okay. Which means I
16 have to call for a vote, right?

17 COMMISSIONER MCNULTY: I think we need --
18 Madame Chair, I believe we need a second on that
19 motion and then I believe we need to vote on the
20 motion to call for the question.

21 VICE CHAIR HERRERA: I second that.

22 COMMISSIONER MCNULTY: No.

23 VICE CHAIR HERRERA: I don't think you
24 need a -- we just have to vote, I think, correct?

25 COMMISSIONER STERTZ: Call the question

1 on the motion, please.

2 MARY O'GRADY: Madame Chair, now, do we
3 have a second to Commissioner Herrera's motion?

4 CHAIRPERSON MATHIS: We do.

5 MARY O'GRADY: Okay. And then the call
6 the question isn't necessarily automatic. Sometimes
7 there's a -- that's treated as a motion itself that
8 may require a vote, if there is additional
9 discussion. I don't know if there is additional
10 discussion.

11 CHAIRPERSON MATHIS: Okay. So I think --
12 I don't really see what my options are. I think
13 they are that I have to call for the vote, is that
14 correct, or do I need -- does something happen?

15 Were you saying, Ms. McNulty, that his
16 call the question has to be --

17 COMMISSIONER MCNULTY: It has to be voted
18 on, yes.

19 CHAIRPERSON MATHIS: Okay.

20 COMMISSIONER MCNULTY: Or the second to
21 be withdrawn.

22 MARY O'GRADY: I don't know. It doesn't
23 sound like the second is going to be withdrawn from
24 the original motion.

25 COMMISSIONER MCNULTY: No.

1 CHAIRPERSON MATHIS: Okay.

2 All in favor?

3 VICE CHAIR HERRERA: (Aye.)

4 What is the motion?

5 CHAIRPERSON MATHIS: It was Mr. Herrera's
6 original motion, which was to amend the amendment to
7 exclude members of the media including bloggers; is
8 that correct?

9 VICE CHAIR HERRERA: That is correct.

10 So I'm voting aye for that.

11 COMMISSIONER MCNULTY: I'm sorry, just to
12 be clear, Ms. O'Grady, we had a motion on the floor
13 that had been seconded and Mr. Stertz called the
14 question and that has not been seconded and we have
15 not voted on that. So I'm just a little unclear on
16 what we are doing here.

17 MARY O'GRADY: Madame Chair, call of the
18 question doesn't automatically cut off debate
19 because that in and of itself requires a two-thirds
20 vote to actually force the Commission to end debate.

21 But I also don't hear any continued
22 debate. And so you can, without objection, proceed
23 to a vote on the merits. But if there is additional
24 debate, the call for the question doesn't
25 automatically cut it off, if there is additional

1 debate. That takes a two-thirds vote.

2 COMMISSIONER MCNULTY: Thank you. I just
3 wanted to be clear.

4 I vote aye on Mr. Herrera's motion.

5 VICE CHAIR FREEMAN: I'm sorry, are we
6 voting? Has the question been called?

7 COMMISSIONER MCNULTY: The question has
8 not been called because it hasn't been seconded and
9 we haven't voted on that. But we apparently have no
10 further debate, so --

11 VICE CHAIR FREEMAN: I was going to add,
12 Madame Chair, if you would like more additional
13 research on the issue, I am certainly supportive of
14 that.

15 CHAIRPERSON MATHIS: Thank you.

16 COMMISSIONER MCNULTY: I would also be
17 supportive of hearing from the press because I don't
18 think we are experts in this area and I think they
19 are and, you know, we kind of realized we have
20 blundered into this based on one of their comments
21 and I would like to hear their comments before we
22 blunder back out, if we do.

23 VICE CHAIR HERRERA: I agree.

24 CHAIRPERSON MATHIS: Okay. I would, too.
25 I would like some more insight into this matter.

1 So how will this be handled with the
2 motion?

3 COMMISSIONER MCNULTY: Mr. Herrera, would
4 you -- I don't think -- I could withdraw my second.
5 Do you want to withdraw your motion in order for us
6 to do the additional research and to get it --

7 VICE CHAIR HERRERA: I would. If we're
8 going to do additional research, I withdraw my
9 motion, but making sure that when you do the
10 additional research, that you look for bodies,
11 similar bodies that have excluded -- or included the
12 individuals that are -- actual phone calls to the
13 log, who is calling them, who is lobbying them, and
14 that includes the media, because I would probably
15 guess that you're not going to find many bodies
16 doing that. But I could be wrong.

17 CHAIRPERSON MATHIS: Any other direction
18 for counsel?

19 Mr. Freeman.

20 VICE CHAIR FREEMAN: Madame Chair, it
21 might also be helpful to look at what Ms. O'Grady
22 mentioned, circumstances where public bodies have
23 prohibited contacts from the outside except through
24 a designated representative such as a public
25 information officer. To me, that is similar in a

1 way but analogous to what we are doing.

2 COMMISSIONER STERTZ: Madame Chair.

3 CHAIRPERSON MATHIS: Mr. Stertz.

4 COMMISSIONER STERTZ: Could you please
5 recap?

6 CHAIRPERSON MATHIS: No.

7 So we've -- have you removed your second,
8 Commissioner McNulty and he's removed his motion?

9 VICE CHAIR HERRERA: Yes.

10 CHAIRPERSON MATHIS: So the motion is off
11 the table, it dies, I guess.

12 And we've directed counsel to conduct
13 some additional research into the scope of what
14 other public bodies, and specifically with relation
15 to media and bloggers and how they were handled, if
16 ever specified.

17 And then Mr. Freeman, can you repeat your
18 direction that you had for Ms. O'Grady?

19 VICE CHAIR FREEMAN: Well, to expand the
20 scope of the research to include instances where
21 public bodies have excluded contacts with the
22 outside except through a designated representative
23 such as a public information officer or perhaps an
24 executive director.

25 CHAIRPERSON MATHIS: Okay. Thank you.

1 COMMISSIONER STERTZ: Madame Chair.

2 CHAIRPERSON MATHIS: Mr. Stertz.

3 COMMISSIONER STERTZ: As a point of
4 clarification, until such time as the amendment is
5 modified, it's incumbent upon the consultant to
6 continue to log all contacts.

7 CHAIRPERSON MATHIS: Yes, including media
8 and bloggers.

9 COMMISSIONER STERTZ: All contacts.

10 CHAIRPERSON MATHIS: That's what the
11 language was.

12 Yes, Mr. Herrera.

13 VICE CHAIR HERRERA: One last thing, I
14 would like to encourage members of the media,
15 including bloggers, to contact the staff and voice
16 their concerns about this amendment and why they
17 shouldn't be included in this amendment. So I am
18 just encouraging members of the media to do so.

19 CHAIRPERSON MATHIS: Okay. Thank you.

20 COMMISSIONER STERTZ: And Madame Chair.

21 CHAIRPERSON MATHIS: Mr. Stertz.

22 COMMISSIONER STERTZ: In a light way, I
23 would also encourage bloggers and media and the
24 members of the public who would wish to continue
25 with full and open transparency of the Commission to

1 contact members of the staff and this Commission so
2 that we have real clarity and real transparency and
3 not to try to give an overweighted sense of comfort
4 when this research is being done to omit this
5 transparency from the record.

6 CHAIRPERSON MATHIS: Thank you.

7 Any other comments?

8 Mr. Strasma.

9 KEN STRASMA: Thank you, Madame Chair.

10 Thank you.

11 I just wanted a clarification for our
12 administrative purposes.

13 Do outgoing contacts from Strategic
14 Telemetry, for example, our contacts with county GIS
15 officers or interested groups who submit plans and
16 we follow up with them if we need plan files, should
17 we be logging outgoing contacts?

18 CHAIRPERSON MATHIS: Yeah, I think that's
19 a great question and something we need advice from
20 counsel on, too.

21 Did commissioners want to comment in the
22 meantime?

23 VICE CHAIR HERRERA: Yeah, I just have
24 one.

25 CHAIRPERSON MATHIS: Mr. Herrera.

1 VICE CHAIR HERRERA: It just reaffirms
2 that when you start making motions like this without
3 really considering, you know, the risks involved,
4 who else it impacts, you know, then you start
5 realizing maybe we shouldn't have made that motion.
6 The motion -- there's so many questions that still
7 remain to be asked.

8 And we even talked about the neighbors.
9 So if Ken's neighbor asks him about the mapping --
10 how the redistricting is going, does he or will he
11 need to log that? And I don't think that was
12 covered. Or somebody at church or somebody at his
13 gym, he looks like he works out. Does that need to
14 be logged on -- I mean, logged in? I guess I
15 don't -- I don't understand. I don't know. I mean,
16 I'm assuming they don't know either.

17 COMMISSIONER MCNULTY: Mr. Kanefield, can
18 you read the language of our amendment to us,
19 please?

20 JOSEPH KANEFIELD: Madame Chair, members
21 of the Commission, let me just read it. It's only
22 three sentences and then I'll tell you what I think.

23 It says -- the heading is, "Documentation
24 of contacts regarding contract." It says,
25 "Contractor shall maintain a log describing all

1 contacts, oral or written, with persons other than
2 IRC staff, attorneys, and commissioners regarding
3 the contract. The law shall include the name of the
4 person, the organization, who the person represents,
5 the date, and the topic addressed. This does not
6 apply to contacts made while attending a public
7 hearing or a meeting of the AIRC."

8 I highlight -- I would emphasize two
9 points in that language, one is "all contacts." So
10 arguably, that's contacts both that Strategic
11 Telemetry receives and also contacts that they
12 initiate.

