

THE STATE OF ARIZONA
INDEPENDENT REDISTRICTING COMMISSION

REPORTER'S TRANSCRIPT OF VIDEOCONFERENCE PUBLIC MEETING

Via GoogleMeets

September 21, 2021

8:01 a.m.

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1 PUBLIC MEETING, BEFORE THE INDEPENDENT
2 REDISTRICTING COMMISSION, convened at 8:01 a.m. on
3 September 21, 2021, via GoogleMeets, Arizona, in the
4 presence of the following Commissioners:

5 Ms. Erika Neuberg, Chairperson
6 Mr. Derrick Watchman, Vice Chairman
7 Mr. David Mehle
8 Ms. Shereen Lerner
9 Mr. Douglas York

10 OTHERS PRESENT:

11 Mr. Brian Schmitt, Executive Director
12 Ms. Loriandra Van Haren, Deputy Director
13 Ms. Valerie Neumann, Executive Assistant
14 Ms. Michele Crank, Public Information Officer
15 Ms. Marie Chapple, Outreach Coordinator
16 Mr. Roy Herrera, Ballard Spahr
17 Ms. Jillian Andrews, Ballard Spahr
18 Mr. Daniel Arellano, Ballard Spahr
19 Mr. Eric Spencer, Snell & Wilmer
20 Mr. Brett Johnson, Snell & Wilmer
21 Mr. Mark Flahan, Timmons Group
22 Mr. Douglas Johnson, National Demographics Corp.
23 Ms. Ivy Beller Sakansky, National Demographics,
24 Corp.
25

P R O C E E D I N G

1
2
3 CHAIRPERSON NEUBERG: Welcome, everybody. We'll
4 dive in to Agenda Item No. I(A), call for quorum. It is
5 8:01 a.m. on Tuesday, September 21st, 2021.

6 I call this meeting of the Independent
7 Redistricting Commission to order.

8 For the record, the executive assistant Valerie
9 Neumann will be taking roll. When your name is called
10 please, indicate you are present. If you are unable to
11 respond verbally, we ask that you please type your name.

12 Val.

13 MS. NEUMANN: Commissioner Lerner.

14 COMMISSIONER LERNER: Present.

15 MS. NEUMANN: Commissioner Mehl.

16 COMMISSIONER MEHL: Present.

17 MS. NEUMANN: Commissioner York.

18 COMMISSIONER YORK: Present.

19 MS. NEUMANN: And Chairperson Neuberg.

20 CHAIRPERSON NEUBERG: Present.

21 MS. NEUMANN: And we are expecting
22 Vice Chair Watchman at some point.

23 CHAIRPERSON NEUBERG: Okay.

24 MS. NEUMANN: And for the record, we have Executive
25 Director Brian Schmitt, Deputy Director Lori Van Haren,

1 Public Information Officer Michele Crank; we will have
2 Community Outreach Coordinator Marie Chappel online along
3 with Alex Pena; our legal team which consists of Brett
4 Johnson, Eric Spencer from Snell & Wilmer, Roy Herrera, I
5 believe, Jillian Andrews and Daniel Arellano from Ballard
6 Spahr; our mapping consultants Mark Flahan from Timmons,
7 Doug Johnson from NDC Research, Ivy Bellar Sakansky from NDC
8 Research; and then our transcriptionist, Angela Miller.

9 That should be everyone.

10 CHAIRPERSON NEUBERG: Okay. Thank you.

11 And welcome, and thank you, team.

12 Please note for the minutes that a quorum is
13 present.

14 Agenda Item I(B), call for notice.

15 Val, was the notice and agenda for the Commission
16 meeting properly posted 48 hours in advance of today's
17 meeting?

18 MS. NEUMANN: Yes, it was, Madam Chair.

19 CHAIRPERSON NEUBERG: Thank you.

20 Agenda Item No. II, approval of minutes from
21 September 14th, 2021.

22 We have just (A), the general session; there was no
23 executive session.

24 Is there any discussion on the minutes?

25 There's no discussion, I'll entertain a motion to

1 approve the general session minutes from September 14th.

2 COMMISSIONER LERNER: This is Commissioner Lerner.

3 I move to approve the minutes.

4 CHAIRPERSON NEUBERG: Do I have a second?

5 COMMISSIONER MEHL: Commissioner Mehl seconds.

6 COMMISSIONER YORK: Commissioner York seconds.

7 CHAIRPERSON NEUBERG: Okay. Commissioner Mehl went
8 first, so for the transcriptionist please note that
9 Commissioner Mehl seconded.

10 We'll vie for, you know, quickness next time.

11 If there's no further discussion, we'll do a vote.

12 So Commissioner Mehl.

13 COMMISSIONER MEHL: Aye.

14 CHAIRPERSON NEUBERG: Commissioner Lerner.

15 COMMISSIONER LERNER: Aye.

16 CHAIRPERSON NEUBERG: Commissioner York.

17 COMMISSIONER YORK: Aye.

18 CHAIRPERSON NEUBERG: Commissioner Neuberg is an
19 aye.

20 With a 4-0 vote, the minutes are passed, thank you.

21 We'll move to Agenda Item No. III, opportunity for
22 public comment.

23 Public comment will now open for a minimum of
24 30 minutes and remain open until the adjournment of the
25 meeting. Comments will only be accepted electronically in

1 writing on the link provided in the notice and agenda for
2 the public meeting and will be limited to 3,000 characters.

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

10 And, with that, we'll move to Agenda Item No. IV,
11 discussion of public comments received prior to today's
12 meeting.

13 I have a few things to note, but as normal, I open
14 it up to my colleagues first, please.

15 COMMISSIONER LERNER: Well, this is
16 Commissioner Lerner.

17 The only thing I'll mention, I know there were a
18 number of other comments, but I know there's still some
19 concerns from the public about mapping and being able to
20 submit and accessibility and all. So I think we'll
21 probably -- and I guess I'll ask Chair Neuberg about this,
22 whether this is an appropriate time to ask for feedback or
23 whether we can do that when we get our update from the
24 mapping consultants. Perhaps we can talk -- we can address
25 some of the questions that were raised by the public.

1 I know specifically we're not looking at those, but
2 I don't know what the appropriate time is.

3 Chair Neuberg, what would you suggest?

4 CHAIRPERSON NEUBERG: Let me ask Doug and Mark if
5 you're comfortable.

6 I'm just checking the language of -- of our agenda
7 and making sure that -- I believe that it's a -- maybe Legal
8 can chime in on this?

9 Well, we -- but because right now as it is in the
10 agenda, it's updates on mapping software, updates on racial
11 polarization report and demographics and competitive
12 measures. So in terms of having mapping respond to public
13 comment, I defer to Counsel.

14 MR. HERRERA: I think it depends on,
15 Commissioner Lerner, on what the public comments
16 questions -- or the public comment related questions are.

17 If you feel as though they are related enough to
18 the two topics that are listed under the Timmons agenda, we
19 can wait until that agenda. If not, I think right now would
20 be appropriate time, of course, subject to Timmons'
21 availability to answer.

22 MR. B. JOHNSON: Yeah, and Commissioner Lerner, I
23 think what you were trying to get at is there were concerns
24 about the ability of the public to be able to issue maps
25 using the software. So based off of what I'm reading, then,

1 it is under Roman numeral V(A) that that would be
2 appropriate.

3 COMMISSIONER LERNER: Okay. Then -- then -- then
4 I'll hold on the comments -- on any feedback on the
5 public -- comments on the public comments until that time
6 and then we can -- we can discuss them.

7 That was my only comment, Chair Neuberg.

8 CHAIRPERSON NEUBERG: Okay. Thank you.

9 And along those lines, I think, the most important
10 thing is to reassure the public that there absolutely are
11 and will continue to be ways to submit maps in the
12 old-fashioned ways. I mean, you know, we're capable of
13 understanding data in many, many different formats; and we
14 will work with mapping on -- on how that will be presented.
15 So stay tuned with V(A).

16 Any other comments from my colleagues?

17 Okay. Just a few quick things. You know, some
18 additional questions about our outreach efforts, our Deputy
19 Director will be giving an update in today's public
20 meetings, our efforts are -- you know, have really picked
21 up, and I'd say they are quite robust and very effective.

22 Public records, we are aware that there are some
23 outstanding public records. Please know that the migration
24 is ongoing now, we are going through the records, and you
25 should be hearing from us very shortly. We are very

1 committed to transparency, disclosure and, you know, as soon
2 as we can get the system up and running, like I said, it is
3 and we're going through the records as we speak, it will
4 become much quicker in the future.

5 So, finally, again ongoing questions about access
6 to mapping consultants. Again, I'd like to just reassure
7 the public, no one is discussing anything with mapping
8 outside of logistical scheduling and learning a software
9 program. Zero mapping will be done privately. A hundred
10 percent of the mapping will be done in public session.

11 No one in the public has the, you know, authority
12 to direct mapping to draft any maps, and the Commissioners
13 are not going to be privately directing mapping to create
14 maps. So we're all in the same boat.

15 If there's no other comment, we'll move to Agenda
16 Item No. V.

17 Okay. Update from mapping consultants Timmons/NDC,
18 and I turn it over to Mark and Doug.

19 Mark, you're on mute.

20 MR. FLAHAN: The comment of 2021.

21 Good morning everybody on the Commission.
22 Appreciate your time today.

23 We got a bunch of updates on the mapping software
24 that I will show you live on the screen and sort of do a
25 dive into the software.

1 The first thing that I want to bring up is the
2 redistricting hub. And let me share my screen with you.

3 Okay. You guys should with able to see the hub
4 now.

5 You've seen this page a bunch of times, but what I
6 want to show is the new addition here is you go down to the
7 redistricting system on the home page. You can see right
8 now we have three plans submitted. We have built in some
9 capability to allow the public to be able to explore any of
10 the submitted plans; you don't need to log in, it's totally
11 open.

12 So if you click on "view submitted plans," it will
13 load this page. And the first part of the page is a
14 breakdown of the plans submitted, so here's the three plans.
15 You can see a pie chart over here that has one congressional
16 and two legislative.

17 If you want to click on the pie chart to sort of
18 select the list on the right-hand side you can. We did send
19 one test plan through to make sure that it was working
20 correctly.

21 If you want to dive into one plan, say we want to
22 dive into this one, we can come down here to the actual
23 application and we can launch the application.

24 And this is what the application looks like. And
25 you can see on the right-hand side here is all of the

1 submitted map plans that have been put through the
2 redistricting system.

3 (Whereupon Vice Chair Watchman joins at 8:12 a.m.)

4 MR. FLAHAN: So if we want to look at the very
5 first one, that is LD001, you can hit "add," and here's
6 exactly what it looks like on the map.

7 You can interact with it. You can easily zoom in
8 to start to see the boundaries of it.

9 You can see we have our township median here. You
10 can click on it and get information about it. You can get
11 total population in there. Deviation. So you can see this
12 district was a little short on deviation.

13 So that way it's out there, anybody can come and
14 view what has been submitted to -- through the system.

15 Our goal is to have this turned around in one to
16 two business days once somebody submits their plan.

17 If I go back to this first screen here, you can
18 also click this link here that says "view all submitted
19 plans." And this is another way to go ahead and look at it.

20 You can see the plan is submitted by the username
21 or their e-mail, we can see the date that it was submitted
22 on, we can see the description of what they want it to say.

23 Let's use a better one.

24 This says: "The legislative district boundary
25 between District 16 and 17 have been redrawn to assure

1 communities" --

2 I'll go to full page so you can finish reading
3 it --

4 "Communities of interest are located within the
5 district."

6 "User plan objective: Nothing in particular except
7 to create different rural CDs."

8 So if you wanted to click that and view that on the
9 map. You can view that on the map; you can also interact
10 with it this way.

11 If you wanted to see the data table, here it is.

12 That is live on the hub today. You can get there
13 really easily again by two different ways.

14 If you load the home page, you scroll down where it
15 says the "redistricting system," you can see total plan
16 submitted, that gets updated when the data gets updated, and
17 you can click this link that says "explore submitted plans."

18 It is also available here at the redistricting
19 system. If you click on the "redistricting system" page,
20 again you can see "explore submitted plans" is here, the
21 total number of plans submitted is there.

22 If you click on the source, it will take you to the
23 table; if you would like the to see the table.

24 You can see we have the submitted plan name here.
25 We have normalized the plan name just in numerical order for

1 IRC, so you can see the IRC plan name here, you can see who
2 submitted it, and you can see the description.

3 If you just want to launch an individual plan from
4 the table, again you can click on a link and load a new page
5 and a new tab, and it will show it on a map for you.

6 So that is out there today.

7 The other piece that we have in the hub that is
8 new, we have put all the training videos on here. This was
9 put into IRC's YouTube channel as a playlist on Friday, and
10 you can get to all of the training videos here.

11 And that is everything that is new on the hub for
12 the redistricting system.

13 Any questions on the hub?

14 If not, then I will jump more into the
15 redistricting system.

16 Okay. Seeing no questions or hearing any
17 questions, let's jump into the redistricting system.

18 Share my screen again with you.

19 Where is it? Here -- do you see the redistricting
20 system now because I lost all you guys?

21 COMMISSIONER LERNER: Yes.

22 MS. NEUMANN: Yes.

23 MR. FLAHAN: Okay. Cool.

24 A couple of questions -- one question I saw that
25 came up in a comment was, you know, what happens if I share

1 my plan with a group, can multiple people edit at the same
2 time?

3 The way the system works is if I share my data in a
4 group and have two people editing the same plan in my group,
5 it works on the last save. So if user one saves something
6 and user two is still doing something and they save last,
7 their save is going to overwrite everything user one does.

8 So I recommend you guys only use one editor going
9 forward. So just sort of throwing that out there.

10 The second piece that I wanted to show today is
11 demographics. And we will talk about more about that in the
12 next bullet, but I also want to show, you know, how it works
13 in the redistricting system.

14 So here I have loaded the template grid map for the
15 legislative districts. So we can see all the data here on
16 the screen.

17 If you want to get to the demographics piece, you
18 can come over here and click "demographics."

19 And over here there's a couple of different pieces
20 in here. If you open up the "key elections data," we have
21 multiple pieces in here. So you have CompDem votes and
22 CompRep votes. And what this is, is this is the total
23 number of votes for either the Democratic or Republican
24 candidates for all nine selected elections by the Commission
25 and what that number of votes would be for the new district

1 you built.

2 And, Doug, hop in here anytime if you've got
3 anything to add.

4 And if you want to turn that on, it's very easy.
5 You can just click the buttons, you can turn on, and you can
6 just see that it adds -- adds in the table.

7 The second piece that we got in here is down here
8 if you look at you have "President 2020 Republican,"
9 "President 2020 Dem," and this is the total number of votes
10 for each party per the nine elections that the Commission
11 chose.

12 So you can see President 2020, Senate 2020,
13 Attorney General 2018, State Mine Inspector 2018, Secretary
14 of State 2018, Senate 2018, State Super- -- Superintendent
15 of Education 2018, State Treasurer 2018, and then again
16 President 2016.

17 You can see that each of them have a Dem and a Rep.
18 So what you can do is you can come over here and you can
19 select it, and it will show you the total number of votes in
20 that election from President 2020 for Republican and
21 Democrats in the newly elected districts that were built.
22 So you can see the data here sitting.

23 MR. D. JOHNSON: And, Mark, I may be jumping ahead,
24 but are you going to show percentages?

25 MR. FLAHAN: Yes. Yeah, that's where I was getting

1 to next.

2 MR. D. JOHNSON: Okay.

3 MR. FLAHAN: So the -- the way that you can look at
4 to see the competitiveness measures here is Doug brought in
5 a percentage, which is the best way to do it. And if I
6 remove the total sums, we can see the percentage of votes
7 per district for this one election, President 2020.

8 So if we use District 1, we can see if the election
9 was happening with these districts back in 2020, Republicans
10 got 32 percent of the vote in that election, and the
11 Democrats got 67 percent of the vote.

12 So that's a way that you can see, of the second
13 competitiveness measure of, you know, how many times the
14 Democrats or the Republicans won one of those nine
15 elections.

16 So the easiest way to set this up is because if you
17 come down here to the key elections data and we turn all of
18 this on -- and I'm only doing this for a demo -- is that the
19 table can get really long and sometimes you can see it gets
20 a little cut off, so it's a tiny bit hard to read.

21 So my recommendation would be to choose a party,
22 whichever one you want, Republican or Democrat and then turn
23 off the other party, so we're only looking at one party.

24 So in this example if we just choose the second one
25 which is Dem, we can turn off the Republican percentages --

1 oops -- bear with me as I turn all this on.

2 Yep, we got it all. One, two, three, four, five,
3 six seven, eight, nine. Yep.

4 So the -- the recommended track that I would do
5 that keeps the table a little cleaner down here so we can
6 see it is if we use District 1 for an example again, right,
7 here's all the nine elections, President 2020 all the way
8 through President 2016 all for the Democrat. And this is
9 just an example, like I said, you can easily pick
10 Republican, not -- it's not a problem, we're just using this
11 as an example.

