

THE STATE OF ARIZONA  
INDEPENDENT REDISTRICTING COMMISSION

REPORTER'S TRANSCRIPT OF VIDEOCONFERENCE PUBLIC MEETING

Via GoogleMeets

June 29, 2021

8:00 a.m.

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1 PUBLIC MEETING, BEFORE THE INDEPENDENT  
2 REDISTRICTING COMMISSION, convened at 8:00 a.m. on  
3 June 29, 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. Valerie Neumann, Executive Assistant  
13 Ms. Michele Crank, Public Information Officer  
14 Mr. Roy Herrera, Ballard Spahr  
15 Ms. Jillian Andrews, Ballard Spahr  
16 Mr. Eric Spencer, Snell & Wilmer  
17 Mr. Brett Johnson, Snell & Wilmer  
18 Mr. Mark Flahan, Timmons Group  
19 Mr. Douglas Johnson, National Demographics Corp.  
20  
21  
22  
23  
24  
25

P R O C E E D I N G

1  
2  
3 CHAIRPERSON NEUBERG: Good morning, everyone. We  
4 have our entire team; welcome public, we can dive right in.

5 Agenda Item I, call to order and roll call.

6 I(A), call for quorum. It is 8:00 a.m. on Tuesday,  
7 June 29th, 2021. I call this meeting of the Independent  
8 Redistricting Commission to order.

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

13 Val.

14 MS. NEUMANN: Vice Chair Watchman.

15 VICE CHAIR WATCHMAN: Present.

16 MS. NEUMANN: Commissioner Lerner.

17 COMMISSIONER LERNER: Present.

18 MS. NEUMANN: Commissioner Mehl.

19 COMMISSIONER MEHL: Present.

20 MS. NEUMANN: Commissioner York?

21 Commissioner York can you hear us?

22 COMMISSIONER YORK: Yes. Present.

23 MS. NEUMANN: Thank you.

24 Chairperson Neuberg.

25 CHAIRPERSON NEUBERG: Present.

1 MS. NEUMANN: And for the record we also have in  
2 attendance Executive Director Brian Schmitt; public  
3 information officer Michele Crank; Brett Johnson and Eric  
4 Spencer from Snell & Wilmer; Roy Herrera and Jillian Andrews  
5 from Ballard Spahr; Mark Flahan from Timmons and Doug  
6 Johnson from NDC Research; and Angela Miller our  
7 transcriptionist.

8 Thank you. Back to you.

9 CHAIRPERSON NEUBERG: Thank you. And please note  
10 for the minutes that a quorum is present.

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

12 Val, was the notice and agenda for the Commission  
13 meeting properly posted 48 hours in advance of today's  
14 meeting?

15 MS. NEUMANN: Yes, it was, Chairwoman Neuberg.

16 CHAIRPERSON NEUBERG: Thank you very much to you  
17 and to the team.

18 Agenda Item No. II, approval of minutes from  
19 June 22nd, 2021.

20 Agenda Item II(A), there was only general session  
21 minutes. There was a minor typo that Val, you know,  
22 corrected prior to the meeting. Aside from that, is there  
23 any discussion?

24 If not, I'll hope it up for a motion to approve the  
25 general session minutes from June 22nd of 2021.

1 VICE CHAIR WATCHMAN: Madam Chair,  
2 Vice Chair Watchman moves to approve the June 22nd meeting  
3 minutes.

4 CHAIRPERSON NEUBERG: Thank you. Do I have a  
5 second?

6 COMMISSIONER MEHL: Commissioner Mehl seconds.

7 COMMISSIONER YORK: Commissioner York --

8 CHAIRPERSON NEUBERG: Commissioner Mehl seconded,  
9 thank you very much.

10 For the record, any further discussion?

11 A quick vote.

12 Vice Chair Watchman.

13 VICE CHAIR WATCHMAN: Aye.

14 CHAIRPERSON NEUBERG: Commissioner Mehl.

15 COMMISSIONER MEHL: Aye.

16 CHAIRPERSON NEUBERG: Commissioner Lerner.

17 COMMISSIONER LERNER: Aye.

18 CHAIRPERSON NEUBERG: Commissioner York.

19 COMMISSIONER YORK: Aye.

20 CHAIRPERSON NEUBERG: Commissioner Neuberg is an  
21 aye.

22 The minutes for the general session are approved  
23 for June 22nd of 2021. Thank you very much again, Val.

24 We'll move to Agenda Item No. III, opportunity for  
25 public comments. Public comment will open for a minimum of

1 30 minutes and remain open until the adjournment of the  
2 meeting; comments will only be accepted electronically in  
3 meeting on the link provided in the notice and agenda for  
4 this public meeting and will be limited to 3,000 characters.

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

12 We move to Agenda Item No. IV, discussion on public  
13 comments received prior to today's meeting.

14 I open it up to my colleagues.

15 COMMISSIONER LERNER: This is Commissioner Lerner.  
16 I just want to again say thank you for people to give us  
17 comments. We got a number of comments about the public  
18 meetings that I noticed and we are -- we are in agreement  
19 that we want good orderly meetings, civil meetings. We're  
20 -- we're going to be hopeful that that occurs, but just want  
21 to acknowledge that we all would like to have those kinds of  
22 meetings because those are for us to hear from you, from the  
23 public as part of that.

24 So I just wanted to acknowledge -- and we'll be  
25 continuing to talk about how our public hearings are

1 organized as we go through that, so I just want to say thank  
2 you for that.

3 CHAIRPERSON NEUBERG: Any other thoughts?

4 I actually have quite a few thoughts. And thank  
5 you, Commissioner Lerner, and -- and you do get a good shout  
6 out in the comments, well deserved, for your diligence and  
7 -- and your contributions. As well as, to be honest, all of  
8 my Commissioners, you know, deeply appreciative to the  
9 attentiveness to homework and detail.

10 I know there's concern in the public about  
11 computer-generated comments, and along with that groups and  
12 organizations that are large and are capable of submitting  
13 kind of templates or just form letters, and we would like to  
14 reassure the public that we're able to distinguish, you  
15 know, information that we receive.

16 That information is important. If an organization  
17 has thousands of members and they take time to submit  
18 information, that's relevant. But, you know, if it's form  
19 versus the time that individuals take, we will work with our  
20 entire team; we have an experienced team to learn how to  
21 translate all of this into the most relevant data because  
22 that's really what it's about. The information tour is to  
23 learn and to understand the data as factually accurate as we  
24 can and to translate that into, you know, representation and  
25 government.



1           So -- so we hear you and -- and we're -- we're  
2 learning and studying this very issue.

3           There was also a question about how to tailor  
4 public comments to our process. I thought that was an  
5 important question, and I would like to reiterate some of  
6 the conversation that we already had.

7           When you are expressing your opinions -- and this  
8 is relevant to submission through online and also our  
9 upcoming meetings, we will do our best with our stock  
10 presentation to elicit this feedback, but we want to  
11 understand your community of interest.

12           We want to understand the subgroups of your  
13 communities of interest; we want to understand does that fit  
14 in or tap into any geographic realities; we want to  
15 understand the history of your community in terms of your  
16 needs, what's not being met, and what you feel, you know,  
17 needs to be met. And the comments that are submitted and  
18 are communicated in a respectful, positive tone, to be  
19 honest, are -- are a little bit more effective.

20           Security. Absolutely. We will be requesting  
21 guidance and support from DPS in order to provide the best  
22 possible security; this is the heart and soul of democracy,  
23 and we take this issue very seriously.

24           The timeline, I know it's frustrating, you're --  
25 you're -- we're going to hear about it later today. Please

1 understand, you know, we're integrating many different  
2 aspects of our team that have different angles on the  
3 timeline; and -- and rather than prematurely giving  
4 information that, to be honest, isn't meaningful, we ask for  
5 your patience such that it's -- it's real information and,  
6 you know, going to be constructive.

7 Closed captioning for hearing impaired. I thought  
8 that was a great comment, not just for that one specific  
9 issue, but -- but making sure that on our speaking, you  
10 know, our listening tour, that we're ensuring that -- that  
11 all communities are able to communicate with us. So I  
12 appreciate that reminder of -- of our responsibility to  
13 provide means of communication.

14 A comment again about our legal counsel and  
15 potential conflict of interest. I want to remind the public  
16 that it was May 11th at a public meeting that we issued a  
17 statement that both legal counsels approved of, and just to  
18 highlight the most important points: IRC's legal counsel  
19 will not be advising any candidate, political party, or  
20 political committee in regard to the Arizona redistricting  
21 processes.

