

THE STATE OF ARIZONA
INDEPENDENT REDISTRICTING COMMISSION

REPORTER'S TRANSCRIPT OF VIDEOCONFERENCE PUBLIC MEETING

Via GoogleMeets

May 4, 2021

9:00 a.m.

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1 PUBLIC MEETING, BEFORE THE INDEPENDENT
2 REDISTRICTING COMMISSION, convened at 9:00 a.m. on
3 May 4, 2021, via GoogleMeets, Arizona, in the presence of
4 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. Yasmin Ramos, Administrative Assistant
13 Ms. Valerie Nemann, Executive Assistant
14 Mr. Roy Herrera, Ballard Spahr
15 Mr. Eric Spencer, Snell & Wilmer
16 Mr. Daniel Arellano, Ballard Spahr
17 Mr. Dennis Burke, Ballard Spahr
18 Mr. Brett Johnson, Snell & Wilmer
19 Ms. Nicole Sornsin, General Counsel, Arizona
20 Department of Administration
21 Mr. Michael Hillebrand, Arizona State Procurement
22 Office
23
24
25

P R O C E E D I N G

1
2
3 CHAIRPERSON NEUBERG: Okay. With that, we are
4 going to call this meeting to order. Agenda Item I(A), call
5 for quorum.

6 It is 9:00 a.m. on Tuesday, May 4th, 2021. I call
7 this meeting of the Independent Redistricting Commission to
8 order.

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

13 Yasmin.

14 MS. RAMOS: Thank you, Madam Chairwoman.

15 Vice Chair Watchman.

16 VICE CHAIR WATCHMAN: Present.

17 MS. RAMOS: Commissioner Lerner.

18 COMMISSIONER LERNER: Present.

19 MS. RAMOS: Commissioner York.

20 COMMISSIONER YORK: Present.

21 MS. RAMOS: Commissioner Mehl.

22 Commissioner Mehl? I think he dropped off.

23 CHAIRPERSON NEUBERG: I think he's frozen.

24 MS. RAMOS: And Chair Neuberg.

25 CHAIRPERSON NEUBERG: Present.

1 MS. RAMOS: I don't know if you want to wait for
2 Commissioner Watchman to jump back on, but we can circle
3 back on to him.

4 COMMISSIONER YORK: Mehl.

5 CHAIRPERSON NEUBERG: Mehl.

6 MS. RAMOS: Also for the record, Roy Herrera, Brett
7 Johnson, Eric Spencer, and Daniel Arellano -- am I missing
8 anybody? -- from Ballard Spahr and Snell & Wilmer.

9 MR. HERRERA: Dennis Burke is here instead of
10 Daniel Arellano.

11 MS. RAMOS: Okay. Dennis Burke is also there.
12 And from ADO we have Michael Hillebrand, Nicole
13 Sornsin, Jessica Klein; and Angela Miller is transcribing
14 for us.

15 Back to you, Madam Chair.

16 CHAIRPERSON NEUBERG: Thank you.

17 And you know what, Brian, can you maybe text -- oh.
18 Here's Commissioner Mehl.

19 Yasmin, can you check in with the vote -- with the
20 presence with Commissioner Mehl, please.

21 MS. RAMOS: Commissioner Mehl.

22 And you are muted, Commissioner Mehl. If you can
23 hear us, please say "present."

24 COMMISSIONER MEHL: Present. Can you hear me?

25 CHAIRPERSON NEUBERG: Yes. Thank you.

1 Commissioner Mehl, what -- what may also be helpful
2 is if you dial in with your phone so at least we have audio
3 with you even if we don't have video, as just as a backup
4 and a safety.

5 Okay. With that, please note for the minutes that
6 a quorum is present.

7 We move to Agenda Item I(B), call for notice.

8 Yasmin, was the notice and agenda for the
9 Commission meeting properly posted 48 hours in advance of
10 today's meeting?

11 MS. RAMOS: Yes, it was, Madam Chair.

12 CHAIRPERSON NEUBERG: Okay. Thank you so much.

13 And I believe, Yasmin, will this be the last day
14 that you're joining us?

15 MS. RAMOS: I believe so.

16 CHAIRPERSON NEUBERG: Okay. With that, I just
17 really want to give you a huge shout out, a deep debt of
18 gratitude, and thank you on behalf of the Commission, on
19 behalf of the State; you've been the glue to our project
20 from day one, you know, truly an MVP, and I just really on
21 behalf of all of us, you've done an outstanding job and
22 we're going to miss you and we hope you stay involved to
23 some degree.

24 MS. RAMOS: Yes, I will. Thank you, Madam Chair.

25 CHAIRPERSON NEUBERG: Okay. Thank you.

1 With that, we'll move to Agenda Item No. II,
2 approval of minutes from April 27th, 2021.

3 We have the general session and the executive
4 session minutes. As a reminder, video recording fulfills
5 statutory requirements.

6 Is there any discussion regarding the public and
7 executive session minutes of last week?

8 I'll entertain a motion to approve the public and
9 executive session minutes.

10 COMMISSIONER LERNER: This is Commissioner Lerner.
11 I move to approve both sets of minutes from April 27.

12 CHAIRPERSON NEUBERG: Do I have a second?

13 VICE CHAIR WATCHMAN: Vice Chair Watchman seconds.

14 CHAIRPERSON NEUBERG: Any further discussion?

15 Vote. Vice Chair Watchman.

16 VICE CHAIR WATCHMAN: Aye.

17 CHAIRPERSON NEUBERG: Commissioner Mehl -- oh. He
18 just left the meeting again.

19 Commissioner Lerner.

20 COMMISSIONER LERNER: Aye.

21 CHAIRPERSON NEUBERG: Commissioner York.

22 COMMISSIONER YORK: Aye.

23 CHAIRPERSON NEUBERG: Commissioner Neuberg is an
24 aye.

25 With that, a 4-0 vote to approve the minutes.

1 I would like to note that we do expect written
2 minutes starting next week because we have a new staff
3 member.

4 Welcome, Valerie. If you could maybe just say
5 hello and introduce yourself and anything you want to share
6 with us.

7 MS. NEUMANN: Hello. Good morning, everyone. I
8 am -- thank you to have me here; I'm very excited. A little
9 stressful about this audio stuff, but bear with me, please,
10 next week.

11 Thank you.

12 CHAIRPERSON NEUBERG: Well, thank you. Welcome to
13 the team and -- and we really look forward to working with
14 you. And -- and we need you.

15 With that, we'll move to Agenda Item No. III,
16 opportunity for public comments.

17 Public comment will open for a minimum of
18 30 minutes and remain open until the adjournment of the
19 meeting. Comments only be accepted electronically in
20 writing on the link provided in the notice and agenda for
21 this public meeting and will be limited to 3,000 characters.

22 Please note members of the Commission may not
23 discuss items that are not specifically identified on the
24 agenda. Therefore, pursuant to A.R.S. 38-431.01(H), action
25 taken as a result of public comment will be limited to

1 directing staff to study the matter, responding to any
2 criticism, or scheduling the matter for further
3 consideration and decision at a later date.

4 With that, we're going to move to Agenda Item No.
5 IV. I did want to just give, you know, our colleagues on
6 the call as well as our community --

7 MR. HERRERA: Chair Neuberg?

8 CHAIRPERSON NEUBERG: Yes.

9 MR. HERRERA: Chair Neuberg, sorry to interrupt. I
10 just want to clarify Agenda No. IV, that although public
11 comment has been open, the Commissioners are still under the
12 blackout period embargo into the conclusion of Agenda Item
13 No. VIII.

14 CHAIRPERSON NEUBERG: Yes. And that -- and that's
15 actually foreshadowing where I'm headed right now. We're
16 going to address Agenda Item No. IV and V, then we're going
17 to jump to Agenda Item VIII. It's -- it's, you know, one of
18 the most essential items, and we're unsure the amount of
19 time; and so I just want to give everybody a sense of the
20 flow of the meeting.

21 And also we will not be recessing today from Noon
22 to 1:00, so we're just going to be plowing through.

23 So, with that, we're going to move to Agenda Item
24 No. IV, discussion of public comments received prior to
25 today's May 4th meeting.

1 As our attorney just mentioned, we have been
2 observing a blackout since 5:00 p.m. on April 29th,
3 Thursday; we received, you know, a tremendous amount up to
4 that point, primarily on the mapping firms. Nothing new
5 from -- from what we shared last week, and so I think we'll
6 be able to have more conversations after the blackout period
7 ends.

8 Any further discussion on that from my colleagues?

9 With that, we'll move to Agenda Item No. V,
10 discussion and possible action on legal counsel briefing.

11 Our counsel would like to give us some policy
12 guidance and also have the ability to have a robust
13 discussion about the retention of legal consultants and
14 expert witnesses. It is advised that the Commission go into
15 executive session which will not be open to the public, for
16 the purpose of obtaining legal advice to further implement
17 and/or advance these legal issues pursuant to A.R.S.
18 38-431.03(A)(3).

19 And just as a reminder to the public, the ability
20 to have these conversations protected with counsel helps
21 protect us legally from further litigation, and so we are
22 well advised to follow this advice.

23 Any further discussion before we entertain a motion
24 to go into executive session?

25 Okay. We'll entertain a motion, please.

1 COMMISSIONER YORK: This is Commissioner York. I
2 motion -- or move that we go into executive session.

3 CHAIRPERSON NEUBERG: Do I have a second?

4 COMMISSIONER LERNER: Commissioner Lerner
5 seconds --

6 VICE CHAIR WATCHMAN: Second.

7 COMMISSIONER LERNER: -- the motion.

8 CHAIRPERSON NEUBERG: Any further discussion?

9 Okay. Vice Chair Watchman.

10 VICE CHAIR WATCHMAN: Aye.

11 CHAIRPERSON NEUBERG: Commissioner Mehl.

12 COMMISSIONER YORK: He's not out there.

13 CHAIRPERSON NEUBERG: Yeah, okay.

14 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, we will move into executive
21 session. And, again, while we're moving over, we'll try to
22 at least get Commissioner Mehl on audio.