13 And then the other specific language to
14 highlight is "regarding the contract," which I think
15 pretty clearly indicates that it's contacts made
16 within the scope of the mapping process and the work
17 that Strategic Telemetry has been contracted to
18 perform.

19 So that would not include personal
20 contacts with spouses and family members and others
21 who are contacting Strategic Telemetry and its
22 employees that are outside the scope of the contract
23 itself.

24 CHAIRPERSON MATHIS: Thank you.

25 Any questions or comments on that

1 clarification?

2 So income and outgoing.

3 Thank you.

4 That takes us to the end of that agenda
5 item, and it is now 12:41 p.m.

6 There is -- I guess we could do
7 discussion of future meetings and future agenda
8 items if people wanted to and then break for lunch.

9 Okay. We haven't set any future agenda
10 -- future meetings yet. So that's probably job one.

11 And we'll need some input from our
12 mapping consultants, too, on the kind of work -- the
13 direction they are going to need from us.

14 Today is Monday. We could meet later
15 this week if there was a need to, but maybe we could
16 talk about some of the agenda items that we know are
17 pressing and determine when it makes sense to meet.

18 I open the floor to anyone.

19 Ms. McNulty.

20 COMMISSIONER MCNULTY: Madame Chair, it
21 seems as though we have a lot of mapping work to do.
22 I know that we asked you for a lot of material last
23 week. Maybe you could tell us the status of that
24 material. And my thought would be we probably
25 should be thinking about getting together later this

1 week to kind of dig in and do nothing but work on
2 these maps, the Congressional maps first.

3 CHAIRPERSON MATHIS: Other comments from
4 others?

5 VICE CHAIR HERRERA: I would agree with
6 that. We -- I think about a week ago, a little
7 longer, we were requested by the IRC staff to submit
8 dates that were either available or not available,
9 and hopefully everyone did that. I know it took me
10 a little bit of time but I ended up getting them
11 information as quickly as possible.

12 So we should be scheduling these meetings
13 ahead of time to allow the public enough time to
14 prepare and for us also to prepare and for the staff
15 and for the mapping consultant.

16 So hopefully we can schedule them. They
17 have the dates now that we are not available or are
18 available, so that shouldn't be a problem,
19 hopefully.

20 CHAIRPERSON MATHIS: I would also ask
21 commissioners if they are open to meeting Saturdays
22 ever if we ever needed to do a two-day
23 Friday/Saturday kind of arrangement or any evenings,
24 too. Just curious if people have thoughts.

25 VICE CHAIR FREEMAN: Madame Chair, I'm

1 certainly not adverse to working on Saturday or the
2 evening, it's just in the past, when we've gotten
3 these requests to keep Mr. Bladine informed of our
4 schedules, I never thought to give him conflicts on
5 weekends.

6 So I had a conflict last weekend, I have
7 a conflict on this Saturday, but going forward I'll
8 make it a point to include that when I am giving my
9 availability.

10 CHAIRPERSON MATHIS: Thank you.

11 I think that would just be helpful for
12 all of us to keep as an option.

13 COMMISSIONER STERTZ: Madame Chair.

14 CHAIRPERSON MATHIS: Mr. Stertz.

15 COMMISSIONER STERTZ: May I give the
16 recommendation that tonight that we get a
17 reconflicting -- a conflict list out including
18 weekends out to Mr. Bladine and a new schedule can
19 get developed. I know time is of the essence in
20 getting this -- taking this to the next level.

21 CHAIRPERSON MATHIS: Okay. Are there --
22 could we at least pick the next meeting date? Would
23 you guys be open to that?

24 I don't know if Mr. Bladine -- sorry, I
25 should ask you if you have the actual input from the

1 commissioners as to when -- who is available.

2 RAY BLADINE: I don't have a complete
3 list at this time, but I think maybe following up,
4 Commissioner Stertz, I can get one tomorrow and send
5 it out to everyone.

6 I think it would be kind of good to know
7 when Strategic Telemetry would be available. Then I
8 could merge that with their list.

9 I'm not helping you come to a decision
10 today, but I don't think I have the information to
11 help you either.

12 CHAIRPERSON MATHIS: No, that's fine.
13 Thank you.

14 So I ask Mr. Strasma, when you all are
15 available, too, because you are key to this.

16 KEN STRASMA: Madame Chair, we would be
17 available beginning Friday and from there on.

18 CHAIRPERSON MATHIS: This Friday?

19 VICE CHAIR FREEMAN: Madame Chair.

20 CHAIRPERSON MATHIS: Mr. Freeman.

21 VICE CHAIR FREEMAN: Friday was my only
22 unavailable date this week. I'm sorry, but I am
23 required to be somewhere.

24 COMMISSIONER STERTZ: And, Madame Chair,
25 Friday and Saturday are unavailable for me.

1 CHAIRPERSON MATHIS: Okay. So starting
2 next week, I guess unless -- I guess there's the
3 option -- we could meet Thursday, but I don't think
4 our mapping consultant could be there so that
5 wouldn't really make a lot of sense, unless there
6 was some nonmapping agenda items that I'm not really
7 paying attention to and you guys can correct me.

8 RAY BLADINE: Madame Chair, why don't we
9 go ahead and I'll get availabilities from Strategic
10 Telemetry and I'll get your availabilities and see
11 if we can't find something maybe several days in a
12 row next week, perhaps going back to the half day or
13 whatever it is, and then send that out to you and
14 then kind of on an objection basis, we'll go ahead
15 and set something unless somebody says, you know, I
16 can't do it.

17 And Mr. Freeman -- Commissioner Freeman
18 is bringing up a good point. I'm not sure even in
19 the last thing we asked for Saturday availability,
20 but that would also be good if you would send either
21 me or Anna an e-mail about the next few two months
22 of Saturdays and then we can take a look at that,
23 too.

24 CHAIRPERSON MATHIS: Great.

25 RAY BLADINE: We'll make that a priority

1 for tomorrow and see what we can do.

2 CHAIRPERSON MATHIS: Thank you.

3 Ms. O'Grady.

4 MARY O'GRADY: Madame Chair, this doesn't
5 go to dates but this goes to future agenda items.

6 In addition to the routine mapping-type
7 items that we've had on the agenda, two things that
8 I thought I would mention was putting on as an
9 agenda item a social science expert to assist with
10 the analysis necessary for both the voting rights
11 analysis and the competitiveness analysis. So have
12 a discussion of that issue.

13 And second, and this may be a longer-term
14 thing, but having an agenda item that involves
15 presentation of maps by the public on specific days
16 that we give them some advance notice because people
17 are submitting maps but it might help to have some
18 time actually on -- figure out the logistics for
19 having some time where they would come and explain
20 their maps and the Commission could ask them
21 questions about their maps.

22 CHAIRPERSON MATHIS: So this would be a
23 specific agenda item different from public comment?

24 MARY O'GRADY: Madame Chair, yes. We
25 could figure out the logistics of how to structure

1 that, but I'm trying to think of the best way to get
2 these third-party maps that we are getting presented
3 to the Commission.

4 CHAIRPERSON MATHIS: Okay. Great.

5 Other agenda items that people would like
6 to have -- see on future -- at future meetings?

7 VICE CHAIR HERRERA: Madame Chair.

8 CHAIRPERSON MATHIS: Mr. Herrera.

9 VICE CHAIR HERRERA: I had talked about
10 at the last meeting having the staff let us --
11 informing us on how much these requests for public
12 information -- you know, release of public documents
13 is costing the IRC and also the inquiry of the AG's
14 Office, how much this is costing the taxpayers.

15 Not to say that this shouldn't happen,
16 meaning that people can still make public requests,
17 but we still need inform the public on how much this
18 is costing the State. So I would like to have that
19 as an ongoing agenda item and an update every time.

20 CHAIRPERSON MATHIS: Okay. And maybe
21 that can be part of the executive director report.

22 RAY BLADINE: Madame Chairman, maybe what
23 I should do is I've got a couple of other items that
24 I should just keep a list of agenda items all for
25 everybody so they know they are coming up, because

1 some of them, until we get the data, there's no use
2 to put them on the agenda. But you need to be
3 assured we haven't lost them.

4 So I do have the cost of the information
5 request from last time. I also have budget
6 information that needs to be presented. I can do it
7 in part of the report, but I thought I would get you
8 budget information out this week, probably if not
9 tomorrow the day after.

10 CHAIRPERSON MATHIS: Okay.

11 COMMISSIONER STERTZ: Madame Chair.

12 CHAIRPERSON MATHIS: Mr. Stertz.

13 COMMISSIONER STERTZ: Madame Chair,
14 Mr. Bladine, it might be good for you, too, when you
15 are sending out the request of dates, to list out
16 what you would typically put in your executive
17 director's report of what things you would like to
18 see covered, some comments that you have heard from
19 us and what we would like to see covered during that
20 and to make sure that we have, in an effort to not
21 infringe on our open meeting law requirements, to be
22 able to have an open dialog with you or with
23 representatives of your staff regarding any of those
24 items that we may need clarification on during that
25 time.

1 CHAIRPERSON MATHIS: Thank you.

2 Other agenda items?

3 COMMISSIONER STERTZ: Madame Chair.

4 CHAIRPERSON MATHIS: Mr. Stertz.

5 COMMISSIONER STERTZ: Because it wasn't
6 spelled out specifically by either Commissioner
7 Herrera or Commissioner McNulty, I'm just going to
8 suggest that on the next agenda, we are hearing a
9 report back from legal counsel so that we can
10 address the issue at hand.

