THE STATE OF ARIZONA

INDEPENDENT REDISTRICTING COMMISSION

REPORTER'S TRANSCRIPT OF VIDEOCONFERENCE PUBLIC MEETING

Via GoogleMeets

April 6, 2021

9:01 a.m.

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1 PUBLIC MEETING, BEFORE THE INDEPENDENT
2 REDISTRICTING COMMISSION, convened at 9:01 a.m. on
3 April 6, 2021, via GoogleMeets, Arizona, in the
4 presence of the following Commissioners:
5 Ms. Erika Neuberg, Chairperson
Mr. Derrick Watchman, Vice Chairman
6 Mr. David Mehle
Ms. Shereen Lerner
7 Mr. Douglas York
8 OTHERS PRESENT:
9 Mr. Brian Schmitt, Executive Director
Ms. Yasmin Ramos, Administrative Assistant
10 Ms. Pamela Peiser, Assistant Attorney General
Mr. Kyle Cummings, Assistant Attorney
11 General
Ms. Jessica Klein, Assistant Attorney
12 General
13 AGENDA ITEM VIII PRESENTERS:
14 BALLARD SPAHR, LLC
Mr. Roy Herrera, Esq.
15 Ms. Jillian Andrews, Esq.
Mr. Daniel Arellano, Esq.
16 Mr. Dennis Burke, Esq.
OSBORN MALEDON, P.A.
17 Ms. Mary O'Grady, Esq.
Mr. Joseph Roth, Esq.
18 Mr. Josh Bender, Esq.
Ms. Kristin Windtberg, Esq.
19 Ms. Emma Cone-Roddy, Esq.
Ms. Luci Davis, Esq.
20 Mr. Josh Sellers, ASU College of Law
SNELL & WILMER
21 Mr. Brett Johnson, Esq.
Mr. Eric Spencer, Esq.
22 Mr. Adam Lang, Esq.
STATECRAFT, PLLC
23 Mr. Kory Langhofer, Esq.
Mr. Thomas Basile, Esq.
24 Mr. Timothy La Sota, Esq.
25

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P R O C E E D I N G

CHAIRPERSON NEUBERG: With that, everybody is on the call so we'll get right to work.

Agenda Item No. I(A), call for quorum. It is 9:01 on Tuesday, April 6th, 2021. I call this meeting of the Independent Redistricting Commission to order.

For the record, the administrative assistant will be taking roll. When your name is called, please indicate you are present; if you're unable to respond verbally, we ask that you please type your name.

Yasmin.

MS. RAMOS: Thank you, Madam Chair.

Vice Chair Watchman.

VICE CHAIR WATCHMAN: Present.

MS. RAMOS: Commissioner Lerner.

Commissioner Lerner.

COMMISSIONER LERNER: Present.

MS. RAMOS: Commissioner York.

COMMISSIONER YORK: Present.

MS. RAMOS: Commissioner Mehl.

COMMISSIONER MEHL: Present.

MS. RAMOS: Chair Neuberg.

CHAIRPERSON NEUBERG: Present.

MS. RAMOS: And for the record, we also have

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1 Executive Director Brian Schmitt; from the Attorney
2 General's Office we have Pamela Peiser, Kyle Cummings,
3 Jessica Klein; and Angela Miller transcribing for the
4 Commission.
5 Back to you, Madam Chair.
6 CHAIRPERSON NEUBERG: Okay. Thank you.
7 Please note for the minutes that a quorum is
8 present.
9 Item I(B), call for notice.
10 Yasmin, was the notice and agenda for the
11 Commission meeting properly posted 48 hours in advance of
12 today's meeting?
13 MS. RAMOS: Yes, it was.
14 CHAIRPERSON NEUBERG: Okay. Thank you very much.
15 With that, we'll move to Item No. II, approval of
16 minutes from March 30th of last week, 2021.
17 We have the general session minutes; we have the
18 executive session minutes. As a reminder the video
19 recording fulfills statutory requirements.
20 Is there any discussion regarding the public and
21 executive session minutes of last week?
22 With that, I'll entertain a motion to approve the
23 public session and executive session minutes of March 30th,
24 2021.
25 COMMISSIONER MEHL: So moved.

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1 VICE CHAIR WATCHMAN: Madam Chair -- I'll second.
2 CHAIRPERSON NEUBERG: Any further discussion?
3 With that, we'll do a vote to approve the general
4 session and executive session minutes of March 30th.
5 Vice Chair Watchman.
6 VICE CHAIR WATCHMAN: Aye.
7 CHAIRPERSON NEUBERG: Commissioner Mehl.
8 COMMISSIONER MEHL: Aye.
9 CHAIRPERSON NEUBERG: Commissioner Lerner.
10 COMMISSIONER LERNER: Aye.
11 CHAIRPERSON NEUBERG: Commissioner York.
12 COMMISSIONER YORK: Aye.
13 CHAIRPERSON NEUBERG: I heard an "aye" along with
14 some dogs, so I -- just want to make sure the
15 transcription. Angela, did you -- did you get -- okay.
16 Terrific.
17 And Neuberg is an aye.
18 And, with that, the general session and executive
19 session minutes have been approved.
20 Moving forward, we have Brian Schmitt our Executive
21 Director taking notes as we speak and we look forward to
22 reviewing some written minutes next week.
23 With that, we'll move to Agenda Item No. III,
24 opportunity for public comments.
25 Public comment will open for a minimum of

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30 minutes and remain open until the adjournment of the meeting. Comments will only be accepted electronically in writing on the link provided in the notice and agenda for this public meeting and will be limited to 3,000 characters.

Please note, members of the Commission may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to A.R.S. 38-431.01(H), action taken as a result of public comment will be limited to directing staff to study the matter, responding to any criticism, or the scheduling the matter for further consideration and decision at a later date.

With that, we're going to use our discretion and jump to Item No. VIII, which is discussion and possible action on options for securing legal counsel.

And, with that, I just want to warn the public -- I know, you know, a lot of people are trying to organize their day around our content -- that there will be a lot of jumping around in our agenda in order to be efficient with our time management. We'll have interviews and then we'll have some breaks in time, and so I just want to warn everybody to stay to focused because we are going to be jumping from item to item.

So with regard to Agenda Item No. VIII, I'd like to just orient everybody about what to expect in the ensuing hours.

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We have four firms that will be presenting to us; they will have up to 10 minutes to give us an oral presentation, followed by a 30-minute opportunity for us to do Q and A. Just to change things up, we'll do our typical voting order for questions, so Vice Chair Watchman please be prepared to ask our first question of the firms.

I also want to remind everybody that the proposals that we have reviewed remain active and confidential. So please do not reference anything that is specifically written in the proposal, don't talk about the proposal. There are lots of questions you can ask that are open-ended, we've all disseminated a list of suggest -- suggested questions that are all vetted and fine, but let's just make sure that we maintain that confidentiality in case we were to choose to resume to go back to the RFP process.

In addition to that, I know that there's been, you know, conversation, are we looking for one firm; are we looking for two firms. I want to make clear that we have not voted on that yet. We've had conversation but no decisions have been made, so the implication of that is all options are all on the table.

I just ask my fellow Commissioners, that one of the values of us going down this route of Option B or Option 2 of meeting with firms that are already procured, is that allows for us to have dialogue, it allows a

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1 consensus-building process, one of negotiation. And so as
2 we move into this process, I just want to keep us centered
3 on -- on what that one advantage is of going down this
4 route, and that is that the five of us can work together to
5 hopefully really come up with some kind of arrangement that
6 will meet our needs enough. Nobody will get everything
7 perfectly, but -- but meet our needs collectively as a
8 Commission and help us fulfill our responsibilities.
9 MS. RAMOS: Madam Chair.
10 CHAIRPERSON NEUBERG: Yes.
11 MS. RAMOS: It looks like they are waiting on the
12 line, I'm not sure, can you just signal me when we're ready
13 to admit them into the meeting, please.
14 CHAIRPERSON NEUBERG: Yes. Thank you, Yasmin. And
15 -- and I believe we changed up the order. Is it Osborn
16 Maledon that is number one?
17 MS. RAMOS: That is correct.
18 CHAIRPERSON NEUBERG: Okay. And -- and prior to
19 going live with them, it's a little bit early, which is
20 wonderful, you know, they meet the Tom Coughlin rule of
21 being early.
22 And any questions? I mean, I just threw out a
23 bunch of information to, you know, the Commissioners. And
24 any questions/comments for us to be on the same page as we
25 embark on these interviews?

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1 Okay. Last thing I want to mention, it's helpful
2 when we can be consistent with our questions that we ask
3 just for, you know, the sake of -- of equal opportunity.
4 That doesn't preclude us from asking follow-up questions, or
5 each firm may have unique questions given their particular
6 backgrounds, and so we obviously won't -- won't stay wedded
7 to that; but -- but for a portion of these interviews, I
8 think it's helpful if we try to be somewhat uniform.
9 Okay. And, with that, Yasmin, let's welcome our
10 first firm.
11 MS. RAMOS: I believe we have Mary O'Grady and Joe
12 Roth.
13 CHAIRPERSON NEUBERG: Hello.
14 MS. O'GRADY: Good morning.
15 MR. ROTH: Good morning.
16 MS. RAMOS: And Joshua.
17 CHAIRPERSON NEUBERG: Good morning. Thank you for
18 joining us.
19 You know what, I don't know if you heard that --
20 that beginning entree. We welcome you to share, you know,
21 thoughts, a presentation, you know, ideas of why you feel
22 you're best positioned to serve this Commission this year;
23 you'll have up to 10 minutes. Followed by that, we have
24 some questions from the Commissioners. We anticipate about
25 30 minutes of questioning.

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1 And, with that, unless you have any questions up
2 front, you know, please feel free to begin.
3 MS. O'GRADY: Well, thank you very much.
4 Good morning. My name is Mary O'Grady and, again,
5 I am a partner at Osborn Maledon as you know, and it's an
6 honor to be here this morning and be considered for the
7 legal counsel position.
8 So I did want to invite -- introduce our team, and
9 I want them to kind of be on camera at least for the
10 introductions so you can put a face to the name. So we have
11 hopefully Kristin Windtberg on the line; Joe Roth, who you
12 see; Joshua Bender should be on the line; Emma Cone-Roddy,
13 hopefully she's here; Luci Davis; and then also on our team
14 is Josh Sellers, who you see, Professor Sellers is from ASU
15 College of Law, and we're very pleased to have him join us
16 as well.
17 Now, you have information on each of them in your
18 proposal, so I didn't plan on detailed introductions, but
19 they are all incredibly talented lawyers, terrific
20 colleagues, and I really am privileged to work with all of
21 them.
22 So, you gave us some time to address why -- why you
23 should select Osborn Maledon as legal counsel, and so that's
24 where I want to start. And it starts with our team, the
25 team that we have, and you really aren't going to find

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1 better, more effective lawyers than the team we have
2 assembled and that we have at Osborn Maledon ready to help
3 if need be.
4 Also, our experience. We have experience in the
5 issues that really are most important to the work that
6 you're going to be doing. We have experience with the laws
7 that govern public entities. And, you know, I've spent many
8 years representing public entities, things like open meeting
9 law, public records law, conflict of interest law; and for
10 the open meeting law, our team has experience with both the
11 statutory open meeting laws and the constitutional open
12 meeting provisions that apply uniquely and solely to the
13 Commission.
14 And some of this seems rather mundane in the shadow
15 of all the kind of really fascinating legal issues you'll
16 have to deal with; but these issues, advising you and your
17 staff on these legal issues are really an important part of
18 the Commission's work, in keeping the Commission -- enabling
19 it to do its work smoothly in a manner that complies with
20 the law and also serves the public interest.
21 And we have lots of experience representing public
22 bodies, policymakers, other public officials. My experience
23 dates back to the '90s, a long, long time ago in working at
24 the legislature; and since then, I've represented and our
25 colleagues have represented lots of elected official and

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1 different kinds of public officials. And we understand our
2 job, our job is to provide good legal advice to help the
3 policymakers make the decisions that they are, you know,
4 charged with making, and then defending their decisions in
5 court to the extent necessary.
6 And in terms of experience, our -- probably most
7 important, our experience with redistricting and
8 representing the Independent Redistricting Commission. So
9 we have a deep knowledge of the Arizona Constitution, the
10 Voting Rights Act, federal constitutional principles,
11 one-person, one-vote, racial gerrymandering, that whole
12 package of -- of body of law that in terms of advising and
13 also litigating some of those issues.
14 And that redistricting experience really matters.
15 Election law is a broad field, and representing candidates
16 or ballot measure committees is very different than the
17 types of issues that you deal with substantively on
18 redistricting and in terms of advising policymakers as they
19 do their jobs.
20 And we do have experience representing the
21 Commission in this mapping process; we represented the 2011
22 Commission. And I understand and I know that some of this
23 Commission, you know, may want a clean break from last
24 decade's Commission, but I really do think our experience
25 actually representing the Commission adds great value as far

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1 as what we can do as this Commission's lawyers because there
2 are lessons to be learned from the past. You don't want to
3 dwell on it; you don't want to get bogged down on it, but
4 there are lessons to be learned.
5 And I've learned some lessons, just constructing
6 this team reflects some of the lessons I learned. Last time
7 my proposal initially was me and Kristin Windtberg, and that
8 was not enough; even with our collaboration with co-counsel,
9 we needed to add lawyers. So this time I identified a core
10 team up front to make it clear that we are ready from the
11 outset for anything, and also to provide that transparency
12 regarding who that supporting -- those supporting players
13 are going to be.
14 Now, we would deploy lawyers only as needed and as
15 needed, so you may not see some of the folks who I
16 introduced on this call, but we are truly ready for anything
17 that the Commission may be confronted with.
18 I also added Professor Sellers, although I am
19 confident in our Osborn Maledon knowledge and ability to
20 advise on voting rights issues and racial gerrymandering and
21 those, but I thought there would be some value added in --
22 in providing an educator to the team who has dedicated his
23 career professionally to this area of law. So not just a
24 legal practitioner as I am, but -- but a -- but a scholar.
25 And Osborn Maledon's experience I think sends a

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1 message of strength. Last decade the Commission prevailed
2 on every legal challenge filed; and not just at the end of
3 the game, every round we prevailed, trial court and appeal.
4 And our success shows that we know how to do this
5 job well. We know how to advise the Commission; we know how
6 to help the Commission make a record that will hold up in
7 court; and that if there's a need to defend the Commission
8 in court, we know how to do that because we've done it and
9 done it successfully.
10 Now, nonpartisan and independent representation.
11 Important issues. And I -- in the course of these comments,
12 I want to address the issues that Commissioner Mehl raised
13 at a previous meeting.
14 Role of the legal counsel is to represent the
15 Commission and in a fair, nonpartisan way. The Commission
16 as a whole. It's not a partisan position. The job of the
17 lawyer again is to give the Commission the best legal advice
18 possible and then, you know, you make decisions and the
19 lawyers defend them.
20 Now, although I view the role of legal counsel as a
21 nonpartisan job, I understand the need for political balance
22 and respect the wisdom of the two-firm approach of the two
23 previous Commissions where, you know, one was led by a
24 Republican and the other by a Democrat; and I think that
25 structure helps ensure the members of the Commission and the

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1 members of the public who are following the process, that
2 the legal advice is balanced and bipartisan.
3 Now, I am a Democrat, the members of my team are
4 registered Democrats, and I selected the Osborn Maledon team
5 members based on their experience and their interest in the
6 issues, and they happen to be registered Democrats. If at
7 some point we needed to use a different Osborn Maledon
8 lawyer for some reason, I would not inquire or consider that
9 lawyer's partisan affiliation. That is not how I function;
10 I don't think that's appropriate unless the Commission for
11 some reason wanted me to do so.
12 Again, this is nonpartisan legal work, and we just
13 want to do the best job possible.
14 Also, independence. Although we do election work,
15 we don't rely on that work to earn a living. We do a lot of
16 different things, and a good amount of our work involves
17 representing public entities and public officers. And I've
18 represented Republicans and represented Democrats as have my
19 team members.
20 Because this is an independent commission, I think
21 it helps to have lawyers who are as independent as possible,
22 too. We are not the lawyers for the Democratic Party, and
23 if we represent the Commission, we won't represent
24 legislative candidates or congressional candidates while the
25 Commission is working on the maps.

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1 And I make those commitments to help ensure you
2 that we are independent and professional and there are no
3 agendas here other than to provide good legal representation
4 to the Commission.
5 Collaboration. We can work with all of the other
6 firms you are considering. Every -- this is a small legal
7 community, we all know each other from various connections
8 over the years, and we can work with anybody. And we have
9 experience with a collaborative team oriented approach on
10 redistricting and other issues, it's how we're used to
11 functioning.
12 Passion for the work, commitment to public service
13 and to Arizona.
14 Now, I spent most of my career -- much of my career
15 as a lawyer in public service, including eight years as
16 Arizona State Solicitor General, and I'm an Arizonan as are
17 many of our team members. One of the reasons I choose
18 Osborn Maledon when I returned to private sector 10 years
19 ago is because I could work with first-rate lawyers at a
20 first-rate law firm with a collaborative culture, that was
21 committed to Arizona and to public service, and I could work
22 on -- do things that mattered like redistricting; and that's
23 why I choose Osborn Maledon 10 years ago, and I think those
24 are among the reasons you should choose Osborn Maledon
25 today. We have the quality, the experience, the passion and

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1 commitment to excellence to do the work that you need and to
2 do it well.
3 So that's why I think you should select Osborn
4 Maledon, and I thank you again for your time this morning
5 and I welcome any questions you may have.
6 CHAIRPERSON NEUBERG: Thank you very much for that
7 comprehensive and thoughtful presentation.
8 With that, I'm going to turn it over to my
9 colleague, Vice Chair Watchman, for the first question.
10 VICE CHAIR WATCHMAN: Good morning. And thank you,
11 Madam Chair.
12 Hello, Ms. O'Grady. Thank you for the overview. I
13 have the question that relates to the six criteria. What is
14 your opinion of the six criteria that creates districts as
15 is enumerated in the Arizona Constitution.
16 MS. O'GRADY: Thank you, Commissioner Watchman.
17 My opinion on them is, you know, they are the core
18 of the Commission's work in terms of, you know, creating the
19 grid map and then adjusting the grid map in light of those
20 constitutionally required factors that the Commission is to
21 consider.
22 And -- and the Commission has broad discretion, you
23 know, apart from the Voting Rights Act and some of those
24 core legal requirements and how it deals with the items --
25 you know, communities of interest and some of the other

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1 factors, is largely within the discretion but what -- what
2 the courts have said and what you must do is consider all of
3 them; they're all part of your constitutional responsibility
4 to make accommodations as necessary to the grid map based on
5 those factors.
6 I hope that answers your question.
7 VICE CHAIR WATCHMAN: It does. Thank you.
8 MS. O'GRADY: Thank you.
9 CHAIRPERSON NEUBERG: Commissioner Mehl.
10 COMMISSIONER MEHL: As a follow-up to
11 Commissioner Watchman's question, the 2011 Commission took a
12 fairly strong position that competitiveness outweighed the
13 other factors and that ended up being controversial, at
14 least in some people's minds. Could you comment on -- on
15 how you saw that?
16 MS. O'GRADY: Thank you, Commissioner Mehl.
17 It's interesting because I -- I don't know that I
18 -- I accept that narrative that they viewed it as more
19 important than the others, they definitely, you know,
20 considered it as a factor in the evaluation, and I think
21 it's a -- you know, as I mentioned, the constitutional
22 obligation is to make sure that the Commission considers all
23 of them, and how you do that evaluation is largely up to
24 your discretion.
25 As the Supreme Court said, you know, the

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1 Constitution means what it says, so you evaluate them to the
2 extent practicable. And with regard to competitiveness, you
3 favor competitive districts to the extent practicable and
4 where to do so would create no significant detriment to the
5 other goals.
6 So that's up to you as a Commission to figure out
7 the strategy and just how you're going to do that based on
8 the -- the -- the facts that you have when presented with
9 the demographic information.
10 Is that responsive to your question?
11 COMMISSIONER MEHL: Yes.
12 And I guess an additional question would be: Given
13 how late we may be getting data, how do you view our legal
14 challenges and -- and timing going forward?
15 MS. O'GRADY: Yeah, that's a good question.
16 I think you just march through the process and use
17 the time before you get the data wisely to plan ahead as
18 much as you can, and just sort of chart out your schedule
19 and educate yourself and educate the public. But I think
20 you can get the job done within -- you know, based on the
21 summer or early fall, I haven't heard specifically, you
22 know, when the data is going to arrive, but you -- but you
23 can get the job done. I think you just need to map that out
24 given, you know, with the January 2nd goal that the
25 Secretary of State has dictated or has suggested, and, you

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1 know, having the 30-day comment period. But it's going to
2 take a lot of work, certainly. It's going to take a lot of
3 work.
4 But with planning and preparation you can get it
5 done in a way that complies with the Constitution.
6 And I have one other comment on the competitiveness
7 question, if I can. The other thing, you know, we had a
8 procedural challenge to the maps -- to the congressional
9 maps and -- and that failed, and it didn't say that they
10 placed too much emphasis on competitiveness, it was based on
11 different theories. But in terms of holding up in court,
12 you know, what the Commission did legally passed -- passed
13 muster last decade.
14 But, again, you have lots of discretion in that
15 area.
16 COMMISSIONER MEHL: Thank you.
17 MS. O'GRADY: Thank you.
18 CHAIRPERSON NEUBERG: Commissioner Lerner.
19 COMMISSIONER LERNER: Thank you. Thank you for
20 being here.
21 I have a question just as a kind of a follow-up a
22 little bit on your discussion of challenge, if that's okay.
23 We know that there were a number of challenges that
24 occurred after that -- Commissioner Mehl just, you know,
25 mentioned that we had some -- and the case went to the

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1 Supreme Court that resulted in a final 5 to 4 decision for
2 the -- in favor of the Commission.
3 If the IRC was to be challenged again in court in
4 any way, how would your firm mount a defense on behalf of
5 the IRC and the voters of Arizona?
6 MS. O'GRADY: Yes. And I think the specific case
7 that you're referring to there is the Legislature versus
8 Independent Redistricting Commission that challenged the
9 Commission's core authority to do congressional
10 redistricting; we had other -- we had another case that also
11 went to the United States Supreme Court.
12 But if someone chose to challenge that again, we
13 won, as you know, you still have congressional redistricting
14 as part of your job, and if we needed to fight it again, we
15 have the benefit of that precedent at trial. So the lower
16 courts would be obligated to follow that precedent; and --
17 and then we, at the Supreme Court, you know, then the
18 question is whether they would feel obligated to file
19 that -- follow that precedent.
20 And last time we reached out at the Supreme Court
21 level to some of the best lawyers in the Supreme Court Bar
22 and actually got pro bono representation at the Supreme
23 Court level. In that case, it was from WilmerHale and Seth
24 Waxman, a former U.S. Solicitor General; and we would do the
25 same again, we would supplement our team at the U.S. Supreme

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1 Court in a cost effective way to give the -- the -- this
2 Commission the best representation possible.
3 COMMISSIONER LERMAN: Thank you.
4 And just as a follow-up, I guess I didn't mean that
5 only one thing, so I think you're sorta answering that now
6 with saying you would get additional assistance when needed,
7 if needed, to mount a defense.
8 MS. O'GRADY: Yeah, that -- that's right.
9 And I feel very comfortable in my work at the U.S.
10 Supreme Court. I've done that before, but I think -- I
11 think it's best for the Commission if we supplement at that
12 court, you know, with -- with others.
13 And we did that in the other case as well that we
14 had the Supreme Court, that we got a unanimous decision
15 court in favor of the Commission in Harris, and we had a
16 different wonderful Supreme Court advocate who we worked
17 with, Paul Smith and others from Jenner & Block; and, again,
18 with pro bono assistance at that phase.
19 So we would, again, make sure that we had the best
20 team for whatever the Commission is presented with.
21 COMMISSIONER LERNER: Thank you.
22 MS. O'GRADY: Sure.
23 CHAIRPERSON NEUBERG: Commissioner York.
24 (Whereupon Commissioner Lerner momentarily is
25 absent from the meeting.)

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1 MS. RAMOS: Chair Neuberg, I just wanted to bring
2 to your attention, I believe Commissioner Lerner dropped
3 off.
4 CHAIRPERSON NEUBERG: Okay. I was won- -- she's
5 rejoined.
6 I don't know, Commissioner Lerner, is -- is your --
7 is your Internet bandwidth a little iffy today?
8 COMMISSIONER LERNER: Apparently.
9 CHAIRPERSON NEUBERG: Okay. Sorry.
10 COMMISSIONER YORK: Welcome back.
11 CHAIRPERSON NEUBERG: We -- we have you back.
12 COMMISSIONER YORK: Okay. Good morning. Good
13 morning, Mary.
14 Quick question, can you describe your experience as
15 it relates to the Voting Rights Act and how you approach
16 protecting minority -- how would you advise us in protecting
17 minority communities of interest.
18 MS. O'GRADY: Sure. I've been working with the
19 Voting -- me, personally, been working with the Voting
20 Rights Act back since the '90s that I was working at the
21 legislature then and, candidly, I was the lawyer for the
22 Democratic Caucus in the House; and -- and the members of my
23 caucus cared deeply about the Voting Rights Act and how it
24 affected, you know, redistricting and all legislation. So,
25 I made it a point to learn that area of law so I could

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1 evaluate legislation that was involved with the preclearance
2 process and have continued that throughout my career in
3 working with election laws, in working on redistricting
4 issues, and -- and then occasionally litigating when
5 necessary on those issues. And so -- so that's sort of the
6 history of my experience.
7 In terms of my view on the Voting Rights Act and
8 redistricting, you know, this is a different decade for
9 Arizona, as it being the first decade where we don't have
10 the Section 5 requirement, we are focused on Section 2,
11 and -- and so that's a change in terms of our Arizona
12 process. But -- but I think from the Commission's
13 perspective, it's still a question of understanding the
14 legal requirements, looking and doing that analysis of the
15 demographic information and the electoral information, and
16 understanding where racially polarized voting exists and how
17 it affects voting in Arizona; and really understanding the
18 -- where the majority/minority districts are, what it takes
19 to have an effective majority/minority district here,
20 avoiding packing, so you're not just looking at census
21 numbers and throwing, you know, minority bodies into the
22 same district, and not paying attention to the electoral
23 needs of a particular district.
24 And also taking the testimony, and I think this is
25 a good example of how these factors interrelate, communities

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1 of interest matter when you're building minority districts
2 and just understanding when you're drawing those lines how
3 those are going to affect the communities within those
4 districts and being mindful of the diversity with the Native
5 American vote and the Hispanic vote, African American vote,
6 and just understanding those communities and how -- you
7 know, where there is coalitions, and just understanding all
8 that information so you can make good decisions that protect
9 the Voting Rights Act and minor -- minority voters and
10 comply with the law.
11 COMMISSIONER YORK: Thank you.
12 CHAIRPERSON NEUBERG: Thank you.
13 Before I take the opportunity to ask my question, I
14 wanted to see if Vice Chair Watchman has a follow-up
15 question to that because I do know you have a sensitivity to
16 the voting rights of the Native American community and their
17 unique needs; it's a unique population.
18 VICE CHAIR WATCHMAN: I do and thank you,
19 Madam Chair.
20 Ms. O'Grady, you talked about the Voting Rights
21 Act, and there's a whole body of Indian law, and -- and as
22 you know in this country, Native Americans weren't allowed
23 to vote until 1924; here in the state it was in the '60s.
24 So can you expound a little bit on the Indian voting rights,
25 because the way tribes look at it, you know, they're not a

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1 part of the minority community, but rather, you know, a
2 treaty law. You know, tribes are basically, you know, dual
3 citizens of the state, if you will.
4 So I'm curious about your thoughts on the Indian
5 voting rights, you know, as they would apply, you know, to
6 this upcoming process that we're dealing with.
7 MS. O'GRADY: Right. You raise a very important
8 point, and Arizona -- and so I think you have to look
9 uniquely at each community in doing that evaluation, and --
10 and in doing that evaluation understand that history while
11 you're making your decisions. And sometimes in the context
12 of Section 2, they're called the "senate factors," which is
13 kind of that history of discrimination.
14 But really understanding that history so you know
15 what -- what are the barriers to turnout, for example, on
16 the reservation and those challenges that have -- and --
17 and, you know, direct discrimination that have affected the
18 ability to elect district -- to -- the ability to elect the
19 candidates of your choice.
20 And paying attention to the reservation boundaries,
21 and even though those aren't listed specifically in the --
22 in the list of boundaries that are relevant under -- under
23 the Constitution, they are relevant to redistricting in
24 Arizona as defined in communities of interest; and also we
25 have an old case that those who have been following

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1 redistricting a long time know, when they split the San
2 Carlos Reservation, the federal judge said, "No, don't do
3 that."
4 So respecting the reservation boundaries and really
5 taking a unique look at the voting history as you are
6 building those districts. And listening to the people,
7 listening to the testimony and learning about those
8 communities and the barriers to voting, and -- and what's
9 going to make a truly effective district where they have the
10 ability to elect the candidate of their choice.
11 CHAIRPERSON NEUBERG: Thank you.
12 VICE CHAIR WATCHMAN: Thank you. Yeah, thank you.
13 I appreciate that.
14 Thank you, Madam Chair.
15 CHAIRPERSON NEUBERG: If the Commission decides to
16 hire two firms, what ideas do you have to minimize costs and
17 maximize efficiency?
18 And in your answer, if you could maybe speak to
19 whether or not you see any opportunity for division of
20 labor.
21 MS. O'GRADY: Thanks.
22 I do think it's helpful to divide -- do some
23 division of labor, to know -- to assign, like, particular
24 research projects or evaluation to one firm to, you know,
25 maybe do the first cut. To respect sort of that bipartisan