23 We anticipate, you know, 15, 30 minutes, somewhere
24 within, but -- but no promises at all; it's fluid.

25 We'll see you in executive session. Please exit

1 out of this link.

2 (Whereupon the proceeding is in executive session
3 from 9:10 a.m. until 9:37 a.m.)

4
5 * * * * *

6
7 (Whereupon the proceeding resumes in general
8 session.)

9 CHAIRPERSON NEUBERG: Okay. It looks like we have
10 our team convened. I see our counsel; I see Brian and
11 Valerie and Yasmin and our Commissioners.

12 And so, with that, I would like to thank the public
13 for your patience; we had, I think, a really informative
14 briefing from our joint counsel. In particular, we spoke
15 about the value of hiring a consultant with the possibility
16 that the consultant can serve as an expert witness on the
17 Voting Rights Act and the 14th Amendment, the equal
18 protection clause; we also spoke about the need to consider
19 hiring consultants/expert witnesses along the way to help us
20 with the Arizona Constitutional requirements.

21 We gave the counsel our general approval for
22 continuing to investigate and research what particular needs
23 Arizona might have along those lines and -- and I think we
24 were all deeply appreciative for the comprehensive and
25 competent presentation.

1 Any other feedback from my colleagues before we
2 move on to the next agenda item?

3 With that, we are going to move to Agenda Item
4 No. VIII, discussion and possible action on options for
5 mapping consultants.

6 There are three parts to this. First, we will move
7 into executive session upon approval to score and evaluate
8 the mapping firms; after that, we can come back and share
9 with you what steps happen next as it relates to posting,
10 you know, these procurement files.

11 In the meantime before we entertain a motion to go
12 into executive session, I just want to clarify and emphasize
13 again for the public that we have been observing a blackout
14 since Thursday at 5:00 p.m.; the three firms had the
15 opportunity to provide clarification. They were provided
16 the public comments; they shared back with us if they chose
17 to their responses to the public comments, and we had the
18 ability to evaluate not just their original proposal but
19 also their responses to the concerns that the public of
20 Arizona raised.

21 With that, I'd like to suggest that the Commission
22 vote to go into executive session which will not be open to
23 the public for the purpose of obtaining legal advice, A.R.S.
24 38-431.03(A)(3), as well as for the purpose of discussion or
25 consideration of records exempt by law from public

1 inspection, including the receipt and discussion of
2 information or testimony that is specifically required to be
3 maintained as confidential by state or federal law, A.R.S.
4 38-431.03(A)(2), pursuant to A.R.S. 41-2534(D), the content
5 of proposals submitted under the State's request for
6 proposal procurement process is confidential until contract
7 award so as to avoid disclosure of content prejudicial to
8 competing offerors during the process of negotiation.

9 With that, I will entertain a motion to go into
10 executive session.

11 VICE CHAIR WATCHMAN: Madam Chair, Vice Chair moves
12 to go into executive session for Item No. VIII.

13 CHAIRPERSON NEUBERG: Commissioner Mehl, I see your
14 mouth going but nothing --

15 COMMISSIONER MEHL: Yes. Commissioner Mehl
16 seconds.

17 CHAIRPERSON NEUBERG: Any further discussion?
18 Vice Chair Watchman.

19 VICE CHAIR WATCHMAN: Aye.

20 CHAIRPERSON NEUBERG: Commissioner Mehl.

21 COMMISSIONER MEHL: Aye.

22 CHAIRPERSON NEUBERG: Commissioner Lerner.

23 COMMISSIONER LERNER: Aye.

24 MR. JOHNSON: Chairwoman Neuberg --

25 CHAIRPERSON NEUBERG: Yes?

1 MR. JOHNSON: We're having some tech- -- we're
2 having some technical difficulties. You have to -- have to
3 let the -- (technical disruption).

4 DIRECTOR SCHMITT: Chairwoman, I just spoke with
5 Brett. He was trying to let you know that we also have to
6 let the public know that the technical advisors are going to
7 be in executive session.

8 CHAIRPERSON NEUBERG: Absolutely. Should we recite
9 the names of everybody? We have our representatives from
10 SPO, the procurement office -- the State Procurement
11 Officers; I believe we have Nicole Sornsinn from ADOA, the
12 legal counsel, she is a technical expert, any -- anybody
13 else or do we need to recite all names?

14 MS. RAMOS: And Jessica Klein also, Madam Chair.

15 CHAIRPERSON NEUBERG: Jessica Klein, Michael
16 Hillebrand.

17 COMMISSIONER YORK: I think that's it.

18 CHAIRPERSON NEUBERG: And our transcription, you
19 know, Angela.

20 Okay. With that, where we were in the voting? We
21 did --

22 COMMISSIONER LERNER: Commissioner York needs to be
23 asked.

24 CHAIRPERSON NEUBERG: Commissioner York.

25 COMMISSIONER YORK: Aye.

1 CHAIRPERSON NEUBERG: Commissioner Neuberg is an
2 aye.

3 And, with that, we will -- 5-0, we'll move into
4 executive session.

5 Please exit out of this link. Thank you.

6 (Whereupon the proceeding is in executive session
7 from 9:44 a.m. until 2:09 p.m.)

8
9 * * * * *

10
11 (Whereupon the proceeding resumes in
12 general session.)

13 CHAIRPERSON NEUBERG: Okay. I believe we have our
14 entire crew. We are glad to resume back into the public
15 session.

16 Thank you so much for everybody's patience; we had
17 a thoughtful process discussing the mapping procurement
18 process.

19 I'd like to thank my fellow commissioners for their
20 preparedness, their conscientiousness with reviewing all of
21 the materials.

22 I would like to suggest that we make a motion to
23 ratify the procurement process, the procurement consensus
24 process and award the contract to Timmons/DNC [sic]. After
25 we make that motion we can enter into dialogue and discuss

1 the process.

2 COMMISSIONER MEHL: Madam Chairwoman, I make
3 that -- I make that motion. Thank you.

4 CHAIRPERSON NEUBERG: Do I have a second?

5 COMMISSIONER YORK: This is Commissioner York. I
6 second.

7 CHAIRPERSON NEUBERG: Okay. And with that, let's
8 enter into dialogue about this motion.

9 COMMISSIONER LERNER: I --

10 CHAIRPERSON NEUBERG: I would like to just start
11 the process by saying that, you know, it's a difficult
12 process, but we went methodically through multiple criteria;
13 and I feel that we, you know, did our best in due diligence
14 to assign qualitatively, you know, assessments to the
15 abilities of the mapping firms, and I feel that we had
16 robust discussions on every level, I loved it, and I believe
17 in it.

18 And I -- I just felt like the process was thorough,
19 and we came to consensus.

20 And, with that, I open it up to my colleagues.

21 COMMISSIONER LERNER: Well --

22 COMMISSIONER MEHL: I know that the public hasn't
23 been able to see the proposals based on how the procurement
24 law works, but they will get to see the proposals and see
25 the Respondent's written answers to different questions; and

1 -- and I hope the public will have a much greater
2 appreciation for the selection we're making when they have a
3 chance review those -- those materials.

4 COMMISSIONER LERNER: And -- and I will just
5 express that I think that we worked well together as a
6 Commission. We're respectful to each other in terms of the
7 dialogue that we had, and I do appreciate that as part of
8 the overall process that was -- that we went through.

9 I'm not sure if I can say more now? Chair Neuberg,
10 can I go on?

11 CHAIRPERSON NEUBERG: Yes, please. Please. I
12 mean, we're going to vote and I think, Counsel, this is the
13 appropriate time to chime in, correct?

14 MR. HERRERA: Yes.

15 CHAIRPERSON NEUBERG: Yes, please.

16 COMMISSIONER LERNER: Okay. So I will say again, I
17 think the administrative process that we went through is
18 something that we all followed; we all did our due
19 diligence, we all looked at, and I feel comfortable that we
20 all spent quite a bit of time reviewing the proposals and
21 having good discussion.

22 I will for the record say I'm not in agreement with
23 the final decision that was made as part of that process. I
24 do feel we followed -- I appreciate the process, but I
25 don't -- but I'm just for the record going to say I don't

1 agree with the final decision that was reached, and I think
2 it's important to express that.

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

5 I -- I, too, agree with the process. It was a
6 great process, and so I am appreciative to the Department of
7 Administration, Attorney General's Office and our staff for
8 guiding us through this process. And I know that, you know,
9 a lot of us are -- are looking at this will be the final
10 mapping consulting firm, and the process that we chose was
11 rigorous, a lot of information; but I -- I, too, am not
12 comfortable with, you know, the -- the final vote-getter so
13 I may have to -- well, I show my vote.

14 But I do appreciate my fellows commissioners, and I
15 think we're a great team, you know, and been at this for a
16 couple months and many, many more months to go. And so, you
17 know, we've been able to work our -- discuss a lot of these
18 issues together.

19 So but, you know, for the record the process and
20 the point system I certainly agree with. I -- I'm not happy
21 with the outcome, so I'll leave it at that.

22 But I also appreciate you, Madam Chair, for leading
23 us through this; it's tough to be a chair, especially for
24 this particular issue, I know, and I feel for you. So I
25 just want to say thank you, you know, for leading us and

1 I'll stop there.

2 Thank you.

3 CHAIRPERSON NEUBERG: Thank you.

4 Would either of the other commissioners like to
5 share what made them, you know, inclined to support
6 Timmons/DNC?

7 I mean we -- we heard concerns. Anything on the
8 positive?

9 COMMISSIONER YORK: This is Commissioner York. One
10 of the things I would like to share with the State is that
11 we selected the state of Arizona procurement process; and so
12 with that we assigned a numbering system to the selection of
13 questions that we -- that were submitted for a bid proposal
14 by all the mapping firms that presented their firm to the
15 State and to us, and so through each question we assigned a
16 series of numbers to award a score that helped us make our
17 selection.