12 We can just see in District 1 that for the nine
13 elections they have one, two, three, four, five, six, seven,
14 and eight, nine that are over 50 percent. So for the
15 competitiveness -- competitiveness measures, this would come
16 back as a nine points for Democrats and zero for the
17 Republicans as in the Democrats would have won the nine
18 elections that are shown here.

19 Anything you want to add there, Doug?

20 MR. D. JOHNSON: Not to that part, but should also
21 put in the percentage of the comp vote, CompDem vote. So
22 they can see the percentage spread.

23 MR. FLAHAN: You can do the same with the total
24 number of votes as in the CompDem, CompRep that we already
25 talked about. You can see that that's here too.

1 So using District 1, the total number of votes is
2 66 percent and the Republican votes is 33.91 percent.

3 Is that what you were looking for, Doug?

4 MR. D. JOHNSON: Yeah, exactly.

5 MR. FLAHAN: Okay.

6 MR. D. JOHNSON: So that's the other competitive
7 measure that -- that that spread measure in this case would
8 be 33 percent in that district.

9 MR. FLAHAN: Before I go off the competitiveness
10 and go to demographics, are there any questions?

11 Let me see if I can move the screen so I can see
12 your faces.

13 There we go. Any questions?

14 COMMISSIONER LERNER: Just real quick, Doug
15 Johnson, can you just explain again for the public that one
16 last measure just to make sure they understand that measure,
17 please.

18 MR. D. JOHNSON: Sure. So as you know, the
19 Commission has adopted two measures of competitiveness: One
20 is whether it's a swing district, and that depends on as
21 Mark was saying whether those nine elections all go for one
22 party or the other or if the district swings back and forth
23 among those nine elections; and the other measure is just a
24 straight, somewhat simpler, the percentage spread between
25 the number of votes cast for the Republicans in the nine

1 elections versus the number of votes cast for the Democrats
2 in those nine elections.

3 And the Commission's kind of target ranges were
4 twofold: One, looking for -- you might call them "highly
5 competitive seats," where there's 4 percent or less spread
6 between the two parties; and then sort of a competitive
7 spread where there's 7 percent or less spread between those
8 two parties.

9 So District 1 that Mark was a talking about there's
10 a 33 percent, 34.2 percent spread. Obviously, that's not a
11 competitive seat by that measure.

12 But District 2, if you look there's a 49.75 to a
13 50.25, so that spread would be 0.5. So obviously almost
14 perfectly balanced and definitely in that 4 percent highly
15 competitive spread.

16 And as you go across on that one, you see the Dem
17 percentages are 52 -- or, 51 and 52, so the Dem wins; 47.75
18 and 47.89 which would be Republican wins; and then it goes
19 back and forth as you go across the list.

20 So that's how folks can tell if the district is in
21 the competitive -- competitive by the one measure or the
22 swing by the other measure adopted by the other Commission.

23 COMMISSIONER LERNER: Thank you.

24 MR. FLAHAN: Any other questions?

25 COMMISSIONER MEHL: Mark, if you -- if we set our

1 demographics with whatever buttons we select, does it hold
2 there so that when we look at different maps, we can quickly
3 click on that button and have the same things, or do we have
4 to reset it every time we open a map?

5 MR. FLAHAN: If you open a map that has set
6 districts like this, you see the grid as an example here.
7 It might not show automatically in the table; you might have
8 to go to the "demographics" button and select it here.

9 But once you've selected it the first time it will
10 hold here; and if I went to change a district, this table
11 will update itself live as I'm changing bloc groups or blocs
12 around.

13 COMMISSIONER MEHL: Okay.

14 MR. FLAHAN: And I can probably show you that, I
15 just need to save this map and create my own.

16 All right. Hold on.

17 Okay. So this is now my own map -- and this is
18 just for demo, I'm not worrying about equal population or
19 anything, this is just to show you that the table updates
20 dynamically.

21 So I'm going to randomly pick a spot and update it,
22 so I just want to put that disclaimer out there.

23 So say if we want to do something here between
24 District 13 and District 14, and we wanted to come here and
25 say, "Well, I want to add some stuff to District 13," --

1 again not taking population or anything into account, just
2 to show you the table updating. If I went over here and
3 drew -- oops -- let's do this first.

4 District 13 currently has, you know, 238,000
5 people, 383. So now that we have that number set, we can
6 see total Republican votes is 504,687.

7 Let's add some data to it. And you can see that
8 that now changed, our target deviation is different. We're
9 now 245,328 population, and you can see that the Republican
10 votes changed from 512,183, and I think it was about 504,000
11 before that.

12 And if we undue it, we can see it goes back --
13 yep -- 504,000.

14 So that's how that table updates dynamically as you
15 change different blocs and bloc groups.

16 Any other questions?

17 COMMISSIONER LERNER: So -- so, Mark, this may be
18 where one of my questions come in from the public, and that
19 is if you were -- because that's a good example, right? You
20 just changed that one.

21 MR. FLAHAN: Right.

22 COMMISSIONER LERNER: So if I'm in the public and
23 I'm looking at the grid maps and I just want to change
24 District 13 'cause that's where I live and that's most
25 interesting to me, can I -- but -- but then when you go

1 through the review, will it allow me to submit and put a
2 comment for just the fact that all I did was District 13?

3 I know I -- I know there's now an imbalance between
4 13 and 14, right, because I did that, right? But how -- if
5 I don't want to do an entire map, how do I do something like
6 that?

7 Which relates to people's communities of interest.
8 We just asked people to give us that feedback, now they want
9 to actually draw a line around their community of interest
10 and say here is what it is.

11 So that's where, I guess, my question came in from
12 the public, but it fits really nicely with what you were
13 just going over.

14 MR. FLAHAN: Okay. Well, let's do this example
15 then.

16 Let's -- let's say this the -- let's say this is
17 the change, right. That this little corner here in the
18 community of interest with these people over here in
19 District 13, and I want to be part of District 13.

20 So we're not going to change much, we're just going
21 to change this little corner for the example.

22 So here's maybe my change, right, for my district
23 because I want 13 to look differently. As you can see, my
24 target deviation is a little over.

25 So what happens is, you come in here and when you

1 hit "submit plan" -- you have to save it for this example --
2 and you hit "okay to submit plan," it's going to ask you --
3 well, one, it's going to run through the integrity checks.
4 So give it a second.

5 We're going to hit "okay." And then you can see
6 here, we can put in our organization in there, and we can
7 put an explanation of plan objectives.

8 The other thing that you can do here is before you
9 hit submit, we can come over here to -- hold on -- the
10 "share" tab. You can hit "information," and you can type an
11 entire description in here.

12 So in here the description is what you're going to
13 want to use: "I modified District 13 for my community of
14 interest." Something like that, right?

15 Hit "save."

16 Sorry, that's a little backwards. Before you hit
17 the "submit" button, hit "share" and go to "information." I
18 thought the description came by when you hit "submit plan,"
19 and I was incorrect on that.

20 So hit "share," hit your "information," add what
21 you want here; and then go ahead and hit "submit." And when
22 you hit "submit plan" again, you have another option for --
23 for your plan objectives.

24 MR. D. JOHNSON: Commissioner Lerner, it is worth
25 noting that if your changes take District 14 out of

1 population balance, though, so that it doesn't pass the
2 integrity check, then you will have to make changes to
3 District 14 to go back.

4 So, yes, you -- you can't ignore what happens in
5 the surrounding districts. But in this example, it says
6 population balance.

7 But they will have to make changes to the other
8 districts if population balance doesn't pass those integrity
9 tests. But they don't have to make any sense, you can
10 always include in the -- the markers he's showing you "I'm
11 focusing on District 13, ignore what I did in District 14."

12 CHAIRPERSON NEUBERG: And -- and Mark and Doug,
13 let's just pretend for a minute somebody says, "You know
14 what, I just don't want to deal with that and I'm going to
15 come tonight to the public hearing." Two different people,
16 one hands you their hand-drawn map of these two districts,
17 so -- and another person hands you a paragraph, a narrative
18 of "I'd like my boundary to be I-60, you know, North, 202
19 South," whatever.

20 How do the two of you record that data and how do
21 we see that data?

22 I think the public is curious about how the
23 different buckets are presented and -- and really want to
24 make sure that, you know how, we're seeing the data, we're
25 getting all of it.

1 MR. FLAHAN: You know, I think that's a really good
2 question and, Doug, hop in here if you want.

3 But let's start on the second piece first, if
4 somebody just submits us a paragraph. If you submit us a
5 paragraph of what you want your district to be, please be as
6 specific as possible and give us boundaries that are easily
7 relatable to something that we can find on a map, whether
8 it's major streets or mountain ranges. If you give us just
9 your community name, sometimes it can be hard trying to
10 figure out exactly what the boundary is of your community
11 name, and then it's us trying to interpret what exactly that
12 data means to put on a map.

13 So the more specific that you can give us, the more
14 accuracy that -- that we can understand it.

15 MR. D. JOHNSON: And I think I -- and I think the
16 key thing from the Commission's perspective is that anything
17 written or on paper will come in, get scanned, be part of
18 the record and be provided to the Commission and be provided
19 to us, and available for the Commission to react to and ask
20 to be adopted into the map.

21 We won't -- we won't be processing every piece of
22 paper submitted into the mapping system, that will be driven
23 by Commission request; but it will all go into the record
24 and into the Commissioners for -- for reading and review.

25 CHAIRPERSON NEUBERG: And I presume it's similar to

1 the community of interest report where we received, you
2 know, all the electronic information, but we received files
3 of -- of just qualitative data.

4 But, you know, in just the generation of the
5 Commission we're -- we're very accustomed, it's natural for
6 us to read, you know, narratives and feedback. So please to
7 the public, when you submit the -- the maps, the visual maps
8 not on the computer and you submit, you know, a letter,
9 we're reading it and we're learning.

10 COMMISSIONER LERNER: And -- and just as a
11 follow-up, Chair Neuberg, I would assume that anything
12 that's done by paper, we'll be getting that pretty rapidly
13 versus -- I know the community of interest you compiled and
14 put that together. But now because of the way things are
15 going, I assume like when people submit those, those will be
16 input pretty quickly; is that correct?

17 MR. D. JOHNSON: Rather than answering for them,
18 that's probably a question for Brian and Lori and the team.

19 CHAIRPERSON NEUBERG: Yeah, that's a really great
20 idea, and I don't see why we couldn't create, you know, some
21 kind of, you know, file of, you know, just -- but, Team?

22 DIRECTOR SCHMITT: Absolutely. We will get those
23 to you-all as quickly as we can.

24 MR. D. JOHNSON: The other piece on that question
25 to note is that different from a community of interest

1 survey where you waited until the end of the process and
2 then all that was processed and provided on the website, as
3 Mark mentioned, submitted maps will get turned around and
4 posted to the -- the map hub site and our target is a day or
5 two.

6 CHAIRPERSON NEUBERG: Sounds like a very dynamic
7 process, an exciting process, an enormous source of
8 information to the public and the Commission, so thank you.

9 COMMISSIONER LERNER: So I guess I want to go back
10 to this one point about -- and I understand why we need to
11 do the integrity check, I'm all for it. But I'm still going
12 back to the fact that we have a lot of folks who have
13 community of interest who want to focus on that one.

14 And once we do 13, let's say, if we go back to the
15 example that Mark did, now 14 has to be adjusted; and once
16 you do 14, you've got to do 15, and you're now creating a
17 statewide map.

18 So that goes back to the same question, how -- is
19 there a way for people to just say all I want is I -- it
20 looks like we're able to actually submit even with a 6,000
21 person difference in population. I don't know what the
22 criteria would be for somebody in a single district to be
23 now off population to still be able to submit that.

24 MR. D. JOHNSON: Yeah. Mark, let me take that.

25 The good news is that if you've taken so many

1 people from 14 that it's out of balance, 13 is out of
2 balance as well. So the one district they're trying to draw
3 is out of balance as well. So they -- even if they only
4 want to draw one district, they still have to take some
5 population out of that to -- to make it a valid single
6 district.

7 So it won't -- as we call it, it won't ripple
8 through the rest of the map because they just find what they
9 want elsewhere, what they want to take out of 13. And --
10 and they have to in order to make it work as one district,
11 and they just put that into 14.

12 So it will be limited to just one other district or
13 at most two. You know, if they want to take something out
14 on the other side, they'd have to find a way to ripple that
15 around. But it -- at most they -- they shouldn't be looking
16 at needing to touch more than two other seats; and
17 90 percent of the time, they'll only have to touch one other
18 seat.

19 COMMISSIONER LERNER: Great. Thank you for
20 explaining that. I was hoping that information --

21 MR. D. JOHNSON: Yeah.

22 COMMISSIONER LERNER: -- to be there. Thank you.

23 MR. FLAHAN: And the system allows for a 10 percent
24 deviation of population total. So 5 percent either above or
25 below, so that also gives them some room. And that's why

1 you can see that plan passed the integrity check, 'cause
2 back-of-the-napkin math, I think 37,000 is 5 percent of what
3 the legislative districts are.

4 Don't hold me to that number, that's just off the
5 top of my head. 37 or 39, I'm pretty sure.

6 To sort of complete the thought on the plan
7 description when you asked me about the example for 13 and
8 the person that just wants to do one district, I want to
9 bring you back to the hub so we can complete that thought
10 because I think it'll, you know, answer some of your
11 questions.

12 So if you look here, you can see the plan
13 description is also listed with the map. So you can see
14 this one just says "testing out a nine CD map." "Plan
15 objective, nothing in particular." And this is what you put
16 in when you submitted a plan. "Attempted to create
17 different rural congressional districts."

18 So that's where you can also see that data and the
19 public, too, of what also was submitted; and then if you
20 want to go see it, we can go view it in here.

21 But I wanted to complete that thought because
22 that's the whole process so people can see where that --
23 where that came from.

24 MR. D. JOHNSON: And just a reminder to the public,
25 not to hit that "submit" button unless you mean it, because

1 the submitted maps are going public.

2 MR. FLAHAN: Yes. Doug, you also bring up a good
3 point, that once you hit "submit," the redistricting system
4 locks it down so no one can edit it. So there's no going
5 back once you do submit. You'd have to a take that plan,
6 save a brand-new plan, save all your modifications and
7 resubmit it. So make sure that you're 100 percent sure that
8 you want to submit the plan.

9 You can submit as many plans as you want. So if
10 you want -- if you want to submit 10, you can do that, too.
11 There's no limitation, so.

12 CHAIRPERSON NEUBERG: And I want to reiterate
13 because this also speaks to many in the Native American
14 lands that don't have Wi-Fi or -- or access. You know, if
15 you can't do this or don't have access to do it, literally
16 draw it on a piece of paper, put in an envelope, write down
17 the IRC's address, put it -- it does cost a stamp -- and
18 we'll get it. And I'm not joking, it's that simple.

19 COMMISSIONER LERNER: Just as a question. Do we
20 have a form online, like a PDF, that people could -- could
21 use kind of as, you know, a boilerplate that would help with
22 them knowing -- to remember all the key points lines they
23 have to draw, the comments they have to make?

24 I'm all for people doing it in any way possible,
25 but I was just wondering if we have -- if something like

1 that is also available.

2 MR. FLAHAN: Are you thinking like a checklist for
3 how you submit a map? Or are you thinking a form of what
4 people need to send for paper submittals?

5 COMMISSIONER LERNER: I'm think of paper
6 submittals.

7 So it could be both, it could be the checklist with
8 the paper. I mean, it could be all combined into one I
9 guess is all I'm thinking. If maybe if there's -- if
10 there's a form that says: Here are all the things you have
11 to submit, now draw your map. Something that just reminds
12 people of what they need to do.

13 I know you're telling people to be very specific,
14 but not everybody, you know, may be here right now. So if
15 they see a form that says here's your checklist, you could
16 submit it on the back of this form, you could submit it on a
17 separate piece of paper; but that checklist would probably
18 be helpful.

19 MR. FLAHAN: We don't have anything like that
20 developed right now, people could -- could hand in anything
21 to you guys in paper; and that was the same thing with the
22 community of interest listening tour. We had a form, but
23 people could still hand in anything that they wanted to
24 write or present to you guys, and I think many people did
25 that, so.

1 CHAIRPERSON NEUBERG: And you know what,
2 Commissioner Lerner, we -- we can emphasize in all our
3 public hearings the opportunity to submit the paper, we can
4 maybe find a spot on our website. We'll -- I suggest we
5 look into that, the staff, so that we -- we make it easier
6 and clearer about the very simple way of sharing data.
7 We -- we can do that.

8 COMMISSIONER LERNER: Thank you.

9 MR. D. JOHNSON: And this is probably a good point
10 to mention what's come up in a lot of public comments about
11 Dave's Redistricting and the other apps that are out there,
12 is that anyone that draws a map with Dave's Redistricting or
13 Districtr or any of those other maps, or their own GIS, can
14 import those maps in. There's the import system that --
15 that Mark has shown before and can be used to bring in any
16 shapefile or text file that all those software packages
17 generate.