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1 approach, I do think it's important that at the end of the
2 day both firms look at it and do an evaluation and say,
3 "Yeah, I think this makes sense," or "I don't think that
4 makes sense," so you are getting the benefit of -- of that
5 two-firm approach.
6 But I do think a lot of that, you know, division of
7 labor, you know, that there can be a logical division of --
8 of some of the legwork between the two firms. And that's --
9 that's particularly true at the litigation phase of in terms
10 of who covers the deposition and that sort of thing. But at
11 -- but at the mapping stage I think you could also divide
12 some responsibility, but I think it's important to the
13 extent the Commission cares about that, to have that
14 two-person, you know, sign off on those significant issues.
15 And you might even think about, you know, coverage
16 for meetings and public hearings, sometimes those can be
17 divided up. But when you want and getting some guidance as
18 to when you really do think you need a lawyer from both
19 firms present.
20 Probably at the business meetings, you'd want a
21 lawyer from both meeting teams -- firms present, but those
22 are things that you can be worked out, again, both for cost
23 effectiveness, minimizing cost, but at the same time
24 honoring that two-firm structure.
25 CHAIRPERSON NEUBERG: You know, with your

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1 experience of working with two firms, what are the areas in
2 which you feel two perspectives are needed?
3 So, you know, from a naive perspective one could
4 say the law is the law. So in your view, what are the
5 particular areas that need different eyes?
6 MS. O'GRADY: You know, that's a good question. I
7 really view the two-firm structure as partly an acceptance
8 of the sensitivity of redistricting. I mean, I honestly
9 feel like we could do this whole job in a nonpartisan way
10 for this firm -- for the Commission; but I accept that, you
11 know, some Commissioners, Republican Commissioners may not
12 want that or feel comfortable with that, and members of the
13 public may not feel comfortable with that so I truly -- you
14 know, but -- but I do feel like it's nonpartisan work, and
15 we can do it all.
16 But with the two, so I think probably analyzing the
17 maps themselves; and when you get down to what the maps look
18 like and, you know, whether they comply, I do think it's --
19 I think that's -- some of those areas it's helpful to have
20 the two firms sign off. And whether the record, you know,
21 like, gets -- whether you satisfied your obligation under
22 the Constitution and are ready to approve a draft map if,
23 you know, gone through all the constitutional criteria, I
24 think it's helpful to have the two firms.
25 And probably on the initial setup. Like, the role

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1 of competitiveness has been controversial both decades and
2 -- and so it's probably helpful to have the two firms
3 involved with that conversation, even though they may -- my
4 experience is often the two lawyers -- the two lawyers don't
5 disagree on what the law says, you know. Clients may have
6 just different reactions to what the law is.
7 But I think probably those particular decisions
8 points are where you'd definitely want the two-firm
9 collaboration.
10 CHAIRPERSON NEUBERG: Thank you.
11 I don't know if we'll have time for another full
12 round, all Commissioners, so what I would like to do is open
13 it up more broadly to second-round questions.
14 We don't have to necessarily go in a specific
15 order.
16 I see Commissioner Mehl has raised his hand.
17 COMMISSIONER MEHL: Yes.
18 Mary, sort of following up to the -- what you just
19 were talking about, from a practical standpoint when we
20 start drawing maps, what types of things will the lawyers
21 have an input in and what types of things, in your
22 experience, will you actually be advising for and against as
23 maps are drawn?
24 MS. O'GRADY: I think it's more -- in my experience
25 it's more answering questions as things come up, and that

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1 often -- and, again, it depends on, and that's part of the
2 important discretionary things you're going to have to
3 wrestle with, is -- is how do you provide instruction to
4 your mapping consultant in terms of what to bring forward to
5 the Commission for consideration; and so then as you're
6 looking at maps that the mapping consultant has prepared,
7 there may be questions, you know -- at the meeting, you
8 know, "Lawyers, is this good enough under the Voting Rights
9 Act, what do you think?"
10 So we -- and so I think you might want both lawyers
11 consulting with one another on that to advise the
12 Commission.
13 And population deviations is another area that --
14 that there might be questions. Again, often these are in
15 the context when you get into mapping at the -- that come up
16 while you're looking at maps that have been -- that the
17 mapping consultant has prepared at your direction and you're
18 trying to get a feel for whether they -- how they measure up
19 to the legal requirements.
20 Does that answer your question?
21 COMMISSIONER MEHL: Yeah, I think it does. Thank
22 you.
23 MS. O'GRADY: Okay. Thanks.
24 CHAIRPERSON NEUBERG: Commissioner Lerner.
25 COMMISSIONER LERNER: Thank you.

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1 So you mentioned about working with other firms.
2 You were -- and you've also mentioned that you were part of
3 the 2011 Commission. Maybe you can elaborate a little bit
4 on how the experience of working with two firms actually
5 functioned. What were some of the things that worked; what
6 didn't work; what were some of the areas that you were able
7 to find that -- that bipartisanship; what were areas that
8 maybe you had some difficulty.
9 MS. O'GRADY: From a lawyering perspective,
10 Commissioner Lerner, I thought it worked very well and I
11 really enjoyed the collaborative working relationship that
12 we had with our cocounsel, Joe Kanefield, who is now at the
13 AG's Office was their lead counsel, and then Wall Roysden
14 who is now also at the AG's Office, was, you know, his --
15 his second in command.
16 And -- and we just, one, I think never trying to
17 kind of end-run each other and also avoiding sort of forum
18 shopping. And so having good communication between counsel,
19 again, trying not to -- and being efficient about it, but
20 also working -- you know, working collaboratively so that --
21 and if we disagree, you know, the Commission will get a
22 sense of that, that we disagree. So we're not -- but we do
23 so respectfully and -- and the noise of lawyers arguing is
24 rarely helpful to a client, so we do try to be efficient and
25 -- and work things out to the extent we could in advance.

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1 But if we're doing things at the Commission, being
2 thoughtful and respectful and -- and collaborative, I guess,
3 is best thing I can say.
4 In terms of what didn't work, I -- I think it
5 worked -- I actually think it worked pretty well. I mean,
6 there were times that -- that Joe had to recuse from some
7 matters because of -- 'cause he represented the Governor.
8 So, like, when we got to the removal of the Chair
9 litigation, they had to recuse from that. So there were
10 pieces of it that -- that we had to go alone, but we -- we
11 just -- but they were isolated and that didn't happen, they
12 weren't to the core of the mapping process.
13 COMMISSIONER LERNER: Okay. Thank you.
14 CHAIRPERSON NEUBERG: I have a follow-up question
15 if nobody else wants to jump in.
16 Can you share with us a little bit about your
17 accessibility and -- and your -- and your preferred methods
18 of communication. My experience so far is it's highly
19 unpredictable when things hit and when they hit they can be
20 somewhat timely and urgent.
21 MS. O'GRADY: I agree with you a hundred percent.
22 Your experience so far is probably going to -- going to
23 remain your experience.
24 You know, we are a very accessible group. E-mail
25 is, you know, get all the time, and -- and -- but -- but

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1 phone call and text also, you know, also works. And I would
2 probably be the primary point of contact for our team, if I
3 for some reason am going to be off e-mail, my approach would
4 probably be to let the Executive Director know and see if
5 that was going to be a -- to be concern; and -- and make
6 sure there was the other contact that was available.
7 But also in this tight window period of mapping in
8 particular, really trying to keep -- keep the main -- be as
9 available as possible all the time, recognizing this -- this
10 is really crunch time, and we just need to get the work
11 done.
12 That said, for example, I know that next Tuesday I
13 have conflicts, so if the Commission were to make a decision
14 and retain us by next Tuesday, Kristin Windtberg is online
15 to cover the meeting if you should need us. So, you know,
16 trying to anticipate and communicate that we will be
17 accessible, and if you need us, we're here.
18 CHAIRPERSON NEUBERG: Thank you.
19 VICE CHAIR WATCHMAN: Madam Chair? Can you --
20 Mary, can you answer that, public meetings, you
21 know, we're planning a series of public meetings, so who
22 would be attending that?
23 'Cause that's also important, you know, from a
24 legal perspective. So who would be pegged with
25 participating in those functions?

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1 MS. O'GRADY: Sure, and that's -- and the way we
2 collaborated last decade was that co-counsel Joe Kanefield
3 kind of split those up and -- often, and we may have gone to
4 some together; but -- but some of them was a lot of travel
5 time we would split up, and some of that is a cost-saving
6 measure, too.
7 And but even if we weren't there, if they were
8 available online, we would -- the other would be watching
9 or -- or reading the text, reading and about what happened
10 at the meeting. So you'd stay informed whether you're there
11 or not.
12 If the Commission wanted us both there to -- to --
13 we would both be there or have someone from our firm there.
14 We were absolutely, you know, there to do what the
15 Commission feels is in the best interest of the Commission
16 and work with you on that.
17 VICE CHAIR WATCHMAN: Thank you.
18 CHAIRPERSON NEUBERG: Any further questions from
19 the Commissioners?
20 Anything, Ms. O'Grady, that -- that we can answer
21 for you?
22 MS. O'GRADY: No, I -- I -- no, I don't have any
23 specific questions for you all.
24 I feel like I could -- I could ramble on forever to
25 talk to you about this stuff, but I don't think you need

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1 that.
2 I did -- I had looked at some of the public
3 comments and they raised some questions that I thought were
4 interesting, and one of them was avoiding litigation, which
5 I know everyone likes to think about, and so if you're
6 interested in more of my rambling on, you know, no matter
7 what you do, someone may sue you, that's the way life is
8 unfortunately. But having a strong record that supports the
9 decisions you made helps -- may not prevent it, may deter
10 it, and certainly helps you win if someone sues.
11 Reaching consensus when possible, I think the
12 broader a consensus there is for the final product, that
13 probably reduces the chances of litigation but it doesn't
14 prevent it. And -- and I understand that's difficult in a
15 redistricting context and -- because there are perceived
16 winners and losers, and those who are perceived losers, you
17 know, often sue.
18 And then just getting the work done in a timely
19 manner, that's when folks get sued, too, if there's no maps
20 done, so that's the other way to avoid it. And avoiding
21 procedural difficulties like open meeting issues.
22 But I -- those are my additional thoughts on at
23 least that particular question.
24 CHAIRPERSON NEUBERG: We -- we appreciate you
25 sharing that, because I think we share that desire to avoid

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1 litigation to -- to the greatest extent possible.
2 MS. O'GRADY: So, no other questions. I guess I
3 just thank you for your time this morning and, again, for
4 this willingness to serve because this is not an easy job
5 that you have signed up for, and you're headed for an
6 interesting journey, and I would love to be able -- and we
7 would love to be able to assist you along the way, but we
8 appreciate the time this morning.
9 CHAIRPERSON NEUBERG: Well, thank you. And we
10 appreciate your time and we appreciate your thoughtful
11 responses. Regardless of how that evolves, I have no doubt
12 that we will, you know, benefit from -- from your insights
13 that you share, so.
14 So thank you.
15 MS. O'GRADY: Thank you all.
16 VICE CHAIR WATCHMAN: Thank you.
17 MS. O'GRADY: I'll try and sign off here.
18 CHAIRPERSON NEUBERG: Okay.
19 (Whereupon the representatives from Osborn Maledon
20 exit the meeting.)
21 CHAIRPERSON NEUBERG: Okay. With that, we have a
22 couple of options and -- and we could potentially even do
23 both of them. We can -- we have the next firm coming at
24 10:15, which I believe is Ballard Spahr.
25 Yasmin, can you just nod?

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1 MS. RAMOS: Yes, that is correct.
2 CHAIRPERSON NEUBERG: Okay. So we have until
3 10:15. We'll, you know, at least take a five-minute break
4 before that next firm comes.
5 We can, number one, begin to process and deliberate
6 and -- and just share strengths/weaknesses of the previous
7 firm we just interviewed and/or we could dive into the order
8 of our agenda, which is No. IV.
9 And so, with that, does anybody have any
10 preference? I'm really open to either strategy as a first
11 step.
12 COMMISSIONER YORK: My thoughts would be to discuss
13 all the firms at the same time.
14 VICE CHAIR WATCHMAN: I agree. So I think we
15 should move down the agenda, Madam Chair.
16 CHAIRPERSON NEUBERG: Okay. If there's --
17 COMMISSIONER MEHL: I support that.
18 COMMISSIONER LERNER: I agree, too.
19 CHAIRPERSON NEUBERG: Okay. Well, then, it's --
20 it's unanimous. Well, at least four out of five, that's
21 enough.
22 With that, we're going to move on to Agenda
23 Item No. IV, which is discussion of prior comments received
24 prior to today's, April 6th, meeting.
25 Before I share my thoughts/responses, I would like

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1 to open it up to my fellow Commissioners. Anything you
2 would like to share regarding the public comments we read
3 from last week?
4 COMMISSIONER LERNER: This is Commissioner Lerner.
5 I guess I'd like to just talk a little as a
6 Commission about what we want to do with public comments
7 because I know we all read them. And I don't know that --
8 other than acknowledging them, that's what we do, and I
9 certainly take a hard look at the comments and consider
10 what's been raised, I don't know that we're doing much more
11 with them. And I'm not sure if we're want to at some point
12 say, well, there were a couple of them we should put on the
13 agenda next time to address?
14 I guess, I'm just throwing out there -- I don't
15 know what we want to do. These are great comments that we
16 receive; I appreciate the fact that we get these comments,
17 that people are giving us information because very often I'm
18 learning things as a result of the public comments, and I
19 just would, I guess, ask if there is a -- we want to do with
20 using these comments. If ever there's something that
21 strikes us and says, hey, this will be worth us following up
22 on, so I'm -- I'm just raising the question. Because I find
23 these comments helpful and very informative.
24 CHAIRPERSON NEUBERG: 'Kay. Pam, did you want to
25 make a comment?

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1 MS. PEISER: I did. I just wanted to clarify, I
2 assume that we have partially moved into discussion of
3 future agenda items in terms of making decisions on what to
4 do with the public comments.
5 COMMISSIONER LERNER: Okay. I did not realize I
6 was doing that, but okay. See, I need help with...
7 CHAIRPERSON NEUBERG: Okay. Well, you know what, I
8 think this is an important question. I mean, you know, to
9 answer your question, Commissioner Lerner, what -- what I
10 personally do with them is I integrate it into all of the
11 decision-making. So what -- what spoke to me, I think, over
12 the past week was the importance of recognizing that
13 although we may represent different factions or whatever
14 word we want to use, we need to be reminded that we're
15 representing a hundred percent of Arizona.
16 I'm absorbing, again, wanting more access to
17 providing comments. Help is on the way, you know. You
18 know, we have an Executive Director, we expect to -- to have
19 a link on our website opening live at some point to have a
20 "contact us" link so that it's a little bit more accessible
21 for people to leave, you know messages.
22 I hear constant, you know, expression of wanting
23 less executive session. To be perfectly honest, I'm not
24 sure there's anything we could possibly do to lessen that.
25 At every step of the way, I think we've done really a good

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1 job of erring on the side of discussing things in public to
2 the extent that is responsible.
3 There were some helpful interview questions that
4 were provided for today; I took them into consideration.
5 I have yet to personally have a comment that rose
6 to the level of saying, hey, you know, we need to do things
7 differently. But -- but, you know, it's on the agenda that
8 if we -- that -- that we are allowed to take action on any
9 of these suggestions, and I would encourage all of my
10 Commissioners that if there's a comment that you're
11 resonating with that you feel rises to the level that, you
12 know, we ought to act on, that's appropriate.
13 COMMISSIONER LERNER: Okay. Thank you.
14 I just wanted to ask the question 'cause I think
15 it's good for us to always be considerate of what's being
16 raised. Thank you for that, Chair Neuberg.
17 COMMISSIONER YORK: Well, and I would agree with
18 Commissioner Neuberg. This is Commissioner York.
19 That our behavior and our sort of guidance has
20 changed in relation to our critiques in our public comments
21 that we receive, so we continue to use those to sort of
22 shape our meetings and our agenda.
23 CHAIRPERSON NEUBERG: And I'd like to remind the
24 public that, you know -- that they're accessible. You know,
25 you can go on our website and click on the links and review

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1 the public comments, that they're open and digestible to
2 everybody who would -- who would like a sense of what's
3 being discussed.
4 And I would also like to say that we're -- we're
5 very excited about -- you know, and this is jumping to a
6 future agenda item, of hiring a public information officer,
7 you know, improving our IT abilities, and -- and becoming
8 truly more interactive, and also potentially even playing a
9 little bit more of an educational role in the community
10 about civics and redistricting.
11 In terms of the public comments as we move on with
12 more substantive issues, I hope the public will continue to
13 weigh in and -- and begin to focus on some of those, you
14 know, issues we need to learn about. Communities of
15 interest, well, who are they? You know, who's been well
16 represented? Who feels that they haven't been represented
17 well? We will have time to learn.
18 And -- and so I just want the public to know. I
19 mean, you know, we are absolutely really absorbing this
20 feedback and doing our best to -- to, you know, learn from
21 it and respond.
22 VICE CHAIR WATCHMAN: Madam Chair, this is
23 Vice Chair Watchman.
24 I agree. It's -- for me, it's -- it's guidance as
25 -- as I look through and, you know, decide like, for

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example, on various issues. And so I guess my encour- -- encouragement to the public is continue to provide public comment. I do read them and very inciteful as we're talking about and so good information.

One thing I want to digress a little bit and I think it would be nice to have our new director, I know he's listening in, but I'm not sure if he's equipped, if he has a computer, but, you know, he started yesterday, so he's now part of the team and the process, and so perhaps next week we should offer him some time to introduce himself. Today would have been a better time, in my opinion, but, you know, probably because of technology or what have you, so. I think we should acknowledge him, we did make a decision so he's a part of the team. So it would be nice to see him here.

I haven't heard him yet, so I think we need to, you know, bring him into -- to the fold here because he is important to our process.

So, thank you.

CHAIRPERSON NEUBERG: Yes. Foreshadowing Vice Chair Watchman to Agenda Item No. XVI, discussion of future agenda item requests, I'd like to add that we have a director report each week.

DIRECTOR SCHMITT: Absolutely.

CHAIRPERSON NEUBERG: And -- and Brian is on -- on

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1 tap to give us an update on one of the agenda items having
2 to do with our hires.
3 DIRECTOR SCHMITT: Absolutely. So I know there was
4 discussion of hiring a subcommittee --
5 CHAIRPERSON NEUBERG: Wait. Brian. Brian, we
6 can't go there quite yet.
7 DIRECTOR SCHMITT: Oh. Okay.
8 CHAIRPERSON NEUBERG: That is the next agenda item,
9 so prior to that conversation, let me just close to see if
10 there's anything else on public comments and we can open up
11 to Item No. V, which explicitly addresses the subcommittee
12 issue.
13 DIRECTOR SCHMITT: Okay.
14 CHAIRPERSON NEUBERG: Okay?
15 DIRECTOR SCHMITT: Sounds good.
16 CHAIRPERSON NEUBERG: Okay. Any other comments on
17 public comments?
18 Okay. With that, we will move to Agenda Item No.
19 V, which is discussion and possible action concerning
20 parameters and use of subcommittees to evaluate applicants
21 for the executive director assistant and other
22 administrative support positions.
23 Just to update the public, as a reminder, last week
24 we approved a motion to create a subcommittee of
25 Commissioners York and Lerner, to provide some support and

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1 guidance to our Executive Director, Brian, with the hires.
2 Subsequent to that in our conversations with our
3 counsel, we understood that there are some requirements that
4 may make this plan not as efficient. In order for the
5 subcommittee to be able to do that work, they still need to
6 out of an abundance of caution respect the open meeting
7 laws, which means that all feedback and work would need to
8 be done in the public eye, which means that the subcommittee
9 would still need to schedule an explicit public session with
10 48 hours' advance notice with a unique agenda.
11 And so given the extra burden of having that format
12 to provide feedback to Brian, you know, we have some other
13 options. We can rescind that motion and essentially reserve
14 time every week for the five of us to have overview with
15 Brian's, you know, you know, weekly director report. I
16 think all five of us could peruse the applications that come
17 in, and any one of us that would like to share with Brian
18 our thoughts of which candidates were excellent, which
19 candidates we may have concerns about; Brian would integrate
20 all of this information, make his own, you know,
21 determinations, and then report to us; and then, you know,
22 the five of us would -- would approve whatever hires
23 eventually happen.
24 But understanding that, I just want to bring it to
25 the attention of the Commission that the idea that we had,

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1 which was excellent, in implementation poses some challenges
2 and how might we create a system that's efficient for Brian
3 but also provides us the oversight.
4 And, with that, I'd like to say the Commission may
5 vote to go into executive session which will not be open to
6 the public for the purpose of obtaining legal advice, A.R.S.
7 38-431.03(A)(3).
8 And, Brian, now -- I'm sorry to have cut you off,
9 now you can speak.
10 DIRECTOR SCHMITT: Oh, no worries.
11 So, with -- with that, I -- before making any
12 decisions, I would discuss with each and every one of you if
13 you wanted to provide input; I would appreciate the input
14 and definitely take it into consideration.
15 I want to build out a diverse team that represents
16 the State, that's really important to me, and so input from
17 each of you will be something I'd appreciate.
18 COMMISSIONER LERNER: This is Commissioner Lerner.
19 Since I was going to be on the subcommittee, might
20 as well -- thanks, Brian, and it's nice to see you.
21 DIRECTOR SCHMITT: You, too.
22 COMMISSIONER LERNER: I -- so I don't know how this
23 would have happened in the past. How were the hiring -- how
24 was the hiring done for the other positions the last time?
25 We were the same limitations?

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1 Do we know?
2 CHAIRPERSON NEUBERG: My understanding is that the
3 previous Commission gave broad authority to their Executive
4 Director and the Executive Director had -- had authority to
5 hire.
6 COMMISSIONER LERNER: So that the Commission was
7 not involved in any way other, than approval, final
8 approval.
9 CHAIRPERSON NEUBERG: My understanding is that the
10 former Executive Director pretty much made executive
11 decisions about his hires.
12 COMMISSIONER LERNER: Okay. I was curious about
13 that I just didn't know as part of that.
14 So I know from my perspective, since I was the one
15 who suggested a subcommittee, I would like to have -- I
16 understand that Commissioner York might be happy if we don't
17 have to pull these subcommittees together. I understand --
18 I guess I still would like to have some involvement in some
19 way, and even if it's that the Commissioners can do a review
20 of the applicants, and that we can then provide -- provide
21 input and have our Executive Director come back to us with
22 maybe the top three that he's considering, the top four, so
23 we can provide input again on that; and then if there's any
24 concerns, those can be raised at that time.
25 Something of that order. Could that -- something

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similar to that kind of process work?

Because it -- it's sort of how we've been working together as a group anyway. So I'm thinking if we have to move away from the subcommittees -- I think the last Commission did have subcommittees as part of it, that was my understanding but I could be wrong. But that's -- but if we move away from that, then let's find another alternative that gives us input.

COMMISSIONER YORK: Well, we also -- this is Commissioner York.

Shereen, I -- I agree with you that we should maybe submit our suggestions to Brian, but there also should be some jobs that I don't think the Commission need to be a hundred percent engaged with the selection, so I think it's sort of a task-by-task situation.

COMMISSIONER LERNER: Yeah.

COMMISSIONER YORK: It's posted this particular job on public by the Department of Administration posted this job, I believe that we probably have some responsibility to review the applicants and submit our suggestions to Brian.

COMMISSIONER LERNER: Right. Right, and that's kind of where I'm going with that.

And perhaps, maybe Brian, could you -- and I would be fine if we wanted to kind of go with -- with providing with Brian, kind of funneling into him our recommendations

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1 for the different positions as they come up, and giving that
2 feedback.
3 But, Brian, could you -- would it be okay, Chair
4 Neuberg, I'm going to ask you for approval of that, if it's
5 okay for you, for Brian to look at how things occurred in
6 the past, just for curiosity?
7 DIRECTOR SCHMITT: Absolutely. I'd be happy to do
8 that.
9 COMMISSIONER LERNER: And then perhaps you could
10 provide us with a report.
11 But I know in the meantime you want to probably
12 start moving forward with the assistant position, so we
13 could at least all review those and provide input, and then
14 maybe next week you can provide us with some -- some
15 information on how things were handled in the past with the
16 hiring; and then we could, and then, Commissioner Neuberg,
17 when would you want us to provide him with input on his
18 current position -- or recommendation?
19 CHAIRPERSON NEUBERG: With the line of this
20 conversation, I'd like to use the discretion to move into
21 Agenda Item VI, which is discussion and possible action on
22 Executive Director and other potential administrative
23 support positions and duties of all IRC staff, 'cause this
24 allows us to then address the public information office
25 position that was posted and these other specific hires.

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1 COMMISSIONER YORK: Commissioner Neuberg, do we
2 have a time issue?
3 CHAIRPERSON NEUBERG: We have eight minutes, and so
4 let's -- we have, I'd say, three minutes for dialogue, and
5 then we'll take an extremely brief break before our 10:15
6 appointment with Ballard Spahr.
7 So let's take advantage of three minutes and we
8 will return to Item No. VI. But any conversation about, you
9 know, the process of these hires and -- and -- and Brian
10 reporting to us?
11 COMMISSIONER MEHL: This is Commissioner Mehl.
12 I think it would be helpful for Brian to have gone
13 through the applicants and at least do a round of here's his
14 top three/top five, and have our concentrate our comments
15 back to him on those; and then -- and then after we've given
16 comments, hear who he recommends hiring.
17 If we make this too cumbersome we're not going to
18 get it done quick enough and we need these positions soon.
19 COMMISSIONER LERNER: Commissioner Mehl, I agree
20 with you that we want to move forward quickly, but I would
21 still like to have some input into that. So perhaps the
22 Commissioners could make their own decision whether they
23 want to provide Brian with their recommendations and maybe
24 get them to him by a certain date; and if you don't want to
25 do that, that's fine, and we can just look at his. That

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1 will allow some flexibility.
2 CHAIRPERSON NEUBERG: I really love that hybrid
3 approach. I mean, I -- you know, we all have different
4 areas that -- that, you know, where we're more concerned
5 about oversight and, you know, having Brian report every
6 week a director's report, he could update us on the hires;
7 we will all see the applications that come in for the
8 positions, we have the applications for the executive
9 assistant position. We will have the applications for, you
10 know, the PIO, whether or not we eventually hire a deputy
11 director.
12 And those of us who -- who, you know, want more
13 oversight can dive in deeper and share it, and -- and those
14 who are a little more comfortable with -- with Brian using
15 his discretion, I think this -- this solution allows us all
16 to have oversight but with a degree of -- of flexibility.
17 But at the end of the day, Brian will come to us
18 with his suggestion for hires, and we'll approve, and we'll
19 do it an expeditious of a way so that we can get staffed as
20 soon as possible.
21 VICE CHAIR WATCHMAN: Madam Chair, this is
22 Vice Chair Watchman.
23 I'm hearing everything that everyone is saying and,
24 for me, like you're saying, I'd like to be a part of the
25 approving the final applicant for each position, but I think

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1 maybe at some point we have also have to have discussion
2 about oversight. Like, for example, you know, how do we
3 work with a PIO or other staff? Do we have to go through
4 the Director, you know, do we have to talk about chain of
5 command so that, you know, we don't -- we mind our Ps and
6 Qs.
7 And so I certainly can and will if I get the
8 opportunity work with each staff but, you know, how do we, I
9 guess, set up the chain of command so that we have proper
10 oversight? And so that's how I interpret this particular
11 agenda item, but maybe we can talk about it the next time.
12 But for me I would like to be a part of the final,
13 basically approving each person for each job that we're
14 looking at.
15 CHAIRPERSON NEUBERG: Okay.
16 VICE CHAIR WATCHMAN: Thank you.
17 CHAIRPERSON NEUBERG: Let -- let's -- Commissioner
18 Mehl, please, and then we'll wrap up.
19 COMMISSIONER MEHL: I think we need a motion to
20 disband or eliminate or whatever word you want to use the
21 subcommittee that we have voted on. So I move that we
22 terminate that subcommittee.
23 VICE CHAIR WATCHMAN: I'll second. Commission --
24 this is Vice Chair Watchman.
25 COMMISSIONER LERNER: This is Commissioner Lerner.

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1 Just as a comment, I would like to have Brian
2 report out next week on what hap- -- that what has happened,
3 you know, that I asked him to kind of just give us an update
4 before we -- I mean, we don't have -- I don't know that we
5 have to disband it right away for things to continue to move
6 forward, but I would like to hold off on that for a week if
7 possible to hear Brian's report.
8 CHAIRPERSON NEUBERG: Let's -- so here's my
9 suggestion. We -- let's come back to this to wrap it up.
10 Let's not make a decision yet.
11 Let's prepare, we have another firm coming in in a
12 few minutes. We'll come back and make some kind of, you
13 know, more determinative, you know, decision about how we're
14 going to approach these hires. But it's a productive
15 conversation.
16 Okay. Yasmin, I'm -- I'm presuming the next firm
17 is not live, not on -- on hold?
18 MS. RAMOS: Yeah, no, they have not joined just
19 yet.
20 CHAIRPERSON NEUBERG: Okay. How about we take a
21 three-minute break.
22 (Recess taken from 10:12 a.m. to 10:15 a.m.)
23
24 CHAIRPERSON NEUBERG: Okay. I think we are all
25 here.