18 And from my standpoint, I felt that the Timmons
19 proposal was the most independent proposal that we'd
20 received; and so I am in favor of the outcome.

21 COMMISSIONER MEHL: I know the public had a lot of
22 comments against each of the three firms, and Timmons did an
23 excellent job of answering in writing and really clarifying
24 a number of the issues that have been raised against them as
25 did the other -- as did Haystaq.

1 But Timmons really showed and has a huge amount of
2 expertise in redistricting, and they did in 2001 achieve a
3 five-to-nothing vote on the congressional map and
4 four-to-one vote on the legislative map so they have a
5 history of being able to bring consensus, and we're
6 certainly hoping that they're able to do that with us as a
7 group this year.

8 COMMISSIONER LERNER: And I will just for the
9 record just because I didn't really give -- I didn't give
10 anything specific.

11 Felt that Haystaq presented an excellent proposal,
12 I felt they could be fair and balanced; and I -- I have
13 concerns, that -- but we will be working together with
14 Timmons to hopefully ameliorate my concerns about some of
15 the issues -- reasons that I supported Haystaq over Timmons.

16 But I did feel that Haystaq presented an excellent
17 proposal showing really good Methodology, I just want to
18 kind of get that out there as well. I do think Timmons
19 presented good Methodology as well, but -- but there were --
20 there were really some strengths in Haystaq's proposal that
21 I felt were worth supporting.

22 CHAIRPERSON NEUBERG: I would just like to add for
23 me in addition to this, I really was attracted to the fact
24 that Timmons/DNC was solely focused on Arizona, where
25 Haystaq/Q2, you know, is going to be spread a little thinner

1 as already being hired by California -- not hired by
2 Michigan, but -- but I like the idea that this mapping firm
3 was going to be solely focused on our project in addition to
4 their robust experience.

5 When you have upwards of almost 400 or, you know,
6 hundreds of projects, you know, to think that none of them
7 are -- are going to have complications I think is
8 unrealistic. And like Commissioner Mehl, I was satisfied
9 with the clarifications that they provided, and -- and, you
10 know, I -- I think all of that information will eventually
11 be open to the public, and I think that will helpful too.

12 Is there any further discussion?

13 So we have a motion to ratify the procurement
14 consensus process and award the contract to Timmons/DNC.
15 We'll take a vote.

16 Vice Chair Watchman.

17 VICE CHAIR WATCHMAN: No.

18 CHAIRPERSON NEUBERG: Commissioner Mehl.

19 COMMISSIONER MEHL: Yes.

20 CHAIRPERSON NEUBERG: Commissioner Lerner.

21 COMMISSIONER LERNER: No.

22 CHAIRPERSON NEUBERG: Commissioner York.

23 COMMISSIONER YORK: Aye.

24 CHAIRPERSON NEUBERG: Commissioner Neuberg is a
25 yes.

1 With that, with a 3 to 2 vote, we will move forward
2 with awarding the contract to Timmons.

3 The information will be posted, the procurement
4 file, within three days pursuant to ACC R2-7-B314.

5 With that, we are going to jump back to where we
6 left off on Agenda Item No. VI which is Executive Director's
7 report and discussion thereof.

8 With that, I turn it over to Brian.

9 DIRECTOR SCHMITT: Thank you, Chairwoman.

10 I have a brief update for you on a few items today,
11 nothing too extensive.

12 Regarding the office, I'm working with ADOA to
13 finalize the potential space just down the hall from our
14 current offices.

15 I also had a good call with the chief information
16 officer for the State last week, and he's aware of our needs
17 and working on a proposal -- a proposal and a plan to get
18 those -- to get us what we need.

19 Regarding the FTE increase, I requested that last
20 week, and I'm hopeful that we will get an increase in FTE
21 authority in the next week or two, so that we're able to
22 post the two positions we voted on last week; we can't post
23 those until we have FTE authority.

24 And besides that, I think the only other item I
25 have is hiring, but that is a separate agenda item.

1 MR. JOHNSON: Real quick, Chairwoman Neuberg, this
2 is Brett. I want to make sure that it's clear that Jessica
3 and Michael were released.

4 CHAIRPERSON NEUBERG: Okay. Thank you.

5 Any question on Brian our Executive Director's
6 report?

7 With that, Brian, let's move into Agenda Item No.
8 VII, discussion and possible action on public information
9 officer and other potential hires and duties of all IRC
10 staff positions. If there's a need to go into executive
11 session for legal advice, we will advise later.

12 DIRECTOR SCHMITT: So I submitted my recommendation
13 for our public information officer to you all last week; we
14 finalized negotiations yesterday on the offer and as -- and
15 the offer was contingent on the Commission's support.

16 If you would like more details, I think we have to
17 speak about those in executive session; but, if you're
18 comfortable moving forward, I can talk about it more as
19 well.

20 COMMISSIONER LERNER: So do we need a motion of
21 some kind?

22 CHAIRPERSON NEUBERG: Brian, would you like to go
23 into executive session to discuss the content of the offer?

24 DIRECTOR SCHMITT: Sure.

25 CHAIRPERSON NEUBERG: Okay. I will entertain a

1 motion to go into executive session.

2 The Commission is going into executive session
3 which -- which will not be open to the public for the
4 purpose of obtaining legal advice with respect to staffing
5 issues, A.R.S. 38-431.03(A)(3), as well as for the purpose
6 of discussion or consideration of records exempt by law from
7 public inspection, including the receipt and discussion of
8 information or testimony that is specifically required to be
9 maintained as confidential by state or federal law, A.R.S.
10 38-431.03(A)(2).

11 With that, a motion to move into executive session?

12 COMMISSIONER LERNER: So move. This is
13 Commissioner Lerner.

14 CHAIRPERSON NEUBERG: Second? Do we have a second?

15 COMMISSIONER YORK: Commissioner York seconds.

16 CHAIRPERSON NEUBERG: Any further discussion?

17 Okay. Vice Chair Watchman.

18 VICE CHAIR WATCHMAN: Aye.

19 CHAIRPERSON NEUBERG: Commissioner Mehl.

20 COMMISSIONER MEHL: Aye.

21 CHAIRPERSON NEUBERG: Commissioner Lerner.

22 COMMISSIONER LERNER: Aye.

23 CHAIRPERSON NEUBERG: Commissioner York.

24 COMMISSIONER YORK: Aye.

25 CHAIRPERSON NEUBERG: Commissioner Neuberg is an

1 aye.

2 With that, we will move into executive session to
3 discuss the details of the hire. I do not anticipate this
4 being a long executive session.

5 Please exit out of this link and rejoin in the
6 next.

7 (Whereupon the proceeding is in executive session
8 from 2:24 p.m. until 2:35 p.m.)

9
10 * * * * *

11
12 (Whereupon the proceeding resumes in general
13 session.)

14 CHAIRPERSON NEUBERG: With that -- and hopefully a
15 lack of echoing -- we are going to move back to Agenda Item
16 No. VII, which is our conversation on the public information
17 officer hire.

18 With that, Brian, would you like to add anything
19 before I entertain a motion from my fellow commissioners?

20 DIRECTOR SCHMITT: Thank you, Chairwoman.

21 I would just like to announce the candidate that
22 I'm recommending is Michele Crank; she's the current
23 director of communications and public relations for the
24 Navajo Nation Gaming Enterprise. I think she'll bring a
25 great knowledge of public relations and the tribes and rural

1 areas; and she'll make sure that we're able to get in
2 contact and get as many people involved as we can.

3 CHAIRPERSON NEUBERG: Anything else that my fellow
4 commissioners would like to add about this hire?

5 COMMISSIONER LERNER: Well, I can say -- this is
6 Commissioner Lerner.

7 I'm really pleased with this hire. I think it will
8 be great to have somebody who is going to be representing
9 the -- the rural areas on our team and -- as well as the
10 tribes, to have somebody who has worked with the tribes.

11 In her work when she was at the Heard Museum, she
12 worked with a number of different groups, not just the
13 Navajo Nation, as well; so she brought people together for a
14 variety of different reasons. And I think she sounds like
15 she'll be a good facilitator and a good communicator, so I
16 think she'll bring a lot to our team.

17 VICE CHAIR WATCHMAN: And, Madam Chair, I echo what
18 Commissioner Lerner is saying. I do know Ms. Crank, and
19 I've known her for many years, and she's been a
20 communicator, has -- has convened a lot of different
21 interest groups, including with the Natives; and so, you
22 know, she's been employed on Navajo and in Phoenix and is a
23 great communicator.

24 So I welcome her addition to the Commission. As
25 Brian and Shereen are saying, I think she will be a great

1 fit to the work that we need to do as a Commission. So
2 she'll be a great addition.

3 And thank you, Brian, for your work.

4 DIRECTOR SCHMITT: Absolutely.

5 CHAIRPERSON NEUBERG: And, Brian, it sounds like
6 there is a relocation that's in order, so a start date of
7 early June?

8 DIRECTOR SCHMITT: Yes. June 1st is the start
9 date.

10 CHAIRPERSON NEUBERG: Okay. All right.

11 I will entertain a motion to move forward the hire
12 of Michele Crank for public information officer.

13 COMMISSIONER LERNER: This is Commissioner Lerner.
14 I move to hire Michele Crank as public information officer.

15 CHAIRPERSON NEUBERG: Do we have a second?

16 VICE CHAIR WATCHMAN: Vice Chair Watchman seconds.

17 CHAIRPERSON NEUBERG: Any further discussion?

18 Okay. Commissioner Watchman.

19 VICE CHAIR WATCHMAN: Aye.

20 CHAIRPERSON NEUBERG: Commissioner Mehl.

21 COMMISSIONER MEHL: Aye.

22 CHAIRPERSON NEUBERG: Commissioner Lerner.

23 COMMISSIONER LERNER: Aye.

24 CHAIRPERSON NEUBERG: Commissioner York.

25 COMMISSIONER YORK: Aye.

1 CHAIRPERSON NEUBERG: Commissioner Neuberg is an
2 aye.

3 And, with that, we welcome Michele Crank to our
4 team; and we look forward to the beginning of June when we
5 can move forward more with our public engagement.