22 It's understandable the IRC's legal counsel will  
23 continue to advise clients in regard to other unrelated  
24 election law matters.

25 There's no reason to believe that the IRC's legal

1           counsel will not honor their ethical duties to maintain the  
2           confidentiality of IRC information.

3                   And along those lines, I would like to just express  
4           that I have only seen two law firms and their counsel, the  
5           individuals, working with a deep level of cooperation, a  
6           remarkable level of accessibility, and I have no doubt that  
7           there's a commitment to our Commission and our state first  
8           and foremost. There's a tremendous amount of eyes that are  
9           on this process, including an active Commission, and so up  
10          to now I believe the Commissioners are -- are quite  
11          satisfied and -- and have full access to our counsel, and so  
12          I'm confident in the process.

13                   My final comment -- and I know I'm sharing a lot  
14          today -- there's a lot of talk about asking the Commission  
15          to do the best that we can to reach out to the entire state  
16          and make these listening tours meaningful and to understand  
17          the information that we're getting. We hear you, and we are  
18          doing our best. I'd like to say, you know, you're all  
19          partners on this; you're on the ground all throughout the  
20          state, you have tentacles, when we release -- you know, when  
21          the press releases something to say there's a meeting, we  
22          ask you: Please, do your best to send it to, you know, fire  
23          departments, police departments, school districts, you know,  
24          the heart and soul of -- of the Arizona public.

25                   So we hear you, but please also be our partner on

1           that.

2                         Aside from that, any other further, you know,  
3           comments or conversation from my colleagues.

4           Okay. Thank you.

5                         We'll move that we'll move on to Agenda Item No. V,  
6           Timmons/NDC.

7           Please take it away.

8                         MR. FLAHAN: Well, thank you, Madam Chairperson.  
9           The biggest thing is that we've been working on this week,  
10          you've guys have had a lot of conversations already about  
11          the listening tour, so we've been, you know, making a lot of  
12          preparations on our side to help you guys going forward on  
13          the listening tour and collecting the community interest  
14          data; but we're going to continue working on that this week  
15          and going forward.

16                         The other couple things that we have for you is we  
17          have been working on the socioeconomic report, and the data  
18          almost wrapped up, so we can start to work -- work on  
19          getting that displayed to provide that to you.

20                         You asked the -- about a tentative calendar a  
21          little bit. So, you know, in July, you know, the tentative  
22          listening tour could be coming, and we're going to be  
23          supporting you guys on that and doing a lot of preparation  
24          for that coming up; we'll be cataloging community interest  
25          data.

1           In August the redistricting software should be  
2 ready to go and be installed; and then we get the census  
3 data on the 16th of August, so that will be exciting for  
4 everybody here; and then after that we'll be working and  
5 getting the census data put into the system and ready to go  
6 in August for start on that data in -- in September.

7           So that's sort of the preview of the next couple of  
8 months for us.

9           A lot of stuff going on, a lot of moving parts, but  
10 we're here with you to support you guys going forward.

11           With that said, I'll open up, are there any  
12 questions from your team?

13           COMMISSIONER MEHL: This is Commissioner Mehl. I  
14 have a question.

15           So the first step after we get the census data, as  
16 I understand it, is to produce grid maps, and I also gather  
17 there's a variety of way of doing a grid map. So what  
18 decisions or what directions do we as a Commission need to  
19 make prior to August 16th so that you're ready to go  
20 immediately producing the initial grid maps?

21           MR. FLAHAN: Doug, you want to answer that one?

22           MR. JOHNSON: Sure. I think you put it very well.  
23 There -- there are a number of different approaches, you  
24 know, flipping coins versus using a sorting point and  
25 flipping coins for the second way to go. There's also some

1 new computer auto-generated options for you.

2 So one of the steps in this process is we will need  
3 to present to you those options and let you pick which one  
4 you want to follow, so that we'll be something we'll --  
5 we'll be coming back to you with. I don't know when we'll  
6 be doing that, but it's certainly something we need to get  
7 on your schedule.

8 COMMISSIONER MEHL: I would encourage that to occur  
9 before August 16th so that those decisions can be made and  
10 -- and settled in so that we can really get going quickly.

11 MR. JOHNSON: I agree a hundred percent.  
12 Definitely.

13 COMMISSIONER LERNER: This is Commissioner Lerner.  
14 Last time we'd asked you for a little bit of a  
15 revised and I know you just gave us a very general  
16 July/August kind of thing, and I was hoping for something a  
17 little bit more detailed than that from you, which would  
18 include -- and now what Commissioner Mehl said, maybe a date  
19 that says by August 1st we will have presented these options  
20 so we can select it.

21 Personally I'd like to have, you know, some -- some  
22 understanding of more specifically what you're doing over  
23 these next couple of months.

24 We also had asked about when training would be  
25 available and -- and hoped that you could give us a date on

1 that. Whatever the date works, I'm telling you which date,  
2 just if it's July 15th, if it's July 30th, whatever that is;  
3 and when the public, because I think the public would like  
4 some time to also get up to speed with the technology.

5 So when -- if you could give us -- again, I -- I  
6 know we had talked about this last time, if you could give  
7 us some dates that you have -- your target dates, whatever  
8 works for you, but if you could give us those target dates,  
9 when do you hope to have the socioeconomic, you know, report  
10 done, when do you hope to have the availability of training  
11 for us, training for the public available, when would you  
12 want to have that presentation on the options that  
13 Commissioner Mehl just spoke about. Those are things that  
14 would be helpful for us to be planning ahead -- at least for  
15 me -- to be helpful on that.

16 And then also I know we had talked last time about  
17 you would provide us some input on the listening tour, and I  
18 don't know if you had anything prepared for that or maybe  
19 you've shared that with Director Schmitt and given some  
20 specifics on that, but we were -- we thought that by this  
21 week you might have something specific that you would be  
22 giving us.

23 So just some questions on those kinds of things.

24 MR. FLAHAN: Sure. On listening tour, we have been  
25 working with Director Schmitt on that behind the scenes and

1 we have sent him some stuff on that.

2 On your question about training, it will probably  
3 be the right beginning of August. I don't have an exact  
4 date because we're still spinning up the system, so I didn't  
5 want to give you an exact date just yet on that. But I know  
6 that's of utmost important for the Commission, and soon as I  
7 have that date I would be able to share with you.

8 MR. JOHNSON: And add to that -- I would just add  
9 to that and concerning the software report and also you have  
10 and training and introduction to all the different concepts  
11 you're going to run into, right, through this process.

12 COMMISSIONER LERNER: Right.

13 MR. JOHNSON: What is communities of interest, how  
14 do you identify them, what is competitiveness and how can  
15 you measure it; you know, all those in depth we'll be  
16 looking at, all these things we got to get scheduled and --  
17 and get a good presentation for you, and work and get all  
18 those things put together.

19 CHAIRPERSON NEUBERG: And, Mark, let me --  
20 Commissioner Lerner, I apologize, this is directly relevant  
21 to your line of question.

22 You know, Mark, you mentioned you are working with  
23 Director Schmitt behind the scenes on some of these things.  
24 Given that we're a very public body, do you -- yes, I  
25 personally have seen it, but the public hasn't. So do you



1 mind just maybe sharing a little more detail and reference  
2 to Commissioner Lerner's question? I know you've been  
3 working a lot about the stock presentation and about how to  
4 elicit the right kind of feedback at public meetings.

5 If you can catch the public and the Commission up  
6 to date about how much you have been doing and what you've  
7 been doing, I think that would be helpful.

8 MR. FLAHAN: Sure. So, you know, for the listening  
9 tour specifically we have been, you know, creating, you  
10 know, what agenda could look like for the listening tour;  
11 the different feedback mechanism that we should be  
12 soliciting; how do we actually solicit feedback from the  
13 public for the listening tour so we can develop the  
14 community of interest report going forward.

15 Probably the next step will be talking about, you  
16 know, the catalogization of data, how do we catalog that.  
17 So we've been providing a bunch of that.

18 We've been providing data about competitiveness  
19 going forward so there has been a lot of stuff that we've  
20 been working on behind the scenes.

21 Does that help answer your question?

22 COMMISSIONER LERNER: Well, from -- from my  
23 perspective, because I haven't seen any of that, that's why  
24 I'm asking the question because, yeah, I appreciate the fact  
25 that you're doing that behind the scenes, but -- but because

1 I hadn't seen that I was unaware, and then the public is  
2 also going to be unaware as part of that.

3 So I don't know if how there's a way for us to  
4 start having input, even if it's behind the scenes, I would  
5 appreciate seeing what you're putting together, and so I  
6 could potentially provide some comments and other  
7 Commissioners as well as part of that, so that when you're  
8 ready to present maybe you don't have a million comments  
9 coming at you.