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1 Yasmin, please welcome our next guest.
2 (Whereupon the representatives from Ballard Spahr
3 join the meeting.)
4 MS. RAMOS: Good morning, and I believe we have
5 four guests from Ballard Spahr.
6 CHAIRPERSON NEUBERG: Okay. Welcome. Thank you
7 for joining us today. We appreciate your time.
8 We'd like to open up the first, let's say, up to 10
9 minutes for you to please share with us your thoughts about
10 why you feel your firm is best positioned to serve our
11 Commission. We'd like to follow that with approximately
12 30 minutes of some Q and A.
13 And, you know, if there are no initial questions,
14 please feel free to jump in and please introduce yourself.
15 MR. HERRERA: Yeah, thank you, Madam Chairwoman,
16 can you hear me okay?
17 CHAIRPERSON NEUBERG: Yes.
18 MR. HERRERA: Okay, perfect. Okay, great.
19 Well, thank you, Madam Chairwoman, and
20 distinguished members of the Commission for inviting Ballard
21 Spahr to present this morning. It's really an honor for us
22 to be here, and we want to thank you for your commitment to
23 this all-important process to the state of Arizona that you
24 have undertaken.
25 With me on the line are several other members of

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1 the proposed team. Of course my name is Roy Herrera, I am
2 the head of the Political Op practice at Ballard; also on
3 the team who are on the call are Dennis Burke, Daniel
4 Arellano, and Jillian Andrews. I'm going to give the -- be
5 giving the presentation this morning and answering most of
6 the questions, but at times you may hear from some of my
7 colleagues.
8 So, again, thank you very much for inviting us. I
9 sent a PowerPoint presentation to each of you, I think it's
10 probably a bit too long for a ten-minute presentation, but
11 I'll try to hit on the highlights; and, certainly, if
12 there's anything in the PowerPoint that you want to ask us
13 during the Q and A, we obviously can answer those -- those
14 questions.
15 But in this brief 10 minutes, I want to give you a
16 sense of who we are as a firm and as a practice group, what
17 our experience is and why we would be a good fit for -- for
18 the Commission as their legal counsel.
19 So, first of all, Ballard Spahr is a national law
20 firm. It's a large law firm with 15 offices, close to 700
21 lawyers nationwide. Our political law practice consists of,
22 you know, roughly two-dozen lawyers nationwide who have
23 experience in practice significant amounts of their time in
24 election law, that includes six lawyers here in the Phoenix
25 office that primarily do election law.

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1 To give you some sense of the scope of our
2 practice, after the presidential election last year -- and
3 we'll get into this -- but we represented the Biden campaign
4 during that election, and we were serving as litigation
5 counsel in three different states after the election:
6 Pennsylvania, Nevada, and of course here in Arizona, and
7 I'll talk about our Arizona experience a little bit later.
8 But our political law practice if we had to sort of
9 distill it, really is helping clients who want to
10 participate in the electoral and political process. So the
11 clients that we represent primarily are candidates,
12 political originations, non-profit and for-profit
13 organizations, government entities, special taxing
14 districts, really any kind of individual organization that
15 wants to participate in the -- in the political process.
16 And a lot of the things that we advise them are on
17 issues that are very relevant to the Commission. These are
18 things like voting rights, these are things like election
19 procedure and election administration, redistricting, the
20 ballot initiative process; other issues that are kind of on
21 the periphery but still important like open meeting laws,
22 ethics rules, lobbying rules. So we help them navigate this
23 very complicated area of the law.
24 I think what makes our firm unique in comparison to
25 many others is that we're able to combine, I think, the

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1 large resources of -- of a big national firm which sometimes
2 come in very handy, particularly when there's lot of
3 litigation going on, so we have the ability to throw
4 resources at an issue on behalf of the client, while also
5 understanding the unique nature of election law, which is
6 the clients in this area need lawyers that work quickly and
7 efficiently, because oftentimes our clients are making
8 decisions in a very fast-paced environment. And that's
9 certainly, I think, going to be true for this Commission,
10 particularly considering sort of the delay in the census
11 data. And so we understand, I think, in this area of the
12 law, that, you know, we have to be efficient and have to be
13 quick in providing sound legal advice to our client.
14 And so with that combination of the two, I kind of
15 liken it to being a boutique practice within a large
16 national law firm that I think really makes us unique.
17 On the next line I have some information about
18 methods of contact and accessibly, which you requested. I
19 think what I'd say about that is we are viewing this
20 engagement as a top priority for our practice. I would be
21 the relationship manager and lead counsel in this engagement
22 responsible for the delivery of legal services. You know,
23 I'm viewing this as being available 24 hours a day, seven
24 days a week, because that is how important this matter is;
25 but, certainly, we have other members of the team which will

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1 be engaged as needed, and certainly we will be at every
2 meeting that the Commission has and be available and
3 accessible whenever you need it; it is that important. And
4 we also understand, again, there is -- there is a quick pace
5 to this because the maps have to be drawn within a certain
6 time period.
7 I'm going to next turn a little bit more into
8 perhaps the more meat or substance of the presentation,
9 which is to talk about the experience that we have, you
10 know, the -- the why.
11 I talked a little bit of how we're, you know, sort
12 of boutique practice within a large firm, I think that's
13 important, but I also just demonstrating the fact that we
14 have the necessary experience to provide you with the
15 services is always obviously very important.
16 I believe we have one of the most active and
17 well-regarded legal practices in the state and also in the
18 country, and that's why I sort of list various
19 representative clients. They include the Biden presidential
20 campaign; they include Mark Kelly's senate campaign; dozens
21 of other congressional, statewide, and local candidates;
22 lots of government entities, it is anything ranging from the
23 Secretary of State's Office, to the House of
24 Representatives, to the Maricopa County Recorder, ASU;
25 special taxing districts like Maricopa County Integrated

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1 Health System, SRP; and, of course, dozens -- you know,
2 quite literally dozens of national and state-based
3 non-profit advocacy organizations, many of them that focus
4 on voting rights.
5 I think -- and I think I did an empirical study of
6 this, that we have been involved in more election-related
7 litigation over the last several election cycles than any
8 other law firm in the state, and I think our experience in
9 2020 is a good example of that. During the 2020
10 presidential election, we participated in over 10 lawsuits
11 pre- and post-election that related to the conduct of
12 elections and election administration, many of those cases
13 involved complex issues of federal and state law.
14 In the post-election period alone, we defended
15 eight different lawsuits in the span of two months related
16 to the presidential election. So that just gives you some
17 sense of our -- our capabilities in a very sort of
18 fast-paced environment.
19 I think our experience and skill speaks for itself
20 in the sense that, you know, we have been hired to advise
21 clients all over the country, our practice has only grown as
22 the years have gone on; and I also say in the last little
23 point here, which I think is very important, is diversity is
24 also our strength. We are the only national political law
25 practice that is headed by a Latino, myself. I'm very proud

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1 of that, but I'm even more proud of the diversity that we
2 have on our team, and I think of some of that is
3 demonstrated very clearly in our proposed team for this
4 engagement.
5 Turning to the next slide, when I talk about our
6 experience and the particular buckets of the law or areas of
7 the law that I think are most relevant to the Commission,
8 certainly our knowledge of the Voting Rights Act is very
9 strong. The VRA is a consideration that happens, it's
10 something that we have to consider in every election law
11 engagement; whenever we would represent a candidate or
12 political organization that's concerned about election
13 administration and voting procedures, the VRA always has to
14 be a consideration; and so we as a result have developed a
15 great deal of familiarity with all of that.
16 And, certainly, in most recently as the principal
17 counsel for the democrat- -- Democratic presidential
18 nominat- -- nominee, as well as the head of the voter
19 protection effort overall in the state last year, you know,
20 we literally thought about voting rights and election
21 procedures on a daily basis.
22 And when it comes to the VRA itself, we have that
23 on the top of our mind as we participated in the Brnovich v.
24 DNC case, which we may talk about a little bit later, which
25 is a VRA case, it's a Section 2 case where we filed an

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1 amicus brief on behalf of some advocacy organization. And
2 then, certainly, there have been a lot, and I imagine this
3 will come up in Q and A, but a lot of changes in VRA since
4 the 2010 districting because of Shelby County and other
5 developments in the law, so we really are in a -- sort of
6 entirely different environment when it comes to --
7 particularly with Section 5, when it comes to the Voting
8 Rights Act. And so, obviously, we've kept apprised of all
9 of those things.
10 The next slide, you know, has to deal more with our
11 knowledge of federal law related to redistricting generally.
12 Obviously, in addition to the VRA, we have to have an
13 intimate familiarity of the 14th and 15th Amendment. You
14 know, the equal protection clause of the 14th Amendment is
15 -- is a particular instrument that's used in redistricting
16 to challenge racial discrimination. There are also have
17 been other developments in federal law that indicate versus
18 the Common Cause case which did away with partisan
19 gerrymandering. We, of course, can talk about that in the Q
20 and A, but that has also changed the way what laws and
21 federal laws are applicable to redistricting.
22 And there's, of course, there's Arizona law. I
23 mean, we all know that the Commission, it's duty and pros-
24 -- procedures are set forth in Article 4 of the state
25 Constitution; we know all of the factors very well that are

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1 to be considered by the Commission as it draws its maps;
2 and, certainly, are able to advise you on that.
3 And given our experience litigating constitutional
4 cases before the State Supreme Court, given the fact that,
5 you know, three of the five members of -- of our team have
6 been former clerks at the federal or State Supreme Court
7 level, three of the five are former federal prosecutors, we
8 are able to, you know, advocate for you very strongly in the
9 event that we need to in the Arizona and federal court
10 system.
11 Knowing I'm -- I'm kind of running out of time
12 here, the next slide has to do more with our experience on
13 district boundaries, you know, the conduct of elections by
14 counties. You know, certainly in a lot of experience
15 representing candidates on -- in issues, we have to deal
16 with residency concerns, boundaries, deadlines for filing
17 offices. In many of the litigation, one example, here's the
18 Trump v. Hobbs case, we had inti- -- you know, had to
19 develop and even defend county election procedures, which is
20 what we did in the Trump v. Hobbs case, so again that's
21 something that we have a great deal of experience in.
22 And then in the next bullet point here, I -- I just
23 set forth a couple of other sort of examples where we've had
24 to deal with constitutional federal statutory issues and
25 specific litigation matters.

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1 The next slide after that is a discussion of our
2 experience in open meeting laws and public records laws and
3 other sort of areas of the law that may affect the
4 procedures and functioning of the Commission. Certainly,
5 that is something we have a lot of experience in. Dennis
6 Burke who, of course, was the Chief Deputy at one point of
7 the AG's Office, is our chief resident expert on open
8 meeting laws; but, certainly, in private practice we have
9 dealt with that as well as public records lawsuits,
10 including several public records lawsuits even last year
11 related to voting data.
12 So, again, it is something we have a great deal of
13 experience in.
14 The last slide which I'll go through very quickly,
15 has to do with our approach to work. And I think this will
16 probably come up in our Q and A, but obvious our number one
17 goal here is to provide legal advice to you guys that
18 ensures you fulfill your duty of drawing lines that
19 withstand legal scrutiny. That's legal scrutiny under both
20 federal and state law, so everything we do is -- is focused
21 on that.
22 So, obviously, helping you navigate the complex
23 election laws in Arizona, including the redistricting
24 procedures and goals in the Arizona Constitution; keeping
25 you up to date on the current state of redistricting law,

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1 because of Shelby County, because of Common Cause, because
2 of some proposals that are floating around in D.C., it is --
3 is an area that has changed a lot since 2010 and is
4 continuing to change; and so, obviously, making sure that
5 you're apprised of all that is necessary.
6 And then of course advising you on the procedures
7 and steps to actually put together the maps, a lot of those
8 procedures are set forth in the Arizona Constitution but, of
9 course, we don't have preclearance anymore so some of the
10 federal procedures are no longer applicable to us.
11 The very last thing in 10 seconds I'll say, I know
12 wanted us to address and we're happy to go in Q and A,
13 working with other law firms. I can certainly say that we
14 have a great deal of respect for each of the other three law
15 firms that you are interviewing today. We have either been
16 co-counsel or opposing them in matters before, and each are
17 -- are tremendous lawyers and we're happy to work with any
18 of them. We can, of course, talk about preferences if you
19 like, but -- but we do have a long history of working with
20 co-counsel in a very successful way on behalf of clients.
21 So -- so with that, Madam Chairwoman, I turn it
22 over to you and the Commission for any questions.
23 CHAIRPERSON NEUBERG: Thank you so much for that
24 comprehensive presentation.
25 With that, I will turn it over to

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1 Vice Chair Watchman for the first question.
2 VICE CHAIR WATCHMAN: Thank you, Madam Chair.
3 Good morning Mr. Herrera. Good to meet you.
4 MR. HERRERA: Good morning.
5 VICE CHAIR WATCHMAN: My question has to do with
6 what's your opinion of the six criteria for creating
7 districts as established in the Arizona Constitution?
8 MR. HERRERA: So there are six criteria, as you
9 mentioned, the first criteria, of course, has to do with
10 compliance of federal law, right? Ensuring that your --
11 your Commission -- your maps comply with federal law.
12 I would say in some ways that's the most important
13 one, because if you are going to be challenged, if someone
14 were to object to the maps that you draw, it is most likely
15 that the vehicle to be used for that challenge is going to
16 be under federal law, whether that be Section 2 of the VRA
17 in some sort of vote dilution claim; or whether that be
18 constitutional claim under the 14th or 15th Amendment, but
19 again, that'd be vote dilution or racial gerrymandering; or,
20 it's a one-person, one-vote claim like the previous
21 iteration of the Commission faced.
22 So I would say that's very important because if
23 you're going to get sued, that's probably how you're going
24 to get sued. And so keeping -- you know, making sure that
25 you're complying with that first goal is very important.

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1 The -- the next set of factors that are set forth
2 in the Arizona Constitution are more traditional factors, I
3 think it's what scholars call the formal factors, the formal
4 criteria. Of course you have the one-person, one-vote
5 criteria of equal population, that is an important federal
6 principle but, of course, it's set forth in the Arizona
7 Constitution, that's very important. And the Commission got
8 sued on a one-person, one-vote claim last time around, and
9 so obviously that's something that -- it's something you
10 have to worry about.
11 And then after that you get into, again, the more
12 traditional factors like, you know, whether the districts
13 compact, you know communities of common interest and -- and
14 -- and all of that.
15 The factor that I -- the last factor I think is
16 probably the one that is most interesting in the sense that
17 it is the most unusual, there's not a lot of states that say
18 competitiveness is a stated factor for -- for mapmakers to
19 consider. Obviously, we're unique in that circumstance.
20 But -- but it is there, and it is important, of course.
21 I -- the other thing I sort of say in general about
22 the factors is that, you know, the voters of Arizona who
23 obviously passed an initiative to create this very
24 Commission, provided a lot of discretion to the
25 Commissioners to decide how to balance those factors. It

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1 didn't say that one factor is more important than another.
2 You can make an argument maybe that competitiveness is
3 slightly different or to be treated slightly different than
4 the other five; but either way, the Commission is given a
5 lot of discretion in deciding how to balance them. And
6 sometimes, as we've seen in the case law, there are
7 instances where the factors may conflict with each other.
8 You know, what happens, for example, in a situation where
9 you have a community of common interest that's divided by a
10 river or a mountain or something like that, I mean, how do
11 you -- how do you sort of deal with that.
12 And obviously our job is to advise you using the
13 existing case law on best way to manage and balance that,
14 but ultimately it's up to the Commission to weigh all the
15 factors and use its discretion and make a decision on that.
16 VICE CHAIR WATCHMAN: Thank you.
17 And maybe if you can add to that, what -- what's
18 your thought on the Indian Voters Right Act because, you
19 know, about a quarter of the state is reservation land, and
20 so, you know, you have an interesting situation. So I'm
21 curious about your thoughts on the tribal and the Indian
22 perspective.
23 MR. HERRERA: Absolutely. Well, that gets to the
24 communities of interest factors which I, you know, think is
25 very important to consider. You know, we -- we have seen

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1 both with the Indian community and with the Latino community
2 in Arizona, that there are common communities of interest
3 that are important, they share social and economic
4 interests. So ensuring that those interests and their
5 voices heard through the maps so they have the appropriate
6 representation in government is very important.
7 So, you know, Arizona is unique in comparison to a
8 lot of states because we have the amount of -- of tribal
9 reservation, I think more than any other state, right? And
10 in addition to having a heavy Latino population. So it
11 presents unique challenges and unique opportunities but it
12 is very, very important.
13 VICE CHAIR WATCHMAN: Thank you.
14 CHAIRPERSON NEUBERG: Commissioner Mehl.
15 COMMISSIONER MEHL: Yes, thank you for being here.
16 Appreciate your presentation.
17 We are not yet decided as to whether we're hiring
18 one firm or two firms, and was curious as to your opinion as
19 to what we should do there; and how you -- how you would
20 work and how would you see dividing up the work and being
21 both efficient and -- and -- and properly representing us if
22 we did have two firms?
23 Or do you think your firm is capable of being the
24 one firm?
25 MR. HERRERA: Thank you, Commissioner Mehl, for

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1 that question.
2 I guess I would start with an observation that you
3 already know, which is the last two iterations of the
4 Commission obviously had a D and an R firm, so to the extent
5 that that precedent matters, you know, it's worth
6 mentioning, of course.
7 My personal opinion is that having a D -- a
8 Republican firm and a Democratic firm is the best course of
9 action for the Commission; and I say that for a couple of
10 reasons. In addition to the precedent, you know, obviously
11 this a political process, partisanship is embedded in
12 this -- in this very Commission, right?
13 I mean, the Com- -- the Constitution provision, you
14 know, ensure that there are two Democratic commissioners,
15 two Republican commissioners, and an independent
16 commissioner. So -- so already in this scheme you already
17 have partisanship introduced, and so I think in recognition
18 of that, it would be sort of the best thing that the
19 Commission can do, to have a D and an R counsel.
20 And the reason for that, I think, is really
21 twofold. One is to ensure that the partisan Commissioners,
22 you know, can trust and feel confident that they have
23 counsel that represents or is sort of part of their -- their
24 partisan, you know, side of the divide, if you will. So I
25 think that provides a level of trust that the Commissioners

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1 probably benefit from.
2 In addition, there's an element of, you know,
3 public perception as well. We talk about a lot about the
4 types of objections that could be brought against the
5 Commission from a legal pers- -- the maps of the Commission
6 from a legal perspective, a lot of those kinds of claims are
7 based on allegations that the procedures that the Commission
8 undertook somehow was faulty. And so part of that, of
9 course, is creating an element of public trust of the
10 Commission, and I think by having a Republican counsel and a
11 Democratic counsel, you help create that trust publicly as
12 well.
13 So, again, the partisans on -- in the public,
14 partisans on each side have confidence that there's a D and
15 an R counsel, you know, in the room advising you.
16 The last thing I'd sort of say about that and then
17 I'll turn into the -- to the question about how we would
18 divide the work. But the last thing I say about it is I
19 think implicit to my answer I think is an understanding that
20 there are no firms, there are no shops in my personal
21 opinions, no bipartisan firms that exist in the state, that
22 truly are bipartisan. I do not believe that.
23 I think we -- the election law bar and the state is
24 a pretty small bar and it is -- and it gets along very well,
25 you know, we're all friends, but we all are either Democrat

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1 or Republican law firms.
2 And, in fact, to give you a further example of
3 this, one of the -- which is Statecraft, one of the other
4 law firms that you are interviewing today, I actually was a
5 former partner with, right? So I actually tried the
6 bipartisan method with Statecraft and it didn't work, and I
7 can explain why it doesn't work. And I'm still -- love
8 those guys. I think they're -- they're still friends, but
9 it doesn't work in practice.
10 So I'm not sure anyone could even do that. So to
11 answer your more direct question, I'm -- I don't think we
12 would be a firm that could be -- to do both sides, right?
13 We're a Democratic-leaning firm.
14 The last thing I'd mention in my long-winded answer
15 here is about dividing the work. I think, you know, that
16 ultimately sometimes that depends on the strengths that each
17 firm brings, right? And so it's kind of hard to say. I
18 think we could provide every aspect of the legal service,
19 but obviously we could work and have worked very well with
20 co-counsel in dividing the work in a way that's efficient,
21 identifying strengths, identifying what we can offer and be
22 good at, and what the other firm may be able to offer and be
23 good at.
24 In trying to develop consensus when we can in
25 advising you on legal issues. Obviously, that's not always

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1 going to be the case, I don't think, but, you know, we'll
2 endeavor to do that. And so that's -- again, goes back with
3 the basic relationship and respect you have with the other
4 counsel to work with them in -- in an efficient way.
5 COMMISSIONER MEHL: Thank you.
6 CHAIRPERSON NEUBERG: Okay. Commissioner Lerner.
7 COMMISSIONER LERNER: Okay. Thank you for being
8 here.
9 You've talked, you have a lot of experience in
10 election law that you've discussed, but redistricting is
11 different than election law. So can you speak to a little
12 bit more about your experience with redistricting and what
13 might happen if -- as in the last cases, twice -- there's
14 been litigation about redistricting. Since your experience
15 is more election law, can you kind of talk a little bit
16 about that, the differences between that and then how that
17 might impact your ability to defend the Commission.
18 MR. HERRERA: Sure. My screen just froze so I hope
19 you can hear me okay. Some technical problems here.
20 So to answer that, I guess I'd start with an
21 observation which is that, you know, having direct
22 experience in redistricting is -- is sort of hard to come by
23 in some sense, right? Because it only comes around every
24 ten years, so there's sort of that reality.
25 But -- but that being said, the principles that you

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1 would be concerned with in redistricting, are principles and
2 legal concepts that we advise clients in already. So if
3 we're talking about things like equal protection claims
4 against the maps that you have drawn, well equal protection
5 is something we have a lot of experience in in general when
6 we're challenging or considering whether an election
7 procedure --it may not be redistricting, but it's another
8 type of election procedure -- actually violates equal
9 protection or not.
10 And so I would say that a lot of the stuff that you
11 would deal with under the 14th and 15th Amendment or the VRA
12 itself, we have dealt with in other context. It may not
13 have been, again, redistricting, but it would be something
14 related to election procedure and a lot of the tests and
15 analysis are very similar.
16 So a good example of this is the Brnovich v. DNC
17 case that is pending before the Supreme Court, which is not
18 a redistricting case, but it's still relevant, I think, to
19 the Redistricting Commission, because ultimately that's what
20 that is dealing with is the standard under Section 2 of the
21 VRA.
22 And since we've had the Shelby County case and we
23 really don't have an operable Section 5, it is Section 2
24 that will probably be the vehicle if you were ever to be
25 sued on a VRA claim; and so that very case in which we

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1 participated in and filed a pretty in depth amicus brief
2 about is important. That is a vote denial case, not a vote
3 dilution case. Again, vote dilution cases will happen more
4 in a redistricting context, but the standard that the
5 Supreme Court is going to come up with in that case is going
6 to be very relevant, I think, going forward for the
7 Redistricting Commission because it may change things.
8 The other thing I'd sort of say to your question,
9 Commissioner Lerner, is that a lot has changed since 2010,
10 as far as what is relevant to redistricting. Because of
11 Shelby County, because of -- because of Common Cause, you
12 know, we don't have some of the same procedures and
13 standards that we had in 2010, so I'm not sure anyone really
14 has direct experience in this new sort of legal environment
15 as a result of the cases we've seen from the Supreme Court
16 in the last few years.
17 And the last piece to that, of course, is that we
18 have a congress in D.C. that is considering changes in a
19 variety of bills that would affect redistricting as well.
20 And if any of those were to pass, we're talking about again
21 new concepts and standards.
22 So I think what we can say is that we have a deep
23 experience and knowledge in election law, and a lot of that
24 is applicable to the redistricting context; and, certainly,
25 we have been advising clients on redistricting issues over

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1 the past several years because, of course, political
2 organizations and candidates are interested in -- in what
3 the process is like, how the lines would be drawn,
4 et cetera. So it is something we have -- you know, really
5 have worked at towards, you know, helping clients with.
6 Maybe not necessarily again in litigation because we haven't
7 had redistricting litigation in several years, but it is
8 something we have a deep and intimate knowledge of.
9 MR. ARELLANO: If I can add just -- just one note
10 to that. This is Daniel Arellano.
11 Our -- every member of our team is an experienced
12 litigator. Every member of our team has either served as a
13 former prosecutor, served as a former judicial law clerk to
14 State Supreme Court or federal judge; we're very comfortable
15 in the courtroom, we're very comfortable in motion and
16 deposition practice, we're very comfortable in appeal. We
17 appear before state and federal courts fairly regularly, not
18 only in political cases but in all types of civil and
19 criminal matters as well.
20 And so in addition to our political law expertise,
21 you know, we're also each of us fairly experienced
22 litigators who are very comfortable litigating on behalf of
23 the Commission as well.
24 COMMISSIONER LERNER: Thank you.
25 CHAIRPERSON NEUBERG: Commissioner York.

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1 COMMISSIONER YORK: Good morning, gentlemen.
2 We've covered a lot of ground today, and in the
3 Voters Rights Act we've heard a lot of about Section 2 and
4 Section 5 and Common Cause and changes since 2010, and I
5 guess I'm a little -- maybe I'm a naive or maybe the public
6 of Arizona needs a little -- also needs a little help with
7 this. Can you explain a little bit about what some of those
8 changes are in Section 5 and Section 10 -- I mean, Section 5
9 and Section 2, and also as it relates to protecting or
10 involving minority communities.
11 MR. HERRERA: Sure. Absolutely, I'm happy to.
12 Thank you for the question, Commissioner York.
13 So when I talk about Section 5 and the changes to
14 Section 5, what we're primarily talking about is the Shelby
15 County case. And what that case is and to back up a little
16 bit what Section 5 --
17 COMMISSIONER YORK: Shelby County is in Georgia,
18 correct? Where is Shelby County?
19 MR. HERRERA: I belive so, actually. I'll defer to
20 some of my more geographically experts on the call, but I
21 think that's right.
22 But -- but what that dealt with and to back up a
23 little bit is, you know, we had a preclearance process. So
24 if you were, you know, just like the last two iterations of
25 the Commission drawing maps, you would have to get those

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1 maps precleared by the Department of Justice, and that would
2 be pursuant to Section 5.
3 What Shelby County did is actually affect
4 Section 4, and basically Section 4 had a coverage formula,
5 it basically had a set of criteria that set forth which
6 jurisdictions nationwide, which states would actually be
7 subject to the preclearance process in Section 5. So
8 Section 4 told you who had to go through preclearance and
9 then Section 5 actually made the preclearance required.
10 What Shelby County did is essentially invalidate
11 that criteria under Section 4 such that no states are now
12 required to go through preclearance. Arizona, of course, as
13 you probably know was subject to preclearance, so in other
14 words it was subject to the criteria that used to be in
15 Section 4.
16 So Shelby County happened and so now we don't have
17 any -- you know, we don't have any preclearance process
18 anymore, so you guys would not have to send your maps to
19 D.C. to get the Department of Justice to sign off before
20 they're finalized.
21 So that is a different -- that obviously introduces
22 a different scenario because what would often happen before
23 in other redistricting con- -- context is that there would
24 be a lot of back and forth between the mapmakers and DOJ,
25 right? You would send a map; they may not clear it. You

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1 have to make changes, et cetera. We don't have that process
2 anymore.
3 So Shelby County was a -- a pretty controversial
4 case. You know, there are obviously people on both sides of
5 that that have different arguments on whether that was the
6 right decision or not, but that is what occurred.
7 So what is left now is Section 2 cases which allow
8 private litigants to sue, you know, basically over any
9 voting procedure that discriminates over a color or a race.
10 And so, again, just to conceptualize this a little bit more,
11 VRA was designed where in kind of a sword-and-shield
12 context.
13 So the shield would be Section 5, right? It would
14 require preclearance; we don't have that anymore. The sword
15 would be Section 2 because it would allow people to sue and
16 make allegations of a violation. So we still have Section 2
17 and so people could still bring a lawsuit based on vote
18 dilution or racial gerrymandering under Section 2.
19 But as I said -- mentioned earlier in that Brnovich
20 Supreme Court which is currently pending, we may see some --
21 some indication there on what this new conc- -- makeup of
22 the Supreme Court may say about what the standard is under
23 Section 2, because there is a standard for basically what
24 plaintiffs have to establish in order to establish that
25 there's been a violation.

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1 The different sides, you know, the Brnovich case is
2 kind of broken up in a partisan way, so the Democrats have a
3 certain concept of what that test should be, the Republicans
4 have a different concept of what that test should be. So
5 we'll see what this new Supreme Court says it will be.
6 The other last thing I'd mention in this context is
7 not a VRA development, but I mentioned the Common Cause
8 case, that is a big deal as well, because that is fed- --
9 you know, that is basically -- what that case says is that
10 partisan gerrymandering claims against redistricting
11 commissions or against maps are no longer judicable. So
12 basically federal courts can't hear those kinds of cases
13 anymore. The Supreme Court said that partisan
14 gerrymandering is essentially a political question, so that
15 takes away a different tool that some litigants would use
16 against the Commission's maps, because now you can't bring a
17 partisan gerrymandering case in federal court.
18 And so we'll see the effects of that case since
19 that just happened after the last redistricting, but we'll
20 see what the effects are in this redistricting.
21 CHAIRPERSON NEUBERG: Okay. Thank you.
22 Mr. Herrera, thank you so much for joining us.
23 In anticipating possible conflicts of interest that
24 may arise, you mention that you do represent political
25 candidates from time to time. Where we will be in the

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1 business of drawing, you know, boundaries, how would you
2 navigate those potential conflicts where you might represent
3 a client for whom we would have some influence over?
4 MR. HERRERA: Yeah. Thank you, Madam Chairwoman.
5 So, you know, obviously up to this point a lot of
6 our experience has been representing candidates and -- and
7 political organizations, that is, you know, sort of the --
8 the bread and butter of election law.
9 Redistricting obviously presents a kind of a
10 different question which you identify, which is are there
11 any conflicts of interest with representing candidates that
12 are running within the lines that the district -- that the
13 Commission is drawing.
14 And so what I would say is, you know, up to this
15 point we have had no conflicts of interests with the
16 Commission, we currently have no conflicts of interest with
17 the Commission; but if a conflict of interest were to arise
18 where we were, you know, basically representing a candidate
19 that did have a conflict with the Commission, our view is
20 that we would withdraw from representation of the candidate.
21 So, ultimately, it is the Commission that is our priority if
22 we were to be hired from the Commission, and so we would
23 never be in that scenario because we would, you know,
24 obviously, you know, get away from that and avoid that
25 conflict of interest.