11 CHAIRPERSON MATHIS: For sure.

12 VICE CHAIR HERRERA: Thank you.

13 CHAIRPERSON MATHIS: Anything from the
14 mapping consultant that you think should be on our
15 radar that we need to be addressing soon?

16 KEN STRASMA: Madame Chair, we would be
17 interested in knowing what the Commission has in
18 mind in terms of the format that the next meetings
19 would take.

20 We talked a while ago about having
21 perhaps three half-day sessions or some back-to-back
22 meetings. I think as we are trying to meet our
23 tight schedule, it we would be good if we could try
24 to schedule some back-to-back meetings. And we had
25 suggested that the half-day so that we could have

1 time to go through work through suggestions that are
2 brought up and come back and have working meetings
3 with the commissioners.

4 CHAIRPERSON MATHIS: Thank you.

5 Okay. I guess the only other one I can
6 think of now is public hearing, which we'll be
7 getting to our second round starting in late
8 September. So I'm sure that will be a future agenda
9 item.

10 Great. Well, that sounds good.

11 COMMISSIONER STERTZ: Madame Chair.

12 CHAIRPERSON MATHIS: Mr. Stertz.

13 COMMISSIONER STERTZ: Just as point of
14 clarification, what is the -- so we know the
15 compression of how much we need to get in between
16 now, what was the date that's been selected for
17 beginning the second round?

18 RAY BLADINE: I think at your last
19 meeting you talked about starting the 26th.
20 Frankly, I would like to push you ahead a couple of
21 days so that we could start that weekend up on
22 Flagstaff and meet that commitment, but that's
23 really your call.

24 But we've put it back to starting the
25 26th, which is a Monday, and it would be nice if we

1 could start that weekend, Friday/Saturday. Again,
2 it assumes that you got your work done. But right
3 now, I understand my instruction is the 26th.

4 CHAIRPERSON MATHIS: 25th is Sunday, 24th
5 is Saturday, 23rd would be the Friday?

6 RAY BLADINE: Friday, yes, ma'am.

7 CHAIRPERSON MATHIS: So if we could start
8 that Friday/Saturday, do back-to-back hearings?

9 RAY BLADINE: We are going to try -- yes.

10 CHAIRPERSON MATHIS: Okay.

11 COMMISSIONER STERTZ: Thank you.

12 CHAIRPERSON MATHIS: All right. Thank
13 you.

14 Any other comments or questions?

15 Okay. We'll go ahead and break for
16 lunch. It's 12:53, and if you could just take 30
17 minutes, I would appreciate it.

18 Thank you.

19 (A recess was taken from 12:53 p.m. to
20 1:58 p.m.)

21 CHAIRPERSON MATHIS: We'll enter back
22 into public session now after that recess. The time
23 is 1:58 p.m.

24 Our next item on the agenda is V, review,
25 discussion and direction to mapping consultant

1 regarding ideas for possible adjustments to
2 Congressional grid map based on constitutional
3 criteria.

4 And at our last meeting, we gave a list
5 of what-ifs to explore to our mapping consultant and
6 we'll hear from them as to what they were able to
7 accomplish in that time frame.

8 KEN STRASMA: So there were a number of
9 what-ifs posed that we explored. One was to have a
10 two-southern border district plan, another was to
11 have a four-southern border district plan. Another
12 was a plan that maximizes respect for county lines.

13 There were a few specific ones that on
14 further discussion, were discussions of adjustments
15 to the existing Congressional district plans, so we
16 didn't pursue that given that we are working off of
17 the grid map now.

18 And then there were some general -- some
19 general guidance provided in that we should strive
20 to maintain the two voting rights Hispanic districts
21 and also a suggestion to try to have a plan that did
22 not split any Indian reservations.

23 That last one, we have not pursued that
24 yet, but looking at it, it seems like it should be
25 doable.

1 What I would like to do, and by all
2 means, let me know about time constraints here, is
3 present what we found about the two border districts
4 and then discuss the challenges that would be
5 involved in getting either a three- or four border
6 district scenario.

7 I had suggested yesterday that we might
8 want to work through as a group in a working session
9 what it would take to do a three border district
10 plan that would be -- that would be constitutional
11 in terms of voting rights issues.

12 My understanding, given the time we have,
13 that perhaps we should defer that to a later mapping
14 working meeting so that we can finish more quickly
15 and also just get direction for what we want to
16 accomplish by the next week.

17 CHAIRPERSON MATHIS: Sounds good.

18 We do have some time constraints,
19 unfortunately, so we will be ending the meeting at
20 3:40 p.m., but backing up from there, we'll go until
21 3 p.m. with other agenda items. So if you're able
22 to talk to us about these adjustments on the
23 Congressional and maybe we do the Legislative next
24 time, unless commissioners have certain what-ifs
25 they want to cover today to bring up next time.

1 We did discuss maybe we could meet this
2 Thursday as a Commission and have a meeting then and
3 that would be on the agenda for that. So we'll go
4 ahead.

5 KEN STRASMA: Okay. The -- this you see
6 up on the screen is a two border district map that
7 also creates the two majority Hispanic districts.

8 One issue here, the Maricopa County
9 majority Hispanic district is a slightly lower
10 percent voting age Hispanic from 57 down to 53
11 percent voting age Hispanic. The southern one is
12 actually slightly higher.

13 That seems to fall into the territory of,
14 you know, we don't necessarily know that that is
15 sufficient. We don't know that it's not. That
16 would -- that's enough on the gray area that it
17 would require additional analysis.

18 The lines -- you can see that fairly
19 squiggly on the border between 1 and 3, that's the
20 sort of thing that could be cleaned up some if we
21 pursue this further.

22 The main issue here was needing to
23 include those two different concentrations of
24 Hispanic population. So you can see the darker
25 green on this map is the greater percent voting age

1 Hispanic.

2 And so down to Santa Cruz up to Tucson
3 and then across to the western border, those are the
4 two concentrations that make it possible to have a
5 majority Hispanic district in that area.

6 We worked a fair amount of time trying to
7 create a three border district scenario that would
8 have two majority Hispanic districts. And I don't
9 want to say it's impossible, but it would be
10 extremely difficult.

11 Either you would have to have some kind
12 of horseshoe configuration capturing both of those
13 areas or have three districts that all extended up
14 into Maricopa County to be getting parts of that
15 Hispanic population. And that's something that, you
16 know, we would be happy to pursue further -- either
17 if someone has any particular direction on how we go
18 about that or working through as group to see what
19 the issues were.

20 That issue would be exacerbated if we
21 were to look at a four border district scenario,
22 obviously, and the four border districts would have
23 to go much farther north, including far into
24 Maricopa County.

25 Were there questions or things people

1 would like us to zoom in on this?

2 COMMISSIONER MCNULTY: Could I take
3 advantage of the fact that Mr. Adelson is here and
4 perhaps ask a couple of questions related to the
5 Voting Rights Act in relation to these issues?

6 My first question is, you mentioned,
7 Mr. Strasma, that the percentage of voting age --
8 HVAP went down in the district -- or the area that's
9 been drawn in the central part of the state and went
10 up in the southern part of the state.

11 And so my question is, in terms of Voting
12 Rights Act analysis, do averages count or what we
13 are look -- are we looking at statewide or are we
14 looking at concentrations of population in
15 particular areas as the basis for our benchmark?

16 And then the second question is, I
17 believe we have a number of Native American
18 minorities. How does that relate -- and we are just
19 looking at HVAP in that green; is that right?

20 KEN STRASMA: Yes.

21 COMMISSIONER MCNULTY: How do they -- how
22 does the fact that this area in the southwest that's
23 been drawn contains both Hispanics and Native
24 Americans relate to voting rights analysis?

25 BRUCE ADELSON: In looking at the first

1 question first, the Native American and the Latino
2 population.

3 If the district is a majority in numbers,
4 a majority/minority district and let's say there are
5 55 percent Latinos and 20 percent Native Americans,
6 for example, then the presumption would be that the
7 minorities in that district are already at a certain
8 numerical threshold where they can elect. Now, you
9 would need to do analysis. So you don't presume
10 that. So you know that for sure.

11 The issue with the coalition district
12 where you have two groups of two minorities or more
13 who are coalescing to support basically the same
14 candidate, you would need to have analysis that how
15 that.

16 From a Voting Rights Act perspective, I
17 have a larger concern with that coalition issue
18 where you don't have that one numeric majority:
19 Latino, Native American, African American.

20 If you have an absolute majority of one
21 group and then a smaller -- another minority group
22 with a smaller number, there will likely be less of
23 an issue. Because when you get into the 65, 70, 75
24 percent range, that's almost actually automatic that
25 the minorities have the opportunity to elect.

1 In looking at reductions in minority
2 population and VAP, voting-age population, you have
3 to look first at what does the benchmark say and you
4 have two -- assuming that I'm correct -- you have
5 two districts right now, your benchmark where
6 minorities can elect. What's the percentage there
7 based on current census date?

8 I don't know that offhand, but that would
9 be something you would look at. What is the number
10 now. What does the benchmark say?

11 If the benchmark is 55 percent, for
12 example, and in a proposal it's 40 percent, that
13 could be problematic. If it's 55 percent and it
14 goes up to 60, maybe that's okay. If it goes up to
15 80, that's probably packing and that will -- could
16 create some Section 2 liability issue.