10 But, you know, that's why I'm asking you questions  
11 because your update is similar to last week but I -- I know  
12 last week we had asked for a little bit more specificity for  
13 this week and just to clarify why I'm asking these  
14 questions.

15 COMMISSIONER MEHL: And to add to  
16 Commissioner Lerner's comments, it's going to get pretty  
17 intense after August 16th, and as Commissioners and the  
18 public getting a little bit better idea of the timeline on  
19 when we will have grid maps, when we think we're going to  
20 have the preliminary maps 'cause then we another listening  
21 tour that's going to be a couple of weeks like -- like this  
22 -- the initial one, that will be very time intensive; and it  
23 will be great for all of us to have a little better idea of  
24 when these things will occur as we schedule the rest of our  
25 lives.

1           So -- so getting a little bit better tentative  
2           schedule going forward would be very helpful.

3           MR. FLAHAN:   Okay.  I will -- I will get something  
4           more -- that I can present next Tuesday.  Practical.

5           COMMISSIONER MEHL:  Thank you.

6           MR. FLAHAN:  Mm-hm.

7           COMMISSIONER LERNER:  Thank you.

8           Yeah, from my perspective as much as we can be  
9           informed of things upfront so that we have time to process  
10          rather than having to make a decision the day of, it would  
11          be helpful.

12          Thank you.

13          CHAIRPERSON NEUBERG:  And -- and a lingering  
14          question I have that I would love the Commission to be  
15          involved with, you know, you raised:  How do we catalog  
16          community of interest data?

17          Will we be -- you know, I don't know -- I don't  
18          understand that process.

19          And then --

20          MR. FLAHAN:  Doug, you want to take that one?

21          CHAIRPERSON NEUBERG:  Excuse me?

22          I'm not saying you have to answer it like literally  
23          right now.  What I'm getting at is I think the Commission  
24          would like to be involved with that so we need to understand  
25          it, and then have sufficient time to process it.

1           MR. JOHNSON: Yeah, just one -- as I'm listening to  
2 discussions, too, is I think what we need to do is work out  
3 topics we're going to present and discuss each meeting, and  
4 -- and, you know, obviously your questions today will be a  
5 big part of that. It's just because it's really hard for us  
6 to answer a lot of these questions on the fly.

7           So it would be -- I think if we can work out a  
8 schedule taking what you shared with us today, work with  
9 Director Schmitt on what should be discussed at each -- at  
10 each meeting, we can come much more prepared and know what  
11 you want us to address and, of course, what we think you  
12 need be aware of at a given point in addition to the things  
13 you asked us outright.

14           We -- we can work on getting that prepared and come  
15 to you.

16           CHAIRPERSON NEUBERG: We'd -- we'd appreciate that.  
17 You -- actually, we don't have a meeting next week so -- so  
18 there's a two-week, you know, window to do I think a lot of  
19 the homework and just the work behind, you know, these  
20 questions.

21           So I think when we reconvene, you know, I'm hoping  
22 that we're -- we're going to have a lot of answers and --  
23 and we'll really be on the same page.

24           COMMISSIONER LERNER: And this is  
25 Commissioner Lerner again.

1           Just as a reminder, you had said that you would  
2 take that -- your schedule and calendar that was quite  
3 lengthy and try to condense that, and you were going try to  
4 get that to us next week, but if you can include that as  
5 well. You were going to modify, of course, accordingly  
6 because we started later than you had anticipated, and just  
7 make the adjustments that you need to make.

8           It would be helpful for us to see that as well and  
9 you can always e-mail that to us in addition or at any  
10 point, but I think that would be helpful for us overall, and  
11 it would be helpful for you as you plan ahead.

12           MR. JOHNSON: And everything you said Commissioner  
13 Lerner, just completely agree and, really, for those members  
14 of the public watching, anything that we e-mail to you of  
15 course will get published to the website as well so we can  
16 all see it at the same time.

17           CHAIRPERSON NEUBERG: Okay. Thank you very much.

18           Is there any other further questions or thoughts  
19 from my colleagues?

20           Okay. Thank you very much Mark, Doug, your entire  
21 team. We look forward to, you know, the updates and moving  
22 forward.

23           We'll move to agenda Item No. VI, Executive  
24 Director's report and discussion thereof.

25           And I turn it over to Director Schmitt.

1                   DIRECTOR SCHMITT: Thank you, Chairwoman.

2                   So a few updates for you today. We are fully moved  
3 into our new office space. Our address is 1110 West  
4 Washington, and we're in Suite 127 now; and all that  
5 information has been updated on the website.

6                   The budget passed both the House and the Senate and  
7 it's been transmitted to the Governor. The budget includes  
8 \$7.9 million in nonlapsing funds and an increase in our FTE  
9 positions.

10                  We're just about to end the fiscal year, so I will  
11 get you a year-end report in the next couple of weeks as  
12 soon as it's ready.

13                  In regards to IT migration, we have one proposal;  
14 I'm waiting for one more to come in. As soon as I get  
15 those, I will present them to you. I know everyone is  
16 anxious to move forward on this project, but we need it to  
17 be the right fit and make sure it's done right.

18                  And then the last item for you all today is the  
19 deputy director recommendation. And before I say it  
20 publicly, I want to see if any of the Commissioners want to  
21 go into executive session to discuss.

22                  If not, I'm content with moving forward.

23                  CHAIRPERSON NEUBERG: Please move forward.

24                  DIRECTOR SCHMITT: Okay. Thank you.

25                  For the deputy director/public manager, I'm going

1 to recommend hiring Lori Van Haren. Lori is currently an  
2 assistant city prosecutor at the City of Phoenix  
3 prosecutor's office. She's responsible for and has helped  
4 developed many of the successful programs for the City  
5 Veterans Court; prior to that she served as chief of staff  
6 for Councilwoman Mendoza.

7 She not only has a tremendous amount of knowledge  
8 on the legal side and with public records, but also with  
9 community outreach and engagement; she also speaks Spanish,  
10 and will be a great addition to the team.

11 CHAIRPERSON NEUBERG: I'd like to just acknowledge  
12 and -- and thank Director Schmitt for the thorough process.  
13 We received really, you know, a number of incredibly  
14 impressive applications. I'm thrilled that so many, you  
15 know, really skilled, talented people in our community are  
16 interested in the process.

17 And I appreciate, again, my fellow Commissioners  
18 who took the time to review the applications, provide  
19 feedback, and personally I'm really, really excited about  
20 potentially recommending a new member to our team.

21 Any other conversation?

22 All right.

23 COMMISSIONER YORK: This is Commissioner -- yeah,  
24 this is Commissioner York.

25 I read, Brian Schmitt, I read your review. I'm

1 excited to office (technical disruption).

2 Do we need to motion, then, is it --

3 DIRECTOR SCHMITT: Yes.

4 COMMISSIONER YORK: -- Brian's responsibility.

5 DIRECTOR SCHMITT: That's what we've done in the  
6 past.

7 COMMISSIONER YORK: A motion. Okay.

8 CHAIRPERSON NEUBERG: So we need a motion to  
9 approve the -- the potential hire of this deputy director,  
10 correct?

11 DIRECTOR SCHMITT: Yeah, correct.

12 COMMISSIONER YORK: Correct.

13 CHAIRPERSON NEUBERG: Okay. I'll entertain a  
14 motion.

15 COMMISSIONER LERNER: I thought Commissioner York  
16 was making that motion.

17 CHAIRPERSON NEUBERG: Oh. I'm -- you know what,  
18 the audio.

19 COMMISSIONER LERNER: Doug, you're a little choppy.

20 COMMISSIONER YORK: Yeah, I'm on a crazy Wi-Fi  
21 connection; I'm not in my office.

22 I motion that we go ahead and hire the executive --  
23 the deputy director that Brian has recommended, Gabriel  
24 [sic].

25 CHAIRPERSON NEUBERG: Okay.



1 VICE CHAIR WATCHMAN: I'll second.

2 COMMISSIONER LERNER: Second.

3 Whoever.

4 CHAIRPERSON NEUBERG: Any further conversation?

5 Vice Chair Watchman.

6 VICE CHAIR WATCHMAN: Aye.

7 CHAIRPERSON NEUBERG: Okay. Commissioner Mehl.

8 COMMISSIONER MEHL: Aye.

9 CHAIRPERSON NEUBERG: Commissioner Lerner.

10 COMMISSIONER LERNER: Aye.

11 CHAIRPERSON NEUBERG: Commissioner York.

12 COMMISSIONER YORK: Aye.

13 CHAIRPERSON NEUBERG: Commissioner Neuberg is an

14 aye.