6 With that, we are moving on to Agenda Item No. IX,
7 which is discussion and possible action on census delay --
8 census data and delay and ways to mitigate its disruption.

9 Our attorneys have prepared a presentation on other
10 state's litigation regarding the census data and deliverable
11 timelines.

12 I think that if we all have the stamina, I would
13 recommend that the Commission vote to go into executive
14 session which will not be open to the public for the purpose
15 of obtaining legal advice with respect to census data and
16 delays, A.R.S. 38-431.03(A)(3).

17 MR. SPENCER: Madam Chairman?

18 CHAIRPERSON NEUBERG: Yes, please.

19 MR. SPENCER: This is Eric Spencer in the -- in the
20 war room. We -- Roy and I are going to tag team this and we
21 intended it to be a public presentation. So we have the
22 ability to seek specific legal advice in reaction to our
23 presentation, but this was intended to be in open session if
24 you're okay with that.

25 CHAIRPERSON NEUBERG: We -- we would welcome as

1 much as you can provide to us in open session. After that,
2 if there is need to go into executive session to discuss
3 anything further, we welcome that.

4 So please, with that, take it away.

5 MR. SPENCER: Okay. Thank you so much.

6 Yasmin, I think you got our presentation if you
7 could display that.

8 Okay. This is what it means to be in a public
9 session; it feels good.

10 Roy and I are going to split this up; I'm going to
11 take the first couple intro slides, and Roy then is going to
12 talk about a very important topic called "differential
13 privacy," and I'll wrap it up with a summary of litigation
14 that is going on across the country.

15 So all of you know by now that we are delayed in
16 when we'll get this census data. There is a legal basis for
17 that. In the Census Act which is in Title 13, there's a --
18 a process laid out about how the census data is supposed to
19 be provided.

20 April 1st is the date by which the census is deemed
21 to have taken place; and based off of that date, which --
22 which occurs in a -- every ten years, so this would have
23 been April 1st of 2020, there are two deadlines that are
24 pegged off of that first April 1st date.

25 The first one is apportionment that has to take

1 places within nine months. Normally if the law has been
2 followed, that would have been delivered by December 31st of
3 2020. As you all know, there was some hiccups this go
4 around, and we didn't get that data as a country until two
5 weeks ago.

6 After the apportionment data, data which is a
7 prerequisite, then comes the redistricting data.

8 The statute requires the Census Bureau to deliver
9 that data to the state as expeditiously as possible, but
10 there's a 12-month statutory deadline. This is in 13 U.S.C.
11 141(c).

12 This is commonly called the "P.L.94-171 data."
13 This is a term of art that redistricting teams like us will
14 throw around. And so that's where it's derived from, it's a
15 1975 amendment to the pre-existing Census Act that is found
16 in federal law. So when someone makes a reference to the
17 P.L.94-171 data, that's the -- the amendment that Congress
18 passed in 1975 that requires this data to be produced.

19 Technically it's a collaboration between the states
20 and Census Bureau to determine years in advance of the
21 census about what data the states need, but for our purposes
22 the important part is that deadline.

23 Next slide, Yasmin.

24 So what happened in this go around? As everybody
25 knows, the Census Bureau announced on February 14th that the

1 data would be delayed.

2 This is a quote on the screen from the Census
3 Bureau where they cited the need to complete the
4 reapportionment portion of their duties. They also -- they
5 also made this vague reference to -- to the impact of
6 COVID-19.

7 The Bureau hasn't really said a lot about that, but
8 there was a court order out of Ohio that does further
9 explain what the Bureau went through. In order to conduct a
10 census, the Bureau commences the process by sending out
11 mailers to as many homes as possible to get a head start;
12 and it's only when those responses do not come back after
13 several attempts, the Census Bureau engages in the next
14 phase which is called the "nonresponse follow-up." That's
15 the census taker hitting the field and going door to door on
16 those -- those stragglers.

17 Well, the exact time that those nonresponse
18 follow-ups were supposed to take place, was essentially when
19 we started the lock down in the country.

20 Their -- their goal was to get out in May of 2020,
21 and they didn't begin that process in earnest until about
22 August of 2020.

23 On top of that there were hurricanes on the East
24 Coast, fires in the West, and some civil unrest over the
25 summer that further complicated the process.

1 So when you combine all of those unanticipated
2 delays, that's what explains the Census Bureau delay in
3 crunching this data.

4 There was actual litigation at the end of 2020 to
5 determine how much longer they should have stayed in the
6 field versus cutting their efforts short and -- and
7 beginning the process of crunching the data; but they pulled
8 out in about October of 2020, and given all the number
9 crunching and -- and reconciliation that needs to take
10 place, the -- the Census Bureau announced that they expect
11 this data about September 30th of this year.

12 Likely in response to nationwide panic at that late
13 date, the Census Bureau threw us a collective bone by saying
14 they can provide the bare minimum data that states would
15 need by August 16th, but it's in a legacy format. The data
16 intended to be provided by September 30th is in a more
17 user-friendly format that looks nice and is -- that is
18 usable by a greater range of nonexperts.

19 But the legacy data that will be coming about six
20 weeks earlier is the exact same type of data format that was
21 produced in previous censuses. So it's nothing new nor is
22 it a -- an incomplete effort, it's just the same substandard
23 product that we are used to getting in the nation, that we
24 will get in mid-August. And by hiring a professional
25 mapping consultant like we are on the verge of doing in

1 Arizona, I suspect they will be perfectly capable of working
2 with that legacy data. So for all intents and purposes,
3 we've got to wait only three more months.

4 This small screenshot or snapshot I provided there
5 is -- is an example of that unintelligible format that
6 someone smarter than us will be able to use in the interim.

7 Next slide, please.

8 I just want to tease this for Roy's forthcoming
9 presentation on differential privacy, but let me just tee it
10 up for a moment.

11 Another statute in federal law requires the Census
12 Bureau to maintain privacy, 13 U.S.C. 9(a)(2). It requires
13 the Census Bureau to undertake efforts to make sure that
14 individual American's privacy is maintained such that the
15 census data cannot be reengineered or reverse engineered in
16 order to identify people specifically.

17 You can imagine a scenario where either based on
18 hiring characteristics or income or racial characteristics,
19 it might be possible on certain census tracks to figure out
20 who that is; and it's not only morally wrong, but it's
21 legally prohibited.

22 So for all passes, the Census Bureau has attempted
23 to comply with that law by using what are known as
24 "disclosure avoidance strategies." What Roy will talk about
25 is the newest form of disclosure avoidance, but the Census

1 Bureau's decision to use differential privacy in this decade
2 is a new strategy, but it is not the first time the Census
3 Bureau has used a strategy; the question is whether or not
4 it has chosen the right strategy. But they have to choose
5 some strategy, and that's born out of that federal statute.

6 The last census in 2010 used something called "data
7 swapping," and I won't go into it, but it is -- it
8 essentially involves changing the information from one
9 residence to another, and making sure that -- that there are
10 reasonable swaps in the data so as to throw anyone off of
11 the trail who is seeking to identify that person.

12 Beyond the census block level, which is the lowest
13 level of counting, you have census groups, and at least when
14 data swapping was used, the total number of persons in the
15 census group at least remained the same; and when
16 information remains the same, it's called "population
17 invariance." And so while data was being changed out to
18 protect privacy a decade ago, you at least had stability
19 in the population numbers at the census group level.

20 But now they're going to use differential privacy,
21 and I'm going to kick it over to Roy to explain in the next
22 few slides what differential privacy is.

23 MR. HERRERA: Thanks, Eric. And thank you for
24 giving me the hardest part of the presentation.

25 MR. SPENCER: You're welcome.

1 MR. HERRERA: So as Eric explained, you know,
2 basically differential policy is another type of disclosure
3 avoidance Methodology; and the reason why we care, of
4 course, about disclosure avoidance is because we have this
5 confidentiality requirement under federal law that applies
6 to the Census Bureau.

7 So differential privacy essentially is another way
8 to try to prevent the disclosure of private information; and
9 so this is what the census has decided to use this time
10 around. And what it is -- and, you know, we could probably
11 spend hours and hours talking about in more technical -- or,
12 more technical perspective or from a physical perspective.

13 But essentially what it means is you are
14 introducing an appropriate amount of noise, statistical
15 noise, into a data set. Such that you're protecting the
16 privacy of information that -- you know, that you're
17 concerned with, while also maintaining the overall state
18 population variance. So basically maintaining the accuracy
19 of the overall data set.

20 And so -- and we can go to the next slide.

21 So what basically you have to do is figure out what
22 the appropriate amount of statistical noise is to introduce
23 into the data set so that you can, you know, basically
24 satisfy both desires: The desire to respect privacy, while
25 also maintaining the accuracy of the data set.

1 So the differential privacy itself as a concept was
2 introduced in computer science literature, you know, in the
3 early 2000s. It is a -- a Methodology that is used by large
4 corporations nationwide like Google and Uber and others, in
5 order to protect private data; and so it is something that's
6 been used in sort of the private sector.

7 Basically what you have to come up with is a
8 mathematical language, a formal mathematical language that
9 represents essentially that way that you're going to
10 introduce that data set, and then that will again sort of
11 accomplish that disclosure avoidance that you're looking
12 for.

13 But -- but one sort of fundamental piece of
14 differential privacy, is by having a similar point here,
15 which is that ultimately what you want to do is get to a
16 point where presence or absence of any one individual on the
17 data set is not going to negatively affect the response that
18 the data provides.

19 So in other words, you still want to maintain the
20 accuracy of the data as a whole despite the introduction of
21 this statistical noise.