17 Does that answer your question?

18 COMMISSIONER MCNULTY: Yes.

19 BRUCE ADELSON: Thank you.

20 VICE CHAIR HERRERA: Madame Chair.

21 CHAIRPERSON MATHIS: Yes, Mr. Herrera.

22 VICE CHAIR HERRERA: Do me a favor and
23 bring up the map again.

24 You said the -- on your map, which do you
25 consider the majority/minority districts?

1 WILLIE DESMOND: Districts number 3 and
2 7.

3 VICE CHAIR HERRERA: See, I -- the way it
4 is now, it's District 7 that's a majority/minority,
5 which is Grijalva's district and obviously District
6 4, which is Pastor's.

7 So how do you explain that?

8 WILLIE DESMOND: I just think it's -- the
9 numbers are --

10 VICE CHAIR HERRERA: It doesn't matter?

11 WILLIE DESMOND: The numbers are a
12 product of how the grid map was drawn in I think a
13 clockwise motion or whatever. So that's where the
14 numbering comes from.

15 We can give you the current percentages
16 of the two majority/minority districts and the ones
17 that would be under this scenario.

18 VICE CHAIR HERRERA: Sure.

19 WILLIE DESMOND: Currently District 4 is
20 57.5 percent Hispanic and District 7 is 50.2. And
21 in this plan, District 3 would be 53.2 and District
22 7 would be 54.1. So one went up, one went down.

23 VICE CHAIR HERRERA: Can you repeat that
24 again? District 4 went to what again?

25 WILLIE DESMOND: District 4 is now

1 District 7 in this plan. So that would be -- it
2 went from 57.45 to 53.17. And then the district on
3 the southeastern corner of the state went from 50.23
4 to 54.08.

5 COMMISSIONER MCNULTY: Madame Chair.

6 CHAIRPERSON MATHIS: Ms. McNulty.

7 WILLIE DESMOND: Southwest, I'm sorry.

8 Excuse me.

9 COMMISSIONER MCNULTY: Are you going to
10 load these onto our laptops so that we can
11 understand -- for example, if we wanted to adjust
12 that where the population would be and so that we
13 understand exactly where these -- where these
14 districts are?

15 WILLIE DESMOND: Yeah, we can load any of
16 these up. We could also adjust it right now if you
17 wanted to play around with it. It's whatever you
18 want to do.

19 I just want to kind of caution that this
20 map didn't meet any of the other six criteria. This
21 was kind of a what-if to see what it would look
22 like.

23 This was the easiest way that we found to
24 make a two border district that had equal population
25 among nine Congressional districts and two majority

1 Hispanic. This would not be anywhere near like a
2 finalized. I think we would definitely want to
3 clean up the lines a little bit. We would obviously
4 have to pay attention to all of the other criteria
5 and considerations.

6 COMMISSIONER MCNULTY: Right, and I
7 understand that. And I think you just e-mailed
8 these to us yesterday evening.

9 So I think we need -- I would personally
10 want to spend some time studying what we've got
11 here, but I would want to do that against the
12 backdrop of the data so that we understand where to
13 go from here to address both the Voting Rights Act
14 issues and the all of the other criteria.

15 CHAIRPERSON MATHIS: Are there comments
16 from other commissioners?

17 COMMISSIONER STERTZ: Madame Chair.

18 CHAIRPERSON MATHIS: Mr. Stertz.

19 COMMISSIONER STERTZ: I concur with
20 Commissioner McNulty that the best thing for us to
21 do is to start to digest the -- the first trickle in
22 of the what-ifs and allow us the opportunity to come
23 back with some -- because I'm sure that there are,
24 as Mrs. O'Grady had stated earlier, there are lots
25 of different ways to skin the same cat. And we've

1 got to give ourselves the opportunity to do that.

2 But, Madame Chair, more of an overview,
3 maybe we could discuss at a Commission level what
4 your opinion is regarding map concepts that the
5 commissioners are going to be looking at
6 independently because we've got not only the
7 software to do so, but the data to do so as well and
8 how we would see -- and potentially caution bringing
9 maps forward that are preconceived.

10 CHAIRPERSON MATHIS: Well, I'm not sure I
11 know how to answer your question.

12 My thinking on the process for this was
13 we had kind of come up with some what-if scenarios
14 for the mapping consultant at our last meeting and
15 they have documented all of those. And we gave them
16 a big list, so they haven't quite done each of them.

17 But I guess my thinking was we would
18 discuss those what-ifs in open meetings at these
19 next couple of meetings or so. I don't even think
20 we've gotten to the Legislative ones yet. So that's
21 a whole other issue that today I thought would be
22 great if we could give them some what-ifs for that
23 because we didn't really do that yet.

24 But I don't know. Did you have some
25 thoughts, Mr. Stertz on how this might proceed?

1 COMMISSIONER STERTZ: My thoughts were to
2 ask the question so that we could get some feedback
3 from the other commissioners.

4 CHAIRPERSON MATHIS: Other commissioners?
5 Do you guys have thoughts?

6 COMMISSIONER MCNULTY: I have a question.
7 I don't know -- I guess this is sort of
8 an answer to how I would see it working.

9 So we've got -- in this area on the
10 southwest, we are increasing the HVAP from -- did
11 you say 50 to 54?

12 WILLIE DESMOND: Uh-huh.

13 COMMISSIONER MCNULTY: And then in the
14 area that we are calling 4 -- or is it 7 -- the area
15 we are calling 7, we are reducing that?

16 So what if we wanted to move that balance
17 more in line with what we think the benchmark is
18 now, you know, in anticipation of the analysis
19 telling us that we need to do that? Show us, you
20 know, what some possibilities would be.

21 WILLIE DESMOND: So we're looking at
22 District 3 and 7. And I guess initially the easiest
23 thing to do -- they show very, very small borders,
24 so it wouldn't necessarily be possible to have them,
25 you know, trade some back and forth to bring the

1 levels to that current value.

2 COMMISSIONER MCNULTY: You mean in terms
3 of where the grid map was -- or when you say
4 initially they have a very small border --

5 WILLIE DESMOND: I'm saying in this
6 scenario, there's a very small area of where they
7 touch. So normally when you wanted to make -- if
8 you wanted to move Hispanic population from one to
9 the other to maybe approach the levels --

10 COMMISSIONER MCNULTY: Yes.

11 WILLIE DESMOND: -- as they currently
12 are, we would go along the border and you would find
13 places where you could, you know, add some and take
14 some away to even it out.

15 In this case, we probably would have to
16 go through some of the surrounding districts. So it
17 would be adding some districts into 2, as it is
18 here.

19 Ken do you want to talk and I can drive?
20 Does that work?

21 KEN STRASMA: Sure.

22 So because we're trying to -- under the
23 scenario he described, raise the Hispanic percent of
24 the current District 7 in Maricopa district and
25 taking away from District 3, it would be possible to

1 push that border farther into 3. All of the dark
2 green, those are the majority voting-age Hispanic
3 districts. So we could add those dark green at the
4 top into 7 and then we would have to equalize the
5 population elsewhere in 3. It would also be
6 possible to add some of that population that's
7 currently in District 8.

8 COMMISSIONER MCNULTY: Does someone have
9 a laser or a pointer?

10 KEN STRASMA: So this is the border
11 between the two at this point. I was saying one of
12 the ways to raise the population of 7, that was one
13 that under the current plan, the district in this
14 area is at 57 percent. Adding this population from
15 3 will lower the voting age percent Hispanic in 3
16 and raise it in 7.

17 Also this territory that's currently in
18 8, which is not a majority/minority district, could
19 be moved into the two districts 3 and 7 effectively
20 raising the voting-age population in those if it was
21 decided that we needed to do that.

22 COMMISSIONER MCNULTY: Now, if you did
23 that, then do we have a population imbalance?

24 KEN STRASMA: Yes, we would.

25 COMMISSIONER MCNULTY: So how would we

1 address that, for example?

2 It also looks like we have a line running
3 through the middle of Maricopa, which strikes me as
4 a problem, but let's set that aside for the moment.

5 KEN STRASMA: In terms of the population
6 imbalance, we would probably need to do some kind of
7 three-way switch. We've taken population -- or we
8 would be taking population away from 3 and giving it
9 to 7 and also potentially taking population away
10 from 8. I'm not sure which district we would give
11 it to.

12 Did you want to try to work through this
13 now or just discuss it as a concept?

14 COMMISSIONER MCNULTY: I think the
15 latter. I'm not sure that any of us are really
16 quick to work through the entire issue without
17 having a little more time digesting the map.

18 But in terms of the concept and how this
19 is going to work, I think it might be helpful to --

20 KEN STRASMA: Okay. Could you zoom out a
21 little bit?

22 So I guess in terms of figuring this out
23 as a concept, we would need to know if we were -- if
24 we were seeking to raise the percent Hispanic in
25 both districts, if we were seeking to have them

1 roughly match what they are now. And perhaps this
2 is something where what we need to do, pending the
3 deeper voting rights analysis, is just prepare both
4 scenarios. You know, perhaps we have one where the
5 new Maricopa Hispanic District 7 is at 57 percent --
6 roughly what it is now.

7 If the analysis indicates that that's too
8 high, that would be considered packing, then we
9 would use a different scenario.

10 And the -- there is a majority Hispanic
11 population in 8 and 9 now. Also down on the
12 southern border of the current 7, all of this shaded
13 white is very low percent voting-age Hispanic. So
14 if 7 was to be moved up north and west slightly,
15 that would raise its effective voting-age percent
16 Hispanic.

17 WILLIE DESMOND: Also just to clarify,
18 these two districts were not drawn to meet the
19 current Hispanic percentage, just to meet two
20 50 percent Hispanic districts, just for the purposes
21 of the what-if. So that wasn't a consideration in
22 the current levels when we drew this what-if
23 scenario.