15 And, with that a 5-0 vote, we welcome our new

16 deputy director.

17 Brian, is it maybe two weeks --

18 DIRECTOR SCHMITT: Yes.

19 CHAIRPERSON NEUBERG: -- or what's the estimate --

20 okay.

21 DIRECTOR SCHMITT: Hopefully July 13th-ish.

22 CHAIRPERSON NEUBERG: Okay.

23 DIRECTOR SCHMITT: As soon as possible.

24 CHAIRPERSON NEUBERG: We look forward to it. Thank

25 you for your diligence in vetting all of these terrific

1 candidates.

2 If there's no -- we're done with that item. We can  
3 now move to Agenda Item No. VII, discussion and possible  
4 action on proposed revised travel schedule.

5 Director Schmitt.

6 DIRECTOR SCHMITT: Thank you, Madam Chair.

7 So the schedule that we presented last week -- and  
8 I'm pulling it up just so everyone can follow along.

9 It's still the same schedule; we are working out  
10 all the details. I don't want to post any of the venues  
11 before we have them a hundred percent nailed down.

12 So if the public, if they would like to go to  
13 IRC.AZ.gov and sign up for the newsletter, we're hoping to  
14 have it completely finalized within the next week; and if  
15 you sign up for the newsletter, we will send out the dates  
16 with all the locations as soon as they're finalized.

17 And for the Commissioners, Valerie put together a  
18 kind of a travel guide for you all, and we will get that to  
19 you along with some forms just for reimbursements and all  
20 that kind of stuff.

21 So we're working through all those kind of details  
22 right now, but can't wait to get it finalized and out there.

23 COMMISSIONER LERNER: Brian, just -- this is  
24 Commissioner Lerner -- a quick question.

25 Is there a way to in addition to -- in case people

1 don't see the newsletter or don't want to receive a  
2 newsletter, I know a lot of folks don't like to get extra  
3 materials, will that also -- is there a way to post at least  
4 the dates at this point knowing that you don't have all the  
5 locations, on the website to just to list them?

6 DIRECTOR SCHMITT: Yeah.

7 COMMISSIONER LERNER: And maybe they are all ready,  
8 and I don't realize it.

9 DIRECTOR SCHMITT: Yeah, and I believe they are  
10 posted. I will double-check the specific location. I will  
11 let you know, but they should be up there.

12 COMMISSIONER LERNER: Okay. Thank you.

13 DIRECTOR SCHMITT: You're welcome.

14 CHAIRPERSON NEUBERG: I -- I saw Val gave a thumbs  
15 up and, you know, it's like a "save the date," I think it's  
16 great.

17 VICE CHAIR WATCHMAN: It's in the Newsroom.

18 COMMISSIONER MEHL: We have times or will the times  
19 vary on some of these depending on the locations?

20 DIRECTOR SCHMITT: We're hoping that the weekday  
21 ones start at 5 o'clock, the weekend ones will start at  
22 9:00 a.m. or 10:00 a.m. So we're going to try to be as  
23 consistent as possible working with the different venues.

24 CHAIRPERSON NEUBERG: And, Director Schmitt, I  
25 wasn't sure how the satellites are going to work. Can you

1 share with us the vision of the main location satellites and  
2 how that fits in to the Commissioners and the public.

3 DIRECTOR SCHMITT: Sure. So we wanted to make it  
4 as accessible as possible if people did want to attend a  
5 meeting in person, so that's why we proposed satellite  
6 locations, where people don't have to drive an hour and a  
7 half to make it to the main location, they can go to kind of  
8 one of the smaller ones, and then we'll integrate them into  
9 the meeting as a whole.

10 So we're working on a technology fix where they  
11 would be available to participate from their community at  
12 the main meeting with everyone else.

13 CHAIRPERSON NEUBERG: But they will be  
14 participating virtually? Not -- we're not dividing our  
15 broader team to have representation there, is that what I'm  
16 understanding?

17 DIRECTOR SCHMITT: We'll have team members at each  
18 of the satellite locations.

19 CHAIRPERSON NEUBERG: Okay. Is that yet -- is that  
20 something -- we will be at the -- those of us who are  
21 traveling physically will be at the main location? Or is  
22 that something that we -- we need to discuss?

23 DIRECTOR SCHMITT: It will be up to all of you. If  
24 one of you would like to go to one of the satellite  
25 locations, you could do that or be at the main location;

1 it's your preference.

2 CHAIRPERSON NEUBERG: Okay. Thank you.

3 And the community's needs.

4 DIRECTOR SCHMITT: Absolutely.

5 CHAIRPERSON NEUBERG: So thank you.

6 COMMISSIONER LERNER: As a question, are these  
7 going to all be recorded then as well?

8 DIRECTOR SCHMITT: Yes.

9 COMMISSIONER LERNER: Okay.

10 DIRECTOR SCHMITT: Yes.

11 COMMISSIONER LERNER: Okay. Thank you.

12 DIRECTOR SCHMITT: And we're planning to have them  
13 live as well.

14 CHAIRPERSON NEUBERG: Thank you.

15 And thank you to the public for -- you know, we've  
16 had quite a few great offers with venues and -- and great  
17 ideas; and the Commissioners who have been involved, it's  
18 truly -- this is a team effort.

19 Any other conversation, feedback, thoughts about  
20 agenda Item No. VII, our travel?

21 COMMISSIONER LERNER: This is Commissioner Lerner.  
22 If -- if you're having -- if you're not sure of some of the  
23 meeting locations, if you want to send out a list of where  
24 you might be having some trouble finding places --

25 DIRECTOR SCHMITT: Sure.

1           COMMISSIONER LERNER: -- to the Commissioners, it  
2 might be that we know some folks in places that can assist  
3 you. So if -- if there's still some places if you're  
4 uncertain on a location, if you let us know, we might know  
5 some folks who could -- who could provide assistance.

6           DIRECTOR SCHMITT: Absolutely. Thank you.

7           CHAIRPERSON NEUBERG: Okay. Thank you, everyone.

8           With that, we will move to Agenda Item No. VIII,  
9 discussion and possible action on stock IRC presentation for  
10 public use.

11           Director Schmitt, you want to give us an update on  
12 just -- our mapping team alluded to some back and forth; I  
13 know there's been a lot of hands on the product, which is  
14 positive, in a positive way.

15           DIRECTOR SCHMITT: Yes. So the mapping consultants  
16 went through the presentation, added pieces they thought  
17 would be important; we got that back to Legal, Legal ran  
18 through it, and I just received the most revised version, so  
19 I will send that to you all today so you can take a look at  
20 it. And let us know if there's anything else you would like  
21 to add or edit, but we should have that fully ready to go at  
22 our next meeting so the public can have it and use it if  
23 they would like.

24           CHAIRPERSON NEUBERG: Terrific. Thank you.

25           Any questions?

1           With that, we will move to Agenda Item No. IX,  
2           discussion and possible action on census data, census delays  
3           and way to mitigate its disruption. We have (A), (B), and  
4           (C).

5           Regarding IX(A), status of speakers. Regarding the  
6           pros and cons of differential privacy, we have been  
7           discussing amongst ourselves and the public the need for us  
8           to analyze this differential privacy issue.

9           We have -- well, thank you to legal counsel,  
10          there's a recommendation and we've secured some, you know,  
11          expert speakers: One on the pro side regarding backing the  
12          Census Bureau; another on the con side challenging the  
13          Census Bureau. They are slated to speak to our community on  
14          July 13th at that public meeting, and we look forward to  
15          being further educated on that challenge.

16          We have -- I'm happy to entertain questions or --  
17          or comments on that before we move to (B) and (C) if there  
18          are any.

19          Okay. Regarding (B) and (C), again, thank you to  
20          our legal counsel, we have two presentations: Item (B) on  
21          the Voting Rights Act; and then Item (C), the Arizona  
22          constitutional redistricting criteria requirements.

23          Our plan is -- and, again, this is in deference to  
24          a significant public comment -- we will have counsel do  
25          these presentations in public session. We're going to take

1 each item separately, so we will first address (B) then (C).

2 I'm going to ask the Commissioners, please write  
3 down and generate your personal questions about the  
4 presentation as it relates to our work, as it relates to  
5 applying these things to Arizona so that we can use the  
6 ability to go into executive session to get legal counsel on  
7 specific questions that we might have in our job.