22 And so how you do that? Well, you know, basically,
23 again, you know, computer scientists and mathematicians can
24 probably explain it better, but you have to essentially
25 introduce a carefully tuned amount of noise into the

1 statistics outputted so that you can keep that -- the
2 statistical accuracy of the overall data set while again
3 protecting the privacy of the individual within the data
4 set.

5 So, go to the next slide. I think.

6 MR. SPENCER: Yasmin might need to go back by one.

7 MR. HERRERA: Oh. Yasmin, can you go back by one?

8 Sorry, I wasn't looking at the...

9 MR. SPENCER: There you go. There you are.

10 MR. HERRERA: So what does it protect against?

11 Well, as Eric alluded to earlier, what we don't want is to
12 be in a position where somebody can take the data, reverse
13 engineer it, and then use that data, comparing it to
14 publicly available data sets -- as you can imagine, there's
15 all kinds of publically available data about people by voter
16 registration records -- and then using the two comparisons
17 to deduce the actual individual that the data set is
18 identifying, right?

19 And so if you combine, you know, one data set with
20 the other, you know, you do an analysis of that, if you are
21 able to deduce individuals, then that's obviously a problem
22 because we have this overall restriction in confidentiality
23 requirement that applies to the census data.

24 But an example we have here of the problem is
25 something like in the 1990s where the Massach- -- state of

1 Massachusetts published data of the employee hospital
2 records, somebody, you know, did the research or compared
3 that data to voter registration data, and was then able to
4 identify who exactly was in those state employee hospital
5 records. In this case, they were able to identify the
6 health records of the governor at that time.

7 So it's -- the concern is, of course, introducing
8 this disclosure of noise Methodology so somebody can't do
9 that; somebody can't go into the data and reverse engineer
10 it to identify individuals.

11 Now we go to the next slide. Thank you.

12 So I mentioned earlier, you know, it's a balance
13 between protecting the privacy of individuals within the
14 data set while also maintaining the accuracy of the data, so
15 what you -- what you end up having to do is calibrate the
16 amount of noise you introduce into the data.

17 And so injecting noise, as I state here, means the
18 computation gives an approximate answer to individual pieces
19 of data.

20 So, you know, you're interject- -- injecting noise
21 into a data set, that data set will then, you know,
22 basically be -- you'll be able to deduce from that data set
23 a certain amount of number or answers or information about
24 that data set.

25 Now, how much noise you interject or you inject

1 into that data set, again, can affect how much your data set
2 is still accurate and also affect how much privacy
3 protection you're introducing into it.

4 The way to kind of measure is that the -- the
5 expert use is what's called a "privacy-loss budget," and
6 also fitting for this is the epsilon value. So the epsilon
7 value is, again, the sort of amount of noise you're
8 introducing or the approximation of the amount of the noise
9 you're introducing to it; it's set to a certain, you know,
10 number.

11 Now, if your epsilon value -- and I say this in the
12 third bullet point there -- is closer to zero, then that
13 means what you're achieving by introducing that noise is in
14 a sense perfect privacy; basically nobody will ever be able
15 to, again, reverse engineer that data set to figure out the
16 private information that you're trying to protect.

17 But in the end if you have your epsilon value at
18 zero, the data is basically useless because there's too much
19 noise.

20 The higher you go, let's say you go to infinity,
21 means that your data will be perfectly accurate but, again,
22 there will not be enough noise for there to be any privacy
23 protection. So when you're trying to come up with as you're
24 trying to figure out how to calibrate the noise, you do it
25 with finding the right epsilon value.

1 As it says here: Determining the epsilon value is
2 a policy decision that, again, depends upon the intended use
3 of the data and the importance of the privacy. How --
4 again, the balancing of how important privacy is with the
5 importance of accuracy.

6 Now, obviously, when we're talking about data in a
7 redistricting standpoint, the accuracy of the data is super
8 important, so determining the appropriate epsilon value is
9 super important.

10 So going to the next slide, and this gets a little
11 bit more on point with what we're concerned with, which is
12 -- and going to be talking about in the litigation a little
13 bit later, is that the Census as we mentioned decided to use
14 differential privacy as a disclosure avoidance Methodology
15 for this census; it decided to do that back in 2018.

16 Basically they did a study, several internal
17 studies, that indicated that census data was vulnerable to
18 reidentification. Again that sort of reverse engineering to
19 identify private information, and so they decided to use
20 differential privacy.

21 They have since released four sets of what they're
22 calling demonstration data applying to differential privacy
23 to 2010 census data. So it's basically a demonstration
24 using different epsilon values of -- or, I guess it's one
25 epsilon value that's been used on four different sets of

1 data, but that data is all coming from 2010.

2 And I think the idea there is to, again, sort of
3 determine the appropriate epsilon value to use.

4 Now, the demonstration data sets that have been
5 revealed that have been looked at by statisticians, and some
6 of those statisticians have said that there are accuracy
7 concerns with the epsilon value that they used. In this
8 case they used an epsilon value of 4. And now that's an
9 issue in the Alabama litigation that Eric is going to talk
10 about a little bit later.

11 And so I'll go through the next slide here.

12 Now what the Census Bureau has said is that it has
13 set a low epsilon value to that demonstration data set to
14 identify issues as defined in the approach later.

15 If you recall what I said a few slides ago: The
16 lower the epsilon value is, the more privacy protection that
17 it introduces; the higher the epsilon value is, the more
18 accurate it will be.

19 So what they did is introduced an epsilon value of
20 4, but they again are saying that they're basically using
21 that to identify issues and that they will change the value
22 eventually.

23 There is a new demonstration data set that was
24 published on April 28th of this year that provides a
25 substantially higher epsilon value of 10.3. So it went from

1 4 to 10.3. Again, using the scale that I had mentioned
2 before, it would mean that data is more accurate.

3 And now what the Census Bureau is saying is that
4 this demonstration data set is more accurate to sort of
5 alleviate some of the cerns -- the concerns that people have
6 raised about the initial lower epsilon value.

7 And then, you know, basically this is sort of a
8 continuation of that same discussion, but the most recent
9 data set shows the following conclusions according to the
10 Census Bureau.

11 Oh one more slide, sorry.

12 Thank you.

13 The Census Bureau has had a few conclusions based
14 on their analysis of the recent data set using that high
15 epsilon value. Conclusions about, again, sort of the
16 variation and accuracy. So one of them is -- you know, one
17 observation that being made is that total populations for
18 counties have an average error of plus or minus five
19 individuals; and at the block level that -- that there's an
20 average population error -- error of plus or minus three
21 persons.

22 So, again, that is the most recent data set of
23 using a higher epsilon value of 10.3, but this is the kind
24 of variation that you are looking at the more granular level
25 in terms of accuracy.

1 So, again, the county: Plus or minus five; at the
2 block level, plus or minus three.

3 One thing they have said, this is the Census Bureau
4 is there is no meaningful bias in the statistics for racial
5 and ethnic minorities even in very small population
6 geographies like on Indian reservations.

7 So that is something that has been raised as a
8 concern and the Census Bureau has said that this most recent
9 data set shows no meaningful bias.

10 Of course, we're going to get into some of the
11 allegations that are being made in the litigation a little
12 later, but that is something we should point out that the
13 Census Bureau has said.

14 The final epsilon value, again, the sort of
15 calibration they're going to decide for this differential
16 privacy will be determined in June. The Census Bureau has
17 invited public feedback based on the most recent data sets
18 -- data sets for fitness of use, privacy, and any other
19 suggested improvements; and the deadline for feedback or
20 public comment on -- on this is May 28th. So that's coming
21 up for anyone who wishes to -- to provide any kind of
22 feedback to the Census Bureau about the use of differential
23 privacy and, of course, the epsilon value.

24 So with that I will turn it back over to Eric to
25 talk about some litigation that has been filed in recent

1 months, including an Alabama case that I think is -- is
2 something that is directly on point to the differential
3 privacy issue.

4 MR. SPENCER: So these two wild cards, the delay in
5 the provision of redistricting data, the P.L.94-171 data,
6 and the use of differential privacy has not surprisingly
7 generated litigation.

8 Now, there are some forms of litigation which I
9 won't talk about here, where states are proactively and
10 preemptively seeking to adjust deadlines either in their own
11 statutes or their own constitutions to deal with this
12 problem; that has not taken place here in Arizona.

13 But I want to talk about our two lawsuits strictly
14 about the delay and the use of differential privacy data.

15 To start off, Ohio went first. About 12 days, 13
16 days after the Census Bureau announced for the delay of
17 redistricting data, Ohio commenced a lawsuit seeking to
18 reverse that essentially; two main causes of action. You'll
19 see this in the subsequent Alabama case as well.

20 First, a straightforward violation of the Census
21 Act. Subsection (c) requires that data be provided within
22 12 months of the centennial census date; Census Bureau
23 anticipatorily breached that or violated that by making this
24 announcement in February, and so state of Ohio sued based on
25 that violation of the law.

1 Secondly, violation of the Administrative Procedure
2 Act. The APA is a federal statute that allows litigants to
3 hold agencies accountable for various decisions that are
4 made in an incorrect way, two of which you are listed here
5 and were implicated by the Ohio lawsuit: Actions not in
6 accordance with law, which is another way of saying they
7 violated the Census Act. So this is another way to
8 bootstrap a second allegation into the lawsuit.

9 And that the Census Bureau's decision was arbitrary
10 and capricious, meaning it wasn't fully reasoned and didn't
11 account for -- for enough variables to be considered a
12 reasoned decision.

13 Ohio thought that states like it with early
14 deadlines should be front-loaded and considered, and -- and
15 they -- and the state alleged that the Census Bureau didn't
16 fully anticipate or account for the fact that so many states
17 rely on that March 31st deadline.

18 So they're asking for a declaration that it
19 violated the law for an injunction to be issued to force the
20 -- the Census Bureau to meet that March 31st deadline; or,
21 alternatively, something called a "writ of mandamus," which
22 is order by a court directing a -- a party that has a
23 nondiscretionary duty to do something and force them to do
24 it.