24 CHAIRPERSON MATHIS: So I have a question
25 for Mr. Strasma. Mr. Stertz raised a good point.

1 What is the best and most efficient way
2 for us to be giving direction to you all both when
3 we are in our public meetings but also, you know,
4 are there things we can be doing outside of the
5 meeting on our own to help with the process and
6 keeping things moving down the track?

7 KEN STRASMA: I think for today it would
8 definitely be helpful if we could get general
9 questions asked that we can try to work through for
10 Thursday in addition to some of the what-ifs that we
11 haven't gotten into yet, depending on how many. I'm
12 not sure if we'll get to them all.

13 And then I do think we should make sure
14 that the commissioners are able to load up and play
15 around with these maps. You have all of the pieces
16 now, but I realize it's unfamiliar territory, so we
17 can walk you through how to load up the files that
18 we sent you last night and see the Hispanic
19 population in order to be working through these
20 yourselves.

21 Responding to Commissioner Stertz's
22 earlier question about what-ifs and individual
23 commissioners work-up, we would be happy to work
24 through plans that people suggest to us outside the
25 meeting and be able to bring them back at the next

1 public meeting if someone did have suggestions that
2 come to you in the next couple of days, by all means
3 let us know and we can both -- both or either --
4 talk you through how to work it through on your own
5 laptops or do the analysis ourselves.

6 CHAIRPERSON MATHIS: Mr. Freeman.

7 VICE CHAIR FREEMAN: Mr. Strasma,
8 Mr. Desmond, you explained how you came up with the
9 two minority/majority districts.

10 Could you explain your methodology in
11 creating the other seven districts?

12 KEN STRASMA: The other seven were left
13 largely as they existed in the grid map except for
14 adjustments to make -- reach zero-population
15 deviation, which does bring up a point Mr. Desmond
16 just reminded me of.

17 This map is at zero-population deviation,
18 as will be required for all of Congressional
19 district maps. We suggest in the interest of time
20 that future what-ifs we leave at one, 200 with the
21 understanding that we can always adjust blocks on
22 the border when it comes time to making these a real
23 map. In terms of exploring the possibilities, we
24 can more visually do it if we're not trying to zero
25 out the population.

1 Also further addressing the question of
2 how the other districts were affected, one key point
3 is the District 5, the northeast border, that's an
4 oft-commented on district in the grid map given that
5 it's so tall and it's not compact by pretty much any
6 measure.

7 Also it is slightly lower in Native
8 American population than the existing northeast
9 district. So if this were a final plan,
10 Congressional District 5 would have to be addressed
11 as well.

12 CHAIRPERSON MATHIS: Other questions or
13 comments?

14 COMMISSIONER STERTZ: Madame Chair.

15 CHAIRPERSON MATHIS: Commissioner Stertz.

16 COMMISSIONER STERTZ: As a point of how
17 we are tracking, one of the commitments that we made
18 to the public was that we were going to, as
19 adjustments were made, even in study from the grid
20 map moving forward -- and the question that just
21 came up was one of them, how were the lines
22 adjusted.

23 How are we now, as we are moving forward
24 from grid map moving forward, tracking these
25 adjustments as minor or as major as they may or may

1 not be, taking the, quote, unquote, snapshots,
2 screenshots that we were going to be putting on as a
3 tracking mechanism and what are the points as we are
4 doing this we can say, okay, take a picture of this
5 one and move on to the next one, so on and so forth.

6 KEN STRASMA: We are -- it's been
7 discussed -- saving snapshots of every change that
8 has been made to the map. Mr. Desmond is bringing
9 up what those files look like for this. If he
10 scrolls to the bottom, we'll see how many snapshots
11 there are. 65 different adjustments made to that
12 map. Those are available to the commissioners
13 whenever they want.

14 On the respecting county lines map, there
15 were 106 different backups. So they are -- those
16 are definitely preserved and available.

17 COMMISSIONER STERTZ: And how are they
18 currently being cataloged? Right now you're
19 tracking them. How will they -- how do you foresee
20 them being cataloged?

21 KEN STRASMA: By date and the name of the
22 map. So, for example, I have CD whole counties and
23 yesterday's day is the what-if scenario for serving
24 counties and two border what-ifs. Two majority
25 Hispanic is the descriptive name for the map that's

1 up on the screen now also with yesterday's date.

2 COMMISSIONER STERTZ: And for the purpose
3 of the analysis right now as you've described, this
4 was solely -- Mr. Desmond, am I correct, this is
5 solely to say -- answer the one question which is
6 how do I have two -- or the two questions. How do I
7 have two border districts and how do I have two
8 majority/minority districts? No other
9 considerations were taken into account?

10 WILLIE DESMOND: That's correct.

11 COMMISSIONER MCNULTY: I'm not sure that
12 actually is correct. I believe my question
13 wasn't -- didn't bear on the number of border
14 districts.

15 I think my question was how to include
16 the minority and historic populations that have
17 lived from San Luis to Santa Cruz County in a
18 district, in a minority/majority district. That was
19 my question. I don't think it bore on the number of
20 districts, just to be clear for the record. You
21 don't need to respond to that.

22 I do have a question about the northeast
23 -- the northwest corner of 3, the green and then the
24 dark green and then the light green, do we know what
25 those populations represent?

1 WILLIE DESMOND: Right here?

2 COMMISSIONER MCNULTY: Yes.

3 Does that color indicate a higher HVAP?

4 WILLIE DESMOND: That color is for that
5 census tract, Hispanic voting-age population of 40
6 to 50 percent.

7 VICE CHAIR HERRERA: Mr. Desmond, in one
8 of my what-if scenarios, and you already may be
9 working on this, I had mentioned that the river
10 district includes part of Yuma and ending -- I think
11 it would makes sense ending it somewhere off of
12 Pacific Avenue and then the rest of Yuma be included
13 in San Luis, Gadsden, Silverton, southern part of
14 Yuma included in what is Congressional District
15 Number 3.

16 WILLIE DESMOND: Yeah, that is one of the
17 ones that we have not had the chance to work on it
18 yet.

19 COMMISSIONER MCNULTY: So you'll be
20 working on that and be bringing that back to us over
21 the next couple of days?

22 WILLIE DESMOND: Yeah. We'll be
23 continually working on these and sharing them with
24 the Commission on like a rolling basis as they are
25 completed.

1 I think one thing we could do is work out
2 a system or provide some training so that everyone
3 knows exactly how to load them up and look at it and
4 create the different shading and stuff to do their
5 own analysis.

6 So, yes, we will be providing those on an
7 ongoing basis.

8 VICE CHAIR HERRERA: Madame Chair.

9 CHAIRPERSON MATHIS: Mr. Herrera.

10 VICE CHAIR HERRERA: Just one quick
11 question.

12 When we eventually are going to go from
13 what-if scenarios to the real thing, how is that
14 going to work? Are we going to have to vote on each
15 of the changes as a group? I'm not understanding
16 what's going to happen once we get to that point. I
17 would like to know.

18 CHAIRPERSON MATHIS: That's a great
19 question.

20 Do other commissioners have thoughts on
21 how that might progress going from what-ifs to the
22 real thing? Because we should probably talk about
23 process for that or if legal counsel has advice,
24 too, that would be great.

25 MARY O'GRADY: Madame Chair,

1 commissioners, just a suggest -- my suggestion would
2 be to continue with these what-ifs for a while, but
3 then once you've kind of played out the what-ifs and
4 people have had an opportunity to think through what
5 they -- the general approach that they think will
6 work, then go back to the grid maps and get some
7 instruction bit by bit in terms of what adjustments
8 are made.

9 And this is just an idea because I don't
10 know for sure what's going to work out best. So I
11 think we'll have to feel our way with what's going
12 to work out best.

13 But at some point I think we'll want to
14 document from grid map to approved map why those
15 changes were made bit by bit and do that after we've
16 spent a fair amount of time with what-ifs.

17 And the Commission, depending on how it
18 works out, we may need to make some incremental
19 votes along the way before it gets to a whole map.

20 But I think we will have to kind of feel
21 our way on those issues and spend a fair amount of
22 time in what-ifs until you have a sense of how you
23 want to play that -- how it's going to play out for
24 a map as a whole.

25 COMMISSIONER STERTZ: Madame Chair.

1 CHAIRPERSON MATHIS: Mr. Stertz.

2 COMMISSIONER STERTZ: May we request some
3 suggestions from Strategic Telemetry on how they
4 have managed this in the past in other similar
5 situations?

6 KEN STRASMA: So what I would suggest, as
7 Ms. O'Grady said, continue to work through the
8 what-ifs but adding a level -- getting back to your
9 previous question of were we attempting to meet any
10 of the other criteria on this two border district,
11 two majority Hispanic district.

12 As we begin to meet multiple criteria,
13 for example, the not splitting any Indian
14 reservations, the things that we were directed that
15 would be overriding criteria for everything that we
16 incorporate, those are the what-ifs, and fairly soon
17 it will become evident where the points of conflict
18 are, when we are attempting to, you know, not split
19 political geography to -- and be compact, as the --
20 it's not up there anymore, but the Congressional
21 District 5 that preserves the two counties but at
22 the expense of being very long and narrow.

23 As those conflicts begin to become
24 evidence in grid maps I think it will then become
25 clear where we need direction from the Commission

1 that might come in forms of votes for policy rather
2 than just what-ifs that can be explored.

3 COMMISSIONER STERTZ: So if I could
4 reduce that down to sort of a process, because I
5 think that's what we are asking about now, what is
6 the process.