8 So just for the sake of organization, we'll start  
9 in public session on Agenda Item IX(B); I'm going to  
10 recommend that after the public presentation while  
11 Commissioners are jotting down their personal notes, unless  
12 there's something just obviously, you know, "I don't  
13 understand that word or that slide," that the entire public  
14 would -- would have the same question, and then after that  
15 presentation on Agenda Item No. IX(B), we move into  
16 executive session, and then we'll do the same with agenda  
17 Item IX(C).

18 And if everybody is okay with that general  
19 suggestion and guide, I will turn it over to our counsel.

20 MR. HERRERA: Thank you, Madam Chair. One  
21 additional update before Item (B), though, this was a  
22 question that we received the last couple of weeks, there  
23 has not been any update on the Alabama litigation on the  
24 differential privacy. Just provide that information.

25 CHAIRPERSON NEUBERG: Okay.



1 MR. HERRERA: So we're going to turn to the Voting  
2 Rights Act presentation first. I'm going to try to share my  
3 screen here so you can see.

4 Little ahead on this presentation, so let me go  
5 back to the beginning.

6 As I'm scrolling, I think the purpose of today's  
7 presentation is to provide an overview of the Voting Rights  
8 Act, the requirements under the Voting Rights Act, and then  
9 that will be followed by the requirements under the Arizona  
10 Constitution. Of course, as Madam Chair indicated, we're  
11 happy to answer questions on that as we go along on the  
12 slides or as Madam Chair indicated if there's questions  
13 about the application of Voting Rights Act, we can answer  
14 them at the end.

15 To give you a little bit of agenda setting today,  
16 I'm going to start with an overview -- historical overview  
17 of the Voting Rights Act, basically providing information  
18 about why the Voting Rights Act was initially enacted; and  
19 then we're going to into Section 5 of the Voting Rights Act,  
20 which has seen a significant amount of change since the last  
21 redistricting position as a result of the Shelby County  
22 position; and then -- but then nevertheless had some  
23 applicability still to redistricting, so I'm going to  
24 explain that; and then after that we'll get into Section 2  
25 of the Voting Rights Act, which is, you know, the most

1       operative and important position of the VRA at this point in  
2       its application to redistricting; and then we'll end with  
3       the conversation about racial gerrymandering, which is a  
4       distinct claim under the 14th Amendment, but nevertheless  
5       shares a lot of principles with the Voting Rights Act and  
6       we'll discuss that.

7               So let's just start with the historical overview of  
8       the Voting Rights Act. So the VRA was initially enacted in  
9       1965 to sort of set the context of this. After  
10       reconstruction, a number of states -- particularly in the  
11       old confederacy in the south -- enacted different measures  
12       that made it difficult for minorities to vote. A lot of  
13       these measures are things that you're -- you're well aware  
14       of, things like poll taxes, property requirements --  
15       property ownership requirements, literacy tests; and as a  
16       result, eventually in the late '50s, Congress passed a  
17       series of civil rights laws but to protect minorities'  
18       rights to vote.

19               But what we saw is that many of these laws  
20       ultimately proved ineffective because we would be -- and I  
21       explain this in a later slide -- we would be in a situation  
22       because under those previous pieces of legislation the onus  
23       would be on someone bringing a lawsuit to get a particular  
24       procedure or provision under state law invalidated.

25               That essentially would happen if people would bring

1 a lawsuit; and then, you know, even if that particular, you  
2 know, provision would be found to be unconstitutional -- or  
3 I should say illegal under federal law, then the states  
4 would just follow that up with enacting a new piece of  
5 legislation.

6 So what I -- what eventually the Supreme Court  
7 refers to as a "whack-a-mole" became part of the problem,  
8 eventually Congress decided that a more comprehensive and  
9 expansive Voting Rights Acts would be necessary; and during  
10 the height of the civil rights movement in the '60s,  
11 particularly after the March on Philmont in March of 1965,  
12 we finally saw an increased support from the White House for  
13 a more comprehensive Voting Rights Act.

14 And so therefore or after that, in August of 1965,  
15 we saw President Johnson sign the VRA into law.

16 Over time the VRA has been amended. It's been  
17 amended five different times. The most recent amendment  
18 came in 2006, but before that it was amended in 1970, 1975,  
19 '82, and '92; and as time has gone on, these amendments have  
20 expanded the protections under the VRA.

21 So initially a lot of the -- the lawsuits and --  
22 and the various challenges under the VRA were primarily  
23 challenges that directly were trying to invalidate things  
24 like poll taxes, things that would directly disenfranchise  
25 minorities voters. Eventually the expansion of the VRA

1 included considerations on whether different voting  
2 procedures would actually dilute minority voting. And vote  
3 dilution in particular is a huge issue which is comes to  
4 redistricting, perhaps the -- the sort of most common  
5 objection to redistricting plans you'll see under Section 2,  
6 which I'll explain a little bit later.

7 But there has been, as I said, amendments to the  
8 VRA that that have expanded its protection over time.

9 Let me go to the next slide here.

10 So I'm first going to talk about Section 5 of the  
11 VRA, which, you know, is known as the preclearance  
12 provision, and I have here in the slide it's not dead but  
13 dormant. What I'm referring to and will explain in a -- in  
14 a few slides is that, as a result of the Shelby County  
15 decision, which invalidated the formula under Section 4, the  
16 coverage formula under Section 4, there are no jurisdictions  
17 that are now covered by Section 5.

18 So we're in a situation where Section 5 is still a  
19 live section, in other words it has not been found  
20 unconstitutional by the Supreme Court; but because the  
21 coverage formula under Section 4 had, Section 5 really has  
22 no application at this point. But it is still nonetheless  
23 important: One, because theoretically Congress could decide  
24 to, you know, enact a new coverage formula -- it's unlikely  
25 for political reasons, and as I get to a little bit later,

1 the Supreme Court has indicated that even Section 5 may be  
2 unconstitutional. Of course, hasn't found that, but it's  
3 possible. But that is, you know, theoretically a  
4 possibility to continue coverage formula.

5 But, more importantly, some of the principles,  
6 particularly retrogression under Section 5, are still  
7 important considerations under Section 2, and I'll explain  
8 that in a moment.

9 But first let's just talk about Section 5 in  
10 general. I referred to it earlier as the preclearance  
11 provision because essentially what it would requires is for  
12 coverage jurisdictions to get preclearance from the federal  
13 government. So either through district court in the  
14 District of Columbia or the Department of Justice.

15 Of course, this is -- at the -- at the point that  
16 the VRA was enacted, you know, voting procedures and voting  
17 laws was primarily reserved to the State, the power to enact  
18 those laws were primarily preserved to the State. So adding  
19 this preclearance provision where the states would have to  
20 go and get preclearance from the federal government was and  
21 has been referred to in case law as "strong medicine"  
22 because it's a pretty expansive exercise of federal power --  
23 it was; and as I referred to before and I say in this slide,  
24 it was designed to end a whack-a- -- a game of whack-a-mole  
25 between the federal courts and states that were determined

1 to preserve wide electoral dominance through, again, various  
2 things like poll taxes and other kinds of voting procedures.

3 And so, again, under the late 1950's Civil Rights  
4 Act, it was a case-by-case approach where you have to go  
5 through litigation to try to, you know, again get a  
6 particular provision to be held to be unlawful. Because  
7 preclearance, the onus will be put on local jurisdictions,  
8 or coverage jurisdictions I should say, to go to the federal  
9 government and get approval essentially of those particular  
10 provisions before they actually go into effect.

11 And, again, the idea here was to bring an end to  
12 the discriminatory voting practices of the Jim Crow era  
13 after Reconstruction.

14 Going now to sort of what actually Section 5 says  
15 and what it required -- or still requires technically -- is  
16 it requires certain states and local jurisdictions -- again,  
17 these are referred to as coverage jurisdictions -- to seek  
18 prior approval or preclearance from the federal  
19 government -- and this is important -- to enact or seek to  
20 administer any voting qualification or prerequisite to  
21 voting or standard practice or procedure with respect to  
22 voting.

23 Redistricting falls within this definition as a  
24 voting -- as a prerequisite to voting or a standard practice  
25 or procedure with respect to voting.

1           So in other words, redistricting plans have  
2           traditionally had to go through preclearance, again when we  
3           had a working coverage formula and had coverage  
4           jurisdiction, and as a result, the state of Arizona in 2000  
5           and 2010 did go through preclearance and historically has  
6           gone through preclearance.

7           So that was a, you know, a feature at the last --  
8           couple of redistricting commissions and redistricting cycles  
9           and, again, because of Shelby County, we don't have that  
10          requirement anymore. So that is a major difference. Again,  
11          we can -- we can talk about that in more detail.