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1 I'd also say in general, in my 12-year career as a
2 lawyer I've worked at several law firms, and I think Ballard
3 is -- is particularly a stickler for conflicts. So I
4 imagine we would -- we could take care of that before it
5 happened if we ever get into that scenario.
6 CHAIRPERSON NEUBERG: Thank you for that
7 clarification.
8 With that, we have about 10 minutes of -- of
9 potential time, I'd like to open it up for a second round of
10 questioning from my fellow Commissioners.
11 VICE CHAIR WATCHMAN: Madam Chair, I have a
12 question.
13 Mr. Herrera, in terms of public meetings and who
14 will be assigned to attend, I know you've mentioned the
15 team, but we're also we're going to have -- we're
16 contemplating public hearings. And so kind of give us an
17 idea of who is going to be there on the job to represent us.
18 MR. HERRERA: Thank you, Commissioner Watchman, for
19 the question.
20 At the -- at the very least I will be at every
21 meeting, there is -- that is our commitment. I think in
22 addition to myself we will probably have Mr. Arellano at
23 every meeting. In -- in addition to that, when necessary,
24 obviously we would draw upon the extensive expertise of
25 Mr. Burke. Obviously, we all know of his extensive

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1 expertise in the AG's Office and as the United States
2 Attorney here; and then Ms. Andrews who is also on the call
3 who will be involved, as well as a fifth member of the team,
4 Mr. Kokanovich.
5 But, primarily, I can guarantee that myself and
6 Mr. Arellano will be at every meeting that you guys have,
7 even when, of course, after the pandemic recedes and we go
8 back to in-person meetings, whenever that is the choice of
9 the Commission, we will be there for those.
10 VICE CHAIR WATCHMAN: Thank you.
11 COMMISSIONER LERNER: Mr. --
12 CHAIRPERSON NEUBERG: Go ahead,
13 Commissioner Lerner. Please.
14 COMMISSIONER LERNER: I'm sorry.
15 So you -- you've mentioned some of the areas, you
16 know, Section 2, Section 5, what's happened with that. So
17 let's say we do our work, we're working, I guess I'm kind of
18 curious about how you would be advising us in terms of the
19 mapping requirements, you mentioned that early on, but then
20 if we do what we think is our due diligence in terms of the
21 best work we can do, on what basis do you think we might be
22 challenged, have a legal challenge?
23 Are you prepared to kind of think through, like,
24 what might cause somebody to file a lawsuit if we're doing
25 our due diligence?

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1 MR. HERRERA: Thank you, Commissioner Lerner, for
2 that question.
3 You know, I guess I have a couple of observations
4 there. The first is some, me being honest and forthright
5 with you, which is to say that we could, you know, give you
6 the best advice and have the -- the fairest and best process
7 and follow the goals set forth in the Constitution and
8 federal law as -- as well as anyone could, and still
9 obviously face a legal challenge, right? Just given the
10 nature of how this works. Obviously, the last Commission
11 faced a number of legal challenges and, you know, you'll be
12 surprised with how creative potential plaintiffs can get as
13 far as bringing a challenge.
14 And a good example of that, for, you know, that I
15 kind of mentioned earlier, is the one-person, one-vote
16 challenge that the Commission faced last time, where, you
17 know, basically we have this principle of one-person,
18 one-vote, which essentially says that the legislative
19 districts and the congressional districts need to be equal
20 in population, there's a line of cases that say that's
21 essentially there is a safe harbor where there is a 10
22 percent deviation between the -- in population between the
23 districts, that basically if the deviation is less than 10
24 percent then you're in a good position.
25 Well, the Commission last time had a 4 percent

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1 deviation and still got sued over -- over one-person,
2 one-vote. So the point of that is that, you know, it's
3 always possible you'll be get -- you'll get sued no matter
4 what you do. But what is ultimately our responsibility is
5 to provide you with the advice and the tools, and to think
6 through every potential scenario so that you're prepared to
7 do that; and that, you know, of course means having a deep
8 knowledge of the existing law, which we do have, thinking
9 about the different claims that can still be brought, I've
10 mentioned some of them, right? Which is the Section 2
11 claims. Again, claims under the 14th Amendment, one-person,
12 one-vote or equal protection are still possible, claims
13 under the 15th Amendment are still possible.
14 So there are different ways, whether it be vote
15 dilution or racial gerrymandering or any other kind of
16 racial discrimination claims that can be brought, and, you
17 know, claims related to your failure to follow the goals set
18 forth in the Arizona Constitution is another avenue.
19 So all of these things are things that we have
20 considered and will continue to consider for you and be
21 ready to advise you on. I think, given the fact that there
22 is a delay in the census data, I think that provides some
23 opportunity here, a bit longer runway for us to advise the
24 Commission and really bring the Commission up to speed in
25 the various legal issues that may present itself given that

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1 we have a little bit more time to do that.
2 I know the Commissioners have already received an
3 overview from the State's Attorney General's Office about
4 that prior litigation that the 2010 Commission faced; but,
5 certainly, we're happy to do that in a more thorough manner,
6 or just go through all of the developments and potential
7 avenues of claims in order to prepare you guys for the best
8 possible process in the mapmaking and, of course, try to
9 prevent, to the extent that we can, any potential objections
10 or lawsuits.
11 COMMISSIONER LERNER: Thank you.
12 CHAIRPERSON NEUBERG: If there are no other
13 questions, I'll have one kind of succinct question, and that
14 is your preferred method of communication. This work can
15 get very hot very timely, you never know when it's going to
16 spike. How does your firm, you know, conduct it's
17 communication?
18 MR. HERRERA: Well, obviously, COVID has kind of
19 presented a bit of a challenge for everybody. I'm in my
20 office today down at CityScape probably for maybe the fourth
21 time in the last year because, you know, we've just gotten
22 so used to working from home. But -- but I think what COVID
23 has showed us is being accessible through a variety of
24 methods whether that be things like this, you know, Zoom,
25 you know, being on videoconference, for example, is

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1 something that everyone can do that we can readily do.
2 But when it comes to immediate responses, you know,
3 telephone and e-mail are the best way to do it because we're
4 constantly monitoring that, right? I mean, I'm maybe one of
5 the few people that still talks on the phone but, you know,
6 certainly, you know, I'm always available via talk --
7 talking on the phone or via e-mail.
8 And I think that gets back to maybe a point I made
9 early on, which is that the nature of election law is
10 different in the sense than other types of, like, say,
11 commercial litigation or something like that because clients
12 do want answers right away, and they want you to be
13 accessible at all times, and so we always do that. I think
14 that's actually one of the strengths of our firm, and
15 certainly if you were to -- you know, to hire us, we would
16 be prepared to be available at any moment or at a moment's
17 notice.
18 CHAIRPERSON NEUBERG: Thank you.
19 With that, we just -- a couple minutes if anybody
20 has any follow-up questions or if you would like to conclude
21 with any remarks.
22 MR. HERRERA: Well, I'll see if there's any
23 questions, sorry.
24 CHAIRPERSON NEUBERG: Please.
25 MR. HERRERA: Okay. Well, again, I just want to

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1 thank the Commissioners for -- for having us here today.
2 You know, we think, obviously, we bring a lot of strength to
3 the table when it comes to the nature of our practice and
4 our firm and our experience, and we very much would be, you
5 know, honored and privileged to -- to represent you in -- in
6 this very important process.
7 I guess I'll sort of end with something I think is
8 important, which is that, you know, we all -- and I speak
9 for the four members of the team that are on the call -- I
10 think got into election law because we believe that, you
11 know, making sure that our democracy functions in the right
12 way is most important, right? And -- and I think one of the
13 reasons why I think we want to represent this Commission, is
14 ensuring and helping the Commission to come up with maps
15 that are legally compliant because that is again the bedrock
16 of our democracy in our state.
17 And so we would be very honored and privileged to
18 be involved in this matter because it really is why, I
19 think, we got into this -- this business in the first place.
20 So, with that, I thank you, Madam Chairwoman, and
21 the rest of the Commissioners for having us today.
22 CHAIRPERSON NEUBERG: Thank you for your time.
23 Thank you for, you know, the entire team joining us and have
24 a good day.
25 MR. HERRERA: Thank you.

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1 CHAIRPERSON NEUBERG: Bye-bye.
2 (Whereupon the representatives from Ballard Spahr
3 exit the meeting.)
4 CHAIRPERSON NEUBERG: For those of us remaining on
5 the call, what I'm going to suggest is we take advantage of
6 the little bit of the time we have before our third firm.
7 We will be hearing from Snell Wilmer as 11:15, maybe we can
8 take the next few minutes to continue our conversation on
9 Agenda Item No. VI, and then take another very brief break
10 before our third firm.
11 And then as a reminder, after that presentation at
12 noon we will take a one-hour recess.
13 So returning to Agenda Item No. VI, discussion and
14 possible action on Executive Director and other potential
15 administrative support positions and duties of all IRC staff
16 positions.
17 We are in the midst of thinking through the
18 oversight for Brian, the level of involvement we each want
19 to take in reviewing applications, and whether or not we
20 want to keep intact the motion to create a subcommittee
21 whether or not that convenes at some point.
22 And I know, I apologize, it's disjointed and we're
23 asking everybody to again kind of now refocus on a different
24 topic. But along those lines, you know, thoughts?
25 I mean, I don't know if we need to actually rescind

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1 the motion if we -- you know, if the subcommittee would like
2 to convene at some point, and it feels that it's efficient
3 and -- and meaningful.
4 COMMISSIONER LERNER: Chair Neuberg, I -- I would
5 just recommend that we hold off on rescinding the motion at
6 this time 'til we hear from Brian next week.
7 CHAIRPERSON NEUBERG: Okay.
8 COMMISSIONER LERNER: Get us back some information
9 on what's happened in the past, because -- on how these
10 hiring processes occurred; and in the meantime we could each
11 still review, though, just to keep things moving, at the
12 very least we potentially we each could review -- whoever
13 wants to -- review the applications for the executive
14 assistant position and provide Brian with our top
15 three/five/whatever it is that we want to do, so that if we
16 decide on Tuesday to rescind, you know, we kind of know
17 where things are but try not to hold things up too much.
18 So I guess I'm just suggesting we just hold off on
19 that one piece but we can move forward with a hybrid model
20 in the interm and see how things go from there.
21 COMMISSIONER MEHL: This is Commissioner Mehl.
22 I respect what Commissioner Lerner is saying, and I
23 withdraw the motion that I had made.
24 CHAIRPERSON NEUBERG: Would it help to hear from
25 Brian right now?

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1 Brian, I'm putting you on the spot. You know,
2 where -- I know you've just received the applications for
3 the executive administrative position. What -- what would
4 be helpful to you? And -- and we don't want to slow down
5 the process, so between now and Tuesday, what would you
6 ideally like to accomplish with your hires?
7 And the -- the public information office position
8 has been posted and will not close, I believe, Yasmin, until
9 the 15th.
10 MS. RAMOS: That is correct, Madam Chair.
11 CHAIRPERSON NEUBERG: Okay.
12 DIRECTOR SCHMITT: So I would appreciate any input
13 that the Commissioners had on the applications we received.
14 I went through them last night, and there were some ones
15 that stood out. I think between now and next week I'll
16 definitely see what the Commission did last time, but I also
17 think it might be worth it to call and see if they're still
18 even interested. It's been a little bit of time.
19 So I -- I want the Commission to know the options
20 before we discuss if they're still interested.
21 COMMISSIONER LERNER: So -- so this is
22 Commissioner Lerner. Brian?
23 DIRECTOR SCHMITT: Sure.
24 COMMISSIONER LERNER: Can I make a suggestion?
25 It's just a suggestion; I appreciate your thoughts on it.

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1 What if you had anybody who was interested in
2 reviewing -- any of the Commissioners who are interested in
3 looking at the applicants provide you with their input by
4 Friday at the latest, and that way you could look at your
5 top candidates, the ones that you selected, the ones the
6 Commissioners might be rec- -- might be considering, and
7 narrow down to those that, you know, potentially you could
8 call to see if they were still interested, taking those into
9 consideration, kind of looking and seeing hopefully those
10 blend.
11 DIRECTOR SCHMITT: Yeah, absolutely. That would be
12 great.
13 COMMISSIONER LERNER: Would something like a Friday
14 deadline work for you?
15 DIRECTOR SCHMITT: Yeah, Friday works.
16 COMMISSIONER LERNER: Chair Neuberg, what do you
17 think of that suggestion?
18 CHAIRPERSON NEUBERG: You know what, I'm trying to
19 process the time of this. You know, I think Brian makes an
20 extremely important point which is, you know, when we posted
21 this position it was many weeks ago --
22 COMMISSIONER LERNER: Right.
23 CHAIRPERSON NEUBERG: -- and I hate to invest a lot
24 of time in reviewing applications or people that are no
25 longer viable and -- and I don't want to slow process down

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1 between now and Friday. So -- so provided that it just
2 doesn't slow the process down of identifying the top
3 candidates, 'cause we're -- we're going to want an executive
4 assistant as soon as possible.
5 COMMISSIONER LERNER: Well, absolutely. I guess,
6 Brian, were you actually going to call all of the candidates
7 or just your top group? Because I was thinking you were
8 going to narrow it down a bit and that's why I was thinking
9 if I -- if things were provided to you by Friday, could just
10 focus on the ones that were the top to call to see if they
11 were still interested.
12 DIRECTOR SCHMITT: Sure, yeah.
13 COMMISSIONER LERNER: What -- what was your plan?
14 DIRECTOR SCHMITT: My only concern is the amount of
15 time we'd had the applications, and then if we -- if it's
16 another week until we make a decision, and then it's two
17 more weeks, I just think that's a lot of time. That's my
18 main concern.
19 COMMISSIONER LERNER: So I guess what I was
20 wondering is were you planning on calling all of the
21 candidates to see if they were still available or just a
22 select group? That's what I was...
23 DIRECTOR SCHMITT: Initially I thought I would call
24 through the list; it's only 35.
25 COMMISSIONER LERNER: That's a lot of calls.

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1 CHAIRPERSON NEUBERG: Well...
2 COMMISSIONER LERNER: So that's why I feel --
3 that's why I was trying to think about how to narrow it down
4 for you a little bit --
5 DIRECTOR SCHMITT: Sure.
6 COMMISSIONER LERNER: -- easier on you in terms of
7 having to call all of them.
8 DIRECTOR SCHMITT: Yeah.
9 CHAIRPERSON NEUBERG: Would it be reasonable, I
10 mean, you know, I've already admitted to all of you I'm
11 impatient. Would it be reasonable to ask for feedback to
12 Brian by close of day Thursday so he could take advantage of
13 the workday on Friday to work with the phones and connect
14 with -- with -- with possible candidates?
15 COMMISSIONER LERNER: I -- I could do that.
16 DIRECTOR SCHMITT: Okay.
17 COMMISSIONER LERNER: I don't know if anybody else
18 is going to review besides me, so.
19 CHAIRPERSON NEUBERG: Me.
20 VICE CHAIR WATCHMAN: Madam Chair, I looked at
21 them, so. I think we send to our Director -- Executive
22 Director our thoughts and then he can have a list, top five
23 of whatever, and see if those folks are interested, and then
24 we go from there.
25 I -- I for one think that the Commission ought to

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1 approve the -- the final candidate and then we go from
2 there; and so -- and then we also start looking at other
3 positions, but I also want to be a part of that, too, as a
4 Commission.
5 CHAIRPERSON NEUBERG: Okay. So it sounds like --
6 and I don't think we need a motion 'cause -- but Pam can --
7 can, you know, clarify. It sounds like we're asking the
8 Commissioners if you would like to share feedback about
9 candidates that you find particularly attractive or anybody
10 that you have concerns about with the executive assistant
11 position, please give Brian feedback by close of day
12 Thursday, so Friday he can begin to do his own, you know,
13 research on the viable candidates and move forward; and he
14 will not do any hires before reporting back to us each
15 Tuesday with a director's report where we can approve any
16 fine -- final hires.
17 MS. PEISER: I believe the best thing to do -- I'm
18 sorry.
19 CHAIRPERSON NEUBERG: Please.
20 MS. PEISER: The best thing to do would be to have
21 a motion --- -
22 CHAIRPERSON NEUBERG: Okay.
23 MS. PEISER: -- regarding Brian providing the
24 director's report, and then if you have specific tasks to go
25 ahead and -- and line them up that way as opposed to being

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1 left more open and broad.
2 As you likely all are aware, the Constitution does
3 not provide for specific delegations, so ultimately
4 everything -- all legal decisions are going to come back to
5 the Commission.
6 CHAIRPERSON NEUBERG: All right.
7 Okay. So -- so with that, can I entertain a motion
8 where we recommend that Brian, our Executive Director,
9 provides a weekly report on Tuesdays at our public meetings
10 regarding his intentions with hire, we will provide
11 oversight and will approve subsequent hiring decisions?
12 COMMISSIONER LERNER: I'll so move. This is
13 Commissioner Lerner.
14 CHAIRPERSON NEUBERG: Second?
15 COMMISSIONER YORK: Second. Commissioner York.
16 CHAIRPERSON NEUBERG: Any further discussion?
17 Okay. With that, we'll do a vote on Brian's
18 director report every Tuesday to keep the Commission
19 involved in a supervisory role with hiring.
20 Vice Chair Watchman, aye or nay?
21 VICE CHAIR WATCHMAN: Aye.
22 CHAIRPERSON NEUBERG: Commissioner Mehl.
23 COMMISSIONER MEHL: Aye.
24 CHAIRPERSON NEUBERG: Commissioner Lerner.
25 COMMISSIONER LERNER: Aye.

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1 CHAIRPERSON NEUBERG: Commissioner York.
2 COMMISSIONER YORK: Aye.
3 CHAIRPERSON NEUBERG: Commissioner Neuberg is an
4 aye.
5 With that 5-0, Brian, we look forward to next week
6 hearing a report and an update; the Commissioners have
7 48 hours to share with you guidance, and from there please
8 move forward with your own investigation and doing due
9 diligence.
10 DIRECTOR SCHMITT: All right. Great. Thank you.
11 COMMISSIONER LERNER: Chair -- Chair Neuberg?
12 CHAIRPERSON NEUBERG: Yes, please.
13 COMMISSIONER LERNER: So the work that Brian will
14 do will also include his report on previous subcommittees in
15 terms of hiring as well, correct?
16 CHAIRPERSON NEUBERG: Yes. Brian, please in
17 addition to, you know, with your report next week, we'd like
18 to understand how the previous Commissions handled their
19 hiring --
20 DIRECTOR SCHMITT: Sure.
21 CHAIRPERSON NEUBERG: -- just for context and --
22 and information.
23 DIRECTOR SCHMITT: Absolutely. I'll include that.
24 CHAIRPERSON NEUBERG: Okay. Unless there's any
25 other conversation on that item, I'm going to squeeze in one

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last agenda item before we take a three-minute break with our next firm.

Agenda Item No. VII, discussion and possible action on data census delay and ways to mitigate its disruption.

I have nothing to share.

I think our -- our attorney firms have much more to share on this than I do so, you know, I don't know if you have great pearls of wisdom.

Okay. With that, why don't we take a three-, four-minute break, and we will reconvene at 11:15 for our appointment with Snell & Wilmer.

(Recess taken from 11:11 a.m. to 11:15 a.m.)

CHAIRPERSON NEUBERG: Yasmin, do you know if your next guest is actually waiting to go?

MS. RAMOS: Yes, they are in the queue waiting for us to let them in the meeting.

CHAIRPERSON NEUBERG: Okay. I see all the Commissioners and Pam, so let's get started. Let's welcome them in.

(Whereupon the representatives from Snell & Wilmer join the meeting.)

MS. RAMOS: And the team from Snell & Wilmer have joined.

CHAIRPERSON NEUBERG: Thank you so much for joining

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us today and for your time. I am Chairwoman Neuberg; and, with that, I'd like to open it up for you to take up to 10 minutes to share with the Commission and the public why you feel you're the best firm to represent the Commission, and after that we'll open it up to about 30 minutes of some Q and A from the Commissioners.

And, with that, please feel free to jump in and please introduce yourself.

MR. JOHNSON: Yes, thank you, Chairwoman Neuberg. My name is Brett Johnson, partner here at Snell & Wilmer; and with me today are Eric Spencer and Adam Lang, also both partners here at Snell & Wilmer. We would all like to thank you, of course, for the opportunity to present today about our firm and what we can do for the IRC as it undertakes such an important task for the state of Arizona.

Although we don't want to repeat what was inside our RFP proposal, I'm happy to take questions about that, of course, but Snell & Wilmer has been around for quite a long time, we -- we go, our roots back to 1938, and it's now one of the largest law firms in the Southwest and the largest law firm in Arizona.

We handle all areas of law, only thing we don't handle is family law. If you need a good divorce attorney we'll give you a good referral, but we just don't do divorce law.

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1 The firm has grown with Arizona; we have strong
2 presence in both Maricopa County as well as Pima; we
3 practice in every single court, federal and state; we have
4 recently opened up a Washington, D.C. office in the last
5 year and a half, which also allows us to have a presence
6 inside the national -- the nation's capital for any cases
7 that are necessary there.
8 I think what sets us aside, and I don't know if any
9 of the Commissioners have had experiences with Snell &
10 Wilmer in the past, but we do think that we are unique based
11 off of our credo. Our credo has three parts to it: The
12 expectation, I'm sure every firm espouses is to do good
13 work; we value our clients. We expect to have personal
14 relationships with our clients and to really represent them
15 in the best possible obviously according to the law. That's
16 just an expectation, that's the baseline.
17 But we go a step further, we're very committed to
18 the firm itself. And some -- some attorneys when they join
19 us, that's something that they aren't necessarily used to.
20 You have to be involved in the firm in some aspect, we don't
21 ask you specifically what to do and people usually gravitate
22 to their own area but support the firm itself. So that's
23 our second credo.
24 Our third one, which we're run into many times
25 where we're trying to recruit laterals, is that we do have a

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1 deep commitment to the community, everybody has to be
2 involved in something. We don't put a litmus test on what
3 that is. If people want to be involved in political
4 activity, so be it; if they want to be involved in a
5 charity, so be it; a trade group; even on government panels
6 and commissions. We value all of the service that Snell &
7 Wilmer provides to the community.
8 As part of that active engagement with the
9 community, we felt -- we feel that we are best positioned to
10 be able to represent the Commission as in evaluating some of
11 these more significant issues for the state of Arizona.
12 In regard to our election law practice, as our
13 proposal made clear, we're versed in almost all the election
14 law issues that will face the Commission: Article IV of the
15 Arizona Constitution, of course; the Voting Rights Act;
16 Title 16 of the Arizona revised statutes; and the Arizona
17 Elections Manual.
18 We do actively represent candidates from both major
19 political parties and even some independents. We have a
20 long history and tradition of doing so. However, as
21 referenced in our proposal, when Snell & Wilmer identifies a
22 legal need for a climate -- client, we determine the best
23 lawyer to provide such services and do not ask about their
24 political affiliation. In representing our political
25 clients, the legal teams are made up of lawyers and

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1 paraprofessionals from multiple or even no political
2 parties; the legal team concentrates on the legal issues,
3 the policy issues are best left for the decisions by the
4 client.
5 We have proposed a team of bipartisan attorneys
6 that will be able to represent the IRC on all issues to
7 ensure the best representation of the Commission and the
8 state of Arizona.
9 Again, there's no litmus test as we said in our
10 proposal, we just want the best team possible to meet your
11 needs.
12 If chosen, we're going to be spending a lot of time
13 together, so we thought that it would be important for you
14 to get to know at least the three of us a little bit better,
15 and hopefully the rest of our team later on.
16 I'm married to Heather who is also a Navy veteran,
17 and we have three rambunctious children. When I was in the
18 Service, all of my family moved here, and it was just
19 natural that we followed. Arizona is our home, and we are
20 very invested in working towards developing a community that
21 all of our eventual grandkids would want to stay here.
22 In regard to what drew me to election law, when I
23 was in the Service, one of my jobs was the Voting Access
24 Officer, ensuring Service members and their dependents were
25 registered and able to vote overseas. This really left an

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1 impression on me about how important it was, quite honestly
2 to young people, about the purpose of voting.
3 And not to get sentimental, when people were
4 getting deployed, we'd fill out their will, and we'd fill
5 out their voting rights on a form to make sure they were
6 able to vote wherever they were in the world.
7 When I joined Snell, I continued to be interested
8 in election law. After a few years here, a group of
9 attorneys got together to more formalize a political law
10 group. We have all been advising stakeholders in the
11 political process for years, but really decided to combine
12 our talents and be able to leverage each other's expertise.
13 Adam Lang and Eric Spencer were instrumental in
14 creating immediately a bipartisan group to be able to
15 represent our clients in the most effective, efficient, and
16 transparent way.
17 And so I'm going to let -- I'm going to let them
18 have a few minutes to introduce themselves.
19 Adam.
20 MR. LANG: Thank you, Brett.
21 Good morning, Chairwoman Neuberg and members of the
22 Commission. Thank you very much for inviting us to speak to
23 you today; we're thankful, grateful, and excited for the
24 potential opportunity to working with each of you.
25 To give you a little sense about me, I come from a

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1 very politically active and publically orientated parents.
2 For as long as I can remember, they were involved in
3 Illinois and at every level: Township, city, county, party
4 meeting statewide. In fact, my father spent more than
5 30 years at a statewide office until he resigned in 2019.
6 My mom, self-proclaimed activist of sorts, started
7 off as a kindergarten teacher. She moved us out to Arizona
8 in 1990, and worked for 30 years in the Peoria Unified
9 School District, starting as a gifted education director,
10 and retiring last year after a stint as superintendent.
11 Being involved in public life, counseling others,
12 helping others, advising others, and trying to make things
13 better for others has always been at the center of what I'm
14 about. This is why I became an attorney, to be able to help
15 people solve some of the most complex existential and
16 stressful problems they will face.
17 In addition to my law degree, I obtained a master's
18 in public policy. My primary reason for doing so was
19 because I saw an opportunity to learn another way of
20 thinking to help people. In law school, and especially the
21 first year, students spend a lot of time reading cases about
22 disputes that arose as a result of a problem that the
23 parties could not resolve in the first place and how to
24 react to those problems afterwards.
25 In providing clients with skills to help clients

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1 react to problems they are facing, reactive thinking, very
2 important skills for an attorney. In a public policy
3 program, it's a bit different. While certainly we learn
4 from case studies, they spend a great deal -- students in
5 this program spend a great deal of time thinking about how
6 they could have avoided or mitigated problems before they
7 became full-fledged disasters or serious issues, more of a
8 proactive way of thinking.
9 I started at Snell & Wilmer in 2003, right out of
10 school, and every single day I get to marry those two ways
11 of thinking -- those two types of thinking, to assist
12 clients in avoiding and resolving legal challenges they
13 encounter.
14 I choose and continue to choose this firm for one
15 primary reason: Because like me, it values relationships as
16 one of its fundamental tenets. As Brett just said,
17 relations with the community, relations with each other, the
18 relations with clients. It is community, colleague, being
19 client centered at its core.
20 Over the past 17 and half years as an attorney
21 primarily focused on commercial litigation along with
22 numerous election law related matters, I have been guided
23 those same values. The needs of my clients, colleagues, and
24 community partners are my priority. I'm constantly checking
25 with them, think about them, and consider how best I can

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1 serve them.
2 When interacting with the clients, I try to take
3 away and take on the stress and anxiety that they were
4 feeling with whatever legal problems they are encountering.
5 The very best part of what I do, the very best days, are
6 when I hear a client take a deep breath, a sense of relief,
7 because they know they can focus on their priorities while I
8 focus on mine which is handling their legal challenges.
9 Commission, it's hard to imagine a more stressful
10 and important job than what it is you are doing and what you
11 have in front of you. Every commission is in the public
12 eye, every commission has its -- had its actions scrutinized
13 and second-guessed, because I think we all can agree, these
14 are not even (technical disruption) time, they are
15 challenging and numerous in unusual ways.
16 I imagine it can be a bumpy road, but it is a road
17 we are well equipped to travel; it is a road that we are
18 prepared to pave with you, and one that we want to be on
19 with you.
20 I look forward very much in participating in
21 today's conversation and working with my good friends Brett
22 and Eric for questions you may have.
23 Eric.
24 MR. SPENCER: Yeah, thank you, Chairwoman Neuberg
25 and Commissioners. I echo the comments of my friends in the