18 So someone doesn't want to use this and wants to
19 bring in a map from any of those apps, they certainly can.

20 And -- and it will -- once you bring it in, just
21 hit "submit" in here, and it will go through the same
22 process and show up on the hub just like anything else.

23 COMMISSIONER LERNER: Thanks, Doug, that was the
24 question I had, so I appreciate you repeating that. Thank
25 you.

1 MR. FLAHAN: Any other questions before we go to
2 demographics?

3 COMMISSIONER LERNER: And the only thing I'll
4 remind, I think this is really good, very helpful additional
5 information to clarify things, so I appreciate that.

6 Is that while we have that 10 percent rule that you
7 mentioned on legislative, there is no wiggle room on
8 congressional. So that when people are adjusting their
9 congressional district, they're going to have to adjust to
10 get it equal population, they don't have the same amount
11 of -- of room for that.

12 Just as a reminder for folks.

13 COMMISSIONER MEHL: And, Shereen, the 10 percent is
14 something that is the extreme that courts have allowed,
15 that's certainly not our goal. The constitution says equal
16 population in legislative, so I think our goal is to get
17 much closer than that on all these districts.

18 COMMISSIONER LERNER: No, absolutely. Hundred
19 percent agree, yeah.

20 MR. FLAHAN: Okay. Then let's move to
21 demographics.

22 Let me reset the table here that way it's not off
23 the screen here. So let me remove these metrics.

24 Okay. So for demographics let's close the "key
25 elections" folder here, and let's go open up the "Arizona

1 standard demographics," and you can see in here total census
2 population, a breakdown here by ethnicity; and then at the
3 very end we can start to see some of the -- the special
4 tabulations for our voting age population.

5 So for demographics we can come up here and we can
6 turn on population: Latino, non-Hispanic-white, Black,
7 Asian American, Native American, other if you want; if you
8 want "non-Hispanic other multirace" you can turn that on
9 also. But if not, come down here and look at the citizen
10 voting age population data that is down here at the bottom.

11 And, again, you can see the description over here
12 as I'm checking them off.

13 So you can see standard "non-Hispanic-White" as a
14 race, the top one was standard Hispanic citizen voting age
15 population 2015, 2019, and -- and we can go all the way down
16 to the bottom and once we hit "okay," now we can start to
17 look at the population breakdown.

18 So that's another way that you can start to look at
19 the demographics.

20 Doug, I don't know if you want to add anything
21 here.

22 MR. D. JOHNSON: Just to highlight what people
23 probably saw on that screen, you can choose to see the
24 numbers or you can also choose to see the percentages.

25 MR. FLAHAN: Yep.

1 MR. D. JOHNSON: Or both.

2 MR. FLAHAN: Any questions on that?

3 COMMISSIONER MEHL: Doug, in your experience is it
4 easier to look at the percentages; is that...

5 MR. D. JOHNSON: Yes. The percentages are what
6 will really matter because the number of citizens in each
7 district can vary wild- -- widely, so it's really which
8 group is the percentage of that citizen voting age or as the
9 courts refer to them "the eligible voters" in that district.

10 So, yes, it's -- it's handy to know there's, you
11 know, 177,000 citizens of voting age; but -- but then if you
12 want to know: Does this comply with the Voting Rights Act,
13 you're really going to focus on are the Latinos 50 percent
14 or are they 30 percent, or whatever group they're looking
15 at.

16 So the numbers are handy, but the percentages are
17 really the key factors.

18 MR. FLAHAN: And you can get there from the
19 "demographics" button and they have options for sum or
20 percent as Doug was saying.

21 That's all I have to show you on the redistricting
22 system. I don't know if there's any questions on that or
23 other questions.

24 Commissioner Lerner, I know you mentioned you got a
25 couple of them, I don't know if we answered them or all or

1 not.

2 COMMISSIONER LERNER: You are have done a great job
3 answering them, so thank you.

4 MR. FLAHAN: Great.

5 Any other questions while I've got this open from
6 any other Commissioners?

7 COMMISSIONER LERNER: I do have a question that
8 doesn't relate to all of this piece, but it was something
9 that Doug Johnson mentioned or you mentioned last time about
10 duplicate submissions. And how will we as Commissioners, if
11 we get 20 people who all submit the exact same map, last
12 time we looked at -- and if this isn't the right place, I'm
13 sorry, you can tell me to stop.

14 But how will we as Commissioners, we need to be
15 able to recognize we're just being swamped with the same
16 thing versus is this a valid map versus another. So maybe
17 Doug Johnson, can you tell us how -- because you had this
18 probably happen, right, where we get a lot of the same, how
19 do we as a Commissioners judge something like that when we
20 see people have all just taken the same map and copied it
21 and sent it?

22 MR. D. JOHNSON: It's completely at your judgment
23 and discretion as individual Commissioners. Our -- our
24 advice would be to rely on the wisdom of the maps, not the
25 volume of the maps. So it's completely up to you to -- to

1 decide how you want to each individually evaluate those.

2 The system won't detect duplicate maps. You know,
3 if one person submits a map and someone else submits a map,
4 they'll be processed as two separate maps; but, obviously,
5 when you're looking at maps, you'll be able to see that.

6 And the tool has the great compare map functions
7 that highlights differences in the maps, and if it doesn't
8 find anything then you can quickly see the two maps are the
9 same.

10 But they will come to you as individual maps, but
11 we would encourage the public to simply send in an e-mail or
12 a letter saying "We all support the map submitted by Joe X,"
13 rather than feeling any preference to have 30 people submit
14 the exact same map and try to flood the system.

15 Because we are looking -- it would certainly be our
16 encouragement and our advice to focus on the wisdom and
17 ingenuity of the maps, not on the volume of them.

18 CHAIRPERSON NEUBERG: And I have -- I have great
19 confidence that, you know, the Commissioners, we receive
20 many other forms of data, and when we put all sources of
21 information together and we digest the information, I have
22 great confidence we can discern, you know, quantity versus
23 quality.

24 COMMISSIONER LERNER: Thank you.

25 MR. FLAHAN: Any other questions on the

1 redistricting system or hub?

2 CHAIRPERSON NEUBERG: I don't think so.

3 MR. FLAHAN: Okay. Stop sharing this, then.

4 Then, you know, the next piece is updates on
5 demographic and competitive measures and polarization
6 report.

7 Let me bring up some stuff on my screen for you.

8 So for the legislative grid maps, you can see on
9 the screen here is the demographic and competitiveness
10 summary breakdown. What you'll notice is what we showed you
11 in the redistricting system is the data that was used to
12 generate this report.

13 So you can see here category where it says "field,"
14 this is all the districts; we have 30 districts in our
15 legislative system, so it's breakdown. We have the next
16 column which is "total population," the next column is
17 "deviation from idea."

18 As you can see we as presented last week from the
19 grid map, there's 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,
20 12 districts legislative data. I have one more person than
21 the other one because there's no way of splitting a person,
22 so we had to use whole numbers here.

23 Percent deviation you can see zero your total
24 population number, which is not your citizen voting age
25 population. Your total population you can see the breakdown

1 of different demographics from Hispanic/Latino,
2 non-Hispanic-White, non-Hispanic-Black, non-Hispanic
3 Asian/Pacific Islander, and non-Hispanic Native American.

4 The next section over is "citizen voting age,"
5 which is what we showed you down at the bottom to check for
6 demographics, which was the special total tabulation. You
7 can have the total population of CVAP in each district.
8 Then it was the same thing, broken down by Hispanic/Latino,
9 Non-Hispanic-white, non-Hispanic-Black, non-Hispanic
10 Asian/Pacific Islander, non-Hispanic Native American. So
11 you can see the percentages here.

12 On the competitiveness, here's the vote spread
13 which you saw what Doug was talking about at the CompRep
14 votes versus CompDem votes, for the total amount of votes
15 for that district. So there is the percentage of spread.

16 And then if you go over to the next two columns,
17 you see Dem wins and Republican wins, so that was the exact
18 thing that I showed you when we set up each race to look who
19 was over 50 percent.

20 So in District 1 it happens to be that the Dems won
21 all nine races that you guys selected and the Republicans
22 won zero.

23 In the district below it, you can see there was
24 only a .5 of 1 percent spread, and that was that one
25 district that we all saw; and you can see the Dems won five

1 of the nine elections that you selected, and the Republicans
2 won four of the elections that you guys selected.

3 One thing that I do want to note here is that very
4 last row that says "statewide." This is statewide looking
5 at the state as a whole; so we added everything up. So you
6 can see the population is the total population for the
7 entire state: 7,551,502 at the census. So this is the
8 breakdown for total population ethnicity for the entire
9 state.

10 Same thing with CVAP, this is the total number of
11 citizen voting age for the entire state under that special
12 tabulation. The vote spread is looking at the entire state.
13 So this is not an add-up here, this is looking at the entire
14 state.

15 And this five and four is also not an add-up saying
16 that the Dems won, you know, five of the districts, you
17 know, five of the districts and Republicans won four of the
18 districts. This is saying that, at a statewide level, out
19 of the nine elections that you chose, the Democrats won five
20 and Republicans won four.

21 So I just want to make sure I pointed that last row
22 out because sometimes if you look to add this up, you'd be,
23 you know, why does that number not add up?

24 And it will make more sense when I show you the
25 congressional grid of why I put that caution out there.

1 COMMISSIONER MEHL: And, Mark, say again how you
2 get to this chart.

3 MR. FLAHAN: This chart we will post on hub for the
4 public to be able to see; but the way that you can get the
5 data to build something just like this, is exactly what I
6 showed you previously with the competitive measures looking
7 at the different percentages and then the pop- -- population
8 ethnicity that we showed you in the Arizona standard
9 demographics folder.

10 Total population was the first part of the
11 demographics, and then when we moved to the citizen voting
12 age population special tabulation at the end, that is how we
13 came up to the second piece which is the citizen voting age
14 population.

15 Down here at the very bottom is sort of a key
16 talking about, you know, the vote spread and what that
17 means. And then "Dem/Rep wins" talking about what that is
18 and the different races in case that's -- you needed a chart
19 real quick: So the 2020 President, Senate; 2018 Governor,
20 Secretary of State, Attorney General, State Treasurer,
21 Superintendent of Public Education, and State Mine
22 Inspector; and 2016 President.

23 There's also some coloring here on the
24 competitiveness, and the coloring key is up here on the very
25 top.

1 So if population deviation from the -- from the
2 target population was higher than 5 percent, you would see
3 red; but we don't have any deviation, so there's no red here
4 because we built it at equal population.

5 And then the vote spread, what you can start to see
6 is if you see in this column -- I guess I can't just
7 highlight a column -- this "competitive vote spread" column,
8 if you see a dark green color in here, that means that it's
9 a highly competitive district, that measure that you guys
10 chose that was 4 percent spread or less.

11 So in here you can see that we got at one at .5 of
12 1 percent and we have another one at .9 of 1 percent, so
13 those are your two highly competitive.

14 And then you can see in the light green, it is what
15 you guys would consider competitive, which was the
16 difference between the two metrics that you guys chose. So
17 the highly competitive ended at 4, and the next measure that
18 guys approved is a 7 percent spread.

19 So if it fell within the 4 and the 7 percent
20 spread, we marked as a light green. So you can see here
21 there's one at 4.5; there's one at 6.7, 6.8, and 6.2. So
22 you have one, two, three, four competitive districts
23 according to your metrics.

24 Now if we look at the next column because the dark
25 green and light green colors do not correspond always from

1 the vote spread to the Dem wins and the Republican wins, as
2 you can see here in this row.

3 So if you see a dark green over here, you can see
4 in District 2 we had five Dem wins and four Republicans
5 wins, it's dark green if we have a swing in two or more
6 elections. It is light green if you only have a swing in
7 one -- in a direction with one election. So we can see over
8 here we have a one and an eight, so that's a light green as
9 a swing.

10 So up there you have one, two, three light green on
11 the number of wins in the swings.

12 COMMISSIONER LERNER: Mark, I just want --

13 MR. FLAHAN: Oh, sorry.

14 COMMISSIONER LERNER: I just want to remind
15 everybody, this is the grid map which is going to change.
16 So this is just a good way for you to look at it and see
17 where we are, but not get too worried at this point, so.

18 Because this is a great explanation, but people
19 will be playing around with these numbers.

20 So, thank you.

21 MR. FLAHAN: Yes, you're very right. This is the
22 grid; we didn't take any of this into account, but we
23 figured you guys would want the data on what came out with
24 the grid.

25 This is the bigger one. Is there any questions

1 here, or can I bring up the congressional?

2 CHAIRPERSON NEUBERG: Please -- please move ahead.

3 MR. FLAHAN: Okay.

4 Same thing. Same coloring key up here that we just
5 talked about, same descriptions down here, same races.
6 Nothing different, just this is congressional district or
7 map that only has nine districts.

8 So the same thing, here's your district numbers, 1
9 through 9; total population we can see that we had three
10 districts that were over by one. Again, we have to use full
11 numbers.

12 Breakdown of total population, the breakdown of
13 ethnicity.

14 For the CVAP, the same thing. Here's your total of
15 CVAP in the districts, the breakdown of ethnicities, and
16 then you can see competitiveness.

17 So the reason I brought up the statewide so heavily
18 on the first one, is that you can see here statewide
19 population again for the entire state, the total breakdown
20 of ethnicities for the entire state -- sorry, got a little
21 tongue tied there; same with CVAP.

22 But when you come over to competitiveness, if you
23 looked at this one first, right? We have a .9 of 1 percent
24 vote spread, but if you added up the Democrat wins, which is
25 one, two, three, four, five, there's a "5" there; and if you

1 add up the Republican wins, there's one, two, three, four
2 there. It looks like these two columns just add it. But
3 they don't, it just turns out that was the exact same as a
4 statewide level.

5 So I just want to caution the public that this is
6 not in addition and a total, this is if you look at it for
7 the entire statewide.

8 So here you have, you know, one competitive
9 district at 2.9 percent, two not highly competitive in the
10 competitiveness category, and then you also have the
11 breakdowns here. So you had one, two, three districts that
12 swung one or more times.

13 I can go through this one in more detail, but I
14 figure I gave you guys a detail in the first one that I'd
15 just give you a quick summary here.

16 CHAIRPERSON NEUBERG: And that was very helpful,
17 Mark. And -- and even though, you know, the data isn't
18 meaningful given that the map is arbitrary, it does, you
19 know, kind of season us to, you know, look at the data,
20 learn how to interpret it, and be ready to apply it, you
21 know, when we have more meaningful districts.

22 COMMISSIONER LERNER: And, Mark, how often -- how
23 quickly will we get this kind of data as we're adjusting
24 maps?

25 Will we be getting this with each adjustment, the

1 same kind of table?

2 MR. FLAHAN: Yes, but I wouldn't say every
3 adjustment. You can could have like 10 different
4 adjustments that you want to make, and I think we would go
5 through that list of 10 adjustments and then give you a
6 table.

7 Otherwise, it couldn't give us time to edge match
8 and do a bunch of other stuff. So I think it would be, you
9 know, the major revisions, so that we would do your 10
10 changes, that was your revision and here you go.

11 COMMISSIONER LERNER: Absolutely. That sounds
12 fine.

13 MR. D. JOHNSON: Yeah, and as to the way Mark was
14 showing earlier, as you're asking about changes, if we're
15 making the changes live in the system, we can't see the
16 summary of Dem wins and Republican wins, but we can see live
17 the vote spread number change and we can also see the
18 individual elections.

19 So if we know we're trying to -- the Commission,
20 you're actually working to move the seat from eight to one
21 to five, four, we can see those individual races live as we
22 do the changes. So we just won't get the eight and one
23 summaries, but you'll be able to see live: Oh, okay, these
24 three have flipped.

25 MR. FLAHAN: Yeah, Doug is right. Technically that

1 data table will update as we showed in the previous demo
2 with all those numbers.

3 MR. D. JOHNSON: Yeah, you won't have to wait for
4 us to run the spreadsheet in order to see if you made a
5 district more competitive, it will be right there in the
6 system.

7 COMMISSIONER LERNER: Thank you.

8 MR. D. JOHNSON: Mm-hm.

9 MR. FLAHAN: That is all I have for the -- for the
10 demographics competitive piece.

11 Doug, do you want to talk about the racial
12 polarization report?

13 MR. D. JOHNSON: Just a quick update. We're --
14 we're wrestling with some difficult data issues.

15 The geocoded voter file, it doesn't line up quite
16 with the census data precinct file which doesn't line up
17 quite with the precincts from the county's file, and so we
18 need to have all that data correct. And so we know we're
19 late, we're -- we're pushing very hard to get this done as
20 fast as we can, but it's more important that we get it right
21 than we get it to you on time.

22 So as soon as we resolve those issues, the -- the
23 scripts and all that are set to run and the table -- we
24 actually -- since we have a little time on the analysis
25 side, they've written a script that generates all the tables

1 on these as well, so it will be pretty fast. But we do need
2 to nail down those data system.