12          But as I mentioned, coverage jurisdictions, in  
13          other words that would have to get the preclearance, were  
14          determined by a coverage formula in Section 4.

15          So what was that Section 4 coverage formula that  
16          was eventually found unconstitutional by the U.S. Supreme  
17          Court?

18          Well, originally it began by looking at data as of  
19          the 1964 general election, and in particular it looked at  
20          two different things.

21          First, there was a question of whether a particular  
22          state or local jurisdiction employed a discriminatory test  
23          or device. If it did do that, in other words it has  
24          literally test or good character requirements or property  
25          ownership requirements for voting, that that would fall

1 within the discriminatory test or divide and, therefore, you  
2 would have met the first requirement of the coverage  
3 formula.

4 The second is really a question of voter  
5 participation. So as of the 1964 general election, the  
6 question is whether in that state or local jurisdiction  
7 fewer than 50 percent of voting age residents were  
8 registered to vote or voted in that particular election.

9 So that was the original coverage formula under  
10 Section 4, but eventually -- and -- and as it was applied  
11 originally, it really applied to most of the states of the  
12 Jim Crow -- of the Jim Crow South, or in other words, ex- --  
13 ex-confederacy states.

14 But, eventually, the preclearance requirements was  
15 expanded to not just look at the 1964 general election, but  
16 to also look at the 1968 general election and the 1972  
17 general election. It was that expansion to look at three  
18 different -- or, you know, to possibly look at three  
19 different general elections, that then expanded that  
20 coverage formula to the state of Arizona.

21 So when that expansions occurred to include those  
22 three states, states like -- or, I'm sorry, three general  
23 elections, states like Texas, Alaska, and Arizona were then  
24 included in the coverage formula.

25 And just, you know, for your awareness, what the



1 discriminatory test or device was in the state of Arizona  
2 that was found to fall within and fulfill the first  
3 requirement of the coverage formula, was that we had a  
4 policy of providing voting materials only in English, and we  
5 used a literacy test for -- for voting, which that procedure  
6 was discontinued up until 1975.

7 So, again, as of the '64, '68 and '72 elections, we  
8 had the discriminatory testing device in addition to meeting  
9 the voting participation requirement. So that's why Arizona  
10 became part of the, you know, coverage jurisdiction under  
11 the existing Section 4 coverage formula.

12 So let's go now into what exactly Section 5  
13 prohibits coverage jurisdictions from doing. So if you're  
14 coverage jurisdiction -- or were, you know under the, you  
15 know, coverage formula at the time -- you were prohibited  
16 from implementing any electoral change that has the purpose  
17 or will have the effect of diminishing the ability of any  
18 citizens of the United States on account of race or color to  
19 vote.

20 In that importantly included both electoral  
21 changes, including redistricting plans, that had a  
22 discriminatory purpose or an innocent purpose but had a  
23 discriminatory effect.

24 And this actually is, both purpose and  
25 discriminatory effect, the -- as a feature, again, of the

1 VRA being more expansive over time.

2 Now, discriminatory purpose is an interesting, you  
3 know, feature. It's a bit unclear, and you'll find in -- in  
4 some of these different tests that sometimes the factors and  
5 standards are not entirely clear. In other words, courts  
6 have sort of struggled with determining what something is --  
7 whether something is or is not a violation.

8 But in general, for discriminatory purpose, the  
9 Department of Justice in 2011 adopted a series of factors  
10 actually coming from a discriminatory housing case, as  
11 factors that courts should look to to determine whether  
12 there was discriminatory purpose. However, in 2013, because  
13 of the Shelby County decision, all of that essentially  
14 became moot because Section 4 no longer provides for any  
15 coverage jurisdiction. So we actually have no sort of  
16 sense, really, of what those adopted factors for  
17 discriminatory purpose actually mean yet because, again,  
18 this is a section that has been determined to be moot.

19 On discriminatory effects as I have here, that is  
20 typically determined by the principle of nonretrogression.  
21 The nonretrogression is a -- is a very important term under  
22 Section 5, it's probably the most important term under  
23 Section 5. And what we're getting at here, and I have this  
24 quote from the Beer case, is whether the ability of minority  
25 groups to participate in the political process and to elect

1 their choice of office is diminished by changes affecting  
2 voting.

3 So the idea again is it focuses on whether -- in  
4 adopting this and applying it to redistricting, is it  
5 focuses on whether a redistricting plan expands or at least  
6 preserves the number of districts in which minority voters  
7 are able to elect the candidates of their choice.

8 So that's essentially what you're looking at and  
9 I'll have a comparison chart here in the next slide here in  
10 a moment, which explains it further, but we're looking at  
11 nonretrogression; and if there is some sort of  
12 retrogression, there could be a violation of Section 5.

13 Now, again, as I mentioned before, Section 5 is  
14 currently moot because there's no coverage jurisdiction  
15 because there's no coverage formula, but it's still  
16 potentially an important consideration under Section 2 of  
17 the Voting Rights Act, which we'll explain when we get to  
18 that section.

19 Now, I've -- I've kind of beat a dead horse here,  
20 but on Shelby County just to talk about that for a moment,  
21 you know, as I mentioned, Congress continuously amended or  
22 reauthorized the VRA, but it maintained over that time to  
23 the Section 4 coverage formula which was, again, based on  
24 the 1964, 1972 election. So the pre-presidential election  
25 cycle.

1           But this is an important fact because in the Shelby  
2 County decision, the Supreme Court criticized the use of  
3 those particular election cycles for the coverage formula.  
4 In particular, it says that it could not justify the  
5 applications of the formula based on decades-old data and  
6 eradicated practices.

7           So I think what was partially informing the court  
8 there was that the data we were looking at, '64 to '72, was  
9 so long ago and so therefore the coverage formula was  
10 unconstitutional. Now again, as I mentioned, Section 5 was  
11 not declared unconstitutional, without any kind of  
12 preclearance formula, there is no jurisdiction that is  
13 covered or subject to its requirements and therefore it's  
14 moot.

15           And also as I mentioned, Congress could  
16 theoretically create a new preclearance formula -- again  
17 it's probably unlikely under the current political  
18 circumstances, but it is possible. But even if they did  
19 that, that would be subject to a legal challenge, probably a  
20 legal challenge that would directly ask -- you know, ask the  
21 court whether Section 5 itself was unconstitutional.

22           So that's Section 5. We're going to turn now to  
23 Section 2, which as I have here is the core of the modern  
24 Voting Rights Act.

25           It is the operative provision. It is the provision

1 under which you will see any sort of VRA challenge; and,  
2 certainly, when we talk about vote dilution under Section 2,  
3 those are the kind of challenges that you see quite often in  
4 redistricting.

5 As I said, postShelby County, Section 2 is the  
6 major remainder of the VRA. You know, going -- and I have  
7 two quotes here directly from Section 2 of the VRA.

8 First, it prohibits any voting qualification or  
9 prerequisite to voting or standard, practice or procedure  
10 which results in a denial or abridgement of the right of any  
11 citizen of the United States to vote on account of race or  
12 color.

13 So you'll notice in this particular definition it  
14 refers to both denial or abridgement, and that sort of  
15 corresponds to two types of cases that you see under  
16 Section 2. The votes are -- the first are vote denial  
17 claims, and the second are vote dilution claims.

18 When it comes to redistricting, vote dilution  
19 claims are again the primary form of a Section 2 objection  
20 or a Section 2 lawsuit; we also see vote denial claims quite  
21 often in other contexts, and the Brnovich case is a good  
22 example of that which I'll get to in a second on the next  
23 slide.

24 But, again, in Section 2 it goes on to define when  
25 denial or abridgement actually occurs. As I state here, it

1 is shown that -- it occurs when it is shown that the  
2 political process leading to nomination or election in the  
3 state or political subdivision are not equally open to  
4 participation by members of a class of citizens in that its  
5 members have less opportunity than other members of the  
6 electoral to participate in the political process and elect  
7 representatives of their chase.

8 So that last phrase "representatives of their  
9 choice" as you'll see in the actual standard under *Gingles*  
10 is pretty important language.

11 Now, again, there are some similarities between  
12 Section 2 and Section 5 in certain respects, but they  
13 diverge from each other quite a bit. And I think I may have  
14 said this before to the Commission a long time ago, this  
15 quote that I have at the top that refers to Section 2 as a  
16 legal sword that enables minority voters to improve their  
17 electoral position, while Section 5 is the shield that  
18 prevents minority voters' position from worsening. That's  
19 taken from a -- probably the most central election law  
20 textbook, legal textbook.