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1 room.
2 I think maybe the best way to understand me is to
3 understand the inflection points in my life and the
4 fortuitous detours that I've embarked on that make me who I
5 am.
6 You know, I'm the first person in my family's
7 history to ever attend college, much less graduate. When I
8 got to the end of undergrad, one of my tasks was to try to
9 get into law school, and I just totally blew the LSAT. I --
10 I foreclosed my opportunity to go to law school the
11 following year, so I decided to move to Tucson. And thank
12 God I did because in the first week there I met my future
13 wife, and 20 years later I have three crazy kids; and had I
14 not made that error, I wouldn't have ended up where I am.
15 I ended up going to law school of my choice,
16 thankfully, and added a graduate degree as well; and during
17 that time when I was prepared to go back to the firm, 9-11
18 occurred, and I had an epiphany that the world didn't more
19 lawyers, it needed somebody on the front lines. So while
20 the rest of my class from -- from the Snell summer class
21 continued on to the firm, I went to Fort Benning, Georgia,
22 and was in Army combat training for the next year and a half
23 actually. And I learned everything, parachuting out of
24 planes, hand-to-hand combat, every weapon in the U.S. Army's
25 inventory, and I deployed to Iraq with 36 soldiers during

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1 probably the hardest time of the war.
2 I led probably 250 to 300 combat missions in
3 Southeast Baghdad and -- and Sadr City. I -- I, obviously,
4 was deeply shaped by that. I survived five roadside bombs,
5 and I think the only way I could have done that is by sort
6 of divine providence. In the first two, my vehicle -- I was
7 in the lead vehicle; I traveled by two of the worst type of
8 roadside bombs and for whatever reason they didn't go off on
9 my vehicle; they detonated on the vehicles behind me and
10 destroyed those vehicles, burnt them to the ground.
11 My third IED I was standing next to my truck on the
12 radio and it went off, and my driver grabbed me and threw me
13 inside the vehicle and covered my body with his own.
14 Survived the fourth, but on the fifth I actually spotted it
15 and crawled up behind it and I identified it as an IED
16 and -- and had it successfully dis- -- dismantled by the
17 explosive experts.
18 But I really shouldn't be sitting here, but somehow
19 I am; and it -- it deeply shaped me. So I was awarded the
20 Bronze Star medal and the Combat Infantry Badge, but -- but
21 the things I remember from those experiences are delivering
22 school supplies to every elementary school in my sector in
23 Baghdad; I gave out hundreds of soccer balls to little kids;
24 both my interpreters immigrated to America with their entire
25 family to become Americans; and best of all, I brought home

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1 all of my soldiers alive and in one piece.
2 And then they allowed me back to Snell so I got to
3 be a lawyer again and an election lawyer.
4 And third fortuitous inflection point in my life
5 was getting to be the state election director. I was
6 involved in high-profile litigation for a candidate at the
7 time and I was getting noticed, and Secretary Elect Regan
8 gave me the greatest opportunity to serve in that role.
9 So I'm one of the few people who have lived their
10 dream of being both an election litigator and an election
11 official, getting to do it.
12 And although I know Dr. Lerner has a Ph.D., I felt
13 that I got a Ph.D. in elections by -- by doing that four
14 years.
15 So I know I'm over time, but I guess I'd sum myself
16 up this way: From -- from my fortuitous marriage I've
17 learned humility and patience; from -- from being a military
18 officer, I learned integrity and discipline; and -- and from
19 being a state official, I learned fairness, I think empathy,
20 and impartiality.
21 So I'm going to kick it back to the Commission now.
22 Thank you so much for letting us introduce ourselves and
23 we're very happy to answer your questions.
24 CHAIRPERSON NEUBERG: Thank you very much.
25 With that, I'll turn it over immediately to

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1 Vice Chair Watchman.
2 VICE CHAIR WATCHMAN: Thank you, Madam Chair.
3 And thank you, Brett, and others for the -- the
4 introduction and summary of the firm.
5 My question relates to the six criteria in the
6 Arizona Constitution. What is your opinion on the six
7 elements that are enumerated in the Arizona Constitution?
8 MR. JOHNSON: Yes, thank you,
9 Commissioner Watchman.
10 I'll take this one. As I think you're aware, I was
11 one of the counsel who -- who brought an action against the
12 last, so I'm intimately familiar with those six criteria;
13 and that -- that was the basis of the whole lawsuit. It
14 wasn't necessarily about politics or about the political
15 questions that were some of the other cases, it was whether
16 or not the -- the Commission at that time actually followed
17 the different criteria and -- and mapped it.
18 So from that perspective, Commissioners, I -- I
19 would say that the -- obviously, A, that the Voter Rights
20 Act criteria plays a very important part because that is one
21 of the main areas for future litigation. So as a lawyer,
22 I'm always worried about the -- the next case, and I see
23 some potentials issues one way on that.
24 But in reality when you look at all of them,
25 they're all goals that have equality in many ways, and --

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1 and I think that the Commission is going to have to juggle
2 some of those policy issues as to for their own purpose what
3 is more -- more important.
4 VICE CHAIR WATCHMAN: Well, the follow-up to that,
5 what's your thought and speak to the Indian Voters Rights
6 Act and how tribes, you know, because of their location and
7 being on sovereign lands, how that plays into this process.
8 MR. JOHNSON: You know -- you know, I think and if
9 you look at the last two Commissions, Commissioner Watchman,
10 I think it played a very important role into that process.
11 And if -- if I encourage as a matter of creating a record,
12 and that's -- that's one thing as a lawyer. In fact, before
13 Judge Gates just recently, she reiterated the importance of
14 creating a record, is inviting all of the tribal
15 communities -- as well as other communities -- to come
16 before the Commission and present according to the criteria
17 that has listed out into -- or in the Arizona Constitution
18 as to definitely communities of interest as well as the
19 Voter Rights Act as it's applicable to the tribal lands.
20 And I think as part of that process ensuring that,
21 number one, you're creating a good record, and you're
22 getting the best academic advice possible to make ensure
23 that you're following the senate factors and establishing
24 the totality and circumstances underneath the Voter Rights
25 Act.

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1 VICE CHAIR WATCHMAN: Thank you.
2 CHAIRPERSON NEUBERG: Commissioner Mehl.
3 COMMISSIONER MEHL: Thank you for being here.
4 As of now, the Commission has not made a final
5 decision as to whether we will be hiring one firm or two
6 firms. Could you speak to the advantages and disadvantages
7 of those directions; and if we hire two firms, how you would
8 get along and work with the other firm.
9 Or if you think your firm is capable of
10 representing the full interest of the Commission, please
11 make your case for that.
12 Thank you.
13 MR. JOHNSON: Sounds good.
14 Since I have the queue, Commissioner Mehl, I'm
15 going to turn that over to Mr. Spencer and let him try to
16 answer that question.
17 MR. SPENCER: Commissioners, I -- I've been
18 watching your meetings since day one, and I've seen the
19 desire to at least give it a go for one firm, I think Snell
20 & Wilmer is the one firm that could do that. Not only are
21 we balanced ideologically within the legal team that we are
22 proposing, but as a firm; we just don't operate as
23 politicos. You're going to get the best legal advice from
24 us.
25 We have knowledge to be able to advise on any

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1 issue. Our team has a former prosecutor, employment law
2 experts, open meeting law experts; so we've got the
3 intellect, we have the -- the bandwidth to do it, and -- and
4 I hope as a result of this interview we've convinced you
5 that we have the credibility to do it.
6 I can see the argument for two firms. There is
7 value in diversity and having another law firm out there to
8 bounce off ideas and confirm that they agree with our
9 assessment is a value. I'm also not so naive as to discount
10 the political pressure that you're under, and I could
11 envision a scenario where it will be politically necessary
12 to hire more than one firm in order to ensure not only
13 yourselves but everybody who is whispering to you, that you
14 have made the right decision that's going to set you up for
15 success.
16 But I think one of our primary goals in this
17 interview today is to -- is to give you confidence if you
18 want to go with one firm, in terms of our experience and our
19 ideological balance, Snell & Wilmer is that firm.
20 MR. JOHNSON: Mr. Lang?
21 MR. LANG: Yeah, I'll add to that. Thank you,
22 Commissioner Mehl.
23 Your second part of that questions was if we were
24 to go with two firms, can we get along with that second
25 firm; is that correct?

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1 COMMISSIONER MEHL: Yes.
2 MR. LANG: Thank you for that question; I think
3 it's an important one.
4 I think it goes back to what all three of us spoke
5 about in our introduction, Snell & Wilmer has been around
6 for 83 years; and we're around mostly because relationships
7 are absolutely key and critical to our -- to us. It is
8 something we value at our absolute core, we're open-door
9 policy here; we like to be involved, and we like to get
10 along with people.
11 Our goals would be to -- to advise the Commission
12 the best way we can possibly can, to work with whoever we're
13 working with, and we do it, and we do it well. We would
14 talk through ideas, we'd come up with a consensus, and we'd
15 give you the best possible legal advice. We don't look at
16 this as a partisanship -- partisan appointment or hiring
17 here, we look at it as something that we can do to give you
18 the best possible legal advice.
19 The way I would kind of describe it is we're very
20 passionate about our clients, but -- but dispassionate with
21 the legal advice we are giving. We want to be deliberate;
22 we want to be thoughtful, and we want to give you the best
23 advice we can.
24 Thank you.
25 MR. JOHNSON: And if I could add one more thing,

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1 and I should have done this the first time, counsel you are
2 interviewing are incredible. I mean, it's -- it's an
3 embarrassment of riches what you have. The election law
4 world is a small community; we have worked with Mary; we've
5 worked with Roy, with Kory. You can't go wrong there.
6 We -- we've worked with them; we've worked against them, and
7 I would give references for them. They'd give references
8 for us, and you really -- you really can't go wrong with any
9 of those firms.
10 CHAIRPERSON NEUBERG: Okay. Commissioner Lerner,
11 please.
12 COMMISSIONER LERNER: Thank you for being here; I
13 appreciate it.
14 MR. JOHNSON: Thank you.
15 COMMISSIONER LERNER: So you alluded to this
16 statement about a lawsuit you brought. Kind of a double
17 question here a little bit, can you talk a little bit about
18 the difference that you see between election law and
19 redistricting? 'Cause there's a -- a distinction there and
20 you're involved in election law, so maybe a little bit about
21 that.
22 And then the other half of that is you mentioned
23 about the lawsuit that you brought forth, so could you speak
24 to -- since you did bring the lawsuit against the IRC last
25 time that went to the Supreme Court, and you did not --

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1 weren't victorious in that one, how would you defend the IRC
2 against lawsuits that are brought against it? How would you
3 kind of play the other role?
4 MR. JOHNSON: Yeah. No, yeah.
5 COMMISSIONER LERNER: So.
6 MR. JOHNSON: Yeah, and -- and the -- thank you,
7 Commissioner Lerner, for you -- for your question.
8 And I guess I -- I've been very lucky, and I'll be
9 honest with you, I know -- I know my colleagues have been,
10 too, is that I've represented both sides of the equation.
11 Obviously, my service to the military I defend the Navy all
12 over the country; and then when I've come here to Arizona,
13 I've been asked by the Government to represent it, maybe not
14 as equally as my private clients, but pretty close. I've
15 done quite a bit of work; and so that's the first focus is
16 understanding who you're representing and what the legal
17 issues that are -- that are being presented.
18 So I'm going to answer your last part of your
19 question first and then I'll come back to your first part,
20 if I may.
21 In regard to preparing for an evidential lawsuit,
22 and -- and I -- obviously every lawyer hopes that you get to
23 a position where there are no lawsuits. It might mean that
24 nobody is happy. I'll be an honest with you, it's like
25 coming out of a mediation, nobody is ever happy coming out

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1 of a mediation. But in that context, everybody understands
2 that you've checked all the boxes accordingly, and you do
3 follow the Arizona Constitution, and that starts, quite
4 honestly, already. You already started that process.
5 And then keeping a very, very good record of those
6 issues and being a good counselor. We are -- we are all
7 three very good attorneys; our team is made up of very good
8 attorneys, but a lot of attorneys forget about that second
9 element of being a counselor and trying to identify issues
10 that are pitfalls going forward and avoiding those pitfalls,
11 or mitigating the risk. You can never eliminate risk, but
12 you can try your best to mitigate it. So that goes to the
13 lawsuit itself.
14 Unfortunately, the case I tried did not go to the
15 Supreme Court. I wish it did; I thought it was the better
16 of the cases because it -- it dealt with administrative law
17 and just following a different criteria; but in that
18 context, I hope you've taken a look, you possibly have, of
19 Judge Brodman's opinion, which I though was a well thought
20 out opinion; I have some disagreements with it, of course,
21 on some of the criteria that may not have been met, which I
22 hope to bring to the Commission and avoid that pitfall going
23 forward.
24 And that gets into the difference between
25 redistricting and election law. To do redistricting, I do

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1 think that you have to have an understanding of election
2 law, and especially in the government context understanding
3 all the mechanics around redistricting, which is election
4 law. The Voting Right Act is an election law statute. The
5 Title 16 is an election law. Dealing with the county
6 recorders and dealing with the city clerks, taken into their
7 context that communities of interest and where they have
8 traditional polling locations as that might impact a
9 district. That's election law impacting redistricting.
10 Redistricting though, obviously, is a nuance
11 because it only comes around every 10 years, there's usually
12 a flurry of lawsuits about those cases; some of them linger
13 on for the entire 10 years, but it's really on a truncated,
14 fast-paced basis, which is very, very similar to election
15 law. Which the, unfortunately, the schedule that has been
16 presented to you all, you're going to have to have an
17 understanding of how quickly litigation happens in an
18 election context.
19 So, Commissioner Lerner, I hope I answered the
20 question.
21 COMMISSIONER LERNER: Yeah, you did. Thank you.
22 I -- yeah. I'll come back, I'll think -- rethink a little
23 bit, but thank you so much. I definitely appreciate that.
24 CHAIRPERSON NEUBERG: Okay. Well, we'll come back
25 to you, Commissioner Lerner, it sounds like you're mind is

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1 working.
2 Commissioner York, please.
3 COMMISSIONER YORK: Good afternoon, Snell & Wilmer.
4 Quick question regarding the Voter Rights Act, we
5 are now educated in Section 5 and in Section 2, so I guess
6 I'd like to ask a question around Section 2 and how it
7 relates to your interpretation on how it will protect
8 minority communities in our state.
9 MR. JOHNSON: Yeah, I'll take that one and then
10 I'll see if one of my colleagues also wants to add on.
11 Obviously without Section 5, Section 2 is one of
12 the remaining, obviously, for the Voting Rights Act. That
13 came -- the Section 2 is actually up on -- to the U.S.
14 Supreme Court, so it's possible that they're going to give
15 some guidance actually before you even get the Census Bureau
16 data that will help frame the discussion around the Voting
17 Rights Act.
18 However, the Ninth Circuit, which is the circuit
19 we're in, has a great body of law already -- already out
20 there on Section 2, not just the case that is before the
21 Supreme Court. And as part of that, it really does in many
22 cases lay out a framework that is in addition to the
23 criteria in the Arizona Constitution, both dealing with the
24 totality of circumstances test, whether or not it's a
25 significant impact; of course, the Supreme Court is going to

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1 decide some of those issues; and then of course the senate
2 factors.
3 And as part of the Voting Rights Act Section 2, the
4 Board is going to -- the Commission, I'm sorry, the
5 Commission is going to have to become very familiar with
6 those senate factors to bring that as part of your
7 deliberation. That may be an academic exercising by
8 bringing in different perspectives; but, again, it's very
9 important for -- let's put aside the Arizona Constitution,
10 which I think the record is essential for. The record is
11 just as essential for Voting Rights Act case. We want to be
12 able to show the judge that you took all of this information
13 into context in making your decision and that, quite
14 honestly, the Court should give deference to you.
15 Now, the deference issue also is -- is a question
16 based off of recent Arizona Supreme Court case law, and
17 that's dealing the gift clause within the State of Arizona.
18 I bring that up because so many of these
19 disciplines are intertwined, and that's probably one of the
20 reasons Snell & Wilmer is so well suited to represent the
21 Commission as it brings from those different perspectives
22 and hopefully represents the Commission in the best manner
23 possible.
24 So did I get that -- anything else, Mr. Spencer?
25 MR. SPENCER: So the only thing I'll add is,

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1 we'll -- we'll do our best to help you create the record and
2 engage in the type of deliberations that mitigate, if not
3 prevent, a Voting Right Act suit, because protection of
4 minority communities is -- is paramount.
5 But, which one thing about on the front end is how
6 the litigation goes on the back end, and Snell & Wilmer has
7 experience in Voting Rights Act cases. They're very expert
8 driven, document intensive, and it requires VRA experts; it
9 requires historians, it requires a number of dis- --
10 different academic disciplines to come in and assist,
11 validate the decision that you've made.
12 Now, try to consult with those folks during the
13 process, but this type of litigation is intense and
14 complicated, and -- and I think we have the -- the bench
15 strength and the experience in those kind of cases to
16 successfully get them to the finish line.
17 MR. JOHNSON: Mr. Lang has one comment.
18 MR. LANG: Very briefly. The only thing I'll add
19 to that is on -- on kind of keep the record is I have a list
20 of some observations that I took reading the redistricting
21 cases and knowing about them over the years; and while the
22 Courts previously seem to suggest that maybe you don't need
23 to show your work in order to get to where you need to go in
24 order to -- to be considered constitutional, they seem to
25 encourage it. They seem to encourage the more you show your

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1 work, the more that you show a record, the more you consider
2 those things publicly, the better off you'll be.
3 Obviously, there's some competing concern there
4 that you'll have to kind of wrestle with, but showing your
5 record is going to be, in my view, a critical component of
6 going forward in the next couple years.
7 MR. JOHNSON: And I -- if I could add just one more
8 thing. You know, Section 4, the Voting Rights Act, is what
9 has been struck down making Section 5 inapplicable, doesn't
10 mean you have to act that way. We're -- we're -- we're
11 relieved of the legal obligation to go to DOJ to go to D.C.
12 for preapproval, but that doesn't mean that you have to take
13 shortcuts because that prophylactic law is no longer
14 enforceable. I say act like there is preclearance; protect
15 minority communities with vigor as if we still have to go
16 through that process. It won't mitigate a Section 2
17 lawsuit, but it's the right thing to do is to continue to
18 act as if Section 5 were still enforceable and -- and govern
19 this Commission.
20 CHAIRPERSON NEUBERG: Okay. Thank -- thank you.
21 The next question, I'd like to speak about
22 potential conflicts of interest. I greatly appreciate your
23 presentation today in a bipartisan fashion, yet we do know
24 that your firm does represent right-of-center candidates and
25 people in elected office.

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1 How would you navigate potential conflicts of
2 interest given that our interest and those of either current
3 or -- or potential future clients, they -- they may clash?
4 MR. JOHNSON: Yeah, and thank you, Chairwoman
5 Neuberg, for the question because it also goes to the ethos
6 of our firm. And -- and I think that even if you ask any of
7 our competitors in this context about ethics, Snell & Wilmer
8 would -- would be examples as to -- as to how we follow it.
9 We take the professional -- rules of professional
10 conduct extremely serious. We also take our contractual
11 obligations extremely serious, which is one -- probably one
12 step down, we always have to live up to our ethical
13 requirements to be able to practice law, but there's also
14 contract requirements on top of it.
15 And as part of that we have an ethics attorney,
16 that's all she does, she's the ethics attorney. So when
17 issues come up of this nature where even there is a hint
18 that there is going to be an ethical issue, we raise it with
19 her.
20 Separate from that, separate from her, we have
21 another conflicts attorney. That's all she does, she runs
22 conflicts all day long, and then she has conversations with
23 the different parties.
24 Now, I, to get to the root of your question,
25 Chair -- Chairwoman Neuberg, I believe it's possible that

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1 maybe even our conflicts where we personally are
2 representing, not somebody else in the firm who is
3 representing somebody, and I think that that has to do with
4 having an open dialogue of conversations about potential
5 conflicts, and avoiding those where necessary and
6 appropriate.
7 We -- we do believe that we can continue to
8 represent candidates and political action committees on
9 their campaign finance. We, as we put in our proposal, we
10 will not be representing any party in regard to
11 redistricting process; to the extent that that is an issue,
12 we plan on putting that in our engagement letters.
13 But we do believe that based off of our past
14 experiences and our ability to represent both the Government
15 and private parties, we -- we think that we have the
16 conflicts and the ethics issue well under control.
17 CHAIRPERSON NEUBERG: Are there -- are there any
18 other red lines that you would like to highlight? Because
19 the public is not privy to any of the proposal information
20 that you provided, so if there's anything that you would
21 like to share.
22 MR. JOHNSON: Well, yeah, I did say that we're
23 counselors, right? And as part of that counselor, that's
24 counseling at law, right? Being able to counsel you as to
25 what the legal requirements are.

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1 Unless you're a lawyer who has been appointed to
2 the Commission or that you're a lawyer that's been an
3 elected official and you're now putting on a different hat,
4 lawyers should not be making policy, and that's one thing
5 that we made clear in our presentation to you all as well as
6 in our opening statements here. So that is a red line.
7 If -- if a Commissioner or the Commission as a
8 whole said: We want to take this action, Brett, what do you
9 think about it from a policy perspective? I would
10 respectfully decline because I think that that is a red
11 line, the lawyer should not opine as to what the -- as to
12 what the policymakers are doing; policy is for you; the law
13 is for us, we will advise you the best possible to stay
14 within the guardrails as to what the law requires, but that
15 is a red line.
16 CHAIRPERSON NEUBERG: Okay. Thank you.
17 With that, we have about five more minutes. I'd
18 like to open it up to additional follow-up questions from my
19 fellow Commissioners.
20 Commissioner Mehl.
21 COMMISSIONER MEHL: There was a letter recently
22 sent out by the Greater Phoenix Leadership Council
23 criticizing some proposed voter legislation, and the Chair
24 of Snell was one of the signors to that group. Could you --
25 I was surprised to see you take a position on that, so could

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1 you comment on that?
2 MR. JOHNSON: And I think -- I'll let Mr. Lang
3 answer also. I think that actually goes to the heart of
4 what Snell & Wilmer is about, is that we are a bipartisan
5 firm, and as part of our individual capacity sometimes we as
6 an individual we will put on a policy hat and identify
7 ourselves in that respect. And I think that if Mr. Feeney,
8 who is our chair, who is part of that organization, is able
9 to obviously express -- express his views on -- on different
10 election laws.
11 I can tell you nobody has asked my opinion as to
12 different -- different election laws that are coming out
13 because, quite honestly, I might have a few. But from that
14 context, I think it goes to the bigger issue that we are a
15 Big 10 firm; we share a lot of different philosophical
16 leanings; but, quite honestly, we put those philosophical
17 leanings aside when we're doing the best representation
18 possible for our client.
19 I'll give you an example. Courtney Henson is -- is
20 one of the members that we proposed. On a very expedited
21 process, I got dragged down to Pima County and on an
22 election matter with only a couple hours' notice. I needed
23 a second chair, Courtney Henson was available; she came and
24 she sat as my second chair and did a phenomenal job. And
25 afterwards she said: "You know I didn't vote for that

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1 person." Never asked. It was never a part of our dealings.
2 We were dealing with the law.
3 So I think that that just actually reinforces how
4 we can be open to -- to a lot of different perspectives
5 while still getting very, very good legal representation.
6 Mr. Lang, anything?
7 MR. LANG: Yeah, you stated it well, Brett. I'll
8 just add that, you know, we are a 400-plus person firm,
9 200-plus in Arizona, and we have people with different
10 thoughts and opinions and views; and we also respect those
11 thought and opinions.
12 We want people to respect; we want people to be
13 thoughtful, but we respect people's views and opinions. And
14 at the same time, we -- we want to be there for each other
15 on our own views and opinions. So when we -- when we have a
16 "meet the candidate" night, you know, people from both sides
17 of the party will show; when we have a case that needs, you
18 know, legal representation that has expertise on both sides,
19 you might see a case with Brett or me on the case together,
20 or Eric and I on a case. There's been numerous cases where
21 that's happened.
22 So we look at it as, you know, we want people to
23 have their voice, we want people to participate in civic
24 discourse. We also want people to be respectful and care
25 about our client.

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1 COMMISSIONER MEHL: Thank you.
2 MR. SPENCER: I just would just add one point, if I
3 could. Just 10 seconds, Commissioner.
4 You know, our Chairman can express his political
5 views and that's what gives the freedom for me to express my
6 political views; and if that freedom that allows the three
7 of us to be safe and confident in our jobs, we have very
8 strong political views; but -- but that expression is
9 protected here at Snell & Wilmer. There's nobody I have to
10 answer to. So I stand by our Chairman's expression of his
11 -- of his views because that's same thing that I've enjoyed.
12 CHAIRPERSON NEUBERG: And if you don't mind,
13 Commissioner Lerner, I see your hand, I will call on you
14 next, I just want a clarifying question.
15 Chair Feeney, this was his personal expression or
16 this was the expression of the law firm? Just please
17 clarify.
18 MR. JOHNSON: Well, the only expression of the law
19 firm is basically something that is voted on by the
20 partnership. But Mr. -- Mr. Feeney is a member of the
21 Greater Phoenix Leadership, it's a very well-established
22 organization, very similar to the Southern Arizona
23 Leadership Council that I think Commissioner Mehl is a part
24 of, too. And sometimes you take positions on the consensus,
25 and for that -- from that perspective I leave it to

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1 Mr. Feeney for sure.
2 CHAIRPERSON NEUBERG: Okay. Thank you very much.
3 Commissioner Lerner.
4 COMMISSIONER LERNER: Thank you.
5 CHAIRPERSON NEUBERG: Our final question by the way
6 because I want to respect Vice Chair Watchman's schedule; we
7 are going to recess at noon.
8 COMMISSIONER LERNER: Okay.
9 CHAIRPERSON NEUBERG: Please.
10 COMMISSIONER LERNER: I know you said that you
11 could be the one firm, but can you speak to how if we
12 selected two firms, what would be the way that you could
13 actually work with the other firm in terms of both
14 economical and collaboration, all of those things that would
15 need to happen as part of that.
16 MR. JOHNSON: Yes. Thank you, Commissioner, and I
17 think as we put in the proposal, a lot of the issues that
18 are going to be facing the Commission are apolitical, and --
19 and maybe one firm has a different perspective or different
20 capability in that area. So, for example, government
21 contracting, I do quite a bit of government contracting. If
22 an issue came up, possibly I would take the lead on it and
23 then the counsel from the other firm would -- would provide
24 support and confirm that the guidance was correct.
25 And it goes back to what Eric was talking about

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1 earlier, is that we know all of these attorneys. We've
2 worked together for a lot of years. To the extent that
3 there is two firms that are selected, I think that we -- we
4 get along very well in the sandbox and would be able to --
5 present those -- those issues.
6 COMMISSIONER LERNER: Thank you.
7 CHAIRPERSON NEUBERG: Any other burning questions
8 before we thank our guests and -- and let them exit?
9 MS. PEISER: Just a reminder, Chair, that we need a
10 reminder to the public on reconvening --
11 CHAIRPERSON NEUBERG: Yes.
12 MS. PEISER: -- as --
13 CHAIRPERSON NEUBERG: Yes. After we -- so, with
14 that, we'd like to thank all of the representatives from
15 Snell & Wilmer. Thank you so much for your thoughtful
16 participation.
17 And, with that, to the broader group and public, we
18 are now going to take a vote to recess. We will recess for
19 an hour.
20 I just want to wait until our guests are --
21 MR. JOHNSON: Oh. Off. Okay.
22 MR. SPENCER: Thank you very much.
23 CHAIRPERSON NEUBERG: Okay. Good-bye. Thank you
24 so much.
25 (Whereupon the representatives from Snell & Wilmer

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exit the meeting.)

CHAIRPERSON NEUBERG: Okay. So -- so we are going to take a vote to recess. The plan so to recess for an hour, and then we will reconvene at 1 o'clock for our last oral presentation from the law firm and to finish up our business.

So before we take a vote to take a recess, Pam, is there any other legal issue you want to bring up or anything else that the Commissioners need to bring up before we recess?

MS. PEISER: No, Chair. There just needs to be an indication as to the time and place of resumption of the meeting, and then Yasmin can go ahead and place on that one screen that the Commission is in recess and the proposed -- or the projected time to resume.

CHAIRPERSON NEUBERG: Okay. With that, can I entertain a motion to go into recess for one hour to reconvene at 1:00 p.m. in order to move forward our agenda and our next interview?

COMMISSIONER LERNER: This is Commissioner Lerner.

So moved.

CHAIRPERSON NEUBERG: Do I have a second?

COMMISSIONER MEHL: Second.

CHAIRPERSON NEUBERG: Any further discussion?

With that, we'll have a vote.

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1 Commissioner Watchman.
2 COMMISSIONER WATCHMAN: Aye.
3 CHAIRPERSON NEUBERG: Commissioner Mehl.
4 COMMISSIONER MEHL: Aye.
5 CHAIRPERSON NEUBERG: Commissioner Lerner.
6 COMMISSIONER LERNER: Aye.
7 CHAIRPERSON NEUBERG: Commissioner York.
8 COMMISSIONER YORK: Aye.
9 CHAIRPERSON NEUBERG: Commissioner Neuberg is an
10 aye.
11 And, with that, we will move into recess, and I
12 look forward to seeing everybody here at 1:00 p.m. sharp.
13 Thank you.
14 (Recess taken from 12:01 p.m. to 1:00 p.m.)
15
16 CHAIRPERSON NEUBERG: I think we're good to go as
17 long as the last firm is ready to present.
18 MS. RAMOS: They are ready, and I will admit them
19 now.
20 CHAIRPERSON NEUBERG: Okay. Thank you very much.
21 (Whereupon the representatives from Statecraft,
22 LLC, join the meeting.)
23 CHAIRPERSON NEUBERG: Hello there. Thank you for
24 joining us this afternoon. Thank you for your flexibility
25 with your time.