25 Next slide.

1 So this case was tossed out just a few weeks after
2 it was filed, and as you can see a week before the deadline
3 by which the data was supposed to be produced under federal
4 law. This was kicked on standing grounds. Now, any time
5 you have a lawsuit that implicates standing, you've got
6 three main components: Redressability, traceability, and
7 injury in fact; and here the court found that Ohio lacked
8 two of those three required elements for standing.

9 On redressability, there was nothing that the Court
10 can do. You can't, a week away from the statutory deadline,
11 force the Census Bureau to deliver data that it's literally
12 incapable of crunching and producing; and moreover, though,
13 apportionment data needed to come first. We only got those
14 data a few weeks ago, I think on maybe April 26th or so, and
15 the date of this order is March 24th. So a full month
16 before the apportioned data was even produced, would just be
17 impossible for a federal court to reverse the order and
18 somehow order the Census Bureau to produce the redistricting
19 data before the apportionment data.

20 So there was no redressability, the Court has no
21 power to enter an order that would give the state what it
22 wants.

23 There also wasn't an actual injury that Ohio had
24 suffered. First, the Court held that in pointing out that a
25 federal agency has violated federal law is not a

1 sufficiently particularized grievance that would allow you
2 to go into federal court to satisfy what's called "Article 3
3 standing." That's the general grievance shared by a wide
4 number of individuals or political subdivisions, so it
5 doesn't hit Ohio particularly hard enough to get it into
6 court.

7 And there's nothing in law that requires the census
8 data to be used in Ohio. There's nothing in federal law, by
9 the way, that requires states to use census data produced by
10 the Census Bureau. But in Ohio, there was flexibility in
11 Ohio law to use other methods to conduct redistricting.

12 Complaints about the quality of the data, the loss
13 of public legitimacy, the possibility that the Ohio public
14 would see this as a partisan fight, all of those were sort
15 of speculative and -- and not concrete enough to -- to
16 maintain a lawsuit.

17 And, frankly, at the end of the day, the Court
18 blamed the Ohio legislature for not being proactive enough
19 to change its rigid deadline to accommodate these delays,
20 and saw it as a problem of Ohio's own making and not a fault
21 of the Census Bureau; so that case was dismissed.

22 Next slide.

23 Now, this is the case that is still ongoing, it's
24 the only case, but it's an important case, especially since
25 oral argument was just conducted yesterday.

1 It's the State of Alabama vs. The Department of
2 Commerce. This is both based on the census delay and the
3 Bureau's use of differential privacy. The Ohio case I
4 briefed a moment ago was merely based on the census delay,
5 but this is the first case also to bring in complaints about
6 using differential privacy.

7 I think to nullify the standing criticisms that it
8 might get, it also brought in some individual voters and
9 existing congressman who is running for re-election, all
10 brought this case as plaintiffs to try to better satisfy
11 standing requirements.

12 There were seven total claims here. The first four
13 involved the differential privacy use. First, it's another
14 violation of the Census Act, and the plaintiffs are
15 essentially arguing that the statutory requirement to reduce
16 tabulations of population inherently includes a requirement
17 that those calculations be accurate; otherwise, the statute
18 would be delusory and differential privacy in these
19 plaintiffs' belief is not an accurate tabulation of
20 population. They are alleging that violates the plain
21 language of the Census Act.

22 They're alleging a constitutional violation as
23 well, the one-vote -- the one-man -- the one-person,
24 one-vote principle. The theory here is that by skewing the
25 data, you might be overpopulating or underpopulating

1 districts which could implicate minority voting rights and
2 dilutes the voting strength of some voters over other
3 voters, and that creates a constitutional problem under the
4 Fifth Amendment.

5 There's another APA claim here; they split this
6 into two different APA claims, but it's all basically the
7 same. It's another allegation that this violates the Census
8 Act, it's another violation that constitutional rights are
9 implicated. So, again, this is another bootstrapping
10 procedure where they're alleging additional causes of
11 action, but it's all based on the same conduct.

12 Next slide, Yasmin.

13 They also say that it's arbitrary and capricious to
14 go down this road.

15 Then we get do the delay of data. Very similar
16 allegations as you see in the Ohio case: A violation of the
17 Census Act, 12-month deadline, another Administrative
18 Procedure Act claim.

19 And next slide should be the last cause of action.

20 So they're asking for basically the same thing as
21 what we saw in Ohio, a declaratory judgment, the injunction,
22 they sought an additional remedy called "vacatur" where they
23 wanted the Court to order the February 12th announcement by
24 the Census Bureau that the data would be delayed, they
25 wanted that -- that announcement to be vacated; and then

1 they also sought another writ of mandamus.

2 Unlike the Ohio case, this is going to be decided
3 by a three-judge panel. Redistricting decisions are usually
4 heard by a combination of district court -- district court
5 judges and federal appellate court judges; and as I
6 mentioned the oral argument took place just yesterday. I
7 don't have too many details on how that argument went.

8 Next slide, Yasmin.

9 So just want to give you a flavor of about how DOJ
10 is fighting this case. Most of the argument in their
11 roughly 80-page brief is centered on standing, and it
12 replicates some of the arguments we saw in Ohio.

13 First they allege that Alabama isn't hit
14 particularly hard. There is a type of injury that can be
15 sustained in the law called an informational injury, but the
16 DOJ argues this doesn't in any way hurt the state's desire
17 to have accurate information; it also doesn't implicate
18 their sovereignty; they think that this data is going to be
19 perfectly useful. Much like Ohio, Alabama doesn't require
20 you to use the federal data. The loss of federal funding
21 based on projected inaccurate counts is too speculative, and
22 it's just too early to talk about a lot of this.

23 These are all in the category of DOJ alleging that
24 the state of Alabama has not suffered an injury-in-fact. It
25 hasn't actually been harmed.

1 Next slide.

2 DOJ also goes through some of the other forms of --
3 of standing.

4 Yasmin -- so.

5 Well, this is on differential privacy. Again, much
6 like the Ohio case, DOJ says that Alabama has created this
7 problem on its own for not addressing its laws; and, really,
8 there's really no other federal alternative to use,
9 differential privacy data is -- is the gold standard
10 according to DOJ, but there's not really a fallback concept.
11 The argument here is that the disclosure avoidance strategy
12 from 2010 is just not appropriate anymore in 2021.

13 And then some of the redressability arguments: The
14 Census Bureau can't speed this up any faster. And they also
15 say that if Alabama got what it wanted here, it would make
16 the situation worse not only for Alabama but the rest of the
17 country because the Bureau says it will have to start over
18 in creating a new -- a new method of disguising the -- the
19 data or -- or protecting privacy rights, and they project
20 that this time frame would basically be 24 to 28 months. So
21 that would push the data all the way to the end of the year.
22 So they're, in not so many words, telling Alabama to be
23 careful what it's asking for.

24 Next slide.

25 This is more standing. I don't want to -- I don't

1 want to repeat all that. Those are all arguments you've
2 heard.

3 Next slide.

4 So needless to say, DOJ says that Alabama doesn't
5 have the right to be there. But they're also arguing that
6 Alabama hasn't made a case on the merits as well. It
7 doesn't have the ability to go into court allegedly to
8 indicate this right; there's nothing in the Census Act that
9 allows the state to go in to court to vindicate this
10 interest. It doesn't say -- it doesn't believe there will
11 be vote dilution, and even if there will be vote dilution of
12 these groups, that's not an argument that the state of
13 Alabama should be making; that's an argument that those
14 individual voters would have to make.

15 It argues that the APA can't be violated here
16 because the differential privacy announcement is not final.
17 It's merely an interim policy and those final decisions will
18 be made in June. It's also not even an agency action; it's
19 not a formal decision. It's just a broad-based policy that
20 DOJ says is not redressable under the APA.

21 All of these decisions are going to be made next
22 month, and as Roy mentioned, there's a new set of the
23 demonstration data out, and the DOJ says on behalf of the
24 Census Bureau, that you can't really come into court until
25 the final decision has been made on the epsilon value; but

1 all of that is tentative at this point, therefore premature
2 to come into court.

3 Next slide.

4 They also say that it doesn't violate any law, the
5 Census Bureau engaged in the proper reasoning and
6 decision-making process to -- to refer to the use of
7 differential privacy, and it stands by their argument that
8 you can't go back to the data swapping method of 2010
9 because of advanced computers and other advancements in --
10 in data techniques that essentially make that 2010 method a
11 highly vulnerable in -- in -- in this decade, and they just
12 say it's not an option to go back to that.

13 Next slide.

14 So -- this is more in the weeds. I'm going to skip
15 this one too.

16 Let me go to the irreparable slide.

17 So irreparable harm. In order to get an injunction
18 here, the state of Alabama not only needs to show it's right
19 on the law but these other factors in favor as well.

20 One is irreparable harm. The DOJ disputes that
21 Alabama has suffered any harm at all, much less harm that is
22 irreparable. Keep in mind to enter an injunction in a
23 lawsuit is an extraordinary remedy that causes you to
24 accelerate years of litigation into a very short amount of
25 time and, thus, the burden is very high to achieve that

1 remedy as a plaintiff, and -- and that's why this enhanced
2 harm that is irreparable in nature is shown; and DOJ said
3 that Alabama can't even meet the threshold test of showing
4 some harm existed.

5 Plus Alabama waited too long. This is a type of
6 argument we call "Laches" where you sit on your legal rights
7 to such a degree that you inhibit your ability to go into
8 court and complain about it too late. And when the Census
9 Bureau announced two years ago that it planned to move to
10 the differential privacy model, that is the appropriate time
11 that a com- -- a complaint of some sort should have been
12 raised.

13 And then there's the public interest. It would not
14 serve that public interest, according to the Census Bureau,
15 if it had to start from scratch; and it would also hurt the
16 other states if somehow Alabama got to jump in front of the
17 line and get its data first. The Bureau is adamant that it
18 not produce this data on a rolling basis but instead provide
19 it all at once.