3 And it's all as a result of that the State doesn't
4 build this database year over year like some states do, we
5 have to build this from scratch, so.

6 It's -- it's coming along, we're definitely making
7 progress but we're not quite there yet.

8 CHAIRPERSON NEUBERG: Well, thank you very much.

9 Any -- any last questions for our mapping team?

10 Okay. Well, thank you. We are actually going to
11 move to Agenda Item No. IX, which piggybacks on this, you
12 know, briefing, a discussion and possible action concerning
13 proposed modifications from the grid map pursuant to the
14 Arizona Constitutional criteria and applicable law and
15 scheduling of map drawing meetings.

16 Meaning, we've arrived at the main event.

17 You know, we are really -- it's imminent where
18 we're going to get together and draw the maps.

19 As the staff and I were looking at our schedules,
20 it became really apparent that we're very short on group
21 time that we have towards the end. It looks like three
22 days, possibly up to five days of deliberation.

23 In my research I've learned based on, you know,
24 studying many other commissions, that even five days when
25 it's the Commission's first time drawing a map is probably

1 not going to be enough time. There's just a lot of unknowns
2 with work styles, turnaround time with the mapping team,
3 et cetera.

4 So, if we don't either find additional time or
5 maybe change our strategy, our deadline is at risk. I am
6 not a proponent of extending the deadline, I think it's an
7 awful option. The challenges we're facing right now are
8 routine challenges that will always be there, but there's
9 likely to be additional challenges down the road that we
10 don't have control over. So for now I think, you know, it's
11 important that we stick to this very firm deadline of
12 approving draft maps by October 27th.

13 And, by the way, I'm so sorry, I wanted to ask Val
14 to note for the minutes that Vice Chair Watchman joined at
15 8:12. An hour -- well, almost an hour ago.

16 So welcome, Vice Chair Watchman.

17 VICE CHAIR WATCHMAN: Thank you.

18 CHAIRPERSON NEUBERG: Thank you.

19 What can we do about this?

20 I would like the Commissioners to entertain the
21 idea of starting a little early. What does that mean?

22 Could be as early as even next week, but we make
23 some of those early preliminary decisions or at least have
24 those early preliminary conversations about things that are
25 very, I'd say, consensus oriented.

1 Now before anybody says, "Whoa, we don't have data;
2 what are we prejudging things," et cetera, I just want to
3 remind everybody where we're at. We finished a listening
4 tour, 15 days, 39 different locations; we've studied over
5 182 communities of interest; I have spent countless time --
6 I'm still digesting the data from, you know, the previous
7 tour; in addition, I'd like to point out that we've been
8 doing this eight months, so we're accumulating broad
9 experience with the State; we've received thousands of
10 public comments; we've already viewed countless maps; and,
11 with that, I'd like to remind us that we already have a
12 foundation.

13 Collectively, we have over 250 years of Arizona
14 experience, okay. I'm -- I'm the newcomer with 41 years
15 here.

16 So also consider that within one week, 60 percent
17 of our new tour will be complete, and we will have all of
18 that data and the feedback per the turnaround time from
19 mapping.

20 So also just for point of reference, the previous
21 commission absolutely did this, I don't know of any
22 commission actually that didn't do it, and from a
23 psychological perspective, and this is what sold me as I
24 began to think about, but I'm -- look, I'm one and we're
25 opening it up to a conversation. But I thought about it

1 from -- from a people perspective, a psychological
2 perspective.

3 I don't know about you, but -- but there's angst
4 about this; I've never drawn boundaries, I'm not an expert
5 in this, and to be able to have a little early time to get
6 our feet wet, to learn the language, to learn each other,
7 you know, may be a good thing.

8 And the final point is, if we start a little early,
9 we can do a full competitive analysis at the end. Remember,
10 we've talked so often about the criteria and -- and the
11 competitiveness can cause, you know, whatever level of
12 detriment to the other criteria we interpret, there can be
13 incredible work done on maximizing competitiveness if we get
14 our communities of interest and all other criteria in order.

15 I think other Commissions have -- have bemoaned the
16 fact that they didn't have more time at the end.

17 So with that I'm going to suggest we have a
18 dialogue about the concept of when to start and also for
19 us -- 'cause this is also very important -- to work
20 backwards in the calendar and really dig deep and find our
21 common times.

22 So I spoke for a while, I'd like to open it up to
23 questions, comments, and/or we can first look at dates if
24 you think that's the better way so that we understand, you
25 know, what we're looking at.

1 COMMISSIONER MEHL: I think looking at dates first
2 is actually not a bad idea, we'll see how many dates we can
3 meet, and then -- and then return to the discussion of what
4 do we do next Tuesday.

5 CHAIRPERSON NEUBERG: Okay.

6 So the drop-dead deadline for approved maps in
7 order for us not to extend our deadline is October 27th, a
8 Wednesday. I suggest we not move into that day with much
9 left on our plate. I don't think having a deadline like
10 that is conducive to really good quality, you know,
11 thinking.

12 Obviously, it could be there as -- as a buffer and
13 an emergency day, but that's the drop-dead deadline.

14 So let's look at the 25th and 26th.

15 I believe those dates are possible. Does anybody
16 have a conflict on those dates?

17 COMMISSIONER LERNER: October we're talking, right?
18 We're going to --

19 CHAIRPERSON NEUBERG: October 25th, 26th, and 27th.

20 COMMISSIONER MEHL: I'm good on all.

21 CHAIRPERSON NEUBERG: One day.

22 COMMISSIONER MEHL: I'm good on all three.

23 COMMISSIONER YORK: I'm sorry, I have a conflict on
24 all three.

25 CHAIRPERSON NEUBERG: You have a conflict on all

1 three?

2 COMMISSIONER YORK: Yeah, I'm supposed to be on a
3 trip.

4 CHAIRPERSON NEUBERG: Okay. And I believe -- so
5 let's look at the 23rd and 24th, the weekend.

6 COMMISSIONER LERNER: I'm fine.

7 COMMISSIONER YORK: I'm available the week of the
8 18th.

9 CHAIRPERSON NEUBERG: But we're going to work
10 backwards, Commissioner York. Let's first focus on the 23rd
11 and 24th.

12 Because there's many other conflicts,
13 Commissioner York, trust me.

14 COMMISSIONER YORK: Okay. I'm sorry, well, that's
15 also a conflict, that's the start of that trip.

16 VICE CHAIR WATCHMAN: Yeah, doesn't work for me
17 either.

18 CHAIRPERSON NEUBERG: So the 23rd is out.

19 Okay. Commissioner Watchman, you are gone from?

20 VICE CHAIR WATCHMAN: I am gone the 20- -- I'm
21 sorry, 22nd, 23rd, and 24th.

22 CHAIRPERSON NEUBERG: Okay. So the 22nd is out.

23 So so far we have zero deliberation dates available
24 during deliberation week.

25 Moving to the 21st. Who is available?

1 COMMISSIONER MEHL: I'm okay that whole week.
2 COMMISSIONER LERNER: I am as well.
3 VICE CHAIR WATCHMAN: 21st I'm good.
4 CHAIRPERSON NEUBERG: Okay. So we have the 21st.
5 What about the 20th?
6 VICE CHAIR WATCHMAN: 20th is good for me.
7 COMMISSIONER LERNER: I'm available.
8 COMMISSIONER MEHL: I'm good.
9 CHAIRPERSON NEUBERG: Okay. 20th.
10 19th?
11 COMMISSIONER MEHL: I'm good.
12 COMMISSIONER YORK: Yes.
13 VICE CHAIR WATCHMAN: Yes for me.
14 CHAIRPERSON NEUBERG: Okay. So after a business
15 meeting we could do all day.
16 You know what, staff and mapping I'm not including
17 conflicts potentially with you. Mark, I know you have few
18 things. If there's anything that we're circling as a yes
19 and you're not available, please let us know. Or if -- or
20 if you don't have staff available.
21 MR. FLAHAN: Okay. We're -- we're --
22 CHAIRPERSON NEUBERG: Okay. The 18th.
23 COMMISSIONER MEHL: I'm good.
24 COMMISSIONER YORK: Yes.
25 COMMISSIONER LERNER: I'm good.

1 CHAIRPERSON NEUBERG: Yes?

2 VICE CHAIR WATCHMAN: Yes, I'm good.

3 CHAIRPERSON NEUBERG: Okay. So we have four days
4 so far. Great.

5 I believe the 16th and 17th, the weekend are out,
6 correct, those days?

7 COMMISSIONER YORK: Yes.

8 CHAIRPERSON NEUBERG: Okay. Commissioner Watchman,
9 I believe you're out of town maybe the entire week of the
10 11th?

11 VICE CHAIR WATCHMAN: I am except for Friday
12 the 15th.

13 CHAIRPERSON NEUBERG: Oh. You're in town on the
14 15th?

15 VICE CHAIR WATCHMAN: Yes.

16 CHAIRPERSON NEUBERG: How does the 15th look for
17 everybody?

18 COMMISSIONER MEHL: I'm good.

19 COMMISSIONER YORK: I can make that work.

20 COMMISSIONER LERNER: I'm good.

21 CHAIRPERSON NEUBERG: Yay. Okay. We're making
22 real progress.

23 We have five days. I think we need more, but --
24 but that's a real solid amount. At least a chunk of time.

25 Vice Chair Watchman, you said you're out until the

1 14th?

2 VICE CHAIR WATCHMAN: Yes, I am. From Saturday --

3 CHAIRPERSON NEUBERG: Okay.

4 VICE CHAIR WATCHMAN: -- the 9th through Thursday
5 the 14th, yes.

6 CHAIRPERSON NEUBERG: Okay. So that brings us to
7 the week of October 4th, two weeks from now, and we have
8 five days, provided that nothing happens, you know, nobody
9 gets sick, you know, no other challenges.

10 I still think that based on the feedback I've heard
11 that, you know, maybe it's enough and maybe not.

12 And I think there may be value to starting a little
13 earlier. Do people want to look at the week of the 4th?

14 Do -- you know, you know when I'm thinking about
15 just general guidelines even to share with Mapping. You
16 know, if we come together for the first day -- remember,
17 we're working from a grid map, so it's going to take a while
18 just to shift it in common sense ways to get even starting
19 points as a template. You know, maybe there's things we can
20 ask Mapping to do, and I'm just brainstorming, like focus on
21 majority-minority communities that we know there's not much
22 wiggle room, you know, focus on helping us map where
23 communities of interests on the grid map so we can get a
24 better sense of where the lines might need to shift. But,
25 you know.

1 Thoughts?

2 COMMISSIONER YORK: I'm available on the 5th all
3 day.

4 COMMISSIONER LERNER: I'm available that week, that
5 entire week if we want to schedule whatever meetings we can.

6 COMMISSIONER MEHL: I apologize, I'm out of town.
7 I was leaving on the 3rd, I could -- I could postpone for
8 the 6th, but from the 6th to the 10th, I'm totally out of
9 pocket, I'm on the East Coast for a family wedding.

10 COMMISSIONER LERNER: So could we do the
11 October 4th and 5th, would that work?

12 COMMISSIONER MEHL: I can do the 4th and 5th.

13 COMMISSIONER YORK: I can do the 4th and 5th.

14 VICE CHAIR WATCHMAN: So can I.

15 MR. FLAHAN: I can do the 4th for mapping but the
16 5th I will -- I will be out of town.

17 CHAIRPERSON NEUBERG: Okay. Is it -- okay.

18 MR. FLAHAN: I might be able to find somebody that
19 could replace me, though.

20 CHAIRPERSON NEUBERG: Yeah, so if necessary. But
21 this is -- so we have --

22 MR. FLAHAN: And -- and on Monday the 4th I would
23 need to be done by 4:00 p.m.

24 CHAIRPERSON NEUBERG: Okay.

25 MR. D. JOHNSON: Yeah, just -- just set vacations

1 as we're looking at this is, we can get someone there, it
2 may very well not be Mark or I.

3 CHAIRPERSON NEUBERG: Okay.

4 MR. FLAHAN: And --

5 COMMISSIONER YORK: The 4th would be our first day,
6 we should have that be the day of guidance.

7 CHAIRPERSON NEUBERG: Well, and some initial work.

8 COMMISSIONER YORK: Right, yeah. I agree with
9 that, but.

10 CHAIRPERSON NEUBERG: If we're going to convene we
11 might as well take advantage of the eight hours we have.

12 COMMISSIONER YORK: Right.

13 MR. FLAHAN: I will say by -- by that week we will
14 not have the completed report or the data for the grid map
15 public hearings at that time, we'll still be having other
16 ones so. Just...

17 CHAIRPERSON NEUBERG: But -- but by that day we
18 will have completed, like I said, 80 -- over 80 percent,
19 because I think with our satellites it's -- it's front
20 heavy, we'll have over 80 percent of the new data available.
21 And then, you know, we will have five substantive days at --
22 towards the latter part when all data is in.

23 So I think that's a really -- I'm relieved, I was a
24 little concerned. But thank you, everybody, for -- for, you
25 know, really trying to be as flexible as possible.

1 And, you know, do I get the sense then that there's
2 consensus that it's okay to start just slightly early, those
3 early days with a little -- little preliminary work?

4 COMMISSIONER LERNER: I think that's a good idea,
5 yeah.

6 COMMISSIONER MEHL: Can you recap the days we just
7 agreed on?

8 CHAIRPERSON NEUBERG: Yes. Beginning on Monday,
9 October 4th with an end time at 4:00 p.m.

10 Should we presume a -- an 8:00 a.m. start? And
11 just as a -- as a reminder, we initially, you know, thought
12 about breaking up the day between, you know, the morning
13 maybe congressional, the afternoon legislative, and then you
14 know vice versa, so that we give both maps, you know,
15 considerable attention. You know, starting early, I don't
16 know as we're getting our feet wet if -- if that makes
17 sense. We'll follow the direction and guidance of our
18 mapping team.

19 COMMISSIONER LERNER: And I apologize, I did not
20 have something -- I had not -- I did not have October 4th
21 up. I'm out of town, I could probably meet for some of the
22 morning, but then when I'm getting on the plane, I won't be
23 able to.

24 So I -- I'm not available -- I'm available first
25 thing in the morning for a few hours, but then probably not

1 most of the afternoon because of my flight.

2 COMMISSIONER MEHL: So, you'll be gone on the 5th,
3 too, then.

4 COMMISSIONER LERNER: No, no. I'm back. I'm
5 returning on that day. I'm just looking to see -- I'll be
6 available from 8:00 to 12:00 that day.

7 CHAIRPERSON NEUBERG: You know what, for a first
8 day I think that's, you know, a good -- good chunk.

9 Mark, Doug, do you think we can accomplish, you
10 know, something meaningful in that four-hour chunk?

11 MR. D. JOHNSON: You can certainly have a robust
12 discussion. I don't know --

13 CHAIRPERSON NEUBERG: Okay.

14 MR. D. JOHNSON: -- where you'll get in terms of
15 mapping or anything like that.

16 CHAIRPERSON NEUBERG: Okay. But it will be a
17 starting point, that way when we dive into it on the 5th,
18 you know, we're ready to go, Mapping will be ready to go,
19 we'll take advantage of the time.

20 So here's the time: Monday the 4th from 8:00 to
21 12:00; Tuesday the 5th -- how do we want to work, you know,
22 the hours? Do we want four hours in the morning with a
23 break and then four hours in the afternoon? Do you guys
24 want long days? I can go 10 hours. We'll save the 12-hour
25 days until the end.

1 COMMISSIONER LERNER: I think we should try to
2 maximize our time especially we've all had Tuesdays set
3 aside.

4 CHAIRPERSON NEUBERG: Okay. So start at 8:00 a.m.
5 and just plow through until it's no longer productive?

6 COMMISSIONER MEHL: Good with me.

7 CHAIRPERSON NEUBERG: Plan eight hours.

8 COMMISSIONER YORK: Yeah.

9 CHAIRPERSON NEUBERG: And we'll start with the
10 business meeting and then flow into mapping.

11 Okay. So Tuesday the 5th, 8:00 a.m. to ongoing.

12 Then we have October 15th. If possible I'd like to
13 start at 9:00 a.m. that day because I actually have a
14 speaking engagement for the IRC. I can cancel that if
15 necessary, though.

16 Let's stay tuned. Can we -- if I can reschedule
17 it, maybe we should.

18 The 15th, whether it's an 8:00 a.m. or 9:00 a.m.
19 start time, plan for all day.

20 And then the 18th, 19th, 20th, and 21st we should
21 plan 8:00 a.m. starts and go through the entire day.

22 COMMISSIONER YORK: I -- just so you know, on the
23 15th I have to leave -- I'm flying to a wedding in Northern
24 California, so at some point, maybe 4 o'clock, I'll have to
25 leave.

1 CHAIRPERSON NEUBERG: Okay. Great.

2 COMMISSIONER LERNER: And on the 4th I may be
3 calling in versus being online, but I'll be able to be
4 there. But it may be by phone.