7 The grid map established the baseline
8 criteria as established by the Constitution.

9 Our next is to make adjustments to the
10 grid map in what I would consider to be going
11 through a series of -- through the steps of the next
12 would be sort of a conceptual design, if I could
13 call it that, which is there's going to be a general
14 criteria of design of Congressional and Legislative
15 districts that would meet the general intent of the
16 1965 Voters Rights Acts.

17 You've just done that for this. We would
18 not say, yes, let's vote on this today because this
19 is -- only meets one of the very wide variety of
20 what-ifs of analysis.

21 So I think what I'm hearing is that, and,
22 Madame Chair, this is just a suggestion, that we go
23 through sort of this free-flowing design concept of
24 making a variety of different studies of looking at
25 a variety of different what-ifs that meet a variety

1 of different scenarios. But there will come a time
2 when we are going to have to make a decision that
3 moving forward to the next level that would start to
4 drill down to real specific criteria and there will
5 be a next level where we are going to have to
6 introduce all of the other significant components of
7 the Constitution into -- into these tests.

8 So I believe that there will be -- come a
9 natural time for votes and there will be a natural
10 time for debate leading up to those votes.

11 CHAIRPERSON MATHIS: I agree.

12 Anybody have other thoughts on that?

13 COMMISSIONER MCNULTY: My only other
14 thought would be that I think we'll be
15 introducing -- as Mr. Strasma said, we'll be looking
16 at the other constitutional criteria as what-ifs
17 pretty much from the beginning.

18 I think right now we started with the
19 Voting Rights Act but we are going to need to be
20 looking at those as we make adjustments to this and
21 looking at what-if scenarios with regard to those
22 from the outset.

23 CHAIRPERSON MATHIS: Any other thoughts,
24 comments?

25 Did you say you had also prepared another

1 what-if and that's the four border district one?

2 KEN STRASMA: We had not.

3 CHAIRPERSON MATHIS: Okay.

4 KEN STRASMA: I had suggested when we
5 have a working session we could work through that as
6 a group if there is interest, either the four border
7 district or the three border district and just to
8 illustrate the challenges in meeting the Voting
9 Rights Act criteria.

10 We do have -- the other what-if is the
11 map that attempts to preserve as many whole counties
12 as possible. I'll bring that up now.

13 CHAIRPERSON MATHIS: Yeah, please.

14 KEN STRASMA: So under the grid map,
15 there were seven split counties, four that were in
16 two districts, two that were in three districts, and
17 one, Maricopa, that was in seven districts.

18 Now, obviously, it's not possible to
19 avoid splitting Pima and Maricopa County because
20 they each have more population than the ideal
21 Congressional district size.

22 So theoretical limit is to split just
23 those two, which is what this map illustrates.

24 The effect here is we have one district,
25 it's the pink District Number 2, wholly contained in

1 Pima. The remainder of Pima is in District 3, which
2 then goes up into Maricopa County to get the
3 remaining population it needs to be zero deviation.

4 Every other district also includes whole
5 counties, for every county outside of Maricopa, and
6 a portion of Maricopa County in order to get the
7 zero-population deviation.

8 So this -- it sort of illustrates the
9 sort of trade-off that's inherent in this process.
10 We can maximize respect for the -- to the county
11 boundaries of every county outside of Maricopa
12 County while having the effect of having a very
13 large number of splits in Maricopa County because
14 every other district has to go into Maricopa to get
15 the necessary population to achieve zero deviation.

16 This plan by itself, as with the first
17 one, we didn't attempt to meet any of the other
18 criteria. It has the -- District Number 7 under
19 this map is at 49 percent non-Hispanic/African
20 American. It would not take that much modification
21 to make this an acceptable voting rights district.

22 The existing Districts 2 and 3 in Pima
23 County are each at about 30 percent
24 non-Hispanic/African American. So some balancing
25 there would have to be done to make one or the other

1 of those, it would probably be existing District 3,
2 become the majority Hispanic district under this
3 scenario.

4 But this was just designed to illustrate
5 the theoretical maximum for respecting county
6 boundaries. So we would have the potential to do
7 that at this point.

8 CHAIRPERSON MATHIS: Any questions on
9 this what-if?

10 Where does the zero percent deviation
11 requirement come from?

12 KEN STRASMA: I'll refer to legal
13 counsel, but there's been Supreme Court rulings
14 requiring that for Congressional but not for
15 Legislative.

16 JOSEPH KANEFIELD: Madame Chair, it comes
17 from the U.S. Constitution itself for Congressional
18 districts and the subsequent U.S. Supreme Court
19 decisions that have interpreted that very little
20 variance, if any at all, for Congressional
21 districts.

22 I think in our legal materials there's
23 some references to the supporting authority for
24 that.

25 CHAIRPERSON MATHIS: What is Legislative

1 deviation?

2 JOSEPH KANEFIELD: Legislative districts
3 are judged the one-person, one-vote standard. It
4 comes under the Equal Protection Clause and provides
5 a little bit more flexibility. You would have to
6 look to the court decisions.

7 It used to be the rule of thumb --
8 10 percent -- although there's some debate about
9 whether that still stands.

10 So obviously, the closer to equal
11 population the better. And if there's a deviation,
12 the courts are going to want to know the basis.
13 They are going to put -- the burden is going to be
14 on the Commission to explain the basis for the
15 deviation. It will have been to be justified.

16 CHAIRPERSON MATHIS: Okay. Thank you.
17 Ms. McNulty.

18 COMMISSIONER MCNULTY: Could I ask Mr.
19 Adelson if he has anything he would add on that, the
20 subject of deviation on the Legislative maps?

21 BRUCE ADELSON: Madame Chair, members of
22 the Commission, I certainly agree with counsel. On
23 the constitutional imperative and the Congressional
24 districts, and the imperative for the Legislative
25 districts.

1 The Justice Department focuses, of
2 course, on the Voting Rights Act issue, but one of
3 the things that Justice will ask, if you have a
4 deviation of let's say 12 percent in a Legislative
5 district, that's very high and they would want to
6 know why if that is impacting Voting Rights Act
7 considerations as far as diluting minority
8 population strength.

9 My -- what I like to see in the
10 jurisdictions that I work with, the deviation is
11 under 5 percent. That's an issue that really wasn't
12 attacked during the last round of redistricting as
13 far as court decision.

14 There is a court from Georgia, the
15 Lariat's decision from I think eight years ago, but
16 that decision hasn't been fully litigated, and that
17 calls into question, as Joe was saying, the
18 10 percent deviation issue.

19 So that's why I don't like to get close
20 to 10. I like to go from 5 down because then as Joe
21 was mentioning, when you have to justify that, it's
22 a lot easier to justify 3 percent than 11. I think
23 11 percent can be very problematic, but 3 percent is
24 not difficult in a typical situation to justify.

25 Thank you.

1 CHAIRPERSON MATHIS: Thank you.

2 Other questions or comments?

3 And there are no other what-ifs to show
4 right now, right?

5 KEN STRASMA: That's correct.

6 CHAIRPERSON MATHIS: Okay.

7 VICE CHAIR HERRERA: Madame Chair.

8 CHAIRPERSON MATHIS: Yes.

9 VICE CHAIR HERRERA: You had asked
10 Mr. Strasma a question about what he would be doing
11 moving forward to make sure we keep you on track,
12 whether or not we meet this week.

13 Is there any other pieces of information
14 that you need from us? Because I want to make sure
15 -- if we are going to be going public with the map
16 on the 24th of September for the first round -- for
17 the second round of public hearings, I want to make
18 sure we're doing everything we can to do as much as
19 we can before September, this week, next week, and
20 the following week.

21 KEN STRASMA: I would like to seek some
22 direction on the Legislative map. If I may suggest,
23 it seems to me that the overriding criteria that was
24 suggested at the last meeting for Congressional,
25 that we reserve the same number of minority

1 districts. And in this case for Legislative, I
2 would include the Native American district, that we
3 proceed with exploring what it would take to do
4 that. And also the direction to attempt to avoid
5 splitting Indian reservations, that we attempt that
6 for Legislative as well as Congressional.

7 The -- we can also begin looking, as we
8 are working through these, at minimizing splits of
9 political subdivisions. Those are fairly clear and
10 unambiguous criteria.

11 In terms of others where it will probably
12 become more problematic and we will seek direction
13 from the Commission is when we get to more
14 subjective criteria such as competitiveness and
15 communities of interest.

16 I would suggest that between now and
17 Thursday or now and whenever the next meeting is on
18 Legislative, we explore preserving the same number
19 of voting rights districts and not splitting Indian
20 reservations and -- but that we not attempt to
21 address competitiveness or communities of interest
22 until we can work through that with the Commission
23 and receive the Commission's specific direction on
24 those issues.

25 CHAIRPERSON MATHIS: I would agree.

1 Anybody else disagree or agree?

2 VICE CHAIR HERRERA: Madame Chair.

3 CHAIRPERSON MATHIS: Mr. Herrera.

4 VICE CHAIR HERRERA: My only concern is
5 in keeping the same number of majority/minority
6 districts at nine without increasing the HVAP of any
7 of them.

8 So -- and if we could, possibly create
9 another -- if one is bordering at around 50 percent,
10 it's 48 percent, then hopefully maybe increasing
11 that one to reaching the 50 level. But I would not
12 want to increase the HVAP even more than they are
13 now.

14 So if -- I think on this one, the
15 Legislative 16, it's at 56.74. So keeping it at
16 that same level.

17 KEN STRASMA: Thank you for that
18 suggestion. And I do recall there were two at
19 49 percent.

20 VICE CHAIR HERRERA: Correct.

21 KEN STRASMA: And I think it would be a
22 worthwhile exercise to see if those two could be
23 raised above 50.

24 VICE CHAIR HERRERA: Sure. It's
25 currently 27 and 29. 27 is at 49 and 29 is at

1 49.81.