20 Next slide.

21 Finally, I just want to show who was involved here.

22 There are more participants on the plaintiff's side
23 here, which we call "amicus curiae." A professor from U of
24 A, Professor Bambauer, she's arguing that using differential
25 privacy is a silly and irrational technique as a

1 scientist -- that's speaking from her perspective as a
2 scientist -- that you have to calibrate your methods
3 according to the particular risk, and her argument is that
4 it apply -- applying this across the board, regardless of
5 risk, is overkill to say the least.

6 Another professor from Wisconsin has weighed in
7 giving the history of Census Bureau state consultation over
8 the last the four decades and pointing out that this is a
9 big problem, that Census Bureau precipitously chose this
10 method without officially consulting with states.

11 Sixteen states have jumped in to -- to weigh in
12 against this. They are primarily relying on a study from
13 the Utah legislature that compared the 2010 demonstration
14 data against the actual 2010 redistricting data in Utah to
15 show how inaccurate the differential privacy data was, and
16 they're arguing that this is going to skew funding from the
17 federal government, it will hurt rural communities and
18 minorities.

19 There's a state government coalition with a bunch
20 of legislators who have weighed in, including some from
21 Pennsylvania.

22 There's two groups that have weighed in in support
23 of the Bureau; various privacy experts and the National
24 Redistricting Foundation.

25 As I mentioned, the oral argument was yesterday. I

1 don't know how it's going to shake out. There's no timeline
2 for the decision. But given that this lawsuit was filed on
3 March 10th and the Court didn't schedule oral argument until
4 May 3rd, it gives some indication that the Court didn't find
5 this a particular exigent situation. But it could be a few
6 days; it's probably going to be a few weeks or even
7 potentially a few months until that comes down.

8 That's the only existing lawsuit about this right
9 now; and, regardless about what happens in the lawsuit,
10 there's a big risk debate about the proprietary and the
11 legal consequences of the census delay and the use of this
12 differential privacy data.

13 I think that brings me to the last slide.

14 And Roy and I are open for questions.

15 If you have questions that implicate what Arizona
16 should do, we would prefer to take those in executive
17 session; but if it's a more high-level informational,
18 academic type of the question, we're certainly happy to
19 answer that in open session.

20 CHAIRPERSON NEUBERG: And -- and prior to having
21 the specific questions, if we could please start with the
22 larger issues, because we're -- we're in public session now.

23 Please.

24 COMMISSIONER MEHL: This is Commissioner Mehl.
25 There also, as I understand it, are states suing the federal

1 government on the apportionment numbers, and Arizona -- many
2 people in Arizona had been expecting us to get another
3 congressional seat, which we did not.

4 Any comment on what's happening there?

5 MR. SPENCER: I don't know -- Commissioner Mehl, I
6 -- I don't know if there is such a lawsuit. I've seen
7 chatter about that, but I have -- say again, Roy.

8 MR. HERRERA: We'll look into it.

9 MR. SPENCER: Yeah. I -- I didn't see any chatter
10 in Arizona about that, but we can -- we can certainly report
11 on that. But I'm not presently aware of any pending lawsuit
12 that would cause those numbers to have to be recalculated.

13 COMMISSIONER LERNER: I have a question too.

14 So in the fall when the Census Bureau pretty
15 abruptly changed their end date, they -- they were going to
16 continue I think into November, and then they stopped it at
17 the end of October -- and I may be wrong on those exact
18 dates, but were there any lawsuits at that time that -- that
19 came into because people felt that -- because some of the
20 question about whether or not we got our numbers counted was
21 because of the lack of time, some of the loss that happened
22 at the end when it was abbreviated, the census count.

23 Do you know if there were lawsuits at that time
24 about that?

25 MR. SPENCER: Yeah, my -- Commissioner Lerner, my

1 understanding is that there was a lawsuit filed in
2 California that -- that sought to keep the Census Bureau out
3 in the field longer and it went to the Supreme Court, and
4 the Supreme Court shut it down, and that -- and that's why
5 October was the ending date.

6 Now, there is a court order in that case that
7 governs various items. I think it precluded the Census
8 Bureau from announcing the -- the apportionment numbers much
9 earlier than when they did a week or two ago. So that --
10 that litigation doesn't affect us at all, but there was
11 extensive litigation.

12 And I think that was an unhappy compromise, as many
13 compromises are, for the Census Bureau to pull in October of
14 last year.

15 COMMISSIONER YORK: I have a question. How do we
16 set the epsilon number?

17 MR. SPENCER: I'm glad we don't have do it in the
18 state level. I don't know if you have comments on it, Roy.

19 MR. HERRERA: No. I mean, you know, as we kind of
20 talked about, I mean, that's an important number for the
21 different reasons we discussed. It's a number that using
22 the data sets that are from 2010, you know, the Census
23 Bureau has tried to find what the right calibration is in
24 that number, you know, that's why we went from 4 to 10-plus.
25 You know, that's a decision that they say they're going to

1 make and, you know, we'll -- we'll see what that is.

2 But as we have sort of discussed from, like, a
3 scientific perspective, the higher that number is, the more
4 you're ensuring the accuracy of the data; and the lower it
5 is, the more you're ensuring sort of the privacy protection
6 that you get from the data set. So, it is sort of a policy
7 decision that the Bureau has to make.

8 COMMISSIONER YORK: So -- so we don't make it, the
9 Census Bureau does?

10 MR. SPENCER: Correct.

11 MR. HERRERA: Correct.

12 COMMISSIONER MEHL: So when we hear the word
13 "noise," aren't we meaning purposeful distortion of data?
14 Isn't that the definition of "noise"?

15 MR. SPENCER: Yes. Yes. It's an acceptable level
16 of data manipulation that creates a desired degree of
17 privacy but is deemed not to unduly affect the -- the
18 accuracy.

19 In other words, it will -- it will give you close
20 enough numbers, and close enough is better than dead on
21 because we gain a certain modicum of privacy protection, and
22 the Census Bureau used that as an acceptable tradeoff.

23 MR. HERRERA: Yeah, and I would just add, you know,
24 in slide five of the presentation, I think we get at that in
25 -- in bullet point three, which is that if it's done

1 correctly as we say here, it ensures that the only thing
2 that we learn about an individual from data set is
3 essentially the same as what could have been learned if the
4 analysis had been performed without that individual data.

5 That's sort of the academic view of differential
6 privacy. So you're protecting data, the privacy data; but,
7 again, you're not significantly altering the accuracy of it.

8 But, you know, again, the key is finding the right
9 epsilon value.

10 COMMISSIONER MEHL: But we'll have no idea what
11 they've really done or how much the data has been
12 manipulated?

13 MR. HERRERA: Well, we'll know the epsilon value
14 for sure. And, I mean, this is sort of beyond our --
15 certainly my brain -- maybe not Eric -- but, you know, to
16 try to sort of explain that in a mathematical equation or
17 something like that, is something I think we have to have an
18 expert opine on and not us as lawyers.

19 MR. SPENCER: But -- but, Commissioner Mehl, we're
20 not going to get the secret set of data -- we're not going
21 to get the answer key. We're -- we're going to get the
22 same --

23 COMMISSIONER MEHL: We're going to get --

24 MR. SPENCER: We're going to get the same -- yeah.
25 We're going to get the same noisy data that everybody else

1 gets and -- and we won't know how noisy it is.

2 COMMISSIONER LERNER: And that was going to be my
3 follow-up too. Is that, it's going to be consistent across
4 the country, so everybody is going to be dealing with the
5 same, quote, "noise" and noise cancellation that is, you
6 know, going on.

7 So whatever happens in Arizona is going to be
8 something similar in Minnesota and all these other folks --
9 all these other places. So at least there will be some
10 consistency, right?

11 MR. SPENCER: Right.

12 CHAIRPERSON NEUBERG: Can I -- can I add a question
13 to that? And this may foreshadow whether or not it makes
14 sense to go into executive session and discuss Arizona
15 specifically, whether or not we even need to do so today.
16 It's been a very long day.

17 But I would like to actually ask Counsel, is
18 Commissioner Lerner correct that it equally affects all 50
19 states? My understanding is that it differentially affects
20 rural areas and specific types of areas.

21 MR. HERRERA: Yeah, Madam Chairwoman, actually that
22 is what we were just discussing. To just be more precise,
23 the epsilon value will remain the same nationwide; that will
24 be consistent. The effects of it, though, could vary.
25 Right? And so -- and there's some studies that suggest what

1 you just mentioned, Chairwoman, as far as the effects on
2 those types of populations.

3 That's -- that's what I meant, the epsilon value is
4 going to be the same.

5 CHAIRPERSON NEUBERG: Thank you.

6 Can I ask, Counsel, is there anything that we
7 collectively need -- you know, are you advising to make any
8 collect decision?

9 If so, executive session I mean just to -- to flesh
10 out any further legal questions. But what is it that we
11 need to do to do our due diligence on this issue?

12 MR. HERRERA: Yeah, I do think that it would be
13 worthwhile to go into executive session because there are a
14 few pieces of this which I think we want to provide legal
15 advice on. So that would be my suggestion barring any other
16 further general questions.

17 CHAIRPERSON NEUBERG: Are there any general
18 questions before I would entertain a motion to go into
19 executive session to discuss the unique application of this
20 to Arizona?

21 And -- and -- and if we move to go into executive
22 session, which will not be open to public for the purpose of
23 obtaining legal advice with respect to census data and
24 delays pursuant A.R.S. 38-431.03(A)(3).

25 I'll entertain a motion to go into executive

1 session.