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1 We -- we would like to welcome you to start with up
2 to a ten-minute presentation of why you feel like you're the
3 best firm to represent the Commission; that will be followed
4 up with approximately 30 minutes of Q and A from the
5 Commissioners.
6 And, with that, please feel free to -- to start and
7 please introduce all of yourselves.
8 MS. RAMOS: You are muted.
9 CHAIRPERSON NEUBERG: Yeah, Kory. Mr. Langhofer,
10 we can't hear you.
11 Okay.
12 MR. LANGHOFER: There we go. Hopefully this does
13 the trick.
14 Thank you, Commissioner Neuberg. I'm Kory
15 Langhofer. I'm really delighted to have the chance to speak
16 with you all today; thanks for making time in this busy
17 schedule.
18 We'll start with introductions. Like I said, I'm
19 Kory Langhofer; I've got ten years of experience doing
20 political law here in Arizona; I have a little bit of time
21 back East as well. And I'm the managing partner of
22 Statecraft.
23 First thing, I live near downtown with my wife and
24 our three kids.
25 And, Tom, do you want to introduce yourself next?

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1 MR. BASILE: Sure. My name is Thomas Basile. I'm
2 originally from the Boston area, started my legal practice
3 at Ropes & Gray; moved out to Phoenix about eight years ago
4 and cofounded Statecraft with Kory.
5 And I just would like to express my thanks as well
6 to come in this afternoon and -- and interview with you all.
7 MR. LANGHOFER: Tim.
8 MR. LA SOTA: Good afternoon, members of the
9 Commission, I'm Tim La Sota. It's good to be here; thanks
10 so much for an interview.
11 I'm from Phoenix. I've practiced political law,
12 have a lot of agency experience in advising them also for
13 over 20 years. I'm a native; graduate of ASU College of
14 Law.
15 MR. LANGHOFER: What I'd like to do next is --
16 well, let me -- let me tell you the parts of Tom and Tim
17 that they're too modest to say about themselves.
18 First, on Tom. Tom went to Harvard College and
19 Harvard Law School, smartest I've ever worked with, and we
20 just would not the have the win-loss record that we do
21 without his role here.
22 And one thing we've learned about Tim over time is
23 that if you have an important political law problem or case
24 that's going to be moving very fast, you absolutely want Tim
25 to be on your side.

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1 With introductions out of the way, let me talk a
2 little bit about what we do at Statecraft and to
3 Mr. La Sota's firm. They are kind of four points here I
4 think is important to touch on.
5 The first is political law is what we do; this is
6 our bread and butter. We're not -- we don't do water law
7 and political law, we don't do securities litigation and
8 political law. Political law is what we do. And,
9 consequently, there is no area or interest that is competing
10 for our time and attention, that allows us to become more
11 expert, I think, in what's going on in political law. In
12 this case, redistricting is kind of a sub -- subpractice
13 area under that.
14 Because we focus almost exclusively on political
15 law, we end up being called upon by clients nationally and
16 certainly statewide here in Arizona to handle their most
17 sensitive and important political law disputes. So we
18 regularly find ourselves in litigation against regional or
19 national firms or, of course, small local ones as well,
20 representing government agencies, statewide and national
21 campaigns. This is, again, our bread and butter, and that's
22 why they call us when they have those sorts of problems
23 arise.
24 Tim, do you want to talk about track record?
25 MR. LA SOTA: Yes. I think between us, the three

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1 lawyers we have on this team probably has the best track
2 record of anyone in the state in terms of election law
3 cases. We've won at just about every single level; a real
4 tremendous record. And I think the numbers speak for
5 themselves. Obviously, this -- this case is -- this matter
6 is probably going to be litigated, that's a pretty safe
7 assumption, we have the experience, we have the know how,
8 and we get the job done on the litigation end.
9 The other important thing to remember, though, is a
10 lot of the advice you'll be -- you'll be given is not just
11 on election law but on general laws applicable to government
12 entities, which -- which could also land you in court as it
13 did the last Commission.
14 So open meeting law, things like that, public
15 record law, all those things that are more general to
16 government you'll want a good -- you know, you'll want a
17 good attorney, and we can provide that. We have great
18 political law experience in court, but we also have great
19 agency experience in advising agencies, and that's very
20 important.
21 Being the former general counsel for the Arizona
22 Corporation Commission, you know, when the Commission asks
23 you, "Can we discuss this; is it properly agendized?" You
24 know, you got to be able to tell them right there. You
25 can't have an associate write a memo, and -- and you'll need

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1 the quick answers, and we can move quickly.
2 MR. LANGHOFER: The last point I want to emphasize
3 about what we do as a proposal here. Is -- oh, there we go.
4 Thanks, Yasmin.
5 I want to talk about our billing practices. We
6 have, I think it's fair to say, the most reasonable billing
7 practices that you'll be looking at today. And there are
8 really two parts of the invoice that you'll be getting. One
9 is the hourly rates, and the other is the number of hours
10 that are worked. It's a pretty simple arithmetic problem
11 after you get those.
12 We can keep our hourly rates low because we manage
13 our overhead very well. We don't spend money on extravagant
14 offices; we don't have signing bonuses for attorneys to join
15 us. We don't have summer associate programs; we're not
16 funding the partners' pensions, right? Like, we done have
17 those costs, and so we can pass those savings through to you
18 in the form of lower rates.
19 The other part of the invoice that you're likely to
20 be getting in this matter is the number of hours worked.
21 And the important thing about the way we approach legal
22 services, not just this engagement but all of them, is we do
23 not have a minimum in number of hours that attorneys in our
24 firms are required to work. So when you show up as an
25 associate at a firm, typically a big firm, you're

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1 customarily told: Look, you're -- you're expected to work X
2 number of hours to stay in the good graces of firm
3 management.
4 And, you know, it's sort of legendary, people in
5 law school know what they're getting into with these minimum
6 hour requirements. And back when I was at a national firm
7 reviewing invoices that would go out to clients, you know, I
8 had a sense that when you give a project to an associate and
9 the associate is told by managements you're expected to bill
10 eight hours today or nine hours today, the work that you
11 give to the attorneys tends to swell to 50 hours
12 expectations that are put in front of them.
13 That's not a great practice. We don't do that. We
14 don't have number of hours' requirement, and we don't have
15 some sort of encouragement for attorneys to, you know, fill
16 their time with work that's unnecessary. And, consequently,
17 we're going to be able to offer to you the most reasonable
18 billing practices of the firms that you're looking at.
19 So on the next line, Yasmin, I want to just pick
20 through. This is sort of point of comparison about what
21 you're getting with a boutique firm versus a big firm.
22 So let's start with academic record and excellent
23 training. You're going to be able to get that at a big firm
24 or a boutique firm. We both offer those things to you.
25 Political expertise. Like I said, this is what we

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1 do; it's all we do. You're going to be able to find that at
2 some practice areas within big firms as well.
3 Extensive experience in state and federal court.
4 Both big firms and our firms can offer that to you.
5 Successful track record. Yes, we both have that.
6 Dexterous and adaptability. Dexterity and
7 adaptability, that's a little bit harder to find at a big
8 firm. Like Tim was saying a moment ago, if you ask a
9 question on the fly in the middle of a meeting, you need
10 someone who doesn't need to have an associate research it
11 and write a memo and do a long analysis. You need something
12 quick. Small firms are better at being quick.
13 Best pricing I've already talked about so I
14 probably don't need to take your time more with that.
15 Yasmin, could we see the next slide, please?
16 Thanks very much.
17 I want to -- I want to just spend a couple of
18 minutes here, this is our last slide, talking about our
19 working style or our sort of philosophy as we think about
20 how to approach this process you guys are undertaking.
21 And just so you have an idea sort of a level
22 setting of what -- what you'd expect if you were to interact
23 with us over the next year or so, maybe several years
24 conceivably.
25 First I want to start with identifying the goal.

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1 And I think this is pretty straightforward. You need maps
2 that thoughtfully balance the Constitution factors and are
3 based on the record evidence. You need both of those
4 things; you need record evidence and thoughtful balancing of
5 those. That's the goal, and we need to identify that at the
6 outset so that we're all moving in the same direction.
7 Second point. This is really more for us than for
8 clients, it's important to see the law as it actually is and
9 not as you want it to be. There's a temptation in political
10 law to talk yourself into thinking, well, a judge will agree
11 with us on this issue because it's -- you know, it's
12 politicized; people drink their own Kool-Aid too often in
13 politics.
14 And it does a client no good for a lawyer to not be
15 able to tell them when there's a trouble down a particular
16 road, right? I think our win-loss record is what it is
17 because we're really effective at saying to clients: Look,
18 I know we really want the answer to be X, but it's likely to
19 be not X, so you need to make your decisions accordingly.
20 Let's see the law as it is and not as we want it to be.
21 Third point. You all cannot control whether you
22 get sued and what you get sued over, and you shouldn't take
23 psychological responsibility for that or sort of assume the
24 burden of it. What you can control is you can anticipate
25 lawsuits and you can make sure that you're prepared for

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1 them, right?
2 So if -- if we think there's going to be litigation
3 under issue X, the VRA obviously is something that we just
4 due process get sued about all the time. You make sure your
5 documentation is in a condition that if someone sues, we
6 have those. That's what you should control about; that's
7 what you should stress about, not whether or when a lawsuit
8 comes; you don't control that.
9 Fourth, we like to think of attorneys and clients
10 as one team. So we have different roles to play, right?
11 Our -- our job is tell you about the law, warn you about
12 roadblocks ahead, hurdles that are coming down the road;
13 your job is to decide.
14 But if we're thinking of it -- if we've got shared
15 goals and sort of shared stress about how we get there, we
16 have open communication with each other, it's likely to work
17 more like a team and not, you know, a contract that you have
18 or just a client that we have. I like to think of us all as
19 a team and getting towards this goal of legal maps that are
20 going to be up to the Supreme Court.
21 And, finally, our perspective about, you know, one
22 of our duties as lawyers is to protect you all from
23 accusations of impropriety. There are likely to be
24 lawsuits, you already have the Linell complaints. Those
25 sorts of accusations of impropriety are going to continue.

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1 Over time we develop a sort of, I think it's
2 fair -- fair -- we become friends with our clients, we feel
3 protective of them. It's our job to protect you from those
4 sort of accusations of impropriety. And so we're on a team,
5 but part of our role matching is to make sure those
6 accusations aren't made or when they're made, they are
7 quickly defeated.
8 So that's how I think our introduction of -- of
9 we're thinking of the process and who we actually are.
10 So we'd be happy to answer all the questions that
11 you have.
12 CHAIRPERSON NEUBERG: Okay. Thank you so much for
13 that presentation.
14 And, with that, we'll open it up to our first
15 question from Vice Chair Watchman.
16 VICE CHAIR WATCHMAN: Yeah. Thank you, Kory, for
17 your opening, and I appreciate it.
18 You mentioned the Constitution and a thoughtful
19 balance of the criteria. Could you elaborate on your --
20 more opinion of the six criteria that are outlined in the
21 Arizona Constitution?
22 MR. LANGHOFER: Thank you, Vice Chairman Watchman,
23 that's a great -- that's a great question.
24 My view on this is you cannot redistrict with a
25 computer; you can't use a formula or an algorithm. You have

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1 these Constitution criteria, of course an overlay of federal
2 law on top of that that you're going to collect evidence on.
3 You'll likely do that from the -- over the course of the
4 month, and then there's a bunch of data you overlay on top
5 of that.
6 And, in the end, you all need to make a decision
7 that is subjective about how you're going to balance those.
8 How do you make sure you balance competitive districts with
9 communities of interest, right? And there are -- it is
10 impossible to do it by algorithm, you just have to do it
11 through a sort of careful and thoughtful process.
12 And I think as you get closer to the decision point
13 on that and you have maps that are looking like they could
14 be, you know, final or close to final, that's when the law
15 firms get even more involved. We start saying, okay, let's
16 run -- let's run this through the Section 2 and 3, right?
17 What holes could someone poke in this, right? This may be a
18 good way of taking care of this Constitutional factor, but
19 couldn't someone say it doesn't give enough weight to that,
20 right?
21 We would help you sort of think through what we're
22 vulnerable on, and also we document your decisions to
23 protect it in court.
24 VICE CHAIR WATCHMAN: If I could add to that.
25 The -- you talked about voting right -- voting -- voter

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1 rights, and can you speak a little bit about the Indian
2 voters' rights and how the tribes fit into this, you know,
3 whole -- whole scheme, and what's your opinion on -- on
4 that?
5 You know, the tribes, we as Natives, were not
6 allowed to participate as citizens until 1924 here in
7 Arizona, or Arizona Indians weren't allowed to vote until
8 the '60s, and so I'm curious about your opinion of about the
9 Indian Voters Right Act and how that would apply here.
10 MR. LANGHOFER: So I think that the Indian
11 communities enter this conversation with a claim to be
12 communities of interest that are protectable under the
13 existing laws.
14 And, of course, that's an issue about which you'd
15 want to take testimony, right? I think it makes sense to
16 solicit the input from each of the tribal communities and
17 ask -- ask what's their view. If they are a community of
18 interest, are they unique? Are they part of other tribal
19 interests? Are they part of a neighboring town? Like, how
20 do they understand their community.
21 But I think given the historic and -- historic
22 background here and the ethnic realities and the perception
23 of how they understand their communities operate, I think
24 they come into it with a very strong claim of communities of
25 interest.

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1 VICE CHAIR WATCHMAN: Thank you.
2 CHAIRPERSON NEUBERG: Commissioner Mehl, please.
3 You're on mute still.
4 MR. LANGHOFER: We've all made that mistake today
5 it looks like.
6 COMMISSIONER MEHL: As a Commission we haven't made
7 a final decision on whether we're hiring one law firm or
8 two. Could you address your view of the pros and cons of
9 either of those directions; and, if we went with just one,
10 do you believe your firm can be that one or do you -- would
11 you argue that we should be selecting two?
12 MR. LANGHOFER: I think you should select two. And
13 there was a time when I started doing political law -- this
14 is, you know, ten years or so ago -- I thought it would be
15 possible to build a successful bipartisan practice; and we
16 tried to do that at my last firm and the firm before that,
17 actually.
18 It didn't work. And the reason for that is there
19 was something very subjective about the way political
20 lawyering works; I just didn't understand. It took me
21 several years to sort of appreciate it.
22 And I think the best way for me to describe it is
23 this: Sometimes you have to deliver bad news to a client.
24 You know, they -- they ask you a question that you know they
25 want the answer to be this, right? And you got to go to

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1 them and say, "Look, this isn't going to work; you're
2 probably going to lose. You need to do something else and
3 here's -- here are the solutions that we propose to you."
4 If you're giving that advice across party lines,
5 your client is going to wonder whether you're giving it to
6 'em straight, right? That subjective element I just didn't
7 appreciate ten years ago. And I think if you're going to
8 deliver bad news, doing it within party lines so you don't
9 have that sort of doubt about whether you're getting good
10 advice, that's really important.
11 This two-firm model that the last two Commissions
12 have followed seems to work. I mean, the primary problem I
13 think is billing overages, right? That's a real problem,
14 you need to be mindful of that. But we help solve that
15 problem in other ways.
16 Fundamentally you will, at some point, get an
17 answer from a lawyer you don't want to get and you -- you
18 need to have trust you're getting an honest answer, and I
19 think you solve that with a two-firm model.
20 CHAIRPERSON NEUBERG: Any other follow-up ?
21 Okay. With that, Commissioner Lerner.
22 COMMISSIONER LERNER: Well, I'd like to do a quick
23 follow-up before I move to my other question.
24 And that is, so if you support the two-firm model,
25 can you talk a little bit about how you would make that

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1 work? What would be the ways that you would work with
2 another firm?
3 And as part of it you mention billing. So, you
4 know, what might -- that's a separate piece of it but not
5 the only thing. I'm curious about how you think that would
6 work.
7 MR. LANGHOFER: Well, the way I understand the
8 lawyering to have worked the last time, I think they started
9 with the Republican and Democratic firms coming together and
10 sitting -- sitting down with the Commissioners and giving
11 them kind of a tutorial on redistricting law. You know, we
12 watched, of course, the meetings so far, and it seems like
13 you guys are doing a really good job of teaching yourselves
14 about it so far.
15 But I think on the big points like that, like, what
16 -- what are the substantive restrictions of redistricting,
17 the two firms need to work together.
18 There are smaller points, open meeting law notices,
19 for example, agendizing items, like, those sort of things I
20 don't know that you need have to have two firms running up
21 duplicative bills about. When you have real substantive
22 questions, I think you need to have overlap of these firms
23 so everyone is comfortable, and the public doesn't feel like
24 one side got cheated, right? Or they were railroaded by a
25 process or some step.

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1 Pretty important to have good working relationships
2 between law firms. We can work with any of the other folks
3 you're talking to. It's a small bar; we all know each other
4 reasonably well. And I think we would want to come together
5 at the beginning and say -- you know, talk through amongst
6 ourselves, we'd operate in the smoothest way possible.
7 We've got pretty good relationships with Ballard --
8 Ballard Spahr. Roy Herrera used to be a partner here; I
9 worked with him at the U.S. Attorney's Office. Dennis Burke
10 at Ballard Spahr was the U.S. Attorney while I was there.
11 Mark Kokanovich, who I think is on their team, I actually
12 grew up with Mark; I've known him since I was three; really
13 good family friends. We got great relationships with them,
14 but I think we can work with anyone.
15 MR. LA SOTA: If I can just add, I think, you know,
16 you're kind of hearing from us that, well, you should hire a
17 Republican firm and a Democratic so that may give you a
18 little bit of heartburn that we'll be able to work together.
19 It's actually very common, and all of us in the room here,
20 we are all here together today, you know, have experienced
21 this certainly in a lot of different contexts, but
22 particular in ballot measures.
23 I mean, it is a small bar as Kory said, and you got
24 to scramble for attorneys sometimes, and I found myself with
25 -- with -- you know, teamed up with the Democrat attorneys

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1 and working very well and celebrating big wins on occasion;
2 and it's just a matter of professionalism, and we're
3 certainly prepared to -- to work with -- with any -- whoever
4 you pick if you do pick two firms and -- and we are one of
5 them.
6 COMMISSIONER LERNER: So my question had been, and
7 I think you kind of answered that a little bit, like when
8 you said open meeting law was -- you know, are there some
9 things that you feel that you would have special expertise
10 in that you could say, "Hey, we can take the lead on this,
11 and somebody else could take the lead on that?"
12 So I think you kind of -- kind of addressed that.
13 So I do have a question. You have been -- you
14 filed some lawsuits on -- that have been sort of --
15 questioned redistricting is probably the easiest way to put
16 it, and -- and been on the side that maybe questions, you
17 know, some of the redistricting goals. So can you speak to
18 how you would take the other side now to defend
19 redistricting?
20 Because, you know, you've done -- you've done one
21 side, now how would you do work on the other way if that
22 makes sense.
23 MR. LANGHOFER: As I understand, I think that
24 question's for Tim because I believe his law firm was in the
25 last round of litigation, but that Statecraft didn't oppose

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1 the last time around. So I'll let Tim answer that.
2 MR. LA SOTA: Thank you.
3 And I think it was a very good training ground
4 because last time I think it became apparent pretty quickly
5 that of the side I was working on, the Fair Trust, which was
6 thought to be aligned more with Republican interest, that,
7 you know, maybe things weren't going to go our way with the
8 final maps. So the job quickly became, look, you know,
9 find -- find holes, find things you can complain about, find
10 things you can sue on. You know, we're going to have to
11 file suit probably -- you know, we had an inkling we -- we
12 would have to anyway, but, you know, there was a certain --
13 a certain sort of special urgency.
14 And the suits that you did see were -- were
15 developed essentially by -- by me and the other attorneys
16 for the Fair Trust that sat through the meetings and came up
17 with the best ideas on things we could challenge.
18 I think there are a lot of lessons from that. It
19 was obviously a lot of that happened kind of a long time
20 ago. It's -- it's sort of interesting the way it's come
21 back to me a little bit through the process of preparing for
22 this interview.
23 But, you know, the bottom line is I think it does
24 prepare me especially well to avoid a lot of the things that
25 -- that happened the last time. They weren't ultimately

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1 fatal to any of the work the Commission did, that's true.
2 But at the same time, I think it -- it could have been a
3 little bit -- I mean, there's always things you could do
4 better. I say that every time; I'm not being critical, but
5 I think it was a good training ground to avoid some of the
6 things that are avoidable. Obviously, not everything is
7 avoidable.
8 COMMISSIONER LERNER: Just as a quick follow-up,
9 I'm sorry. Can you be more specific? Give an example
10 perhaps?
11 MR. LA SOTA: Well, sure, I can -- so the, you
12 know, the -- in the last go round, it was apparent to me
13 just basically from going to the meetings that they -- that
14 they had abandoned the -- the grid map; that they basically
15 put the grid map up and -- and moved very quickly away from
16 it. Now, ultimately Judge Brodman said that they spent
17 enough time on that; they'd done enough specifics, that, you
18 know, they'd taken enough input, that -- that that was okay.
19 But I think that was a procedural objection that was -- was,
20 frankly, very well founded, and it was developed by sitting
21 in those meetings and say, "Hey, you know, what happened to
22 the grid map? We're on the grid map a second ago, and now
23 we've got all these what-if maps."
24 Ultimately not successful, but there might have
25 been a better transition from the grid map to what was next.

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1 Open meeting law was -- was another example. At
2 one point the last Commission took the position that the
3 Arizona open meeting law did not apply to it. That -- that
4 position did not prevail but, ultimately, the -- the Court
5 did decide that the -- that what they had done was -- was in
6 compliance with the open meeting law.
7 Now, none of those things ended up invalidating any
8 of the work the Commission did. The Commission's work last
9 time withstood all scrutiny; it even went up to the Supreme
10 Court, obviously two separate cases. But nonetheless, I
11 think that those are good lessons for this -- this go round.
12 Obviously the law has changed significantly, on the federal
13 side particularly, but I think those are examples. And
14 that's what -- that's what they send me to all those
15 meetings to -- to do is, is basically, look, if it doesn't
16 turn out right, we're going to sue and what can we sue on.
17 That's it just in a nutshell.
18 COMMISSIONER LERNER: Thank you.
19 CHAIRPERSON NEUBERG: Commissioner York.
20 COMMISSIONER YORK: Good afternoon, gentlemen.
21 Appreciate your time.
22 One of the things that we've heard a lot about is
23 the voter right -- Voters Right Act and the changes from
24 Section 5 to Section 2, and so I would like you to share
25 with us perhaps how you would deal with a Section 2

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1 challenge as it relates to minority communities in our
2 state.
3 MR. LANGHOFER: Well, Section 2 hasn't had so many
4 changes since the last redistricting cycle; I think there's
5 one Supreme Court case in the intervening ten years. And,
6 you know, the short version of Section 2 is that it's
7 complicated, and it depends on the facts in your state and
8 on your maps and your record.
9 And so, really, the only thing I could responsibly
10 say now, you know, we don't have a record or maps yet, is
11 that Section 2 is probably the most fertile ground for
12 litigation, right? There -- this is -- I would be surprised
13 if there's not litigation in a swing state like Arizona over
14 Section 2.
15 And so one of your big goals, anticipate
16 litigation: Here you go, you're anticipating it.
17 And you -- when you get close to finalizing your
18 maps or you get maps you think are sort of semifinal, you
19 need to be going through those with a fine tooth comb, every
20 district saying to yourself: What's the -- what's the
21 record on this? What was the testimony we had? What --
22 what was the math on this again?
23 Like, how -- how would this look if someone who is
24 a hundred percent against us, wanted to make us look as bad
25 as possible, got to have an uninterrupted 30 minutes with

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1 the judge, what would they have to say, right? You think
2 about it that way, and if they've got points in there that
3 sound persuasive to you, you got to look back and see where
4 there's a way of making that map better.
5 That -- you go through that exercise again and
6 again until you feel comfortable that you've balanced all
7 the factors properly then you -- you go to -- I think that's
8 the way you should be approaching the problem.
9 Of course, document as you go along so you got
10 exhibits when court comes.
11 CHAIRPERSON NEUBERG: Okay. Thank you.
12 I have a two-part question. First, I'd like to
13 better understand this relationship between Tim and
14 Statecraft. You know, I don't know if you're one and the
15 same or if there's some kind of contract or -- you know, I
16 know that Tim is contracted with the State, and so I'd like
17 to understand that distinction; and, the second part to my
18 question is, do you anticipate any potential conflicts of
19 interest that may arise over the next few years, you know,
20 with, you know, your potential representation of other
21 political parties or other interests?
22 MR. LANGHOFER: So the conflicts I think is pretty
23 straightforward: We -- we can't have conflicts and would do
24 what it takes to avoid them.
25 The most obvious way that would come up is if we're

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1 representing districted candidates, a legislative or
2 congressional candidates in connection with, you know, their
3 election or re-election, and we have all agreed that will
4 not happen while the Commission is drawing maps. It just --
5 we would withdraw from those engagements or take a pass on
6 them.
7 On the relationship between Mr. La Sota's firm and
8 Statecraft, he has a separate firm, but we have, over the
9 course of several years, subcontracted work to each other as
10 necessary. And I think structurally the way it would work
11 here, the way the proposal was submitted was Statecraft is
12 the bidder but subcontracting out at one-third of the work
13 to Mr. La Sota's firm, so that, you know, you and the DOA
14 don't have to deal with sort of multiple overlapping
15 contracts, they have one and we're sort of allocating it
16 between the two firms, entirely between us.
17 It's an arrangement we're pretty comfortable with,
18 actually; we've done it, like I said, several times over the
19 last few years.
20 MR. LA SOTA: If I could expand very briefly on --
21 on the candidates. You know, one of the constitutional
22 criteria is that you, you know, you're not supposed to
23 consider the interests of incumbents. And, you know, we are
24 all, the three of us who represent a number of -- of
25 incumbent legislators, con- -- members of congress over the

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1 years, are making this commitment right here and right now
2 that we are not going to -- that we are not going to be
3 representing them if we do get this contract.
4 You know, we're not saying well, you know, if they
5 want to go -- go up against the Commission we're not going
6 to represent them, we are just going to drop them because we
7 think -- "drop" is the wrong word, but we will find them
8 other counsel because we think that this Comission, it's
9 important to maintaining the credibility that, you know,
10 we're not going to be considering individual incumbent
11 members of congress or the legislature because that's what
12 the Constitution tells us.
13 One other note on teaming up with Statecraft. As I
14 mentioned earlier, it's fairly common in big cases,
15 Statecraft and I -- Statecraft brought me on for the Andy
16 Biggs recount, and that was actually -- we prevailed in that
17 against in Christine Jones, and -- and she hired two firms
18 herself who are both bidders on this contract, Ballard Spahr
19 and Snell & Wilmer. So we anticipate being able to work
20 well obviously internally as well as with whoever else is
21 chosen, if we are chosen.
22 CHAIRPERSON NEUBERG: Okay. Thank you.
23 With that, we have -- we have some additional time
24 for other questions from the Commissioners.
25 Commissioner Mehl, please.

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1 COMMISSIONER MEHL: Kory, you've talked about some
2 of the benefits of a boutique firm, and an obvious question
3 for us to ask is, do you have the fire power for the kind of
4 litigation and the kind of future you might have? Are you a
5 large enough firm to handle our work?
6 MR. LANGHOFER: Yeah, that -- that's a good
7 question. And I think -- I think this is a good question
8 because this is a common concern with clients hiring
9 boutique firms.
10 So let's just start with what's subjectively true.
11 We've handled large document-intensive cases -- either alone
12 or in association with Mr. La Sota -- and against regional
13 and national firms very successfully. So statewide ballot
14 measures, we've done, you know, many of those, really part
15 of our largest sort of focus of the practice.
16 And, you know, with those you are looking at
17 hundreds of thousands of signatures, tens of thousands of
18 pages and has to be done in the course of days, right? You
19 don't have months to go through discovery, it's very fast
20 and extremely document intensive. So we've gotten
21 accustomed to that.
22 Statecraft has represented clients in congressional
23 investigations, in white collar investigations involving
24 millions of documents, hundreds of thousands of e-mails, you
25 know, hundreds of custodians. These are large

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1 document-intensive cases that we've handled very
2 successfully.
3 The business model, just to -- let me explain
4 how -- how is that possible when you have a small number of
5 partners at your firm, how is that the possible. The
6 business model is just different.
7 The large firm business model is you have your
8 labor on salary, right? You have a lot of junior associates
9 who churn through documents and discovery when the time
10 comes. And the business model of a small firm is different;
11 you don't have them on salary, they're on contract. So when
12 something comes up, you, you know, go back to your
13 contractors and say we need you to process this or get back
14 to us with -- you define the parameters of course.
15 Now and what we have found is that it's critically
16 important for the person who is giving oral arguments for
17 you or taking depositions for you to know the substantive
18 law front and back and to be able to, you know, very fluidly
19 dealing with complicated set of facts and documents. It is
20 not critical that the person reviewing, you know, the one
21 hundred thousandth e-mail know the Voting Right Act front
22 and back, right? What you need is a deep knowledge that's
23 concentrated in the few senior lawyers that are working for
24 you, and then access to larger number of associate lawyers,
25 if necessary, or contract lawyers for review of Commission

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1 records as they come in.
2 This model has worked very well for us.
3 CHAIRPERSON NEUBERG: Yes, Commissioner Lerner, and
4 I -- Jessica Klein, I saw that -- did you raise your hand?
5 MS. KLEIN: I did. I just wanted to, you know, we
6 were trying -- I'm Assistant Attorney General Jessica Klein,
7 I'm here on behalf of the IRC.
8 And I -- I just wanted to make sure and sort of
9 clarify something based on what Commissioner Lerner had
10 asked before, which is, you know, we're looking -- the IRC I
11 should say, is looking right now for a firm based on the
12 current list of firms that are on the outside counsel list
13 from the Attorney General's Office. So in this case it's
14 actually Mr. La Sota's firm that would be on the -- the
15 list, and so it would be the opposite arrangement where
16 Statecraft would be subcontracting to Mr. La Sota' firm. So
17 I want to make sure Commissioner Lerner's question was
18 answered fully.
19 MR. LANGHOFER: I don't think that's a deal breaker
20 for us.
21 CHAIRPERSON NEUBERG: Okay. Thank -- thank you,
22 Jessica, I think that's an important clarification, that's
23 something we had wanted to know. Thank you.
24 And any other -- before Commissioner Lerner
25 responds, any other further legal questions?