21 But I have here, you know, a chart that sort of  
22 talks about the differences between the two sections. I  
23 start both with the standard as we've talked about already  
24 in Section 5. You know the standard there really goes down  
25 to retrogression. In other words, is the challenge

1 procedure resulting in a minority group of losing ground.

2 Section 2 is different. The question, you know,  
3 under Section 2 really is, whether a group's members have  
4 less opportunity than other members of the electorate to  
5 participate in the political process and elect  
6 representatives of their choice.

7 So, again, two different standards have some  
8 similarities to each, but they are different.

9 Second, you know, when we are talking about the  
10 scope of the application, as I mentioned before, Section 5  
11 applies only to covered jurisdictions of which we have none  
12 currently, whereas Section 2 applies to every voting  
13 jurisdiction, no matter, you know, what coverage formula,  
14 there is no coverage formula. So Arizona for example, it --  
15 Section 2 applies to Arizona voting procedures.

16 And then a crucial point here is I think this last  
17 row, which is, you know, how they do differ when it comes to  
18 the initiation of proceeding?

19 It's mentioned before, before the Voting Rights Act  
20 one of the issue with a prior civil rights lawsuit is that  
21 it requires plaintiffs to bring challenges, and so the  
22 result of that litigation made it difficult in this sort of  
23 whack-a-mole situation to stop the states from doing various  
24 things locally.

25 The idea with Section 5 is that that would put the

1           onus -- preclearance would put the onus on local governments  
2           or state governments to go to the federal government and get  
3           permission for particular voting procedures. But, of  
4           course, that's Section 5.

5                     Under Section 2, which is again the operative  
6           provision now, plaintiffs are required to bring challenges.  
7           So instead the onus is actually -- or the burden rests on  
8           the plaintiffs to bring challenges under Section 2 of a  
9           violation of a particular voting procedure, which again  
10          includes redistricting.

11                    So as I mentioned before, you know, under Section 2  
12          you see two different type of claims primarily. The first  
13          are vote denial claims. This is when the challenger is  
14          alleging that a voting procedure has resulted in not being  
15          able to exercise the right to vote at all.

16                    You know, I mentioned the Brnovich case. Those of  
17          us who are election nerds -- mostly -- mostly Eric -- was up  
18          early this morning to see whether the Supreme Court would  
19          issue a decision in the Brnovich case since we are nearing  
20          the end of the term. We didn't get a decision today on that  
21          case; it looks like it's going to be later this week that  
22          we're actually going to see it.

23                    But we have this in here because, although the vote  
24          denial cases are distinct from vote dilution case, which  
25          again vote dilution cases are what you typically see under



1       redistricting, and also vote denial cases have a different  
2       standard than vote dilution cases; it nevertheless can be an  
3       important case because we'll see this Supreme Court, which  
4       has changed quite a bit in recent years, it will be their  
5       first decision under what Section 2 requires. So I think  
6       we're all sort of waiting on pins and needles to see what it  
7       is.

8               My suspicion -- and this is also what I think some  
9       election experts are saying -- is that the decision is  
10      likely to be a bit messy, so we may not see sort of a --  
11      sort of a very clear precedent that comes from it, but  
12      nevertheless it is important for our analysis to get an  
13      indication of where the Supreme Court is leaning and how it  
14      is viewing Section 2.

15             But, again, vote dilution cases is what we see in  
16      redistricting, so what are those kinds of challenges? It's  
17      a challenge that alleges that a voting procedure has  
18      resulted in having less opportunity to exercise political  
19      power equal to that of a member of a different group.

20             And so essentially a vote procedure like  
21      redistricting, you know, that allegation would be the  
22      redistricting has resulted in less of an opportunity to  
23      exercise political power equal to that of a different group.

24             Now, when I -- I sort of quote here from the  
25      *Gingles* case, and I'll get into the *Gingles* factors, which

1 is the test under Section 2 for vote dilution -- and by the  
2 way it is pronounced jin-gles. We actually had to look this  
3 up because I didn't know if it was jin-gles or gin-gles, but  
4 it's jin-gles.

5 The quote here I think is important: When the  
6 dispersal of racial minorities into districts in which they  
7 constitute an ineffective minority of voters or from the  
8 concentration of racial minorities into districts where they  
9 constitute an excessive majority, that is when dilution can  
10 occur. And this refers to the two different types of  
11 dilution that you typically see, which is packing and  
12 cracking -- or cracking, and I'll get into what those are,  
13 but this quote, I think, describes it pretty well on when  
14 you can see vote dilution occur.

15 So how do voting -- vote dilution claims arise?  
16 They most arise when minority voting power is diluted by the  
17 creation of insufficient majority-minority districts.

18 And so I have here that the definition of a  
19 majority-minority district, which is it contains more  
20 constituents who are members of an ethnic minority group  
21 than constituents who are white and non-Hispanic.

22 Now, the standard remedy for a vote dilution claim  
23 is the creation of a greater number of majority-minority  
24 districts where the minority group is reasonably assured of  
25 being able to elect the candidate of its choice. Again,

1 candidate of its choice harkens back to the actual language  
2 of Section 2 itself.

3 But that's difficult to determine at times. I  
4 mean, it's easy to say what the standard remedy is, but  
5 courts have really struggled over time in determining when  
6 vote dilution occurs and, of course, determining the  
7 specific contours of a remedy. So we're talking about, you  
8 know, you are going to remedy a situation by creating a  
9 greater number of majority-minority districts, what does  
10 that exactly look like? You know, the devil is always in  
11 details there.

12 But, again, as I mentioned, the vote dilution can  
13 occur in two different instances. The first is packing, so  
14 that's when members of the minority group cre- -- are --  
15 when you pack members of the minority group and you create  
16 too few majority-minority districts where minority voters  
17 may elect members of their choice. So that's too few  
18 districts. Essentially, that's the situation where the  
19 minority group is controlling fewer districts than it could,  
20 and so essentially minority votes are being wasted in that  
21 scenario.

22 The other scenario is called cracking. Cracking  
23 divides the minority group into too many districts where  
24 they cannot achieve the majority. So you're spreading out  
25 the minority vote into too districts, and they can't form a

1 working majority in any particular district.

2 So that's packing and cracking.

3 Now, again, those are examples of how vote dilution  
4 can occur. But the question is what is the legal standard  
5 for vote dilution? In other words, what does a plaintiff  
6 have to establish if they're going to establish that vote  
7 dilution has occurred by a particular voting practice?

8 Now, there is basically a two-step inquiry to  
9 determine vote dilution. The first is based -- the first  
10 step is based on a -- essentially a three-part test from the  
11 *Gingles* case, these are the so-called *Gingles* factors or  
12 *Gingles* requirements; and once that three-part test is  
13 satisfied, then you go into a second stage called a totality  
14 of the circumstances, which con- -- which then you consider  
15 a bunch of additional factors which are typically referred  
16 to as the Senate factors in that analysis.

17 So you first have to satisfy this initial  
18 three-part test, which we'll go over in detail; and then you  
19 get the totality of circumstances and have to satisfy that;  
20 and at that point is when you have satisfied the, you know,  
21 test under Section 2.

22 So what are the tests here? Or what are the steps  
23 more specifically?

24 Well, first, the *Gingles* factors, you know, the  
25 question here is: Is the minority population capable of

1 electing a candidate of its choice in a hypothetical  
2 district according to this three-part test?

3 You know, so the three-part test, the beginning of  
4 it is that: The racial group is sufficiently large and  
5 geographically compact to constitute a majority in a  
6 single-member district; then the racial group is politically  
7 cohesive; and then if majority votes sufficiently as a bloc  
8 to enable it to defeat the minority-preferred candidate.

9 And I'm going to -- the next three slides address  
10 all three of these specifically, so we will get into the  
11 details of these three different factors.

12 But then again, as I mentioned, once you satisfy  
13 these three factors, you go into a second stage of the  
14 totality of the circumstances, which asks that, based on the  
15 totality of the circumstances, do the members of the racial  
16 group at issue in fact have less opportunity to elect the  
17 candidates of their choice? And that requires an  
18 examination of the factors listed in the Senate report that  
19 accompanied the 1982 amendment to the Voting Rights Act, and  
20 we'll go into those particular factors in some more detail  
21 in a moment.

22 Let's just start with a first *Gingles* factor, and  
23 that's whether the minority group is able to establish it is  
24 sufficiently large and geographically compact to constitute  
25 a majority in a single-member district.