5 CHAIRPERSON NEUBERG: Okay.

6 Okay. Excellent.

7 Any further discussion on -- on this topic?

8 Thank you for everybody's flexibility. I know it's
9 not ideal but, you know, it never is, and it's hard
10 coordinating this number of people's schedules. And I want
11 to just give a special shout out to the mapping team, I -- I
12 know we're pushing you on a time schedule that -- that you
13 didn't plan for, and we're deeply appreciative for -- for
14 working with us and, you know, thank you.

15 There's no other conversation, I'm going to suggest
16 before we move to the next agenda item which is back to
17 No. VI, the Executive Director's report and discussion
18 thereof, I think this is a logical breaking point. Just
19 take maybe a quick, you know, 10-minute break, eight-minute
20 break.

21 COMMISSIONER YORK: And I would ask if Brian, can
22 you send out kind of a summary of those dates and time?

23 DIRECTOR SCHMITT: Yes, I will do that.

24 COMMISSIONER YORK: Okay. Perfect.

25 CHAIRPERSON NEUBERG: Okay. See you all soon.

1 COMMISSIONER YORK: Thanks, Erika.

2 (Recess taken from 9:27 a.m. to 9:38 a.m.)

3

4 CHAIRPERSON NEUBERG: Welcome back, everybody.

5 Commissioner Lerner just mentioned or requested to
6 possibly look at noon to 4:00 on the 4th instead of 8:00 to
7 12:00. how does that look for the group?

8 You're on mute, Commissioner Mehl.

9 COMMISSIONER YORK: I'm good.

10 COMMISSIONER MEHL: Would we want to -- that's fine
11 with me, but would we want to actually go until like 6:00,
12 if we're going to start as late at noon?

13 COMMISSIONER LERNER: I can go -- once I'm online,
14 I can go the whole day. I just -- otherwise, I have to cut
15 short as well.

16 But this is -- I could be more present this way
17 where I wouldn't have to be calling in.

18 So 6:00 is fine with me.

19 CHAIRPERSON NEUBERG: Okay. Noon to 6:00.

20 VICE CHAIR WATCHMAN: I'm okay with that.

21 CHAIRPERSON NEUBERG: Great.

22 And -- and per that previous conversation,
23 something actually through me for a loop. I didn't realize
24 that we have conflicts on the 25th, 26th, and 27th. That is
25 the end of that official 23-day period that the public has

1 the opportunity to comment. So, it was brought to my
2 attention during the break that if we have our final
3 deliberation on the 21st, that is technically shortchanging
4 the public a little less than a week -- a few extra days
5 of -- of public comment time.

6 You know, so what do we think about that?

7 I mean, I -- you know, on one level do we think
8 that on all of the -- excuse me?

9 COMMISSIONER YORK: Can we extend public comment to
10 28 -- 29?

11 CHAIRPERSON NEUBERG: Well, but the point is our
12 last deliberation is the 21st so we were going to be voting
13 on a map on that day.

14 Now, you know, I had thought initially we were
15 going to be able to vote at the end of that public comment
16 period.

17 Commissioner York, are you out of town on the 28th
18 and 29th as well?

19 COMMISSIONER YORK: No.

20 CHAIRPERSON NEUBERG: So -- so we have really two
21 options. You know, one option if we want to, you know,
22 fulfill the full public comment period and not vote for a
23 final map until the end of that, we could potentially add
24 maybe the 28th or 29th. It does violate our deadline by a
25 day or two, but I don't think it substantively affects

1 things.

2 You know, obviously much of the deliberation would
3 happen early anyway, but that's one option.

4 The other option is to deliberate and -- and vote
5 on -- on maps on the 21st and, you know, hope that the
6 public understands.

7 But let's have a little dialogue about the choice.

8 COMMISSIONER MEHL: I'm -- could you clarify on
9 the -- on the pub- -- the 23-day public period? When does
10 that start from? Is that the -- is that the comment on the
11 grid maps or...

12 CHAIRPERSON NEUBERG: Yes. And I just -- I'd like
13 to -- to defer to Counsel or Doug on this.

14 You know with the schedule, I -- you know, on the
15 schedule it has the 27th as the deadline, and so I -- I
16 presume that that entails the full 23-day review. We had
17 voted to, you know -- on the schedule we voted for 23 days.
18 We could vote, if we move it early, we would need a motion
19 to, you know, move up the vote to the 21st.

20 But maybe legal counsel can chime in here on any
21 legal, you know, implications of this decision.

22 COMMISSIONER MEHL: Well, we've already published
23 the grid maps and we're still in September, so how do we not
24 have 23 days?

25 I thought I was a three-week comment period,

1 basically. So how do we not have three weeks to comment on
2 the grid maps well in advance of that?

3 I'm not sure we have a real issue here.

4 COMMISSIONER LERNER: Yeah, I see that on the
5 map -- on the -- on the schedule it looks like our 23-day
6 review for the grid map ends October 8th, but then our draft
7 maps is -- we have an October 27th as coming up with our
8 draft maps.

9 CHAIRPERSON NEUBERG: Yeah that's an excellent --
10 that -- that's an excellent point.

11 So, legal council, we didn't -- it doesn't look
12 like we advertised that we were considering additional
13 public comment once October 15th hit.

14 COMMISSIONER MEHL: Yeah. So I think we're okay
15 with what we're doing and we're okay to finish on the 21st
16 if we can reach consensus and do it.

17 And I am available that week of the 27th and
18 28th if we -- we probably should tentatively hold some more
19 dates in case we don't finish by the 21st. But let's really
20 try hard to do that.

21 COMMISSIONER LERNER: I agree.

22 MR. HERRERA: Yeah, so, Madam Chair, I guess my
23 thought is that, you know, looking at the calendar, I think
24 the idea would be or perhaps the consideration would be, you
25 know, does the public expect to have until the 27th to

1 provide public input, you know given that original schedule;
2 and would shortening that time period be something different
3 than what they expected, that's sort of the consideration.

4 But I think the suggestion that was just made of
5 having the reserve dates on the 28th and 29th when all five
6 Commissioners are available, is probably a good idea just so
7 that the Commissioners have that blocked off if those dates
8 are necessary.

9 You may not need them, but if you do, you know, you
10 can have that. Again, assuming that all five Commissioners
11 are available.

12 CHAIRPERSON NEUBERG: But -- but -- but can we --

13 COMMISSIONER MEHL: I would then --

14 CHAIRPERSON NEUBERG: Can we look at what is
15 actually written on schedule Option 2? Because it says, you
16 know, 23-day review which is from 9/15 to October 8th, the
17 23-day review is over October 8th; then there's additional
18 four days for comment and data compilation or whatever,
19 October 11th through the 15th.

20 So where does the public get the notion that they
21 are providing feedback all the way to the 27th? Because on
22 our ma- -- on our schedule that we've made public and we
23 approved, that whole final week is just decision-making.

24 COMMISSIONER MEHL: I do think it would be wise to
25 amend the schedule and show that our goal is to complete the

1 draft maps by the 21st, so that anyone going to the website
2 or looking at our materials can see that that's what we're
3 trying to do.

4 Maybe even show an alternative up to the 29th if we
5 haven't completed by the 21st, just -- just to make it
6 clear.

7 MR. B. JOHNSON: And that -- that would be
8 appropriate to ensure public involvement in the process, and
9 it still gives you over a month from today for public
10 comment as well as your drawing of the maps.

11 MR. HERRERA: Yeah, I would agree. If you are
12 going to make the change, that you should vote to make that
13 change in the schedule for that reason.

14 And again to your point, Madam Chair -- I mean,
15 ultimately, this is a policy decision, it sort of depends on
16 whether the Commissioners expected to receive public comment
17 up until that last map drawing day that we had on the
18 original schedule or not, if that's something the
19 Commissioners expected to do or not.

20 So, to answer your question.

21 CHAIRPERSON NEUBERG: That's actually a really
22 important point, Roy, and let's ask the Commissioners.

23 I did not expect to have additional data after
24 October 15th; I presumed that when we came together during
25 that concentrated mapping time, that we were taking a pause

1 from data collection, and we were exclusively focused on
2 mapping.

3 But -- but if, you know, I don't know whether
4 other -- other's expectations of that.

5 COMMISSIONER MEHL: And I think even though we are
6 starting now on the 4th and 5th, we should fully expect to
7 get data up through the 15th still, because we will still be
8 on the very early stages of us being together trying to draw
9 a map.

10 So I don't think we need to amend the October 15th
11 date, but I think amending the 27th date to the 21st and
12 making that publicly known would be a good thing.

13 COMMISSIONER LERNER: But, Commissioner Mehl, just
14 to clarify looking at this, the -- would we basically just
15 say that we're going to just do our draft -- we have our
16 draft map development dates 10/15 to 10/22 now on this
17 schedule Option 2, right? So we're just modifying it
18 slightly to 21.

19 The next line was draft maps public decision
20 meeting 10/22 to 10/27, which is really not what we're doing
21 at this point, we're kind of combining those, right? We're
22 condensing all of that into one, so that's probably where we
23 want to try to condense that and clarify all of that.

24 Is that what you're suggesting?

25 COMMISSIONER MEHL: Yes.

1 COMMISSIONER LERNER: Makes -- makes sense to me.

2 COMMISSIONER MEHL: And then I would show an
3 alternative -- I would make a next line that says
4 alternative dates if needed through October 29th.

5 MR. D. JOHNSON: If I may, Madam Chair, just
6 talking about adding dates at the end. The 23 days was the
7 Commission adopted, the 30 days afterwards is in the
8 Constitution.

9 CHAIRPERSON NEUBERG: Right.

10 MR. D. JOHNSON: If you push -- if you push back
11 adopting a draft map, you're pushing back everything. So
12 that will probably push back your decision days at the end,
13 which that would be very -- I caution you against doing.

14 COMMISSIONER MEHL: I really hope we can finish by
15 the 21st and that would put us in good position for that 30
16 days.

17 COMMISSIONER YORK: Can we call additional meetings
18 after the 21st if we needed?

19 COMMISSIONER MEHL: I guess I would just suggest
20 that all Commissioners keep the 28th and -9th clear on their
21 calendar even if we don't publish those as additional days,
22 so that we don't run into this again where we can't get
23 together.

24 COMMISSIONER LERNER: And I agree, I think we
25 should set those aside.

1 That would only -- that would only put us off if we
2 had to by a day or two, so it wouldn't be dramatic change.
3 And I think that goes with what Chair Neuberg was talking
4 about, which is we don't always know what is going to come
5 up, so.

6 So add the October 28th and 29th on hold?

7 CHAIRPERSON NEUBERG: And along those lines, take a
8 look at the calendar in the -- you know, the December
9 deliberation week as well, and let's try to avoid scheduling
10 travel during -- during those windows.

11 So I want to make sure that there's no disagreement
12 about us having this motion and moving up the
13 decision-making to the 21st. It gives the public more than
14 a month -- well, a month of additional comment on the grid
15 maps, the public hearings would have been well done by then,
16 but -- but it's -- it's, you know, I want to make sure that
17 all of us are comfortable with this.

18 Okay. If there's no further dialogue, I'll
19 entertain a motion to move up the decision date to
20 October 21st with the possibility of moving it -- extending
21 it to the 28th or 29th, if necessary.

22 COMMISSIONER MEHL: This is Commissioner Mehl. I
23 move that motion.

24 VICE CHAIR WATCHMAN: Vice Chair Watchman seconds.

25 CHAIRPERSON NEUBERG: Any further discussion?

1 Okay. Vice Chair Watchman.

2 VICE CHAIR 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 convene the mapping process
12 on the 4th with a goal of ending on the 21st.

13 COMMISSIONER LERNER: To clarify, the 4th we would
14 begin at noon, correct?

15 CHAIRPERSON NEUBERG: Correct.

16 COMMISSIONER LERNER: Thank you.

17 COMMISSIONER MEHL: And, Commissioner Neuberg --
18 Chairwoman Neuberg, you mentioned looking at the -- blocking
19 out dates for the final mapping, you want to -- you want to
20 reaffirm what those dates are?

21 CHAIRPERSON NEUBERG: So we have the major time
22 from the 14th, Commission revise and tentatively adopt plans
23 from the 14th to the 17th, and then the final adopted plans
24 at the 22nd, so --

25 COMMISSIONER MEHL: This is all December?

1 CHAIRPERSON NEUBERG: Yes.

2 So from the 14th through the 22nd is a prime time.

3 COMMISSIONER MEHL: Okay.

4 CHAIRPERSON NEUBERG: And -- and possibly even just
5 understanding that, you know, we may need to extend it a day
6 or two now, that may, you, know extend a couple days as
7 well. Hopefully not, we know the holiday is right around
8 the corner.

9 Okay. If there's no other discussion, we can move
10 to Agenda Item No. VI, Executive Director's report and
11 session thereof.

12 DIRECTOR SCHMITT: Thank you, Madam Chair.

13 First up I'm going to talk about migration, it is
14 currently underway; it should be complete in the next three
15 to six weeks. So we'll be fully integrated with legal
16 counsel's e-discovery system.

17 Next up, Michele is on the way to Window Rock and
18 Alex is on the way to Yuma, so Marie is going to give an
19 update on our outreach efforts.

20 Marie.

21 MS. CHAPPEL: Good morning, Madam Chair and members
22 of the Commission.

23 Just a quick follow-up, Michele continues to get
24 calls from the media and setting up interviews with
25 reporters about the work that the Commission is doing.

1 Alex has been continuously posting to our various
2 social media platforms; and he said he's getting a lot of
3 traction, especially on the map that he's put up showing up
4 where the meetings are, where the meetings have been; people
5 like that kind of visualizing, so that's been working really
6 well.

7 And then I continue to follow up with groups who
8 are on our list of contacts, just to make sure that they
9 have been receiving our information, if they have any
10 questions.

11 We created a flyer for the library to start
12 distributing to their membership in the various libraries
13 throughout the state.

14 And then kind of a thank you to some of the cities
15 we will be having meetings in, they have been trying to help
16 us find volunteers, especially when we only have one staff
17 member who will be staffing a meeting. So it looks like
18 several of the cities will be joining us to help with
19 attendees who are coming to the meetings.

20 And that is about it. Thank you.

21 DIRECTOR SCHMITT: Thank you, Marie.

22 Next up Lori is going to talk about our public
23 meetings we have going on.

24 MS. VAN HAREN: Thank you.

25 Good morning, Chairwoman and Commissioners.

1 I am super excited about the first grid map meeting
2 tonight in Mesa; and as Marie described, we have one in Yuma
3 and Window Rock today.

4 If you want to take a look at any of our upcoming
5 grid map public hearings, they're on our website under -- at
6 the IRC.AZ.gov under the public hearing section.

7 What we are planning now, especially after the
8 direction we received from the Commissioners this morning,
9 is a series of public hearings for the draft maps once those
10 are adopted. Our anticipated dates would be from starting
11 November 2nd to November 23rd, and we are soliciting input
12 from the various organizations, people, the Commissioners.

13 Based on our previous listening tour meetings,
14 we're looking for different locations that we can make sure
15 to attend.

16 One of the decisions that we made for the grid map
17 meetings was to host them in larger venues because we were
18 super excited and super surprised by how many people wanted
19 to attend the listening tour meetings back in August, so we
20 wanted to make sure we have enough room, especially with the
21 seriousness of COVID so that people could socially distance;
22 but on these upcoming meetings, because we have more
23 frequent meetings, we can start to look at some of the
24 venues that have been limiting attendance and go to several
25 smaller meetings.

1 So I'd ask anybody listening with the public to let
2 us know where you'd like us to see the meetings next, and we
3 have some options available at the grid map hearings for
4 people to -- to show us where they want to have us go next;
5 and anybody can e-mail us or -- or contact us directly.

6 Those are all of the updates I have, unless the
7 Commission wants to direct me to do anything with those
8 meetings.

9 COMMISSIONER LERNER: So -- so, Lori, can you
10 clarify a little bit what you mean when you say you'll have
11 more meetings, what's the vision you're talking about there
12 on how that will work? A morning meeting and an afternoon
13 meeting? Same day? Similar to --

14 MS. VAN HAREN: I guess, I'll leave it to the
15 Commission to direct me on that as well.

16 The first thing we will looking at is when we
17 will -- when the Commission will adopt the draft maps, so
18 now that we have definitive kind of timeline of when that
19 can happen, we were thinking more frequent meetings
20 potentially morning and afternoon; and it also depends on
21 our mapping team and so we're working with them to see how
22 many meetings that they can do and then staffing
23 considerations and travel considerations and location
24 considerations.

25 CHAIRPERSON NEUBERG: You know, I'm actually going

1 to suggest that we put this on the agenda for next week for
2 us to have a thoughtful conversation about how to maximize
3 our time during that 30-day review period. You know, how to
4 maximize collecting the feedback from the community.