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1 Okay. Commissioner Lerner, please.
2 COMMISSIONER LERNER: This is actually a nice
3 follow-up from that. I was just wondering if you can give
4 us a sense of how your representation will work, who will --
5 who would be the ones attending the meetings, who would we
6 be interacting with directly?
7 Sort of the lay of the land in terms of how -- how
8 this partnership would work.
9 MR. LANGHOFER: I think -- I'd be interested in
10 Tim's input on this as well.
11 I think that the most important thing that you have
12 someone from our operation attending each of the meetings.
13 Not necessarily in person, but certainly virtually if not in
14 person. And -- I would expect that all of us are available
15 to you for contact or questions as necessary; and I think
16 it's fair to say that all of us would be surprised if we
17 didn't get calls and texts from you after hours and on
18 weekends because of the way things to go because it moves
19 fast and you need to talk to lawyers when you need to talk
20 to them.
21 I'd be happy to be the primary point of contact,
22 but I also don't have a point of pride in that. If
23 Mr. La Sota prefers to be or if you would prefer him, I
24 would not have my feelings hurt.
25 MR. LA SOTA: I remember last time the -- the

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1 counsel, I mean, they are at every -- essentially every
2 meeting in person, and I thought that -- I thought that did
3 make a big difference to their ability to advise the
4 Commission to -- to basically lay the table for successful
5 defenses largely of what the Commission did -- well,
6 ultimately, completely of what the Commission did.
7 So I think you -- you -- you'd expect certainly us
8 to be there essentially the entire time. And -- and,
9 obviously, there will be, just as there will be some
10 division of labor if you do pick two firms, because the
11 other firm -- between the two firms, there will be division
12 of labor between -- between us.
13 Now, one of the things also to consider is that --
14 is that this thing is going to move extraordinarily fast.
15 And I think that -- that we are, you know, we're adaptable
16 and we can -- we can pivot quickly, and it's going to take
17 that. I think that being nimble is actually an advantage of
18 having the type of working relationship that isn't just in
19 theory, that we can point to in practice of a record of
20 success.
21 As I pointed out in the Biggs case, very document
22 intensive, very quick, you know, dealing with a plaintiff
23 that -- that -- with basically unlimited resources to -- to
24 try to do a successful election challenge.
25 So we are up to that task. And -- and, you know,

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1 we may find that -- certainly would find, I'm sure, that --
2 that certain individuals deal a little bit more in certain
3 subjects, but I think that you'd be happy regardless.
4 CHAIRPERSON NEUBERG: Any other questions?
5 I have a follow-up question on -- on the division
6 of labor. Do you have more to expand on that in terms of
7 how to best be efficient and to minimize costs for the
8 State?
9 MR. LANGHOFER: I think the -- let's start with the
10 question of what you need overlap on. And I think as you
11 get near end and you're approving it and you're going
12 through VRA analysis and the potential litigation theories,
13 you -- you -- it's worth it to have overlap on that. When
14 you have procedural issues that are, I think we can all
15 agree, not partisan issues; they're mechanical. It doesn't
16 make any sense to have two firms doing that and running up
17 two tabs.
18 Then you've got this sort of gray middle like
19 attending Commission meetings, for example. Is that
20 litigation purpose, I actually think it is, that's why I
21 would say it's important to have two folks there for every
22 meeting, one -- you know, one from the D side, one from the
23 R side. But that's not necessarily true, you can look at
24 that and say, "I appreciate the suggestion; we'd rather have
25 one lawyer there." Which is great but I think we should

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1 sort of define that up front.
2 So, look, if your lawyers are retiring at the end
3 of this engagement, you've done it wrong. Like, we really
4 need to find a way of keeping costs reasonable here because
5 ultimately tax payors are on the hook for it, you should be
6 getting value for every additional hour you're -- you're
7 paying for.
8 MR. LA SOTA: Yeah, if you do choose us you'll be
9 starting out on first base because I think we have an
10 extraordinarily competitive rate as it is, so. Obviously,
11 we'll -- we'll work very hard to minimize unnecessary legal
12 work, but to the extent there is some overlap, it's going to
13 happen no matter who you pick, and it will cost you less
14 with us.
15 CHAIRPERSON NEUBERG: Okay. We -- we have just a
16 few more minutes. Does anybody else have any other
17 questions they'd like to ask?
18 With that, I don't know if you'd like to make any
19 closing statements. We thank you very much for your time
20 and for, you know, you know, your investment in this.
21 MR. LANGHOFER: Thanks very much for your time.
22 Look forward to hearing back from you.
23 MR. LA SOTA: Thank you.
24 CHAIRPERSON NEUBERG: Okay. Have a good afternoon.
25 (Whereupon the representatives from Statecraft,

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1 LLC, exit the meeting.)
2 CHAIRPERSON NEUBERG: Okay. With that, it's
3 actually fortuitous, for whatever reason, we managed to
4 finish business right up until Agenda Item VIII, which is
5 right where we are with this process.
6 And so we have now had the opportunity to listen to
7 all four firms. I'd like to open it up to dialogue to share
8 impressions, thoughts, suggestions. And I think we can
9 leave it open ended for now, and then maybe we'll focus on
10 our conversation after we just share our general thoughts.
11 We're not a shy group; who is going to start?
12 COMMISSIONER YORK: I guess I have a question as we
13 discuss the pros and cons of these presentations. I think
14 the group needs to decide whether or not we're angling
15 towards one firm or two.
16 CHAIRPERSON NEUBERG: I think that's a great first
17 question and we could start with that and -- and -- and/or
18 we could start about talking about the strengths and
19 weaknesses of each firm.
20 But if everybody is ready to, you know, chime in
21 about one firm/two firms, please, share.
22 VICE CHAIR WATCHMAN: Well, Madam Chair, this is
23 Vice Chair Watchman.
24 After listening to the four firms discuss, you
25 know, their philosophy and their take on the political side

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1 and who they represent, I'm inclined -- and I always thought
2 this would be our objective -- that's to have two firms
3 representing us.
4 And so, I guess, it was apparent in the past but,
5 you know, this -- this obviously is going to be a
6 challenging process. You know, I hate to say it but, you
7 know, we're in a big political divide nationally and
8 locally, so I think it will serve us well, serve the
9 Commission well to have two firms. I think it's pretty
10 clear and from looking at the four -- looking at the four
11 firms which party they have affiliations to.
12 And so my inclination and I would like to see us
13 move toward two firms so that we can balance the issue, you
14 know, balance the situation and basically have a check and
15 balance on each other, I think it's -- it's very important.
16 But I don't think we should make a decision today
17 but, you know, but I think two firms would be -- would serve
18 us very, very well.
19 CHAIRPERSON NEUBERG: I was actually hoping to make
20 a decision today. Just for clarification to anybody.
21 VICE CHAIR WATCHMAN: I don't want to today, so
22 I'll make that point.
23 So thank you.
24 CHAIRPERSON NEUBERG: Okay.
25 COMMISSIONER MEHL: This is Commissioner Mehl.

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1 I'm comfortable going with two firms. I would be
2 comfortable with going with one firm but only if we could
3 agree and have all of us in accord, and I'm not getting a
4 sense that that is really likely, so I'd be fine with two
5 firms.
6 And I'm fine with making decisions today.
7 COMMISSIONER LERNER: I'll just agree, I think,
8 that -- basically agree that if we could come to an
9 agreement on one that would be great, but I don't know that
10 we could; therefore, I think we need to go with two. We'd
11 like -- it would be nice not to have a divided decision on
12 this.
13 CHAIRPERSON NEUBERG: Commissioner York, is there
14 anything you want to add before I chime in?
15 COMMISSIONER YORK: I'm comfortable in making the
16 decision today.
17 CHAIRPERSON NEUBERG: Okay. And I -- you know,
18 I -- look, you know, in an ideal world, I think it would be
19 wonderful to have one firm, and I think it's something we
20 should aspire to at some point. I think given the realities
21 of partisanship today and the value of us reaching
22 consensus, you know, I think the fact that we're open to two
23 firms and open to finding a solution that truly represents
24 all of us, I think is a huge step.
25 So -- so understanding that it sounds like we're

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1 moving in the direction of two firms, you know, there was
2 only really one firm that presented themselves of Snell &
3 Wilmer as -- as being able to represent us as one firm.
4 Moving forward maybe we should speak about the firms as
5 Snell & Wilmer and Statecraft as a Republican representative
6 and Mary O'Grady's firm, Osborn Maledon, and Ballard Spahr
7 as -- as the Democratic side.
8 Let -- let's dive in to the pros and cons of each
9 and -- and, you know, why don't we do it based on the order
10 of presentations. We started with Osborn Maledon.
11 Please open up to, you know, pros and cons.
12 COMMISSIONER LERNER: We're looking at Ballard
13 Spahr versus Osborn --
14 CHAIRPERSON NEUBERG: No, what -- what I thought we
15 would take each firm --
16 COMMISSIONER LERNER: Oh.
17 CHAIRPERSON NEUBERG: -- just generally speaking
18 and talk about strengths and weaknesses, and then we could
19 talk about our -- our collective, you know, judgments.
20 You know, just opening up on, you know, Osborn
21 Maledon, I thought their presentation was incredibly
22 professional; I think their experience is spot on. I was
23 really drawn to the notion of avoiding litigation and
24 thinking about ways to navigate that process.
25 I thought there were a lot of positives. You know,

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there's no question that -- that it's a political firm and it's -- it's a firm that's politically out there. So I think that's important just to acknowledge.

So -- so those are my thoughts.

Thoughts from other Commissioners?

COMMISSIONER LERNER: This is Commissioner Lerner.

I will agree with you on everything you've said, Chair Neuberg. I think they're a really strong firm that have experience, of course, because they are there last year -- last time, not last year, thankfully. Ten years ago.

So they bring some good experience with them, and I think that they -- they spoke well in terms of being able to work with other firms as well, which is an important piece from my perspective. They certainly understand what the issues are as part of it; and their work last time, they prevailed in every legal challenge. So they did well for the Independent Redistricting Commission last time as well.

So I think they bring a lot of strength as part of that.

CHAIRPERSON NEUBERG: Any other comments?

VICE CHAIR WATCHMAN: Madam Chair, this is Vice Chair Watchman.

I guess I'll echo what Commissioner Lerner was saying. Great core team, great presentation, very

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1 experienced. Basically on the political side, you know,
2 there's a need for a balance and they acknowledge that, you
3 know, the -- the two parties that we're dealing with and so
4 I thought that was good.
5 Good answer to my question about the six criteria
6 and the Constitution, so I was happy about that.
7 And thank you for reminding, you know, that
8 question, I appreciate that.
9 And then, you know, just -- just the -- the size of
10 the team, if you will, and the enormity of that office, I
11 think, you know, there's a lot of resources to bear, so, you
12 know, I'd think that they'd do a good job for us if we were
13 to select them.
14 So thank you.
15 CHAIRPERSON NEUBERG: Commissioners Mehl or York,
16 any, you know, positives/concerns, anything you want to
17 share?
18 COMMISSIONER YORK: Well, my concern would just be
19 the fact that they were very involved in the last process
20 and that -- that process was not a super positive for the
21 State. And so, yeah, they were -- they did prevail, but I'm
22 sure there's still some opinions out there that believe that
23 was a big ethical point.
24 CHAIRPERSON NEUBERG: Okay.
25 COMMISSIONER MEHL: Well, this is Commissioner

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1 Mehl.
2 I think we're dealing with four firms that are
3 obviously very, very qualified and -- and any of them could
4 do a terrific job.
5 I think -- I think that some of the firms are --
6 although all four have partisan leanings, I think a couple
7 of the firms are more extreme partisan, and I would put
8 Osborn at the top of the list of the more extreme partisan;
9 and their reputation is more of -- more of an aggressive
10 partisan nature. They've been involved in not just the 2011
11 Commission, but some of the other things they've been
12 involved with have been highly controversial.
13 CHAIRPERSON NEUBERG: Okay. Thank you for noting
14 that.
15 Unless there's any -- yes. Please.
16 COMMISSIONER LERNER: So I guess I'd just like to
17 address, there are different perspectives on what happened
18 last time, and I think that actually things went well last
19 time in terms of the results. I know that that is not the
20 case with my colleagues, that they have a different
21 perception of what happened, and that's because we come from
22 different world views.
23 And -- but I just want to acknowledge that, that
24 when -- when we hear, you know, things did not go well, my
25 perc- -- my view is that they ultimately did result in a

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1 good product from that previous Commission.
2 So I just want to be -- I guess, make that
3 statement. And it's okay that we come from different
4 perspectives on that, I just want to acknowledge that
5 difference of opinion because it shapes, you know, how we
6 look at things. So I just wanted to make that -- that
7 comment.
8 COMMISSIONER YORK: I would agree,
9 Commissioner Lerner. This is Commissioner York.
10 That I don't want us to get in that similar -- same
11 situation that we don't want to get into last year -- last
12 years ago.
13 COMMISSIONER LERNER: Completely agree.
14 CHAIRPERSON NEUBERG: Commissioner Watchman, it
15 looked like you wanted to make a comment? No?
16 Okay.
17 VICE CHAIR WATCHMAN: I'm looking at my notes, but,
18 you know, I think, you know, my colleague, Commissioner
19 Mehl, basically said that Osborn, you know, has strong
20 political affiliations, I think there's another firm that
21 also has strong political affiliations or at least a sense
22 of that. But I'll bring it up then.
23 But, you know, it's our -- it's our human nature, I
24 guess, and so there's two firms of the four that I think are
25 very strong; the other two, you know, are not so strong.

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1 And so I'll just leave it at that, so.
2 Just -- just a comment. Thank you.
3 CHAIRPERSON NEUBERG: Ver- -- very fair.
4 With -- and I would say they're all political.
5 What we're doing is political, you know.
6 The second firm, Ballard Spahr. Who would like to
7 open it up talking about strengths weaknesses?
8 COMMISSIONER LERNER: I'll start, I guess.
9 I think they gave an excellent interview. I think
10 they bring a lot of strengths from their experience. I like
11 their answers in terms of the depth of knowledge that they
12 had. The information that they gave was I thought was --
13 there was some good specific examples, which I like as an
14 academic. Don't just tell me the general, give me an
15 example, and I felt that they -- they did a nice job on
16 that.
17 I think they bring a strong team as well and --
18 and, you know, I think that they basically all presented
19 well. And their experience, the team that they bring, I
20 think is going to be -- would be of value if we selected
21 them because of the range of where they've worked and what
22 they've done.
23 CHAIRPERSON NEUBERG: Thank you.
24 Other comments?
25 VICE CHAIR WATCHMAN: This is

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1 Commissioner Watchman.
2 I thought they did a great job and, you know,
3 echoing what Commissioner Lerner said. Good team, great --
4 great presentation by Mr. Herrera and his colleagues. And
5 so I thought they did a great job and so they answered all
6 the questions, you know, with a lot of clarity in my
7 opinion.
8 So again another -- another good firm. So great --
9 great presentation on their part.
10 CHAIRPERSON NEUBERG: Yeah, you know what, I agree.
11 Before -- before I turn it over to my other Commissioners, I
12 thought their presentation was highly competent,
13 professional. I think their knowledge of the Voting Rights
14 Act is -- is top.
15 I liked how they had a perspective of protecting us
16 from litigation. I thought they were honest with
17 acknowledging that there really aren't genuine bipartisan
18 firms right now that have maybe the level of expertise that
19 we're looking for; and I was reassured by their commitment
20 with regard to conflicts of interest, that at the end of the
21 day when it came to deciding to represent potential
22 candidates versus the IRC, that the IRC comes first; and so,
23 for me, that was extremely important.
24 Other thoughts?
25 COMMISSIONER YORK: My comments would be that I

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1 learned more in that interview about the process and the
2 Voters Rights Act than I probably did the other three
3 candidates.
4 COMMISSIONER MEHL: I thought they were very
5 impressive.
6 CHAIRPERSON NEUBERG: Okay. Excellent.
7 With that, why don't we move on to the third firm
8 which is Snell & Wilmer. Who would like to open it up?
9 COMMISSIONER MEHL: I thought that Snell was very
10 solid. They obviously have the depth and experience. I
11 think they have the reputation that if -- for -- for the
12 Republican firm, I think they would be a very solid choice
13 and really covered all of the major bases that I would have
14 expected them to cover.
15 I think they're the one firm that would claim they
16 really could do both, but I don't think we're going that
17 direction anyway.
18 COMMISSIONER YORK: One of the takeaways I got, I
19 liked the folksiness of the interview, I liked the fact that
20 they included all three -- three lawyers gave us their
21 story, made me feel a little bit more comfortable with them
22 from a -- you know, if I was to -- if I got down to two,
23 that would probably be the one I'd be most comfortable with.
24 COMMISSIONER LERNER: This is Commissioner Lerner.
25 I also liked the fact the introductions, I thought

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1 those were a nice way to do something a little more
2 personable, I agree.
3 I will say I was a little concerned about their
4 conflict of interest piece were they were not necessarily
5 going to give up representing anybody whereas the other
6 firms all indicated they would not do, all three -- the
7 other three kind of mentioned "we will step away from that
8 and put the IRC first" as you just mentioned. So that --
9 that was a bit of a concern. A concern for me. And then
10 some of their past political work.
11 I think they're a very strong firm. Snell &
12 Wilmer, right? Very well known, very strong firm, large
13 firm. They certainly have a lot to bring. But some of the
14 work that they've done in the past might be seen as
15 alienating some of the constituency in Arizona. The work on
16 SB 1070 and some things such as that, and it may not be the
17 same attorneys, I don't know exactly. So just -- just as I
18 mentioned.
19 But I thought that they had a nice demeanor.
20 VICE CHAIR WATCHMAN: Madam Chair --
21 CHAIRPERSON NEUBERG: Thank you.
22 VICE CHAIR WATCHMAN: -- I agree with everyone. I
23 wish I could have seen everybody, all of them, you know,
24 they were talking on the side, I just couldn't see who was
25 talking. So they're using one screen and one mic, so that

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1 was -- I can't have a "can't see them" note here. So it's
2 really hard to kind of put, you know, the information and
3 the name to a face but, you know, that's a little pet peeve
4 of mine.
5 But I think what my -- what my colleagues have
6 indicated, yes, they're known in this state. You know, I've
7 seen them in different arenas, including the Indian country
8 arena. So, you know, I think they'd serve well as the
9 Republican firm as Commissioner Mehl mentioned.
10 Thank you.
11 CHAIRPERSON NEUBERG: I -- I concur with everything
12 that's been said. I think they have the bandwidth; I think
13 they have the sophistication, the experience. I -- I think
14 they would have the commitment to place us first, although
15 I -- I'm highly sympathetic to Commissioner Lerner's
16 comments about, you know, potential conflicts.
17 You know, I -- I'd be very -- I'd be very
18 comfortable with them as a Republican firm. Again, I mean,
19 I -- you know, again down the road, you know, if there's a
20 time that maybe our state would look at a single, you know,
21 representative, I really appreciate the fact that they --
22 they worked towards bipartisanship. That is something I
23 deeply value and appreciate, and -- and I think that -- that
24 they're looking at it through that lens as something that I
25 think is positive from my perspective.

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1 If no other comments on Snell & Wilmer, we'll move
2 to our last firm, which is Statecraft.
3 COMMISSIONER YORK: Well, my opening comment would
4 be is it's really not Statecraft, it's La Sota.
5 CHAIRPERSON NEUBERG: Exactly.
6 COMMISSIONER YORK: Which is a tad disappointing
7 considering the application led with Kory.
8 They seem very capable; I'm a little worried about
9 their size; and in my experience I don't like to lead with a
10 discussion around fees, that bothered me, so.
11 COMMISSIONER MEHL: I -- I thought they were --
12 also made a very impressive presentation, but I do think
13 we're in the pretty deep waters here on -- on the work we're
14 doing and what we're going to be facing; and although they
15 made a good argument on how they would cover it size-wise, I
16 would be a little bit concerned there.
17 CHAIRPERSON NEUBERG: Commissioners Lerner or
18 Watchman, anything you want to add to that?
19 COMMISSIONER LERNER: I -- I don't necessarily have
20 a problem with a small firm because I sometimes think they
21 can make us the number one priority. Again, I like the fact
22 that they said -- that they can put aside other candidates
23 and that they would put us first, so I did -- I did
24 appreciate that piece of it.
25 I do understand what you're saying in terms of it's

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1 not Statecraft but it's La Sota. I actually did not realize
2 that earlier until we got that clarification about that.
3 But I -- I thought that they gave a good interview.
4 I -- I liked a lot of what they had to say in terms of what
5 ability they would have, and I understood how they would
6 actually balance their size with being able to bring others
7 in.
8 VICE CHAIR WATCHMAN: This is
9 Commissioner Watchman.
10 I thought that the size would have been perfect,
11 but then when I looked at their fee structure and trying to
12 balance, you know, what they're going to be earning and how
13 much time they're going to have to pay attention to this, I
14 think the gentleman said that he would spend most of his
15 time doing this, and so, you know, how can you make a living
16 spending all the time on us and -- and what about his other
17 clients?
18 And so I think in this case not having the size and
19 the depth, you know, would -- would not be -- would not suit
20 the interest of us as Commissioners and the Commission, so.
21 But great -- great presentation and great thought,
22 so. Thank you.
23 CHAIRPERSON NEUBERG: I concur with -- with a lot
24 of what's been said, and I do want to say that if I was in
25 hot water and/or I needed a firm to, you know, be aggressive

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1 to help me, they were absolutely a firm I would choose; I
2 thought they did a great job.
3 You know, but in terms of personally my view, which
4 I -- I've been clear with everybody wanting to err on the
5 side of caution and avoiding litigation and my concern about
6 the bandwidth, I have to agree with the commentary.
7 You know, I'm hesitant. I'm hearing actually the
8 early signs of consensus, I'm a little bit afraid to
9 actually throw it out there, but to me it sounds like there
10 may be consensus around a partnership between Ballard Spahr
11 as a Democratic firm and Snell Wilmer as a Republican firm
12 in partnership.
13 How would Commissioners feel about that
14 partnership?
15 COMMISSIONER MEHL: I'll make that a motion and
16 make it a clear discussion.
17 CHAIRPERSON NEUBERG: Okay.
18 COMMISSIONER LERNER: This is Commissioner Lerner.
19 I can second that motion so we can have that
20 discussion.
21 CHAIRPERSON NEUBERG: Thank you for that second.
22 With that, let's enter into a discussion about
23 asking Ballard Spahr and Snell Wilmer to enter into a shared
24 agreement with the Commission to represent us.
25 COMMISSIONER LERNER: This is Commissioner Lerner.

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1 I just have one question that maybe pertains to
2 this, and that is when we made our decision on the four that
3 we were going to select, there were a couple of other firms
4 that had been considered but didn't necessarily get the
5 votes, I just want to be sure we're comfortable, whether or
6 not we wanted to go back and take a look at the other couple
7 firms or move forward. I wanted to ask the other
8 Commissioners their thoughts.
9 COMMISSIONER YORK: I'm --
10 CHAIRPERSON NEUBERG: You're speaking,
11 Commissioner Lerner, about the firms that have already been
12 procured by the State that are Option 2 or B but that we did
13 not invite for an interview?
14 COMMISSIONER LERNER: Right. There were -- when we
15 had made the decision about this, these to invite, there
16 were a couple of others, I think, that had come up. But
17 only those are only on the state list, that's all I'm
18 talking about.
19 COMMISSIONER YORK: Commissioner Neuberg, I think
20 she's referring to Option C where there were two firms that
21 weren't qualified the State prior?
22 No? Okay. Never mind.
23 I'm -- this is Commissioner York, I'm in error.
24 COMMISSIONER LERNER: When I -- just, I didn't
25 know, there were other firms on the list that we had

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1 reviewed and I just wanted to make sure that we didn't want
2 to go back to any of those from that original list that are
3 already on the state list, if we wanted to go back to. I
4 just wanted to ask that question.
5 COMMISSIONER MEHL: I thought the four that we
6 heard from were all in extremely confident and extremely
7 qualified, I suspect several (technical disruption), but I'm
8 comfortable moving forward with the decision today after
9 these interviews.
10 VICE CHAIR WATCHMAN: Madam Chair, you know,
11 earlier I said that I wasn't ready to -- to move forward. I
12 guess let me just explain that comment.
13 And -- and the reason I was not comfortable and
14 made that comment earlier is that, you know, we're obviously
15 concerned about getting public comment and certainly I saw a
16 lot of comments related to the selection of our Executive
17 Director and, you know, did we do it hastily, you know, did
18 we not, you know, vet it enough.
19 And so -- but I think public input is very, very
20 important. And so I'm sure we'll -- we'll hear comments
21 today about which firms, you know, would be great firms.
22 And I did see an e-mail but I haven't had time to look at
23 it, that some -- some comments were sent to us.
24 But if -- if we need to move forward today, there
25 is a motion and a second, that's obvious, so I just want to

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1 make sure that we recognize the public process and public
2 input.
3 But I know there's a -- there's a motion and a
4 second, so if we're willing to move forward I'll make my
5 decision then.
6 But thank you.
7 CHAIRPERSON NEUBERG: You know, thank you,
8 Vice Chair Watchman. You know, we are all sensitive to the
9 public input. I think the at the end of the day the
10 question is, do we anticipate that that public input would
11 in any way influence the decision that we're about to make.
12 And, you know, my personal consumption of the
13 comments up to now -- obviously, I can't fully predict what
14 they would be, but -- but having a sense of how people think
15 and given the discretion that we have being selected to make
16 these decisions, personally I feel that I have enough
17 information available to make that decision for our State
18 today.
19 But -- but that's me and I welcome, you know, the
20 feedback of my Commissioners.
21 COMMISSIONER LERNER: This is Commissioner Lerner.
22 We did receive during our -- our break a chance to take a
23 look at the public comments up until that point. So I know
24 I did take a quick look at that just to get a sense of what
25 the comments were.

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1 So I certainly have thought through -- been
2 thinking about what people have -- have said in those
3 comments. It was just a quick -- an opportunity, but it was
4 -- at least it was nice to have that opportunity to have
5 some comments.
6 COMMISSIONER YORK: Well --
7 CHAIRPERSON NEUBERG: And I think the -- the most
8 important question is, do you feel that you have learned
9 enough and have accumulated the information you need to make
10 a decision today?
11 COMMISSIONER YORK: I -- I -- this is
12 Commissioner York.
13 I have learned enough to make a decision today.
14 CHAIRPERSON NEUBERG: Commissioner Mehl?
15 COMMISSIONER MEHL: Yes.
16 CHAIRPERSON NEUBERG: Okay.
17 Okay. So let's get back to there was a motion to
18 consider asking Ballard Spahr and Snell Wilmer to partner to
19 represent us. Any further discussion about that?
20 I -- I think, you know, they're -- they're two
21 outstanding firms. They bring different strengths I think
22 would compliment each other. I'm confident and comfortable
23 that they're going to keep us safe as it relates to, you
24 know, open meeting laws and public records.
25 And the deeper issues of having to represent us

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1 whether it be in state court or federal court, I feel like
2 that combination has the litigation experience, the
3 bandwidth, the sophistication to, you know, really serve us
4 well and to have checks and balances, you know, given their
5 different strengths that would, I think, serve the State.
6 VICE CHAIR WATCHMAN: Commissioner -- Chairwoman
7 Neuberg, I just went through the -- real quickly the
8 comments, and so -- I just wanted to acknowledge that and so
9 if -- I guess, contrary to what I said earlier, I think
10 based on what you said, you know, there's enough information
11 out there, great -- great proposals, great presentations;
12 and so I would be willing to move forward.
13 And then, obviously, based on what I read this
14 morning from the comments. So I apologize for not reading
15 that earlier.
16 CHAIRPERSON NEUBERG: If there's no further
17 conversation it sounds like we may be ready to vote for a
18 motion to approve Ballard Spahr and Snell Wilmer to partner
19 as our legal representation.
20 With that -- Commissioner Lerner, do you have a
21 comment?
22 COMMISSIONER LERNER: Well, Chair Neuberg, looks
23 like our legal counsel has their hand up. Pamela.
24 CHAIRPERSON NEUBERG: Pam?
25 COMMISSIONER MEHL: That's been up the entire day.