2 COMMISSIONER STERTZ: Madame Chair.

3 CHAIRPERSON MATHIS: Mr. Stertz.

4 COMMISSIONER STERTZ: These percentages
5 currently apply to the current districts. They do
6 not -- so following the constitutional requirement
7 of looking at first clearing -- cleaning the slate
8 and not doing line adjustments, these percentages
9 that do not fall into criteria -- I'm not dismissing
10 your thoughts. They are on a bubble now in a
11 district that no longer exists, so it's not
12 necessarily relevant.

13 What is relevant are the current number
14 of districts as we have that prevents us from going
15 into retrogression.

16 And I also have a question regarding the
17 Native American in District 2. There has been a
18 reduction of percentage or a reduction of population
19 and we'll ask for -- be asking for some
20 clarification as we move further down the road with
21 that as well and what that means as far as that
22 district is concerned.

23 KEN STRASMA: If I may respond, that is
24 correct, the existing District 2 has lost
25 population. We'll have to gain and we would explore

1 ways to do that without lowering the effective
2 percent.

3 To the point about how we are not
4 adjusting the current districts, which are what
5 yielded the baseline percents, I view that as a
6 first cut at what is possible.

7 And so that's -- it's giving us a clue
8 that a certain number of districts meeting a certain
9 threshold are possible. I say only a clue, not
10 proof because some of these districts are
11 malapportioned and by the time the population is
12 adjusted, it may no longer be possible to create the
13 exact same number at or above a certain threshold.
14 So it's a pointer and a clue, not a hard and fast
15 rule.

16 COMMISSIONER STERTZ: Thank you.

17 CHAIRPERSON MATHIS: Were there any other
18 what-ifs that we wanted to talk about before the
19 Legislative maps?

20 You wanted to see in --

21 COMMISSIONER MCNULTY: Madame Chair, I
22 think I need to see the voting rights information in
23 the context of those Legislative district before I
24 -- I'm sure I know the answer to that but just for
25 my perspective.

1 CHAIRPERSON MATHIS: Okay.

2 Mr. Freeman.

3 COMMISSIONER FREEMAN: With respect to
4 the exercise on the Legislative districts, do you
5 anticipate coming back to us with one map, two,
6 three? Because I would imagine there would be more
7 than one way to draw the maps to create nine
8 minority/majority districts. I might be wrong on
9 that, but your thoughts.

10 KEN STRASMA: Without knowing for sure,
11 until we go through the exercise, my guess would be
12 there will be multiple different scenarios and we'll
13 discover branches of different approaches as we are
14 working through it.

15 CHAIRPERSON MATHIS: Any other questions
16 or comments on this?

17 Okay. Well, if we're going to meet
18 Thursday -- so you'll have some more what-ifs
19 developed for the Congressional districts by then
20 that Willie can present to us.

21 Anything else that we need to be doing or
22 thinking about between now and Thursday?

23 KEN STRASMA: I don't believe so.

24 We appreciate the direction and we will
25 have plenty of work to do.

1 CHAIRPERSON MATHIS: Great. Okay. Thank
2 you.

3 Any other questions?

4 Okay. So that kind of covers both V and
5 VI on the agenda.

6 Can someone tell me the time because I no
7 longer have my phone.

8 VICE CHAIR HERRERA: It's 2:47.

9 CHAIRPERSON MATHIS: 2:47.

10 We can take that means 13 minutes of
11 public comment because we're going to go into
12 executive section most likely for some legal advice
13 in a little bit. That's on our agenda, which is
14 agenda item XI, regarding the Attorney General
15 inquiry.

16 So if we could take public comment now
17 with some folks that maybe we haven't heard from. I
18 have quite a stack, and I don't know if all of you
19 are still here, but maybe we'll start with people
20 that we haven't heard from and then move through.

21 VICE CHAIR HERRERA: Madame Chair.

22 CHAIRPERSON MATHIS: Yes, Mr. Herrera.

23 VICE CHAIR HERRERA: I notice that we
24 have quite a few public comment forms and I want to
25 make sure that we are able to squeeze everybody in.

1 So do you want to limit the presentation?

2 CHAIRPERSON MATHIS: Yeah, I think that's
3 a good idea to get as many of these as we can.

4 So let's aim for a minute and a half of
5 input, and if there are some of you who have more
6 substantive things to present, you can always give
7 us the information by giving it to our Executive
8 Director, Ray Bladine, if you have anything written
9 and he will collect that and it will get into the
10 record as input.

11 But let's go ahead and get started.

12 I have Richard Elias, Pima County
13 Supervisor, District 5, representing Hispanic
14 Council for Good Government.

15 And if you would, our court reporter
16 reminds me to spell your name into the microphone so
17 that we get an accurate spelling and account.

18 RICHARD ELIAS: My name is Richard Elias,
19 E-l-i-a-s. I'm the Pima County Supervisor from
20 District 5 in Pima County. And I bring with me my
21 friend from up north from Maricopa County.

22 MARY ROSE WILCOX: Thank you very much.

23 Richard and myself and Pete Rios, who is
24 Pinal County Supervisor -- my name is Mary Rose
25 Wilcox. I'm a Maricopa County Supervisor.

1 We come before you to present Hispanics
2 for Good Coalition for Good Government. We do have
3 quite a presentation. I don't think we are going to
4 be able to finish it in a minute and a half or even
5 the three minutes, so we'll do the best we can.

6 But we would ask perhaps you consider us
7 for your Thursday agenda. I think the information
8 we bring will be very helpful.

9 Let me tell you who we are briefly.

10 We are a group that has come together
11 from all over the state of Arizona. Richard,
12 myself, and Pete Rios are the cochairmen and we are
13 Hispanics for Good Government.

14 When the last redistricting took place,
15 we also formed a similar coalition and we were very
16 helpful to the Commission.

17 We assisted you with the general outreach
18 that you need for the Hispanic community, we set up
19 many forums for you, and we got you the information
20 from our community that many times in general
21 meetings, people might not come out. But if we are
22 part of the presentation or part of the outreach, we
23 can get a lot of the Hispanic community to you.

24 Let me say, first of all, thank you very
25 much for hearing us today. And we have come

1 together because we all love Arizona. We all know
2 we have special needs in Arizona, special areas. We
3 have border issues, we have rural urban issues, two
4 big urban areas and the rest rural, we have many
5 Indian nations. We have things that we know are
6 special and we know our communities well very, so we
7 think we could be a resource to you.

8 We want to again remind you that the last
9 Commission, we did come together and do some very
10 progressive work with them.

11 We also know that when we came together
12 with a service of resource on the last
13 redistricting, we had many, many meetings and what
14 came out is a real good guide for majority/minority
15 districts.

16 We felt that we hit on the items that go
17 into consideration for redistricting all the way
18 from equal populations to the special items that the
19 Voter Rights Act looks at.

20 So we come before you as a resource. We
21 would ask that we take this opportunity to show you
22 a brief map that we put together just to kind of
23 give you a guide. And with your permission, it
24 would only take like probably half a minute. But we
25 could kind of give you a sense of where we are

1 coming from.

2 We took our areas, 4 and 7, which are
3 majority/minority districts, and we put them
4 together with an eye toward the issues both of
5 redistricting and the special voter rights criteria.

6 So would you want us to do that really
7 fast?

8 CHAIRPERSON MATHIS: I hate to say this,
9 but I'm wondering could you come to our meeting on
10 Thursday? And what we'll do is on the agenda, we'll
11 have a special agenda item that Ms. O'Grady
12 suggested earlier where public that has maps to
13 present in a more formalized proposal kind of thing,
14 they could come during that agenda item, this is
15 separate from public comment, and actually present
16 that information and you'll have much more time, and
17 I really apologize.

18 MARY ROSE WILCOX: We would love to do
19 that and perhaps we could even bring more members of
20 our coalition.

21 CHAIRPERSON MATHIS: That would be great.

22 MARY ROSE WILCOX: Where will that
23 meeting be?

24 CHAIRPERSON MATHIS: Wonderful.

25 The meeting -- we are talking about Casa

1 Grande for the meeting on Thursday. I think that's
2 still to be determined, so don't hold me to that,
3 everyone, but I think Mr. Bladine is looking into
4 that venue.

5 MARY ROSE WILCOX: Perhaps we could call
6 Mr. Bladine and get a time that we could get
7 everybody to come.

8 And we will use a disk. Okay? So your
9 people with mapping can review it.

10 CHAIRPERSON MATHIS: Wonderful.

11 MARY ROSE WILCOX: We do have hard copies
12 also of some material that we'll give you a couple
13 of copies.

14 CHAIRPERSON MATHIS: That will be great.
15 Mr. Bladine will accept that. Thank you so much,
16 and I apologize again for the shortening.

17 RICHARD ELIAS: Thank you. We do
18 appreciate the time that we have.

19 I'll make this as brief as possible.

20 I think the maps that we have put
21 together really represent a baseline for meeting the
22 Justice Department's requirements. We're making
23 sure that the Latino population here in Arizona is
24 not further disenfranchised.

25 I would note that those two Hispanic

1 majority districts include areas that encapsulate
2 the two border cities, rural areas that share a
3 common link with the Hispanic neighborhoods in both
4 the major metropolitan population areas here in the
5 state of Arizona.