5 You know, mapping, you know, could probably do, you
6 know, two to three public hearings a week, but we may want
7 to supplement that with additional touch points throughout
8 the state. So I think, you know, staff are coming up with
9 some creative ideas about open houses where, you know, maybe
10 the five Commissioners aren't just stationary sitting there
11 absorbing information, but we move around and -- and staff
12 or other, you know, representatives can be in a room with a
13 whole bunch of citizens and collect data. And, you know,
14 we'd obviously work out a system to, you know, how that data
15 is presented to us.

16 But we'd like to be creative with, you know, how do
17 we get out there as much as we can to the public, get them
18 super exposed to the draft maps, and -- and fine tune.

19 So, you know, put your thinking caps on. And maybe
20 we can reconvene next week and -- and, you know, have --
21 have a deliberate, you know, conversation.

22 MS. VAN HAREN: Wonderful. Thank you.

23 CHAIRPERSON NEUBERG: That sound good, Lori? I
24 mean, is there anything, any other, you know, feedback that
25 you're looking for right now?

1 MS. VAN HAREN: No, that's perfect. I will
2 absolutely gather the information and have options to
3 present to the Commission next week, and then, with your
4 direction, you can let us know what you would like to do.

5 COMMISSIONER LERNER: And then just as
6 Commissioners we should note that November 2nd to
7 November 23rd dates to do what we can to be around and set
8 those aside where we can, correct?

9 MS. VAN HAREN: That would be wonderful.

10 CHAIRPERSON NEUBERG: You know what, I would set
11 aside between now and December 22nd. And I'm only partially
12 joking.

13 COMMISSIONER YORK: In my industry the fall is
14 convention season for our business, but -- November and
15 December are pretty light; it's October, September. I'm in
16 Chicago today, so.

17 CHAIRPERSON NEUBERG: Okay. Good. Thanks for
18 joining.

19 Okay. Anything else?

20 Brian, Lori?

21 DIRECTOR SCHMITT: That is all we have for you-all
22 today.

23 CHAIRPERSON NEUBERG: Okay. Thank you.

24 We'll move to Agenda Item No. VII, discussion and
25 probable action on presentation from economic drivers for

1 the State.

2 I -- I have nothing for the group; I don't know if
3 there's anything the group, you know, feels the need to
4 follow up on.

5 COMMISSIONER MEHL: This is Commissioner Mehl.

6 I think we've had some great presentations that
7 have been really helpful, but we're about to hit the mapping
8 hard, and unless there's something really compelling, I
9 would suggest that we've got the information we need.

10 COMMISSIONER LERNER: I would agree.

11 CHAIRPERSON NEUBERG: Okay. I agree as well.

12 With that, we'll move to Agenda Item No. VIII,
13 legal update from counsel.

14 There are two items. We'll have first a
15 presentation on Latino voting rights and an overview of
16 redistricting case law specific to Latino communities; and
17 (B), presentation on overview of principles involved in
18 identifying and drawing majority-minority districts under
19 federal law.

20 Counsel will give as much of this presentation as
21 possible in public session.

22 I am going to recommend that we move into executive
23 session which will not be open for the public for the
24 purpose of obtaining legal advice to further implement
25 and/or advance legal issues pursuant to A.R.S.

1 38-431.03(A) (3), being able to move into executive session
2 for the Commissioners to be able to ask questions about
3 majority-minority districts.

4 And so, with that, I will turn it over to Mr. Roy
5 Herrera.

6 MR. HERRERA: Thank you, Madam Chair.

7 And just to be clear, we will be doing the
8 executive session piece at the end of this, right? So I
9 will -- I will do a public presentation and then --

10 CHAIRPERSON NEUBERG: Correct. Thank you.

11 MR. HERRERA: -- executive session.

12 Let me share my screen here and sometimes this is
13 an endeavor, so let me try.

14 And it's not letting me.

15 Okay. Figured it out -- nope.

16 You guys don't see it, do you?

17 Let's see.

18 CHAIRPERSON NEUBERG: Not yet.

19 MS. NEUMANN: I have it pulled up, Roy, if you'd
20 like me to present.

21 MR. HERRERA: Yeah, if you don't mind. Just so --

22 MS. NEUMANN: Okay.

23 MR. HERRERA: -- we're not using time here.

24 It says it's sharing on my computer, but it clearly
25 is not. So, yeah, if you could make sure to be using the

1 presentation marked "public," we can go from there.

2 So I'll go ahead and get started. So I think just
3 to kind of outline the day a little bit, we're going to talk
4 about -- you know, the purpose of today's conversation is to
5 talk about Latino voting rights and how those rights have
6 been applied under the Voting Rights Act; and then from
7 there springboard into a discussion about majority-minority
8 districts, how -- the importance of majority-minority
9 districts and how they're treated under the Voting Rights
10 Act; and then at the end of the conversation in executive
11 session we'll discuss, you know, principles related to
12 majority-minority districts as were used by IRC 2.0, and
13 then also with the current grid map.

14 So I think that's kind of the lay of the land.
15 The -- I'm going to start with and thank you for putting
16 that up.

17 If you want to go to the next slide.

18 With a look at history looking at voting rights in
19 Arizona, I'm starting obviously very early, preterritorial
20 days, and then going to work through more recent history;
21 and then I'll talk about a couple of seminal cases, they're
22 not Arizona cases, but examples of Latino communities, you
23 know, asserting their rights under the Voting Rights Act,
24 and how that's perceived under redistricting; and then, of
25 course, talk a little bit more, more of a refresher manner,

1 the rules of Section 2, the Voting Rights Act.

2 A couple of things I'm not going to be talking
3 about today, just so you're aware, is we're not going to be
4 discussing -- and we've talked about this in prior legal
5 presentations -- the difference between vote dilution and
6 vote denial cases under Section 2.

7 In a redistricting context, vote dilution cases are
8 the kind of cases that you primarily see, and that's what
9 we're going to be focusing our time on here; but there is,
10 of course, a long history of cases related to vote denial
11 and in particular vote denial as its affected the Latino
12 community. So a lot of the same kinds of literacy tests and
13 poll taxes and even some versions of voter ID have been
14 challenged under the Voting Rights Acts in a vote denial
15 setting; but I'm not going to talk about that in detail
16 because, again, that's not -- that's not particularly
17 relevant, I think, for redistricting purposes.

18 The other thing I'm not going to talk about today
19 from a legal perspective is -- is just something that I
20 think we've already talked about before, is the concept of
21 one-person, one-vote under the 14th Amendment in the Arizona
22 Constitution, because again I think we've given that kind of
23 advice already and presentation on that to the Commission.
24 Of course, if you have questions about it, we can answer
25 them now or in executive session; but we're not going to be

1 focused on that.

2 So let's jump back into the presentation.

3 The -- beginning of this, of course, is the
4 overview of private stark history of discrimination against
5 Latinos, and this is not news to folks in Arizona and
6 nationally; and so I'm going to talk as you can see in this
7 first screen about sort of about the early period in
8 Arizona.

9 This is of course when a portion of Arizona was
10 still part of Mexico. This early period there were many
11 examples -- and, again, it's mostly based on historical
12 research -- of Latinos holding prominent roles in the
13 community, you know, this is when it is sort of -- it wasn't
14 a period where we had sort of the exact type of democracy,
15 you know, that we have here in Arizona, but it is important
16 to note that.

17 Then at the end of the Mexican-American War, we
18 have the Treaty of Guadalupe Hidalgo, and at that point the
19 United States conferred citizenship on about a hundred
20 thousand Hispanics that were living in Arizona at the time.

21 So -- so that's sort of the first instance of that.

22 First, we have this history in the West of a lot of
23 western migration from the east. I think that western
24 migration, again, according to historians led to a reduced
25 role of Latinos in sort of civic life, and, you know,

1 resulted back from the economic perspective were most
2 Latinos working as laborers at the time with pay disparity.

3 And, you know, it's important to note that
4 interracial Latinos, those that were Latinos that descended
5 from both Native Americans or African Americans as well as
6 Hispanic backgrounds, you know, faired worse in those early
7 years, early territorial years and preterritory years of
8 Arizona.

9 Actually, I actually missed something that I wanted
10 to mention. We are planning on having an academic who is
11 focused on Latino political history come and present to the
12 Commission, that's something we're still sorting out from a
13 calendar perspective. So this is my very rudimentary kind
14 of attempt of explaining this academic background that there
15 are countless of experts who teach courses on this and
16 hopefully at least one of them can come in and present a
17 more holistic view and perhaps a more sophisticated view
18 than I will.

19 Moving on to the next slide.

20 Early Arizona, in 1909 the Arizona territorial
21 legislature required an English language literacy test as a
22 prerequisite to voter registration. So, of course, that was
23 back when we were still a territory, not a state, still has
24 a territory legislature with, you know, voting. And even
25 back then there was English language literacy test related

1 to voter registration.

2 And, again, past historians have determined that
3 that test was specifically designed to present the territory
4 of Hispanic citizens -- Latino citizens from voting because
5 of their lower English literacy rates than white citizens.

6 So, again, this is -- this is history back in
7 territorial era; and then we have the Arizona Constitution
8 and Arizona becoming a state.

9 At that convention, the Arizona Constitutional
10 Convention, Latinos were largely excluded from the drafting
11 of that. There was actually only one Latino delegate to the
12 drafting of the Arizona Constitution back in the early
13 1900s.

14 Next slide, please.

15 Okay. I have a delay on my screen, so I'll look up
16 here.

17 So when the -- when Arizona became a state in 1912,
18 the legislature reimposed the English literacy test that
19 existed pre- -- in the -- in the territorial days. Again,
20 that was determined by historians to limit Latino voting.

21 Again, you know, historical record reflects that
22 Latino voters were frequently required to pass more
23 difficult versions of the literacy test without assistance
24 compared to white voters; and that, of course, led to
25 disenfranchisement.

1 You will notice that there's somewhat of a theme
2 here when we talked about in prior weeks, Native American
3 Voting Rights history in Arizona and, of course, you know,
4 nationally with African American communities, this kind of
5 literacy test is fairly common in this sort of early era.

6 And then, of course, as I mentioned during the
7 Native American Voting Rights presentation, the literacy
8 test that we're talking about was actually not repealed
9 until 1972, so that's two years after the Voting Rights Act
10 amendment that banned literacy tests nationwide. So we had
11 that VRA, and that's federal legislation, but then locally
12 that -- that literacy test was actually banned.

13 And then bringing it further along in history,
14 Latinos in the 1960s were the target of voter intimidation
15 and challenges at the polls. There's sort of a long
16 history of that -- or, long historical record of that, I
17 should say, from the 1950s; and then leading up to the 1970
18 election, the Arizona legislature required all citizens to
19 reregister resulting in an undoing of certain voting
20 registration outreach efforts in Latino communities, and
21 that was, you know, again related to the 1970 election.

22 Now, you know, fast forward, I think this is a
23 fairly good transition to talk about the Voting Rights Act.

24 Obviously as we talked about before in prior
25 presentations, the Voting Rights Act was designed primarily

1 to empower Latino voting rights -- or, I should say minority
2 group voting rights and prevent discrimination through, you
3 know, voting practices and procedures against minority
4 groups.

5 As I have here in the third bullet point, Latinos
6 being characterized under the VRA when Congress amended the
7 statute in 1975 to include protection for language minority
8 groups, and that term included, of course, persons of -- of
9 Spanish heritage which, of course, covered the Latino
10 community here.

11 So it was 1975 where the VRA, you know, clearly
12 covered the Latino community.

13 Now, going a bit further along here and sort of
14 talking about this from a more legal perspective, you know,
15 again, this is not news, Latinos have held statewide
16 electorate office in the modern era in Arizona. We've one
17 governor of Hispanic decent and other statewide
18 officeholders.

19 Nevertheless, statistics have shown that Latinos
20 have held fewer elected and judicial offices compared to
21 whites in the state of Arizona. Again, I don't think that's
22 surprising news to anyone, and that unfortunate news.

23 Until the VRA coverage formula for preclearance was
24 repealed by the U.S. Supreme Court, that's the Shelby County
25 decision, Arizona was required to have any law that impacted

1 elections, which included redistricting of course,
2 precleared by the Department of Justice. And we talked
3 about, you know, what the coverage formula was under
4 Section 4 in our prior presentation. But under that prior
5 coverage formula, Arizona was a coverage jurisdiction and
6 therefore had to, you know, submit redistricting maps under
7 the preclearance procedure.

8 And as we see here in the circle, Arizona's prior
9 redistricting plans received preclearance under Section 5;
10 and the most recent one included two majority-minority
11 congressional districts. And, again, I think that's
12 something that all of you are -- are well aware of.

13 Next slide.

14 And then again, we have one slide here on -- on
15 some registration trends and sort of numbers that we derived
16 from both Timmons and some academic data. But, again, if we
17 are able to secure an academic to come in to present to the
18 Commission, which hopefully we can, I think they will
19 probably be able to present some more detailed numbers on
20 this than we will.

21 But as you can see from here, Latinos are the
22 largest minority group in Arizona, they form 31 percent of
23 the total population. However, they make a substantially
24 smaller share of the CVAP vote, that's the citizen voting
25 age population, that's 23 percent of Arizona. We'll talk

1 about the importance of CVAP when talking about the VRA and
2 majority-minority districts in a moment.

3 And it's also important to note that Latinos are
4 less likely to vote as cohesively as other minority groups,
5 there is a lot of academic research on that. You know,
6 obvious example of that is kind of the difference between
7 the Latinos in the state of Florida, for example, and
8 Latinos in the Southwest, but that is something that is
9 unique to the Latino community that may not be present with
10 some of the other minority groups, particularly the
11 African-American community.

12 So providing a bit of an overview of some notable
13 VRA cases that were asserted and relate to Latino voting.

14 The first one is the *LULAC* case from 2006. Again,
15 this is a vote dilution case, which is the type of case that
16 you normally see in redistricting, a Section 2 vote dilution
17 case. This is a scenario where the state of Texas, and of
18 course Texas draws their maps there through the legislative
19 process, they drew congressional districts to increase
20 Republican seats and protecting particular Republican
21 incumbents that been in danger due to increasingly numerous
22 Latino population.

23 So the reaction to that threat was the particular
24 proposed district; and the Court found that, you know, the
25 district at issue, the increase in Latino voting

1 registration and overall population, along with the rise of
2 Latino voting power and, of course, the near certain victory
3 of the Latino candidate, were the various reasons that the
4 State redrew the particular lines in that particular
5 district.

6 Go to next slide, please.

7 You know, the Court in that case noted that the
8 statewide redistricting plan failed to afford Latinos
9 proportional representation, and noted that changes to the
10 challenge district undermined the progress of a racial
11 group. And, again, that is a situation where, you know, the
12 particular increase in the Latino population and voting
13 power in that district, their reaction to that was a
14 particular line drawing.

15 Here they're saying that that change, that
16 particular line drawing undermined the progress of the
17 racial group that had been subjected to significant
18 voting-related discrimination, as increasing the politically
19 reacting and cohesive.

20 Again, that latter piece is particularly important
21 under the *Gingles* test, which I will talk about in a moment.

22 Under another sort of quote from the case that I
23 think is instructive. You know, in this back -- against
24 this background, Latinos diminishing electoral support for
25 the incumbent indicates their belief that he was

1 unresponsive to their needs; in other words, they were
2 looking for a different candidate, and the State took away
3 their opportunity because they were about to exercise it.

4 Again, the eventual -- and if you want to go to the
5 next slide.

6 Eventual results of this case was -- the next slide
7 goes to Montes.

8 But just to put a sort of coda on the *LULAC* case,
9 was that the particular line in question needed to be
10 redrawn. So the entire map was not thrown out, but
11 adjustment made to that particular district.

12 Another case that's kind of instructive here that
13 demonstrates this idea in assertion of rights under
14 Section 2 is the Montes case. This is from Washington State
15 in 2014.

16 Here there was a challenge to a particular city's
17 at-large voting system that alleged that it deprived Latinos
18 of the right to elect representatives of their choosing to
19 the city council. The plaintiff in that case noted that no
20 Latino had ever been elected to city council in the 37-year
21 history of the at-large system, despite the fact that from a
22 proportional perspective, they accounted to approximately --
23 of approximately one-third of the City's voting age
24 population, probably one-quarter of the citizens voting age
25 population.

1 If you want to go to the next slide.

2 And in this case, you know, this is a quote from
3 the case, which I think is important for all of you to see,
4 this kind of talks about the standard that people talk about
5 under *Gingles*. But it says that: "A plaintiff under
6 Section 2 must make a prima facie showing that a bloc voting
7 majority would usually able to defeat candidates supported
8 by a politically cohesive, geographically insular minority
9 group."

10 That really is a good, I think, summary of what
11 sort of *Gingles* typically asks of plaintiffs. And, again,
12 we'll talk about that in -- in further detail.

13 But application of the *Gingles* factors in this
14 particular case, you know, the court, in looking at those
15 factors, said that the Latino population in that particular
16 city was sufficiently large and geographically compact to
17 allow to form a majority voters in a single-member district;
18 and then looked at statistical analysis using ecological
19 regression, which is one way to -- to do this type of
20 analysis, that the Latino population constituted a
21 politically cohesive minority group and voted as a bloc;
22 and, finally, that the non-Latino majority voted
23 sufficiently as a bloc to enable it defeat the Latino
24 minority's preferred candidate.