2 VICE CHAIR WATCHMAN: Madam Chair,

3 Vice Chair Watchman. So moved.

4 CHAIRPERSON NEUBERG: Do I have a second?

5 COMMISSIONER LERNER: Commissioner Lerner seconds.

6 CHAIRPERSON NEUBERG: Further discussion?

7 Commissioner Watchman.

8 VICE CHAIR WATCHMAN: Aye.

9 CHAIRPERSON NEUBERG: Commissioner Mehl.

10 COMMISSIONER MEHL: Aye.

11 CHAIRPERSON NEUBERG: Commissioner Lerner.

12 COMMISSIONER LERNER: Aye.

13 CHAIRPERSON NEUBERG: Commissioner York.

14 COMMISSIONER YORK: Aye.

15 CHAIRPERSON NEUBERG: Commissioner Neuberg is an

16 aye.

17 And I'm getting really fast at this.

18 With this, we're going to move into executive
19 session. Please exit out of this link and move into the
20 next link. Thank you.

21 (Whereupon the proceeding is in executive session
22 from 3:30 until 3:51 p.m.)

23

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1 (Whereupon the proceeding resumes in
2 general session.)

3 CHAIRPERSON NEUBERG: Okay. We have our
4 commissioners; we have our counsel online.

5 We are back in public meeting. Thank you for
6 everybody's patience. We are were continuing the
7 conversation on hiring an expert in differential privacy.

8 Based on the conversation, I will entertain a
9 motion to retain an expert witness in differential privacy
10 from a statistical perspective to see how this issue affects
11 Arizona, with a particular focus on one-vote, one-person,
12 and to mitigate any dilution of votes.

13 With that, I will enter- -- entertain the motion.

14 VICE CHAIR WATCHMAN: Madam Chair, so moved.

15 CHAIRPERSON NEUBERG: Do I have a second?

16 COMMISSIONER YORK: I have a comment. We need to
17 amend the motion to make sure counsel -- I don't think.

18 CHAIRPERSON NEUBERG: I'm sorry. There was an echo
19 and I didn't hear what you said, Commissioner York.

20 COMMISSIONER YORK: Isn't counsel going to -- isn't
21 going to find the expert?

22 CHAIRPERSON NEUBERG: Yes.

23 VICE CHAIR WATCHMAN: Yes.

24 COMMISSIONER YORK: That was not in the order.

25 CHAIRPERSON NEUBERG: We are authorizing counsel --

1 COMMISSIONER YORK: There you go.

2 CHAIRPERSON NEUBERG: -- to select and retain an
3 expert witness in differential privacy.

4 COMMISSIONER YORK: Perfect.

5 COMMISSIONER MEHL: I'll second.

6 CHAIRPERSON NEUBERG: Any further discussion?
7 Commissioner Watchman.

8 VICE CHAIR WATCHMAN: Aye.

9 CHAIRPERSON NEUBERG: Commissioner Mehl.

10 COMMISSIONER MEHL: Aye.

11 CHAIRPERSON NEUBERG: Commissioner Lerner.

12 COMMISSIONER LERNER: Aye.

13 CHAIRPERSON NEUBERG: Commissioner York.

14 COMMISSIONER YORK: Aye.

15 CHAIRPERSON NEUBERG: Commissioner Neuberg is an
16 aye.

17 And, with that, Counsel is authorized to move
18 forward with retaining an expert witness in differential
19 privacy to ensure that the interests of Arizona are
20 protected.

21 If there's no further conversation on that agenda
22 item, we will move forward to No. X, discussion of future
23 agenda item requests.

24 I do know that legal our counsel would like to do
25 some training when we have the time sufficient.

1 Anything else in particular that my fellow
2 commissioners would like to add or raise at this point?

3 COMMISSIONER YORK: Were we going to post community
4 outreach coordinator position before we vetted the job
5 description?

6 Did you hear that? No?

7 CHAIRPERSON NEUBERG: I'm sorry, what are you
8 asking?

9 COMMISSIONER YORK: I said did we -- were we going
10 to post the community -- the community outreach coordinator
11 position?

12 CHAIRPERSON NEUBERG: Are you asking to put that on
13 the future agenda item?

14 That is not --we're not in the middle of discussing
15 hires right now, so -- so are you asking for to put that on
16 a future agenda item, our hires, which will automatically
17 roll into next week?

18 COMMISSIONER YORK: Okay.

19 COMMISSIONER LERNER: So -- so you said that there
20 was going to be some training, which would be great, from
21 legal counsel. Could they as part of that talk -- come
22 back, circle back around about subcommittees?

23 We talked about that a while ago and whether that
24 could be part of -- they seemed to have said that there was
25 a potential for that. I would just like to get the final

1 word from them because we may want that in the future.

2 CHAIRPERSON NEUBERG: Okay. Let's add to that on
3 the discussion of subcommittees.

4 If there's no other additions, Agenda Item No. XI,
5 discussion and possible action on the scheduling of future
6 meetings.

7 I would like to note that the next two weeks we
8 have hard stops actually at noon for a variety of conflicts
9 amongst the commissioners. So both on the 11th and 18th, we
10 only are available 'til noon and there is no other
11 compatibility -- at least next week -- for the Commissioners
12 to convene at another time.

13 So I'd like to propose, you know -- and we've
14 gotten just a tremendous amount of work done today, which is
15 excellent -- for a little of a buffer. How do people feel
16 starting early on the 11th and 18th?

17 VICE CHAIR WATCHMAN: That works.

18 COMMISSIONER YORK: I'm good.

19 COMMISSIONER LERNER: That's fine with me.

20 CHAIRPERSON NEUBERG: 8:00 or 8:30? 8:00 is great
21 for me, I mean, but. You know, we have a whole team here,
22 and I know that's taxing.

23 COMMISSIONER YORK: 8 o'clock works.

24 COMMISSIONER LERNER: 8 o'clock works. If it's
25 okay for the -- for our team, then 8 o'clock is fine for me.

1 CHAIRPERSON NEUBERG: Okay. Sp let's plan for the
2 next two weeks for 8:00 a.m. to noon.

3 We -- we have on the agenda a travel schedule;
4 we're excited to welcome our PIO coming on board early June.
5 I think, you know, prior to that, I don't have much to add
6 with regard to a specific travel schedule unless anybody
7 else does.

8 COMMISSIONER LERNER: So, Chair Neuberg, once --
9 now that we have the mapping consultant, we got a bit of --
10 a bit of a handle on where things are going, should we start
11 thinking about as part of our travel schedule our first
12 round of public meetings, is that part of what you're
13 thinking?

14 CHAIRPERSON NEUBERG: Yes. But I -- I don't have
15 anything in particular to recommend because I think it's
16 going to take a little time to marry our whole team -- and
17 -- and get, you know, and we also have IT issues to
18 consider. Because we can travel but if we don't have the
19 technology to go along with it, that that doesn't work. And
20 so, you know, I'm looking forward to very shortly getting
21 the entire team so that we can flesh it out I think more
22 effectively.

23 COMMISSIONER LERNER: I guess I like to have
24 something maybe -- it probably be something I could work
25 with our Executive Director a little bit on, but I'm just

1 looking at the next agenda item, public comments.

2 There's a number of different ways people give
3 public comments now and I'm wondering if -- and we may need
4 to wait for our IT person. But it would be nice if we could
5 somehow figure out a common method for people to give their
6 public comments because now I think when the meeting is
7 over, there are other ways with "contact me." Our e-mails
8 are not listed or our staff.

9 I just don't know what the answer is; I don't have
10 any suggestions. Other than maybe this is something we need
11 to look into it what can we do to make it a little more
12 efficient, and then it's more efficient for us to look at
13 them as well.

14 CHAIRPERSON NEUBERG: We can -- we can certainly
15 ask an IT person to help us with the transmission of the
16 information.

17 I -- I would like to reassure the public there are
18 two ways to reach us, it's essentially 24/7 and we receive
19 all the information. While public comments are open during
20 the public meeting, those comments are compiled, shared with
21 us, and they are eventually posted on our website.

22 When public comments are closed, anybody in the
23 public has the ability to reach us through the "Contact Us"
24 link on our website; that is shared with us. That is not
25 posted online as public comments. However, I'd like the

1 public to be aware that that material is subject to public
2 records request so anybody contacting us through either
3 means should understand that the content and their identity
4 is a matter of public record.

5 But as of right now I understand technology,
6 there -- there are gaps. It doesn't work sometimes; it's a
7 little confusing, but between the link on our agenda for
8 public comments and the "Contact Us" site on our website, we
9 are open for comments 24/7 when there's not a blackout
10 period.

11 Okay. Back to -- I think we've finished our future
12 meetings.

13 No. XII, an announcement. Next meeting will be
14 May 11th at 8:00 a.m. with a stop at noon.

15 With that, we will move to Agenda Item No. XIII,
16 which is the closing of public comments.

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

24 And, with that, we move to Agenda Item No. XIV,
25 which is adjournment.

1 I will entertain a motion to adjourn.

2 COMMISSIONER YORK: So moved.

3 CHAIRPERSON NEUBERG: Second?

4 COMMISSIONER LERNER: Second.

5 CHAIRPERSON NEUBERG: Any further discussion?

6 Vice Chair Watchman.

7 VICE CHAIR WATCHMAN: Aye.

8 CHAIRPERSON NEUBERG: Commissioner Mehl.

9 COMMISSIONER MEHL: Aye.

10 CHAIRPERSON NEUBERG: Commissioner Lerner.

11 COMMISSIONER LERNER: Aye.

12 CHAIRPERSON NEUBERG: Commissioner York.

13 COMMISSIONER YORK: Aye.

14 CHAIRPERSON NEUBERG: Commissioner Neuberg is an
15 aye.

16 And, with that, we will adjourn, and I look forward
17 to seeing everybody next Tuesday at 8:00 a.m.

18 Thank you for everybody's time and, you know,
19 patience today; it has been a long day.

20 (Whereupon the meeting concludes at 4:02 p.m.).

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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 19th of May, 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 19th of May, 2021.



Miller Certified Reporting, LLC
Arizona RRF No. R1058

Miller Certified Reporting, LLC