6 The other thing I think that's important
7 to know is that polarization of voters continues to
8 happen. And the most recent elections are the
9 greatest example of that. Therefore, we think its
10 critical that that be taken into serious
11 consideration when taking a look at these maps and
12 using our group as -- like Mary Rose said, a
13 resource for all of you to be able to reach the
14 Justice Department criteria for passage. Okay?

15 CHAIRPERSON MATHIS: Thank you very much.

16 RICHARD ELIAS: Thank you very much for
17 all you do.

18 CHAIRPERSON MATHIS: Represent Steve
19 Farley from District 28 in Tucson.

20 STEVE FARLEY: Thank you very much for
21 having me here. Thank you very much the work you
22 are all doing. I have seen the heat. You have felt
23 the heat, and you have done an incredible job at
24 standing up to do what you are charged with with
25 great responsibility; to make our districts a place

1 that is deserving of the people of Arizona.

2 And unfortunately, I believe the
3 districts right now, and since I serve in the
4 Legislature I have some basis to see that, does not
5 represent the people of Arizona. I don't believe
6 that they are fair.

7 I'm encouraged to see that you have hired
8 great people at every step of the way to be able to
9 look carefully at the mapping and the data, because
10 the mapping and the data, I believe, will show you
11 that you will be able to meet DOJ requirements for
12 majority/minority districts and at the same time be
13 able to create more competitive districts.

14 And part of why I would argue that
15 competitive districts are crucial in Arizona right
16 now and part of the promise of the Independent
17 Redistricting Commission is because right now, there
18 are colleagues that I have heard say that it is
19 their belief that they do not represent everyone in
20 their district. They simply represent the people
21 who voted for them in their primary.

22 And that's what happens when you have a
23 district that is quote, unquote, safe in which there
24 is such a majority of people from your own party
25 that you do not have to listen to anyone else you

1 don't agree with already. And that's not our
2 democracy. That's not the way our democracy ought
3 to be.

4 So I would encourage you to look at
5 competitiveness as a way of making elected officials
6 like me work for the vote of our constituents
7 instead of taking it for granted. And that's
8 really, really important, especially when I saw last
9 week a Gallup poll came out and said that
10 self-identification in Arizona, 42 percent of people
11 identify themselves Republicans, 40 percent as
12 Democrats. That's a lot closer than a two-thirds
13 majority in both houses would say.

14 Thank you again for the work you're
15 doing. I have great admiration for every one of
16 you. This is something that goes well beyond party
17 and goes to the heart of our democracy.

18 Thank you so much.

19 CHAIRPERSON MATHIS: Thank you.

20 VICE CHAIR HERRERA: Thank you.

21 CHAIRPERSON MATHIS: Kenneth Bertschy,
22 representing self from Tucson, if he's here.

23 Ronald Silk from Pima County,
24 representing self.

25 Jose de Jesus Rivera.

1 JOSE DE JESUS RIVERTA: Thank you,
2 commissioner. Jose de Jesus Rivera. As always
3 happens with my wife, Mary Rose has spoken all of
4 the words that I wanted to speak.

5 CHAIRPERSON MATHIS: Oh, great. Thank
6 you.

7 We have Jim March from Pima County
8 Libertarian Party.

9 JAMES MARCH: Thank you.

10 Folks, everybody in this room is going to
11 have a different agenda, we all understand that. If
12 those agenda are public, then we have a pretty good
13 chance of meeting somewhere in the middle with
14 something we can all live with.

15 Linda, you mentioned the potential
16 problem with lobbyists, and that's what I'm here to
17 talk about.

18 Fair Trust has been representing
19 themselves as some group with people coming here
20 paid for that purpose. And not only are they
21 talking to your -- you and your people off-line --
22 as long as they are just coming up to this
23 microphone, nothing we can do about it. But they
24 were talking to people on the side and you are not
25 the only Legislative branch people in the room.

1 There's also Mr. John Mills over here, is a
2 Legislative staffer of some sort. I don't know
3 exactly what.

4 My belief is that Fair Trust has crossed
5 over the lobbying limits rules pretty seriously. I
6 used to be a lobbyist in California for a nonprofit.
7 I know what lobbying rules are generally all about.

8 And today I'll be filing this complaint
9 with the Secretary of State's Office and I offer you
10 a copy as well.

11 And, folks, if you want to read it at the
12 end of the paper document, it tells you exactly
13 where to get it online. Go to tinyurl.com, that's
14 t-i-n-y-u-r-l, .com, forward slash unfairtrust.
15 Tinyurl.com/unfairtrust.

16 I'm going to leave a copy of this with
17 you. You can extract the data online and put it on
18 your site. And I think you need to think about
19 whether the lobbying rules are being followed in
20 this room. It's very important that they are.

21 Thank you.

22 CHAIRPERSON MATHIS: Thank you.

23 Tim Sultan, vice president SAB
24 Negotiation Group, representing self.

25 Okay. Harvey Akeson, representing self.

1 Vince Leach, representing self.

2 Betty Bengtson, representing self.

3 BETTY BENGTON: No comment today except
4 keep up the good work.

5 CHAIRPERSON MATHIS: All right. Thank
6 you.

7 And Frank Bergen from Tucson, Pima
8 County, representing self.

9 FRANK BERGEN: Very quickly, it's
10 B-e-r-g-e-n.

11 At the end of the August 7th meeting,
12 Commissioner Stertz used a sports metaphor, which I
13 guess opens us up to using sports metaphors.

14 I still don't understand his. It had
15 something to do with the fact that the Green Bay
16 Packers could be successful in the national football
17 league, meaning that anyone in any party could be
18 competitive in any Legislative district in Arizona,
19 and I don't think that's correct.

20 I am a voter in Legislative District 30
21 where -- and I'm also a Yankee fan. Derric Jeeter
22 could only get elected in District 30 if he ran as a
23 Republican.

24 In District 28, which is Commissioner
25 Stertz's district, the only way that Vince Lombardi,

1 if he came back to life, could be elected is if he
2 ran as a Democrat.

3 And with that, I'll save other things for
4 later since you're short on time.

5 Thank you very much.

6 CHAIRPERSON MATHIS: Thank you.

7 I can take one more. Roy Goodman,
8 representing self.

9 ROY GOODMAN: Hello. My name is Roy
10 Goodman. That's R-o-y, G-o-o-d-m-a-n. I'm a
11 resident of Tucson, Pima County. I am a registered
12 Green Party member.

13 I am here to thank you, yes, to thank
14 you. In these past few months I have come to an
15 even greater appreciation of the challenging task
16 you have taken on.

17 I ask that you maintain the highest level
18 of transparency and that you be true to your
19 expectations of yourselves.

20 I look forward to more competitive
21 districts than we currently have around our state.

22 Thank you.

23 CHAIRPERSON MATHIS: Thank you.

24 Well, I apologize ya'll, it's 3:02 p.m.
25 and we have this matter to deal with our legal

1 counsel, so we'll have to post- -- the rest of the
2 public comment will have to postpone until our next
3 meeting.

4 I hope that those of you who didn't get
5 to speak and would like to today can come to our
6 meeting on Thursday, which -- keep -- stay tuned to
7 our website and you'll see the venue and time for
8 that because that hasn't been set.

9 And with that, we'll go ahead and move on
10 to the next agenda item.

11 And I thank the public all for coming and
12 participating today. We really appreciate it.

13 This is agenda item XI, report legal
14 advice and direction to counsel regarding Attorney
15 General inquiry. The Commission may vote to go into
16 executive session which will not be open to the
17 public for purpose of obtaining legal advice and
18 providing direction to counsel.

19 Any comments from legal counsel first,
20 beforehand or anything? Anybody --

21 MARY O'GRADY: Nothing for legal.

22 CHAIRPERSON MATHIS: Just -- any comments
23 from legal counsel on advice with regard to agenda
24 item XI, any update you wanted to provide?

25 JOSEPH KANEFIELD: Madame Chair, we do

1 have some advice that we would prefer to do in
2 executive session, if that is the wish of the
3 Commission.

4 CHAIRPERSON MATHIS: Okay. Is there a
5 motion to go into executive session to obtain legal
6 advice and provide direction to our legal counsel
7 regarding the Attorney General inquiry?

8 COMMISSIONER MCNULTY: So moved.

9 VICE CHAIR HERRERA: I'll second that.

10 CHAIRPERSON MATHIS: Okay.

11 All in favor?

12 ("Aye.")

13 CHAIRPERSON MATHIS: Any opposed?

14 COMMISSIONER MCNULTY: Aye.

15 CHAIRPERSON MATHIS: You were for, right?

16 COMMISSIONER MCNULTY: Yes.

17 CHAIRPERSON MATHIS: So it's five "ayes,"
18 just for the record, and we'll go into executive
19 session.

20 We'll end public section right now. It's
21 3:04 p.m.

22 (Whereupon the public session recessed
23 and executive session ensued.)

24

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1 (Whereupon the public session resumes.)

2 VICE CHAIR FREEMAN: All right. It's
3 3:57. We're back on the record in public session.

4 We just concluded our executive session
5 and our chair needed to leave to make an
6 appointment, so we're back on the record and we have
7 concluded with our agenda items for today, and so
8 next item on the agenda is adjournment, so the
9 meeting is adjourned at 3:57 p.m.

10 (The meeting concluded at 3:57 p.m.)

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5 I, MICHELLE D. ELAM, Certified Reporter
6 No. 50637 for the State of Arizona, do hereby
7 certify that the foregoing 264 printed pages
8 constitute a full, true, and accurate transcript of
9 the proceedings had in the foregoing matter, all
10 done to the best of my skill and ability.

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12 WITNESS my hand this 4th day of
13 September, 2011.

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