25 These last two bullet points are, I think, a clear

1 example of kind of the racial polarization analysis that you
2 would have to do under Section 2.

3 Then again this is -- you know, I perhaps maybe
4 should have refresher of *Gingles* before this case, but as
5 you recall from the *Gingles* analysis, if the first portion
6 of the analysis is met from a plaintiff, the Court then
7 looks to the totality of the circumstances in that
8 particular situation, and then decides again whether there
9 is a violation.

10 In this particular case it looked at the totality
11 of the circumstances and concluded that there was a
12 violation mostly by looking at the City's prior failure to
13 provide Spanish-language voting materials and voter
14 assistance and systemic challenges in the city to Latinos'
15 electing candidate of their choice.

16 So, again, when you're looking at the totality of
17 the circumstance, you're going to be looking at factors that
18 are sort of beyond the racial polarization analysis. Again,
19 we'll go through that in a moment.

20 So what are the key considerations when it comes to
21 Latino communities in redistricting?

22 You know, we've talked about sort of the historic
23 examples of the discrimination in the state of Arizona, some
24 examples of how some plaintiffs have asserted, you know,
25 Latino voting rights or felt that particular voting

1 procedures or systems were discriminatory; but as far as
2 takeaways go for purposes of redistricting law, Latinos are
3 treated like other racial or language minorities under the
4 VRA and the 14th Amendment.

5 In other words, the same legal principles guide the
6 inquiries to Latinos as they would to other members of other
7 minority groups. That being said, it's important to note
8 that Latinos have a unique history of racial
9 discrimination -- of course, they have a unique history in
10 general.

11 They also display sufficiently distinct voting
12 patterns that will often distinguish their claims in a state
13 like Arizona from other minorities in other Voting Rights
14 cases, we've talked about that a little bit; there's maybe a
15 distinction between Latinos in Arizona from, say, African
16 Americans in the South; and then these trends and these
17 differences inform applications of the VRA in the drawing of
18 majority-minority and minority ability districts. Those two
19 types of districts are, again, important under VRA analysis,
20 which I will explain a bit more.

21 So the next portion of this is going to be talking
22 about again kind of a refresher course of what the VRA
23 requirements are. But I'll pause for a moment there to ask
24 if there is any questions related to the sort of historical
25 overview and some of those examples that I gave, in

1 particular anything to the extent that we have an academic
2 coming to present to the Commission, anything in particular
3 you would like for them to focus on that I've failed to do,
4 which is probably a lot.

5 CHAIRPERSON NEUBERG: I thought it was excellent.

6 But a question that I still have is, for an
7 academic if we can arrange it, is more of the migration
8 pattern. Where -- where are the pockets in our state, you
9 know, of the Latino community; how did they get there; were
10 there certain economic drivers? You talked about being
11 pushed into day laborer jobs. And maybe just a little color
12 about the attachment to the geographic areas that the Latino
13 community currently lives in.

14 MR. HERRERA: I think that -- oh. Go ahead,
15 Commissioner Lerner.

16 COMMISSIONER LERNER: No, I was going to say that
17 that's of interest to me as well, to kind of look and see
18 how things have changed over time with where people are
19 settled and why they've moved around; the same kind of
20 questions.

21 MR. HERRERA: And I think and in sort of reaching
22 out to the academics in kind of the I would say kind of the
23 scope of presentation I think we're including that kind of
24 information in our request to them. So hopefully they're
25 able to present on that.

1 COMMISSIONER LERNER: I have one other question
2 that you may still be planning to address, and that is a
3 little bit more from local kind of issues that have
4 occurred, legal.

5 You mentioned, you know, you've given two us legal
6 cases out of state. Do you have some in state that you'll
7 be addressing or could address, they could address next
8 time?

9 MR. HERRERA: So, I -- I would say a couple of
10 things to that. There are -- have been sort of numerous
11 instances of -- and, again, in a vote denial context of
12 let's say Latino voting rights at issue. The clearest one I
13 think is the Brnovich case, which we've already briefed you
14 on; there were claims in that case from Latino groups and
15 Native American groups related to that particular voting
16 procedure.

17 But, again, that's not a redistricting case so
18 that's not, you know, why we sort of brought it back to your
19 attention, but that's a clear example of that.

20 There was a prior, if we're talking about vote
21 denial cases which are different than vote dilution cases, a
22 prior lawsuit related to voter ID requirements in the state
23 of Arizona that was brought under Section 2.

24 But as far as redistricting goes here in Arizona,
25 primarily under the VRA -- and we've talked about this, I

1 think, it was IRC 1.0 -- that was, you know, really a
2 question related to Native American voting rights, right,
3 which is slightly different than what we're presenting here.

4 But I don't know --

5 MR. B. JOHNSON: And competitiveness.

6 MR. HERRERA: And competitiveness, yeah. But I
7 don't know if you have anything else to add.

8 MR. B. JOHNSON: No, there just -- there just
9 hasn't been, at least in the modern era, has not been voter
10 dilution cases that I'm aware of in the state of Arizona.

11 We'll take a look and obviously we have learning
12 lessons from around the country as -- as Roy pointed out.

13 MR. HERRERA: Yeah. I mean, you'll notice some of
14 the seminal cases, particularly the *LULAC* case is a 2006
15 case, and since 2006 we just have not had anything in
16 Arizona that has been sort of a specific application of some
17 of those principles. But, you know, I mean, historically
18 there may have been more, but as we all know the sort of
19 state of redistricting law evolves, and so sometimes some of
20 those historical overviews are not always -- usually
21 helpful, but we can take a look to see if we're missing
22 anything that you -- you need to be aware of.

23 CHAIRPERSON NEUBERG: You know, Roy, it seems that
24 many of the legal cases center around congressional
25 districts of Section 2, what do we need to know about

1 legislative districts and our responsibility and is there
2 less focus there?

3 MR. HERRERA: No, there isn't. In other words,
4 under Section 2 which is designed, again, to prevent any
5 kind of voting, you know, procedure which includes -- or
6 system, which includes redistricting, from discriminating on
7 the basis of race, that would apply to legislative
8 districts, congressional districts, city districts.

9 The *LULAC* case, for example -- I'm sorry, the --
10 Yakima case, the Montes case, that's a city case, right?
11 It's a municipal case where we're still applying the same
12 Section 2 principles in that -- in that kind of context.

13 So for your purposes, you know, considering the
14 legislative and congressional lines, you're going to be
15 looking at the same requirements under the VRA.

16 CHAIRPERSON NEUBERG: Thank you.

17 MR. HERRERA: And -- and unless there's other
18 questions, I'll just actually turn to the VRA and kind of
19 provide that refresher that -- that I wanted to do before we
20 get into maybe some more of the specifics.

21 So if you want to go to sort of the next slide.

22 The next slide is a slide that we've used before
23 before the Commission but, again, I think it's kind of a
24 good overview, this chart, which demonstrates the
25 requirements under Section 2 and under Section 5 and

1 compares them.

2 As I've already mentioned and we've mentioned
3 before, Section 5 is no longer applicable; we do not have
4 the preclearance process anymore here as a result of the
5 Shelby County case, and that is because Section 4's coverage
6 formula is no longer operable.

7 Nevertheless, I think it's important to -- it may
8 be important to still consider some principles under
9 Section 5 or Section 2, but also I think it's a good
10 demonstration of the requirements under Section 5 and how do
11 they compare to Section 2.

12 We have this quote from law school, an academic
13 textbook, that I think is an interesting way to look at it,
14 which is describing Section 2 as a legal sword that enables
15 minority voters to improve their electoral position. That
16 is to say under Section 2, you know, somebody could bring a
17 challenge, you know, a private right of action -- or, I'm
18 sorry, yeah a private challenge, you know, essentially
19 alleging that a particular redistricting plan discriminates.
20 So Section 2 is that sword and then Section 5, because it
21 was a preclearance procedure, here it is described as a
22 shield.

23 So what are the standards, Section 5, Section 2?

24 Well, under Section 5 the standard primarily is a
25 standard of retrogression. So in other words, minority

1 groups may not lose ground relative to its prior position.
2 So there's this idea that if there are a certain amount of
3 representative districts, majority-minority districts,
4 having less, you know, of those districts could potentially
5 be retrogression and therefore it violates Section 5.

6 Under Section 2, the analysis is whether the
7 group's members have less opportunity than other members of
8 the electorate to participate in the political process and
9 to elect representatives of their choice.

10 And this again will make some sense when we go
11 through the *Gingles* factors again. But, again, it's
12 whether -- it's really a question of opportunity and
13 participation to elect representatives of your choice,
14 that's what you're typically looking at under Section 2 in a
15 vote dilution scenario.

16 What the scope of application, again, we already
17 mentioned this under Section 5, the coverage jurisdiction of
18 which Arizona was one up until Shelby County; under
19 Section 2 it applies to every voting jurisdiction.

20 And this actually gets to your question,
21 Madam Chair. You know, basically any kind of voting
22 jurisdiction is subject to Section 2. You know, any kind of
23 voting, you know, system or -- or process is subject to
24 Section 2.

25 Initiation of proceedings. You know, preclearance

1 would put the onus on the government. In other words, just
2 like IRC 1.0 and 2.0 did, you would send maps to the
3 Department of Justice and then they would preclear them or
4 not.

5 Section 2 is different of course, there is no
6 preclearance, it actually requires plaintiffs to bring
7 challenges as I mentioned that's one of the reference to the
8 legal sword piece.

9 If you want to go to the next slide.

10 And then again, I -- I already kind of covered
11 this, but Arizona was a covered -- this was related to
12 Section 5, was a covered jurisdiction under Section 5 until
13 2013, Shelby County case. This is the first redistricting
14 cycle since the end of preclearance, that has introduced
15 some certainty, and we say here in the third bullet point:
16 "While Section 5 no longer applies, the Court could
17 potentially consider retrogression as evidence of vote
18 dilution in violation of Section, 2 so long as it's
19 supported by data."

20 I think the important piece there to note is that,
21 what we put here, I think, in the parenthesis is that the
22 concept hasn't been tested yet, right? I mean, we are in
23 a -- the first redistricting that has occurred after the
24 Shelby County decision, so some of -- there's some unknown,
25 I think, on sort of the application of Section 5 principles

1 and Section 2 claims; but it is worth considering.

2 So the next slide here gets into the -- the next
3 few slides, actually, get into the definition of two
4 different types of districts: The first are
5 majority-minority districts; and the next are what I would
6 call ability districts -- or, excuse me, not ability
7 districts, but minority ability districts. That's right.

8 I was getting that confused with performance, which
9 we'll also talk about in a moment.

10 But both majority-minority and majority ability
11 districts are important sort of definitional pieces to
12 understand when doing a VRA analysis. I'll talk about why
13 when we go to the *Gingles* test.

14 But first let's try to define them so you guys have
15 a clear understanding of what they are.

16 And, again, this is a refresher, so you may already
17 remember this from prior presentations.

18 But when it comes to majority-minority districts,
19 we're dealing with a situation where a particular minority
20 group makes up 50 percent plus one majority of the
21 district's voters.

22 As we have here in the next bullet point, it
23 probably when you're doing that sort of percentage
24 calculation, it probably must be CVAP or citizen voting age
25 population, not just voting age populations. There can be

1 some differences between the two; and as we've seen with
2 Latinos, sometimes that -- the Latino community that
3 sometimes difference can be somewhat stark.

4 Now, we put probably in here because some courts
5 have been kind of cavalier in what population or voting
6 population they are using for their analysis; but from our
7 sort of view of the case law, it is CVAP that is pri- -- the
8 primary consideration when doing a majority-minority
9 district calculation. But again, there's some sort of
10 strangeness, you know, related to how courts have described
11 their calculation.

12 The Department of Justice -- and, actually, before
13 I turn to the second -- this third bullet point here, which
14 deals with how do you treat multiracial voters, one thing I
15 mention here is the Department of Justice has released
16 particular redistricting guidance -- and, of course, this is
17 Department of Justice's guidance, it's sort of how they are
18 viewing redistricting; and, in particular, you know, they've
19 touched on sort of how they're doing both vote dilution
20 claims and racial gerrymandering claims; and then in
21 addition to that, they issue guidance, which we're putting
22 forth here, related to how you treat multiracial voters.

23 You may have seen some news reports that in the
24 sense that, at least from what I've seen in media reports --
25 and this is just the media reporting it not, you know, fact

1 necessarily -- that there have been an increase in voters
2 that have identified themselves as multiracial in prior
3 census. So the question here is, well, how do you count
4 that when you're dealing with, you know, calculating
5 majority-minority district?

6 The DOJ, in their instruction, have said that they
7 count multiracial racial voters who identify as white and
8 some other minority category as members of the minority. So
9 for multiracial voters who identify as members of two or
10 more minority categories, the DOJ practice -- practices --
11 how do you say that word? I've been having trouble all
12 over. I-ter-tive -- i-ter-tive?

13 MR. B. JOHNSON: I-ter-a-tove.

14 MR. HERRERA: Iterative. We were joking about this
15 yesterday; it's been difficult word today for me and Daniel.

16 Iterative allocation, but the point to that is that
17 they analyze them as members of each relevant group one at a
18 time.

19 So, again, two different situations: You've got a
20 multiracial voter who is white and one other racial group --
21 or minority group, I should say. They're counted as that
22 minority group under the DOJ guidance; and then if you are a
23 member of multiminority -- if you're, you know, a
24 multirace -- or if you're identifying as multirace, in other
25 words, part of two different minority groups, that will be

1 treated as iterative, so you would be, you know, kind of
2 going in order and counting which you're part of.

3 So, again, that's the DOJ guidance that they
4 released; and that's actually based on prior census guidance
5 that was released back in 2000.

6 So, again, this is majority-minority.

7 Now, we're at defining minority ability districts.
8 So what we are we talking about here?

9 Well, here we're talking about a situation where a
10 particular minority group is typically able to elect its
11 preferred candidate, either with the help of white voters,
12 with the crossover voters here, or voters of a different
13 minority group, that's a coalition; so you would have two
14 minority groups combining to elect their preferred candidate
15 in a coalition setting, or you would have a minority group
16 combining with white voters to select the minority's
17 preferred candidate in a crossover setting.

18 How do you determine, you know, whether that kind
19 of district exists?

20 That requires complex expert analysis of group
21 voting patterns, electoral participation, election history,
22 and voter turnout. That is something, again, that the map
23 drawers and, of course, the legal team with our experts can
24 help you in calculating because it is -- it is complex.

25 So why do we care -- well, actually, and then let

1 me do a distinction here between the two, because I think
2 this is an important point to sort of think about.

3 We talked about majority-minority districts, these
4 are the "50 percent plus 1" districts. For a
5 majority-minority district, they are usually what we call an
6 ability district but not always. So when we refer to
7 "ability" here, again what we're talking about is a minority
8 group having the ability to elect its preferred candidate.

9 Now, if you're doing a calculation of
10 majority-minority districts using CVAP, you can have a
11 slightly majority-minority district by CVAP but may -- may
12 not still have an effective minority ability districts due
13 to disparity in voting patterns or access.

14 So what we're getting at there really is if you're
15 doing a calculation using CVAP, that number that you get
16 from that calculation might show majority-minority, but if
17 you look at voting pattern turnout, for example, that might
18 not necessarily result in that minority group electing the
19 candidates of their choice. For example, if they have low
20 turnout, that may not be the case.

21 And so we, again, sort of refer to the experts here
22 to say that experts can help determine whether a higher
23 minority CVAP threshold may be required to ensure that the
24 group can elect its preferred candidate in a particular
25 district.

1 And, again, that's the difference between ability
2 and just the sheer CVAP calculation for a majority-minority
3 district.

4 So comparing the two, the majority-minority
5 districts come into play in the *Gingles* framework for
6 determining vote dilution under Section 2. I'll talk about
7 that when we talk about the framework.

8 Nevertheless, minority ability districts may be
9 important under both sections, Section 2 and Section 5.
10 They were particularly relevant under Section 5 for
11 determining retrogression; but, again, we have this sort of
12 unknown here related to sort of the application of Section 5
13 to Section 2.

14 So let's talk about *Gingles*, the *Gingles* framework.
15 So as we mentioned before, in prior advice and prior
16 presentations, *Gingles* is a multistep test that a -- a
17 plaintiff in a particular Section 2 challenge would have to
18 go through and prove to establish that there's been a
19 violation.

20 So the Step 1 is, is the minority group capable of
21 electing a candidate of its choice in some hypothetical
22 district, so in a proposed district.

23 How do you determine that?

24 Well, there are three criteria: The first is that
25 the minority group must be sufficiently large and

1 geographically compact to constitute a majority in that
2 hypo- -- hypothetical district; the second is that the
3 minority group must be politically cohesive; and then the
4 third is that the majority must vote sufficiently as a bloc
5 to enable it to defeat the minority's preferred candidate.