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1 COMMISSIONER LERNER: Oh, has it been up all day?
2 All right.
3 COMMISSIONER MEHL: It's been up all day.
4 MS. PEISER: Oh. I'm sorry. No, I did not mean to
5 do that. I do apologize.
6 COMMISSIONER LERNER: Okay. Never mind then.
7 CHAIRPERSON NEUBERG: Okay. With that, we are
8 going to do a vote.
9 Vice Chair Watchman with the motion to approve
10 Ballard Spahr and Snell Wilmer as our partner attorney
11 firms.
12 VICE CHAIR WATCHMAN: Aye.
13 CHAIRPERSON NEUBERG: Commissioner Mehl.
14 COMMISSIONER MEHL: Aye.
15 CHAIRPERSON NEUBERG: Commissioner Lerner.
16 COMMISSIONER LERNER: Aye.
17 CHAIRPERSON NEUBERG: Commissioner York.
18 COMMISSIONER YORK: Aye.
19 CHAIRPERSON NEUBERG: Commissioner Neuberg is an
20 aye.
21 And, with that, we unanimously approve the hiring
22 of our future counsel. Congratulations Ballard Spahr and
23 Snell Wilmer -- or condolences, you know, however we all
24 want to look at that next process. But it's very exciting.
25 And I -- before we move to the next item, I really

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1 want to compliment my fellow Commissioners. You know, maybe
2 in retrospect it seems kind of an easy decision but, you
3 know what, this was a process, and the fact that we all made
4 compromise, nobody got everything they wanted and, yet, we
5 all came together to find a way to represent what we
6 collectively feel we need, I just think is -- is a great
7 sign and something I'm incredibly excited about, and
8 something that I'm also deeply appreciative of.
9 And so with that, we can skip Item No. X, which
10 would have been moving into evaluating the legal counsel
11 with the RFP.
12 We are going to table Agenda Item No. XI, which is
13 discussion --
14 MS. PEISER: Chair -- excuse me.
15 CHAIRPERSON NEUBERG: Yes, please.
16 MS. PEISER: If you could hold for just a moment.
17 CHAIRPERSON NEUBERG: Please.
18 MS. PEISER: There may be a need, and I'll defer to
19 Ms. Klein on this, to determine whether you're keeping it
20 open as in just sitting there or if you're terminating it
21 completely.
22 CHAIRPERSON NEUBERG: The -- thank you, Pam.
23 And, with that, I presume that we need to first
24 extend the offer and sign contracts before we would formally
25 terminate the RFPs.

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1 MS. PEISER: That's a good point. So -- in that
2 case, you could continue to table it to next week and then
3 once everything is up and firm, so to speak, and a
4 transition date has been determined, then look at it for
5 your final decision.
6 CHAIRPERSON NEUBERG: Okay. Since I'm not hearing
7 Jessica chime in, I'm presuming that that would be an
8 appropriate course of action.
9 MS. KLEIN: Yes. I concur with Pam.
10 CHAIRPERSON NEUBERG: Okay. So we will reconvene
11 next week, make sure that the firms accept the contract
12 offers, and then we will make a determinative decision next
13 week as it relates to the RFP process.
14 Okay. With that, I was alluding to tabling Agenda
15 Item No. XI which is discussion and possible action on
16 securing mapping consultant support.
17 We just simply don't have the bandwidth or the time
18 to begin to open up those proposals. I do want to just
19 share, because last week I -- I had openly lamented a
20 concern about, you know, the number of proposals that we
21 received and -- and what that means for us.
22 I do want to let you know, you know, just in my due
23 diligence, I'm feeling a lot more -- more optimistic and
24 comfortable. We've had the opportunity to see the firms
25 that publicly submitted the proposal, although we don't have

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1 the proposals, and I do believe that we have competent,
2 capable options; and given the climate of competition where
3 all 50 states are doing their redistricting, I just wanted
4 to share that my -- my perspective on this has evolved a
5 little bit, and I'm optimistic and comfortable about our
6 conversation that we'll have next week.
7 COMMISSIONER MEHL: And this is Commissioner Mehl.
8 I want to point out that if we don't get moving on
9 selecting a mapping consultant, we run the risk that one,
10 two, or three of the firms could withdraw because they've
11 gotten too much other work. So I do encourage us to move
12 forward quickly on the decisions on the mapping.
13 CHAIRPERSON NEUBERG: Commissioner Mehl, that is
14 such a great question, it's something that I asked of our
15 counsel. And -- and not to put Jessica Klein on the spot,
16 but she reassured us that these proposals are active for
17 180 days, meaning that it is extremely rare for a firm to
18 submit a proposal that is open for 180 days and then to
19 withdraw that proposal because they got too busy.
20 And -- and so learning that helped reassure me a
21 little bit. Yes, things do happen and there is a fair
22 amount of competition, but understanding the rarity with
23 which firms would withdraw, I do think we can embark on this
24 process having a comfort level that we have viable options;
25 and we have also asked the -- the State Procurement Office

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1 when we do ultimately meet next week, to speak with us about
2 ways to expedite the process where it doesn't have -- you
3 know, because if we do go through the rankings, you know,
4 RFP process, we'll want to -- to expedite it as much as we
5 can.
6 COMMISSIONER MEHL: I do have a suggestion in that
7 regard.
8 We found that when we were looking at the lawyers,
9 that in order to do the RFP process we had -- that
10 evaluation tool becomes very specific and very important;
11 and I didn't -- and can we get the a draft evaluation tool
12 sent out immediately or as soon as possible to all of us so
13 we can be reviewing it?
14 'Cause I think each of us actually should spend a
15 little more time in -- in making sure we have questions on
16 there that we think would help differentiate the firms so
17 that we can make a selection.
18 CHAIRPERSON NEUBERG: You know, that -- that's a
19 great question with what kind of options. I mean, I've
20 looked at -- those proposals are already active, so I don't
21 think -- I mean, I think that ship has sailed in terms of us
22 being able to ask specific questions.
23 COMMISSIONER MEHL: No, the evaluation tool we
24 haven't developed yet.
25 CHAIRPERSON NEUBERG: Right. That -- okay.

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1 That was potentially going to be on -- on our
2 agenda today. We shelved that for next week, that is
3 absolutely something that we're intending to do during the
4 meeting next week. Whether or not we can get a head start
5 on looking at the criteria, that's -- that's a question for
6 counsel.
7 MS. KLEIN: This is Jessica Klein. I don't think
8 there's a problem with getting those to you in a draft form
9 for your review prior to the next meeting, but I'll confer
10 with SPO and make sure that they have that ready. It's my
11 understanding that they do; I just don't want to speak to
12 them because the State Procurement Office isn't on this --
13 on this call or in this meeting.
14 But from a legal perspective there's no problem
15 with you reviewing it in advance but, of course, you can
16 only take action in the public meeting.
17 COMMISSIONER LERNER: This is Commissioner Lerner.
18 I'd just -- I'd like to echo Commissioner Mehl's
19 comment. At this point if we -- I understand we don't have
20 the time today, but if we don't decide on the evaluation
21 tool by next week, then the week after we select our
22 interviews, and then the week after -- it's three weeks away
23 before we can do that -- before we can actually have those.
24 So -- so we definitely want to be cognizant of the
25 timing, and see if there's something we can do.

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1 CHAIRPERSON NEUBERG: I -- I love this. I mean,
2 you know, 'cause there's a sense of urgency and movement.
3 And I think next week if we can get in advance the criteria
4 and we could be prepared at next week's meeting to do that
5 ranking, which would then allow us to receive the proposals,
6 and I do believe that -- that the State Procurement Office
7 will be ready to also present to us next week about ways to
8 expedite the process.
9 I think starting next week we can really move
10 forward pretty quickly on the mapping consultant.
11 MS. RAMOS: Madam Chair, this is Yasmin.
12 CHAIRPERSON NEUBERG: Yes.
13 MS. RAMOS: I just confirmed with our State
14 Procurement Office, and I will be sending the draft
15 evaluation tool to the Commission either today this
16 afternoon, or tomorrow morning.
17 COMMISSIONER MEHL: Thank you very much.
18 CHAIRPERSON NEUBERG: Excellent. Thank you.
19 Okay. With that, if there's no further
20 conversation, we will move on to Agenda Item No. XII, which
21 is discussion and possible action on the budget.
22 I have nothing to add.
23 VICE CHAIR WATCHMAN: Madam Chair, this is
24 Commissioner Watchman.
25 Is it probable to get the printout of the budget

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1 that's being proposed for next fiscal year. You mentioned 3
2 million but, you know, I'm -- I'm still not -- I'm still
3 curious as to what the budget says and, you know, I'm not
4 familiar with the Arizona state process. But my
5 understanding is that the legislature has not approved the
6 budget; therefore, the governor has it, and it's just the 3
7 million that you mentioned is just a proposal.
8 And so I'm curious to see, you know, what that --
9 what that looks like 'cause, you know, we're going to have
10 to pay all the bills and, you know, is there enough for two
11 firms? 3 million is a lot of money, but just curious as to
12 how it's delineated, so if we can get a copy of that, that
13 will be very helpful to me.
14 CHAIRPERSON NEUBERG: Vice Chair Watchman, we do
15 not have a budget, we haven't created a budget yet, that is
16 something we will collectively do.
17 I believe the 3 million that you're referring to is
18 what has been earmarked legislatively by our state
19 government to allocate to our process.
20 As I've said before, with that allocation we have
21 the ability to come to the State to make the case for
22 anything we fiscally need in order for us to do our work.
23 And so as it relates to the two firms, you know, I believe
24 that we have just cause to -- to make those requests over
25 the upcoming weeks.

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1 And I'm looking at Brian in my lower box here,
2 Brian will be working with ADOA to explicitly, you know,
3 flesh out a budget as it relates to, you know, the -- the
4 expenses that we're incurring and what we can foresee long
5 term.
6 But there is no budget as you're referring to in
7 the immediate term, and I do feel comfortably that -- that
8 we have enough money allocated by the State to cover these
9 basic expenses that we're incurring at this point.
10 VICE CHAIR WATCHMAN: Madam Chair, I guess I'm not
11 quite certain, you know, so I'm just going to question, you
12 know. They're working on the budget right now as I read in
13 the paper, so the leg- -- it's a process right now, so I'm
14 hoping there's a $3 million line item in there somewhere; is
15 it in the -- is it in the Governor's budget or is it in the
16 legislative budget, where is it at? What does it say?
17 And, you know, I don't know if, at least in my view
18 of it, you know, if we're -- if we don't have enough, who do
19 we ask? Does it come from the Governor or does it come --
20 you know, because my understanding is that money has to be
21 appropriated by the legislature. And so -- you say we can
22 ask and they'll give it, it's a whole process.
23 I may be wrong, but maybe someone -- maybe Brian
24 and company can give us an overview of what the Arizona
25 budget process is and what it looks like and where we are in

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1 the budget process. All I know is that they're formulating
2 a budget, July 1 the next fiscal year kicks in. You're
3 saying 3 million; but I just don't have enough information
4 to -- to be satisfied that -- that we're going to be okay,
5 so.
6 So if I could ask for at least some clarification
7 how it works, I'll get off this topic.
8 So thank you.
9 CHAIRPERSON NEUBERG: Legally I don't know how I
10 would confirm that we have 3 million. I mean, I -- I don't
11 know how to answer your question.
12 Brian, I guess --
13 VICE CHAIR WATCHMAN: You can ask Brian.
14 DIRECTOR SCHMITT: I'd be happy next week during
15 the breakdown to try and track down that info for you and
16 present it to you so you know where we're at.
17 VICE CHAIR WATCHMAN: Sounds good. Thank you.
18 DIRECTOR SCHMITT: Okay. Yeah, absolutely.
19 CHAIRPERSON NEUBERG: Okay. And I just want to add
20 one thing. When we're talking about the budget and we're
21 talking about two the law firms, when -- when we just had a
22 consensus vote, this decreases the likelihood of litigation.
23 When we talk about costs and we talk about oversight, to the
24 extent that the five of us do our job in the best ability
25 that we can and we avoid litigation to the best of our

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ability, we'll -- we'll save the State money.

So I'm hopeful. I'm optimistic about it.

VICE CHAIR WATCHMAN: I agree. I'm just making sure we have the money to spend, so.

Then there's "Oh, we forgot you guys." I mean, you know so. You know, I'm wanted to see it.

And, you know, they have these big budget stacks, so I'm hoping that there's one page that says the Arizona Independent Redistricting Commission and $3 million is, you know, so far authorized for us, so.

CHAIRPERSON NEUBERG: Okay. I don't want to bounce any checks.

VICE CHAIR WATCHMAN: Right.

CHAIRPERSON NEUBERG: We'll -- we'll make sure that we're -- we're solvent.

So but serious, I mean, we're joking but thank you for that oversight, it's an important fiduciary responsibility.

Okay. With that, we can move on to Agenda Item No. XVIII, possible action on bill paying of incurred expenses.

We have an expense for Miller Certified Reporting, LLC, dated 3/29/21. I need a motion to approve paying that bill.

COMMISSIONER MEHL: Chairwoman, is it possible to make a motion authorizing our Executive Director to on an

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1 ongoing basis pay all Miller Certified Reporting bills; and,
2 if so, I make that motion.
3 COMMISSIONER LERNER: I -- this is Commissioner
4 Lerner. I would second that motion.
5 CHAIRPERSON NEUBERG: Any further discussion?
6 VICE CHAIR WATCHMAN: Discussion. Perhaps we -- we
7 do a monthly report on what's approved, you know, so that we
8 understand our balances at the end of each month or
9 something like that.
10 So I'm okay with the motion and the second, just so
11 that we understand how much we have left in the bank, so to
12 speak.
13 CHAIRPERSON NEUBERG: This -- this is, you know, we
14 are going to have to have a broader conversation with
15 authorizing who to spend what and at what dollar amounts; we
16 don't have to do that right now. But this is foreshadowing
17 a decision that that is imminent, but for the time being we
18 have a motion to permit our Executive Director to pay Miller
19 Certified Report -- Reporting on an ongoing basis without
20 approval.
21 Remind me who -- who -- Pam?
22 VICE CHAIR WATCHMAN: I --
23 MS. PEISER: If I could just suggest that you
24 include at least a top perimeter on that.
25 I admit I actually have no idea how much

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1 Ms. Miller's bills are, so whatever, you know, if it
2 normally runs a thousand dollars, then consider a window
3 just so that you guys can do your due diligence for anything
4 that falls out of the ordinary ranges.
5 COMMISSIONER LERNER: This is Commissioner Lerner.
6 Maybe I can make a suggestion that for this
7 particular one that let's do the normal approval, and ask
8 our Executive Director to come back to us next time and just
9 here's our -- here's what they tend to be. So if they're
10 $500 we intend to approve 600, so if it a little more
11 sometimes we don't have a problem of that. But that can be
12 part of his report next time so we can make this official in
13 the future.
14 DIRECTOR SCHMITT: Absolutely, I'll include that.
15 CHAIRPERSON NEUBERG: Right. And -- and, Brian,
16 any other regular expenses that we would expect to incur --
17 DIRECTOR SCHMITT: Sure.
18 CHAIRPERSON NEUBERG: -- just to expedite the
19 process. Not that I can think of those regular costs right
20 now, but maybe cell phone or, you know, other types of
21 things.
22 DIRECTOR SCHMITT: Absolutely.
23 CHAIRPERSON NEUBERG: Okay.
24 VICE CHAIR WATCHMAN: Madam Chair?
25 COMMISSIONER YORK: Rent.

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1 CHAIRPERSON NEUBERG: Yes.
2 VICE CHAIR WATCHMAN: You have a question, Doug?
3 COMMISSIONER YORK: I would just say rent would be
4 a regular expense, those kind of things.
5 VICE CHAIR WATCHMAN: Okay. All right.
6 Well, earlier I heard that one of the attorneys
7 piped in that -- that the Constitution speaks to the
8 Commission, and so I think in this regard the wording should
9 be we delegate to the director, you know, certain
10 authorities. In this case, the authority to sign off on, in
11 this case, the billings from Miller Certified, and then we
12 add to that we delegate to him to -- to cover cell phone
13 expenses, whatever expenses are out there.
14 You know, I think we have office space; I know I
15 have my computer here. So, you know, delegate to him to
16 cover those expenses. That -- that's how I would describe
17 the process that we're dealing with right now.
18 Just a thought, Madam Chair. Thank you.
19 CHAIRPERSON NEUBERG: So do we -- do we want a
20 motion to just approve this specific Miller Certified
21 Reporting invoice and then next week Brian will report to us
22 an overview of general basic invoices that maybe we want to
23 approve in a blanket manner?
24 COMMISSIONER MEHL: I'll amend my motion to accord
25 with that.

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CHAIRPERSON NEUBERG: Okay.

COMMISSIONER LERNER: And I will second the amendment.

CHAIRPERSON NEUBERG: Okay. So we're voting right now on approving paying Miller Certified Reporting invoice dated 3/29/21, and resuming next week our conversation about ongoing approval of expenses.

Are we ready -- any further conversation?

Okay. We have a vote. Vice Chair Watchman.

COMMISSIONER WATCHMAN: Aye.

CHAIRPERSON NEUBERG: Commissioner Mehl.

COMMISSIONER MEHL: Aye.

CHAIRPERSON NEUBERG: Commissioner Lerner.

COMMISSIONER LERNER: Aye.

CHAIRPERSON NEUBERG: Commissioner York.

COMMISSIONER YORK: Aye.

CHAIRPERSON NEUBERG: And Commissioner Neuberg is an aye.

And, with that, we unanimously approve paying our invoice to Miller Certified Reporting.

With that, we will move to Agenda Item No. XIV, discussion on ADOA resources and updates.

Here I'm going to request Brian to come back on live Item No. (A) with IT. I'd like to ask the Commissioners regarding phones.

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1 So I do -- you know, Yasmin began the process of --
2 of maybe putting in an order for phones that are unique to
3 our process. I don't know how that played out, but I do
4 know that Brian will need to place an order for himself. I
5 would like a phone.
6 Anybody else -- we need -- really, it's the next
7 48 hours, I'd say, please communicate to Brian so we can
8 just do one blanket order. And the value of having a
9 separate State phone is in case our records are subpoenaed
10 it -- it makes it much easier to -- to compartmentalize our
11 lives.
12 Okay. You have 48 hours if you want a phone.
13 VICE CHAIR WATCHMAN: Sounds good.
14 CHAIRPERSON NEUBERG: Okay. Other updates with
15 ADOA. Facilities, No. (E), badges. I know Brian is now,
16 you know, he has his badge; he can go in to our location.
17 I do believe, Yasmin and Brian, can you clarify for
18 us, are we now in Suite 205? Or are we 105? I think they
19 moved us.
20 MS. RAMOS: I wasn't aware of that, I thought it
21 was 205. I will have to check on that.
22 CHAIRPERSON NEUBERG: No, I think -- well,
23 originally, way back when it was 105, but it's now -- it's
24 205, correct?
25 MS. RAMOS: As far as I'm concerned I believe it is

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205. I can double-check again and find out.

CHAIRPERSON NEUBERG: I'd like to just double-check 'cause I think that that changed somewhere between my first visit.

MS. RAMOS: You know what, I apologize, Madam Chair, it is Suite 105.

CHAIRPERSON NEUBERG: Okay. It's 1- -- 105.

MS. RAMOS: Yes, that is correct.

CHAIRPERSON NEUBERG: Okay. So then it has not changed. Terrific.

Okay. Anyway, when anybody is ready for our badge for us to convene in person, we are ready to set that up.

VICE CHAIR WATCHMAN: So, Madam Chair, question.

CHAIRPERSON NEUBERG: Yes.

VICE CHAIR WATCHMAN: Is Brian going to be working out of the office or is he working from another location, i.e. home?

What -- what did you decide on that?

CHAIRPERSON NEUBERG: Brian, you want to share?

DIRECTOR SCHMITT: I think more of a hybrid model until more of the team comes onboard, and then probably more in the office or -- and during meetings, so.

VICE CHAIR WATCHMAN: So if I could ask what -- what does that mean? Are you going to do this indefinitely or are you picking a time to when you are going to maybe use

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1 our office full-time.
2 DIRECTOR SCHMITT: Well, yeah --
3 VICE CHAIR WATCHMAN: Just trying to figure out
4 what your thoughts are, Brian.
5 DIRECTOR SCHMITT: Oh. And, yeah, part of the
6 setup process is I have to work with ADOA to get computers
7 in, the office situated how we want, that kind of stuff.
8 But I do see in the future more full-time.
9 VICE CHAIR WATCHMAN: Okay. Sounds good. Thank
10 you.
11 DIRECTOR SCHMITT: Yep.
12 CHAIRPERSON NEUBERG: Okay. With that, we will
13 move to Agenda Item No. XV, update, discussion, and possible
14 action on Howard open meeting law complaint provided by AGOA
15 [sic] legal counsel, including written response to the
16 investigation inquiry.
17 The Commission may vote to go into executive
18 session which will not be open to the public for the purpose
19 of obtaining legal advice specifically related to the Howard
20 open meeting law complaint, A.R.S. 38-431.03(A)(3), for
21 discussion or consideration of records exempt by law from
22 public inspection, including the receipt and discussion of
23 information or testimony that is specifically required to be
24 maintained as confidential by state or federal law pursuant
25 to A.R.S. 38-431.03(A)(2), as well as for consultation with

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1 attorneys regarding pending or contemplated litigation
2 pursuant to A.R.S. 38-431.03(A)(4).
3 (Whereupon at 2:38 p.m. Commissioner Mehl is
4 momentarily not present.)
5 CHAIRPERSON NEUBERG: So, with that, Pam, if you
6 can give us an update and then maybe share what you need to
7 share in public; and if there's a reason to go into
8 executive session, we can evaluate that.
9 MS. PEISER: Thank you, Chair.
10 This is Pamela Peiser, by the way for Ms. Miller.
11 At this point we're in the process of drafting the
12 bones of the response, and then we'll be working with
13 Commissioner Mehl for his input and to make sure that we
14 have not misinterpreted anything and make sure that
15 everything is factually correct; as stated before, of
16 course, it will go after that to the whole Commission.
17 The only -- I don't want to call it a hiccup
18 because it's not a hiccup, but the only additional point to
19 consider right now is I'm assuming -- and you can tell me if
20 you feel differently -- that you want us to continue working
21 on this up until a handoff to the new law firm; and that at
22 that point, you know, they can review it and determine with
23 consultation with the Commissioners -- or the Commission as
24 a whole, you know, if there's anything else to add based on
25 what's already been done and moving it forward.

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1 CHAIRPERSON NEUBERG: Yes. That -- that makes
2 sense to me, Pam, to continue to work on it until the
3 handoff.
4 Any questions, comments, concerns?
5 Okay. With that, we will move on to Agenda Item
6 No. XVI, discussion of future agenda item requests.
7 We have brought up the addition of adding a
8 director report for Brian to be able to report to us more
9 broadly. Any other agenda item request?
10 Everything has already been agendized and I think
11 mapping will be a major priority next week, and -- and if
12 anything does come up in the next 24 to 48 hours, please let
13 Yasmin and Brian know.
14 With that, we'll move to Agenda Item No. XVII,
15 discussion and possible action on scheduling of future
16 meetings.
17 I -- I'd like to a talk a little bit about our
18 Tuesday schedule. We do have an eight-hour block with --
19 with the link, some of the Commissioners aren't available
20 throughout that entire block. I'd like to be able to
21 clarify when we are free and when we're not free on the
22 Tuesday, because we -- we will not on a regular basis be
23 able to finish our business in a three-hour window, which is
24 9:00 to noon; some weeks maybe, but -- but, obviously, when
25 the agenda is robust, you know, it takes longer than that.

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1 So we have two options, you know, either we need to
2 carve out a long day on Tuesday as we have been doing,
3 but -- try to make it a little more specific earlier on; or,
4 you know, potentially having occasionally to add another day
5 in there.
6 And -- and it's really per, you know, the
7 availability of the Commissioners. But -- but let -- let's
8 first talk -- I mean, the Tuesdays have worked well.
9 How does everybody feel about a long day on Tuesday
10 if we take this one hour recess because I believe there may
11 be a pre-existing conflict?
12 Let's try to get on the same page about how we're
13 approaching the Tuesdays and whether or not we may need to
14 add additional days if we can't get our business done in one
15 day.
16 COMMISSIONER YORK: This is Commissioner York.
17 I'm not opposed to all days on Tuesdays. What I
18 think we should do is look at the Tuesdays in month blocks;
19 and so maybe we send you the next four, if there's any
20 conflicts we let you know so you could juggle the schedule
21 accordingly.
22 But as for us to sit here and sort of speculate for
23 the rest of the year, that's going to be pretty impossible.
24 You're muted, Dave.
25 COMMISSIONER MEHL: Generally speaking it's easier

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1 for me to block a longer day Tuesday than it is to find
2 another day, but that doesn't mean I wouldn't be flexible if
3 we needed another day sometime. But on a regular basis, I
4 would rather go longer on Tuesday than be searching for a
5 second day.
6 COMMISSIONER LERNER: And I'll just mention that
7 I -- once we have public meetings we know things may change
8 up again as part of it, but I'm fine with
9 Commissioner York's suggestion of giving a block month to
10 month to say this -- this works for long days; this may not.
11 VICE CHAIR WATCHMAN: Yeah, I agree with
12 Commissioner York's comment. Let's look at it a month at a
13 time. And for some days Tuesday is not good; but,
14 generally, speaking I think I can block the whole day out
15 with the one-hour lunch break, so.
16 CHAIRPERSON NEUBERG: Okay. So most days --
17 Vice Chair Watchman, most Tuesdays you're free except for,
18 and I know there's a difference in time zones, noon to 1:00
19 Arizona time, Navajo time is a little different.
20 VICE CHAIR WATCHMAN: Right. It's 1:00 to 2:00,
21 yeah, so.
22 CHAIRPERSON NEUBERG: Okay.
23 VICE CHAIR WATCHMAN: But, again, I'll -- I'll work
24 with it, you know, for the next month a single month at a
25 time; and as we get into public hearings, obviously

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conditions will change. But month to month, at least for the rest of this month I'm okay if we have to do a day-long session.

CHAIRPERSON NEUBERG: Okay.

COMMISSIONER LERNER: So we -- do we send our information to Brian for the rest of April? You want us to do that?

DIRECTOR SCHMITT: Yeah, that will be great.

COMMISSIONER YORK: Didn't Yasmin also send us a Google calendar? I think she did.

VICE CHAIR WATCHMAN: She did.

COMMISSIONER YORK: Which I didn't do.

COMMISSIONER LERNER: Yeah. Whatever -- whatever the approach is, I'll do whatever.

CHAIRPERSON NEUBERG: Okay. So it really does sound for now that what work -- works best for everybody is to block off Tuesdays to the best of our ability. We'll get our monthly calendars off to Brian and Yasmin, and we'll continue to move forward.

Okay. Any other items to add for agenda for next week?

Again, if anything comes up, you know, feel free to reach out to Brian and Yasmin.

With that, we will move to Agenda Item No. XIII, announcements.

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1 Our next meeting date will be next Tuesday,
2 April 13th, at 9:00 a.m. with an eight-hour link. We'll see
3 how long -- how many hours that meeting will take.
4 Any other comments or concerns about our next
5 meeting date?
6 Okay. With that, we will move to Agenda Item IV --
7 I'm sorry, XIX, which is the closing of public comments.
8 Please note, members of the Commission may not
9 discuss items that are not specifically identified on the
10 agenda. Therefore, pursuant to A.R.S. 38-431.01(H), action
11 taken as a result of public comment will be limited to
12 directing staff to study the matter, responding to any
13 criticism, or scheduling the matter for further
14 consideration and decision at a later date.
15 And, with that, that brings us to Item No. XX,
16 which is adjournment.
17 Do I have a motion to adjourn?
18 COMMISSIONER YORK: This is Commissioner York.
19 I motion to adjourn today's meeting.
20 CHAIRPERSON NEUBERG: Do I have a second?
21 VICE CHAIR WATCHMAN: I'll second.
22 Commissioner Watchman.
23 CHAIRPERSON NEUBERG: Any discussion?
24 Okay. We'll vote.
25 Vice Chair Watchman.

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1 VICE CHAIR WATCHMAN: Aye.
2 CHAIRPERSON NEUBERG: Commissioner Mehl.
3 COMMISSIONER MEHL: Aye.
4 CHAIRPERSON NEUBERG: Commissioner Lerner.
5 COMMISSIONER YORK: Muted.
6 COMMISSIONER LERNER: Aye. Everyone has done it
7 today I think, right?
8 COMMISSIONER YORK: Yeah, exactly.
9 CHAIRPERSON NEUBERG: Commissioner York.
10 COMMISSIONER YORK: Aye.
11 CHAIRPERSON NEUBERG: Commissioner Neuberg is an
12 aye.
13 And, with that, we adjourn, and I look forward to
14 seeing everybody next Tuesday at 9:00 a.m.
15 Have a great week everybody. Great work.
16 VICE CHAIR WATCHMAN: Thank you.
17 COMMISSIONER YORK: Thank you.
18 VICE CHAIR WATCHMAN: Bye now.
19 CHAIRPERSON NEUBERG: Bye-bye.
20 (Whereupon the proceeding concludes at 2:48 p.m.)
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24
25

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1 C E R T I F I C A T E

2

3 STATE OF ARIZONA)

4) ss.

5 COUNTY OF MARICOPA)

6

7 BE IT KNOWN that the foregoing proceedings
were taken before me, Angela Furniss Miller,
8 Certified Reporter No. 50127, all done to the best of
my skill and ability; that the proceedings were taken
9 down by me in shorthand and thereafter reduced to
print under my direction.
10
I CERTIFY that I am in no way related to any of the
11 parties hereto nor am I in any way interested in the outcome
thereof.
12

13 I FURTHER CERTIFY that I have complied with the
requirements set forth in ACJA 7-206. Dated at Litchfield
14 Park, Arizona, this 19th of April, 2021.

15

16 _____
Angela Furniss Miller, RPR, CR
CERTIFIED REPORTER (AZ50127)

17

* * *

18

I CERTIFY that Miller Certified Reporting, LLC, has
19 complied with the requirements set forth in ACJA 7-201 and
7-206. Dated at LITCHFIELD PARK, Arizona, this 19th of
20 April, 2021.

21

22 _____
Miller Certified Reporting, LLC
Arizona RRF No. R1058

23

24

25

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