6 We'll talk about all three of these in a little
7 more detail in the next slide, but as you can see in the
8 graphic here, the second and third prongs of this first step
9 are what are typically called the racial polarization
10 prongs.

11 And we talked again about, you know, in earlier
12 agenda item about the racial polarization report and racial
13 polarization analysis. That is something that, you know,
14 using the data that we have that, again, Timmons and the
15 legal team going are going to be able to conduct that
16 analysis for you.

17 After the first step is done, you go to the second
18 step which is the totality of the circumstances test. And
19 that is, you know, based on those circumstances, do the
20 members of the minority group, in fact, have less
21 opportunity to elect the candidate of their choice?

22 That second step is primarily looked at what we
23 call the Senate Factors, which is basically related to the
24 1982 amendment to the VRA, it was the Senate report that was
25 attached to that amendment that listed these factors that

1 have become the factors that we look at under Step 2 of
2 *Gingles*.

3 Let's go to the next slide to a little bit deeper
4 dive into these steps.

5 As we mentioned, you know, Step 1 had three prongs:
6 The first prong to Step 1 is the question of whether there
7 is sufficiently large and geographically compact minority
8 group to constitute a majority.

9 The first piece of that is size, so it must be an
10 actual majority, 50 percent plus 1 of CVAP. In this
11 particular analysis, crossover votes from white voters do
12 not count for this inquiry, so that sort of idea of
13 crossover is not relevant to -- to this particular prong; a
14 coalition, which combines two minority groups might count,
15 if it can be proved that those -- that those two minority
16 groups are cohesive enough to be treated as one. A lot of
17 courts say that that is actually unlikely, so that is not
18 something that's very common but theoretically possible.

19 Second piece of this prong is compactness. You
20 know, in this context what we mean by "compactness" is, is
21 the minority group sufficiently concentrated that a district
22 can be formed while still respecting traditional
23 redistricting principles like communities of interest and
24 political natural boundaries. A district that combines far
25 flung and disparate minority populations may not satisfy

1 this particular part of this -- this prong.

2 And we have an examples here from the *LULAC* case
3 where, you know, there is a situation where one group of
4 Latino voters in the Austin suburb -- suburbs were combined
5 with another group 300 miles away in the Rio Grande Valley;
6 the holding there was that that particular district was not
7 compact enough.

8 So that's the first prong.

9 Let's go to next slide, go to the second prong.

10 Second prong is again related to political
11 cohesiveness, that is whether the minority group has
12 expressed clear political preferences that are distinct from
13 those in the majority.

14 How you determine this is by analyzing actual
15 voting preference in actual elections. So there's
16 statistical analysis related to this. As we can see here,
17 as we say here, "Expert statistical analysis is used using
18 prior election results to make this determination."

19 There are different methods, of course, for
20 determining that. I think during the racial polarization
21 report that Lisa Handley did, I think she went through some
22 of these statistical methods.

23 But in this particular -- the second prong, which
24 is the first prong of racial polarization, you would need to
25 use statistical analysis. There is a set quantative --

1 quantitative threshold for how cohesive a group must be.
2 You know, experts have, you know, kind of different ranges
3 that they look at. We set forth here that some experts have
4 used cohesion threshold of 60 or 67 percent.

5 In practice cohesion could often be much higher,
6 but it really again depends on the particular district that
7 we're talking about and -- and going through that
8 statistical analysis and expert analysis.

9 Let's go to the section slide, which is the third
10 prong of Step 1.

11 Here we're talking about the majority. So we're
12 talking about the white voting bloc. The majority must be
13 suf- -- must vote sufficiently as a bloc to enable it to
14 usually defeat the minority's preferred candidate.

15 "Usually" in this context means more than half the time.

16 The "minority's" when we refer to "minority's
17 preferred candidate," what we are referring to is the one
18 who would win if the election were held only among the
19 minority group in question but need not to be a member of
20 the group of. So that's important to note.

21 This is a result-oriented test. It's kind of
22 similar to the last one. There's no quantitative level of
23 cohesion is that required; discriminatory motives are
24 irrelevant to this analysis. It's a statistical analysis.
25 So, again, like the last one, there's not sort of a

1 threshold that is necessarily set forth in stone, it -- it
2 involves, again, statistical analysis and expert analysis.

3 In the Ninth Circuit the ability of a minority
4 group to play kingmaker between two white candidates is less
5 telling than its inability to elect primary or general
6 election candidates from within the group against white
7 opponents.

8 So this kind of a particular wrinkle in the Ninth
9 Circuit. So, again, that's something to think about when
10 you're thinking about, you know, whether this sort of
11 kingmaker idea is more important than the inability to
12 elect. And, obviously, the Ninth Circuit has an opinion on
13 that.

14 As I mentioned already, you know, expert
15 statistical analysis is used using prior -- or looking at
16 prior election results, and that's how you ultimately
17 determine whether this third prong is met.

18 So, again, this is the second of the two racial
19 polarization prongs when we talk about racial polarization.

20 Let's go to the next slide.

21 So those three prongs were all related to Step 1 of
22 the *Gingles* framework. A plaintiff in a Section 2 case
23 would have to establish that they sort of met that
24 particular step, including all three prongs. If a plaintiff
25 is able to show that, they can move on to Step 2, which is

1 the totality of the circumstances test. And, again, in that
2 situation, the question is do the members of the minority
3 group, in fact, have less opportunity to elect the candidate
4 of their -- of their choice.

5 And as I mentioned before, we look at what's called
6 the Senate Factors in order to determine this in a totality
7 of circumstances test. The Senate -- Senate Factors focus
8 on the history and present effect of discrimination against
9 the minority group both in voting election and generally;
10 and it's, you know, a long list of factors which we included
11 at -- in its own slide in a prior presentation, so if you
12 want to look at them, we can resend that. But those are the
13 Senate Factors that you would look at under this piece.

14 Also, you know, it may be relevant to look at
15 proportionality in this totality of circumstances test. In
16 other words, whether the number of minority ability
17 districts statewide is proportional to the minority group's
18 overall statewide population share for an upper limit of the
19 VRA's requirements.

20 It is important to note, though, that Section 2
21 does not explicitly require a state to meet the
22 proportionality, there's a lot of case law related to that,
23 but that's something to think about.

24 In practice, a minor- -- minority group that
25 satisfies the three-part test in *Gingles* Step 1 will almost

1 always have already shown enough to succeed in Step 2. So
2 in other words, if a plaintiff has shown, you know, again,
3 that the first three prongs under Step 1 have been met, two
4 of the three are done through statistical analysis, then
5 usually -- again, this is just in practice, and what we've
6 seen in prior case law -- that is enough to show the Step 2
7 or satisfy the Step 2, totality of the circumstances.

8 So let's go to the next slide.

9 And so -- and, again, this is kind of an obvious
10 point, but if both steps of the *Gingles* test are met, the
11 minority group have proven vote dilution in violation of
12 Section 2; the remedy in that case is that the state or the
13 court must draw one or more or actual majority-minority
14 districts to remedy the violation, not just minority ability
15 district.

16 So the result of a Section 2 violation would be the
17 drawing of majority-minority district, which is distinct
18 from the ability district that we talked about.

19 So let's go to the next slide.

20 What about the 14th Amendment?

21 We've also talked about racial gerrymandering in
22 prior presentations, it's important to think about. The
23 Equal Protection Clause of the 14th Amendment prohibits
24 states from drawing districts predominantly on the basis of
25 race, that's what we typically refer to as racial

1 gerrymandering.

2 So when does that occur?

3 Racial gerrymandering occurs when a state draws
4 districts based on race to the exclusion of traditional
5 redistricting criteria. The traditional racial criteria
6 here, typically compactness, contiguity, communities of
7 interest, political boundaries, et cetera.

8 An example of this is a district that connects
9 narrow and disjointed minority communities across a large
10 distance may be a racial gerrymander. Again, 'cause that
11 would be drawn to the exclusion of traditional redistricting
12 criteria.

13 It's important to note that compliance with the
14 State's obligations under the VRA is not racial
15 gerrymandering. In other words, if you are attempting to
16 comply with the Section 2 of the Voting Rights Act, that act
17 in of itself is not racial gerrymandering.

18 Now, one other thing to sort of talk -- think about
19 when we are talking about racial gerrymandering, DOJ has
20 released some guidance related to how it's viewing both
21 racial gerrymandering and something we didn't really talk so
22 much about, but is still potentially a Section 2 claim,
23 which is what we would call a discriminatory -- discriminatory
24 intent claim. The analysis there is somewhat similar to
25 racial gerrymandering in that you would be looking at direct

1 and circumstantial evidence that a map drawer basically used
2 race as a predominant factor to the exclusion of traditional
3 redistricting criteria when drawing a particular map.

4 So that's just something to think about, but DOJ
5 has their views on that and their guidance.

6 So before I sort of go into executive session and
7 talk more about majority-minority districts as they relate
8 to IRC 2.0 and the grid map, are there any questions that
9 the Commissioners may have for us?

10 CHAIRPERSON NEUBERG: That was excellent and very
11 thorough, and I'm presuming at some point that will end up
12 on our news room on our website; that would be a great
13 resource.

14 If there's no further questions, I'll entertain a
15 motion to go into executive session for the purpose of
16 obtaining legal advice to further implement and advance our
17 understanding of mapping for majority-minority districts.

18 COMMISSIONER MEHL: So moved.

19 VICE CHAIR WATCHMAN: This is Vice Chair Watchman,
20 motion to go into executive session to discuss further the
21 topic at hand.

22 COMMISSIONER MEHL: Second by Commissioner Mehl.

23 CHAIRPERSON NEUBERG: Okay.

24 Vice Chair Watchman.

25 VICE CHAIR WATCHMAN: Aye.

1 CHAIRPERSON NEUBERG: Commissioner Mehl.

2 COMMISSIONER MEHL: Aye.

3 CHAIRPERSON NEUBERG: Commissioner Lerner.

4 COMMISSIONER LERNER: Aye.

5 CHAIRPERSON NEUBERG: Commissioner York.

6 COMMISSIONER YORK: Aye.

7 CHAIRPERSON NEUBERG: Commissioner Neuberg is an
8 aye.

9 With that, we'll move into executive session -- oh.
10 Counsel?

11 MR. B. JOHNSON: This might be a good time to give
12 the court reporter a break before we go in, so just for --

13 CHAIRPERSON NEUBERG: Okay. How about a five- to
14 10-minute break quick?

15 COMMISSIONER YORK: Five.

16 CHAIRPERSON NEUBERG: And anything else?

17 Okay. With that, we'll move into executive session
18 with our counsel and our core staff. Thank you.

19 (Whereupon the proceeding is in executive session
20 from 10:47 a.m. until 11:32 a.m.)

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24 (Whereupon the proceeding resumes in general
25 session.)

1 CHAIRPERSON NEUBERG: Okay. I think I see
2 everybody around.

3 Director Schmitt, yes? We got everybody?

4 Okay. Thank you for everybody's patience while we
5 were in executive session, that was just a great opportunity
6 for us to do a deep dive into the legal implications of the
7 VRA and the majority-minority districts, will very much help
8 us as we begin the mapping process.

9 And so, with that, we have already addressed Agenda
10 Item No. IX, we will move to Agenda Item No. X, discussion
11 of future agenda item requests.

12 We already identified the plan to discuss more
13 broadly the listening tour or whatever hearings that we will
14 have for the 30-day review period of the draft map.

15 Anything else that the Commissioners would like to
16 put on our radar?

17 COMMISSIONER LERNER: I think that potentially
18 having the guest speaker that Roy mentioned.

19 CHAIRPERSON NEUBERG: Roy is working on securing an
20 academic to give us further context in the Latino migration
21 patterns, their political history; I don't believe I have a
22 date yet, but I believe that would be forthcoming.

23 COMMISSIONER MEHL: Chairwoman, I would suggest
24 that if they're not available by next Tuesday, that we're
25 really -- we're not going to be able to do it, 'cause then

1 we really start the detailed mapping meetings.

2 CHAIRPERSON NEUBERG: Yeah, you know what,
3 Commissioner Mehl, I hear what you're saying, you know, I
4 have a slightly different perspective. I understand it's
5 timely, but even after we do just a draft map, we have an
6 entire, you know, additional 30-day period we're going to be
7 hearing additional public testimony, we're going to be
8 refining the maps; and so if it does kind of fill in some
9 gaps in the knowledge and it can be done within, let's say,
10 two weeks, three at the most, I don't know, you know, it
11 still may be relevant.

12 Can we give Roy another just week or two maybe?

13 COMMISSIONER MEHL: Well, actually I agree with you
14 that there is that gap while we're doing another round of
15 public hearings where we're still going to have business
16 meetings, and in that gap, yeah, that -- that may work fine.
17 I just wouldn't want to take up those days you did, sort of
18 with great difficulty set aside for us to do the -- the real
19 mapping work, I wouldn't want to take up those days for more
20 presentations.

21 But you are totally correct that they're then other
22 meetings before we start digging back into the final maps.

23 CHAIRPERSON NEUBERG: Yeah, we'll take a look and
24 make sure it doesn't take away from, you know, serious
25 deliberation time.

1 MR. HERRERA: Madam Chair.

2 CHAIRPERSON NEUBERG: Yes.

3 MR. HERRERA: Just really quick on that point. I
4 think we would be looking at either -- as far as my
5 conversation thus far with the academic -- either on the 5th
6 or the 12th to come in. Is there a preference?

7 I mean, kind of given what Commissioner Mehl said
8 at the break, would the 5th be preferable or would be the
9 12th be preferable?

10 CHAIRPERSON NEUBERG: The 12th we are not scheduled
11 to deliberate. I believe that -- I don't remember which
12 Commissioner is out of town; I'm presuming we'll have a
13 business meeting.

14 How do the Commissioner's feel about delaying this
15 educational piece to the week we don't have deliberations?
16 I'm open to that.

17 COMMISSIONER YORK: I'm good with that.

18 COMMISSIONER MEHL: I'm good with the 12th.

19 COMMISSIONER LERNER: I am as well.

20 MR. HERRERA: I'll shoot for that, Madam Chair,
21 with the --

22 CHAIRPERSON NEUBERG: Okay.

23 Okay. Anything else with regard to additional
24 future agenda items?

25 If anything comes up, you know, feel free to reach

1 out to the staff within, you know, the next 48 hours, just
2 sensitive to us getting the agenda posted in time.

3 There's no other suggestions, we will move to
4 Agenda Item No. XI, announcements.

5 We are looking forward to our hearings. Today at
6 4 o'clock we will be in Mesa, Yuma, and Window Rock and that
7 begins at 4:00 p.m.; but the public should be aware we
8 expect to be there for several hours, so after work, you
9 know, please come. We will be there.

10 On Thursday at noon in South Scottsdale, Casa
11 Grande, and Sierra Vista; on Saturday at 10 a.m. we'll be in
12 South Phoenix and Prescott; on the 29th we're going to be in
13 Northern Scottsdale and Tucson; and the 7th we'll be in
14 Surprise, Flagstaff, San Luis, and Kayenta.

15 So we're really excited to see everybody.

16 And our next public meeting will be next Tuesday,
17 the 28th. That was Agenda Item No. XII.

18 So we can move to Agenda Item No. XIII unless
19 there's any other further announcements.

20 Closing of public comments. Please note members of
21 the Commission may not discuss items that are not
22 specifically identified on the agenda. Therefore, pursuant
23 to A.R.S. 38-431.01(H), action taken as a result of public
24 comment will be limited to directing staff to study the
25 matter, responding to any criticism, or scheduling the

1 matter for further consideration and decision at a later
2 date.

3 With that, we have arrived to Agenda Item No. XIV,
4 adjournment.

5 I will entertain a motion to adjourn.

6 VICE CHAIR WATCHMAN: So moved.

7 Vice Chair Watchman. Adjourn.

8 CHAIRPERSON NEUBERG: Second?

9 COMMISSIONER MEHL: Second by Commissioner Mehl.

10 CHAIRPERSON NEUBERG: Okay. Vote.

11 Vice Chair Watchman.

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: Thank you.

20 Commissioner Neuberg is an aye.

21 With that, we will adjourn.

22 And I look forward to seeing my colleagues, the
23 staff, and the public later today and over the upcoming
24 days.

25 Take care. Bye-bye.

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(Whereupon the proceeding concludes at 11:38 a.m.).

* * *

C E R T I F I C A T E

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

BE IT KNOWN that the foregoing proceedings were taken before me, Angela Furniss Miller, Certified Reporter No. 50127, all done to the best of my skill and ability; that the proceedings were taken down by me in shorthand and thereafter reduced to print under my direction.

I CERTIFY that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome thereof.

I FURTHER CERTIFY that I have complied with the requirements set forth in ACJA 7-206. Dated at Litchfield Park, Arizona, this 5th of October, 2021.



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

* * *

I CERTIFY that Miller Certified Reporting, LLC, has complied with the requirements set forth in ACJA 7-201 and 7-206. Dated at LITCHFIELD PARK, Arizona, this 5th of October, 2021.



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