1           So, again, when you are looking at that language,  
2           it's referring to two different things: One, it's referring  
3           to the size of the minority group; and the second, it's  
4           referring to the compactness or the geographical compactness  
5           of the minority group.

6           So what does size mean in this context? Well, size  
7           typically means that the size of the minority group has to  
8           be more than 50 percent of the voting age population. It's  
9           important to note that it is the voting age population that  
10          the courts have had to look to when determining that.

11          And so you have to be in a scenario where you're  
12          more than 50 percent of the voting age population. There  
13          have then been questions of so-called crossover districts or  
14          so-called coalition districts would satisfy this size  
15          requirement.

16          A crossover district is a district where there's a  
17          minority group that can still elect the candidate of their  
18          choice with the help of crossover voting from white voters.  
19          So that is a minority group along with crossover votes from  
20          white voters electing a candidate of its choice.

21          The Courts have said that that does not satisfy  
22          this particular *Gingles* prompt. So that is not a -- a kind  
23          of district that would satisfy this.

24          However, the courts have indicated that coalition  
25          districts, that is a situation where two or more racial

1 minority groups can create a majority together can satisfy  
2 this prong, as long as their groups are sufficiently  
3 cohesive.

4 Cohesiveness actually gets into the next *Gingles*  
5 factor so there's a little bit of an overlap here, and we'll  
6 discuss what that means, but that's a way that you can  
7 satisfy this size requirement under this particular *Gingles*  
8 factor.

9 The second part of this *Gingles* factor refers to  
10 compactness, which asks whether the minority community is  
11 sufficiently concentrated taking into account principles  
12 such as like communities of interest and respecting  
13 traditional boundaries.

14 I have a reference here to the *LULAC* case, which I  
15 think is a -- is a very interesting case, and it has a good  
16 demonstration of the compactness issue. This is situation  
17 where a district in Texas was found to not be compact  
18 because it combined Latinos near Austin and those of the Rio  
19 Grande Valley 300 miles away.

20 You can imagine a district where you had a large  
21 Latino population in Austin and then you had the metro area,  
22 and then the district was drawn to include 300 miles away a  
23 different Latino population in the Rio Grande Valley. The  
24 Court found that that was not compact and did not satisfy  
25 this particular *Gingles* factor.

1           Now, one of the things and it's kind of, it's  
2 referred to in the *LULAC* case, is a district is not compact  
3 when a hypothetical district can cram together far flung or  
4 politically differing minority groups whose only common  
5 index is race. And, again, that's coming from the *LULAC*  
6 case, but if you're in a situation where they're far flung  
7 or they're politically different, you may face this -- this  
8 issue under the compactness requirement.

9           Moving to the next *Gingles* factor on cohesiveness.  
10 Again, you'll witness some similarities to the first factor.  
11 But this is referring to whether the minority group has  
12 expressed clear political preference that are distinct from  
13 those of the majority.

14           Now, how do you prove this particular factor if  
15 you're a plaintiff?

16           It's typically proven through expert testimony and  
17 statistical analysis showing some sort of correlation  
18 between minority status and candidate preference. Courts  
19 have also indicated that they can consider nonstatistical  
20 evidence, basically observations or experiences of those  
21 involved, you know, in a particular area. So, you know, you  
22 can do it both different ways -- or, you know, two different  
23 ways, but expert testimony and statistical analysis is the  
24 primary way to demonstrate again whether there is a  
25 situation where the minority group is politically cohesive.



1           There is, importantly though, no quantitative  
2 threshold for how cohesive a group must be. So the courts  
3 have never made that a bright-line rule for this particular  
4 quantitative threshold or statistical threshold on  
5 cohesiveness.

6           And the logic here, by the way, is that if -- you  
7 know, Section 2 is to ensure that the minority group can  
8 elect the candidates that it prefers, and again that goes  
9 back to, you know, Section 2 itself, then it must actually  
10 have a group preference. You know, it has to have political  
11 cohesiveness.

12           The third factor here is majority bloc voting. So  
13 this is similar to factor two in some ways, it's sort of the  
14 reverse of it. So Section 2 is looking at minority bloc  
15 voting, Section -- I'm sorry, *Gingles* factor three is  
16 looking at majority bloc voting. And so as a result, what  
17 is commonly referred to as racial polarization really is  
18 referring to both factors two and three, for the majority  
19 bloc voting and the minority bloc voting together, they come  
20 together to be considered as racial polarization.

21           Now, the question in this third factor is whether  
22 the white majority votes sufficiently as a bloc to enable  
23 it, in the absence of special circumstances such as the  
24 minority candidate running unopposed usually to defeat the  
25 minority's preferred candidate. And, again, you -- you

1 would have to show that.

2 And, again, it's typically shown in similar ways as  
3 factor two through statistical analysis and expert  
4 testimony.

5 Now, I'm turning now to the Senate factors or the  
6 totality of circumstances test. But as I mentioned before,  
7 you have to satisfy the first three *Gingles* factors, which  
8 I've gone through in detail, before you get to this totality  
9 of the circumstances test. But if the minority population  
10 satisfies all three *Gingles* requirements, then the Court  
11 examines under the totality of the circumstances as a result  
12 of a challenge practice or structure, the plaintiff did not  
13 have an equal opportunity to participate in the political  
14 process to elect candidates of their choice.

15 Now, how do you determine this?

16 Well, as I mentioned, in the 1982 Voting Rights Act  
17 there was a Senate report that accompanied that amendment  
18 that included a bunch of factors to consider under the  
19 totality of the circumstances; the *Gingles* decision actually  
20 adopted those specific factors for this portion of the  
21 inquiry.

22 I also have proportionality here. Proportionality  
23 is referring to the percentage of total statewide dis- -- or  
24 minority opportunity district with the minority share of the  
25 citizen voting age population. So kind of the simplified

1 way of looking at it is, you know, if the minority  
2 population in a particular jurisdiction is 30 percent, well  
3 then 30 percent of the districts should be minority  
4 opportunity districts, that's sort of proportionality as --  
5 at its very basic.

6 I have this in here, though, because it's not a  
7 Senate -- it's not a Senate factor, but it is a factor under  
8 the totality of the circumstances that some courts consider,  
9 particularly the Ninth Circuit. Of course, we're in the  
10 Ninth Circuit, which is important to -- to remember.

11 And the idea of proportionality is that it protects  
12 against the state having too many majority-minority  
13 districts, because under the law there is no right to  
14 proportional representation under statute. So, again, it's  
15 a factor to look at and consider under the totality of  
16 circumstances.

17 So what are the actual, you know, factors that you  
18 have to look at -- or I should say Senate factors that you  
19 have to look at.

20 And I have the listing of them here. The first is  
21 the history of voting related discrimination in the  
22 jurisdiction -- and I sort of also say that when we're  
23 looking at the Senate factors, you'll notice that they're a  
24 little bit different in that they're a little bit more  
25 historically based, so they're looking at sort of the

1 history of a particular jurisdiction -- at least some of the  
2 factors are -- than the first three *Gingles* factors.

3 So in the Senate factors, the first one the history  
4 of voting related discrimination in a particular  
5 jurisdiction, the extent to which voting in the jurisdiction  
6 is racially polarized -- there's two of these, by the way,  
7 that are sort of most important, and I'll point them out at  
8 the end. The extent to which the jurisdiction has used  
9 voting practices or procedures that increase the opportunity  
10 for discrimination against the minority group; whether  
11 there's an exclusion of members of the minority group from  
12 the candidate slating process that is a feature of the  
13 district; the extent to which the minority groups bears the  
14 effects of past discrimination in education, employment,  
15 health; use of overt or subtle racial appeals in political  
16 campaigns; extent to which members of the minority group  
17 have been elected to public office in the jurisdiction;  
18 evidence that elected officials are unresponsive to the  
19 minority group's needs; and finally, evidence that the  
20 policy underlying the use of the contested practice is  
21 tenuous.

22 Of these factors, the two most important ones, at  
23 least that the Supreme Court has indicated is the most  
24 important, are the second one, which is the extent to which  
25 voting in the jurisdiction is racially polarized, and then

1 the third to last one which is the extent to which members  
2 of the minority group have been elected to public office in  
3 a particular jurisdiction.

4 Those are all factors but, again, the Supreme Court  
5 has indicated those two are -- are most important. And then  
6 the Ninth Circuit, as I mentioned before, added this  
7 additional important factor of proportionality in this  
8 analysis.

9 I go into the next slide a little bit more about  
10 what I just stated, you know, there -- when you're looking  
11 at the prioritization of the Senate factors, there is no  
12 single factor that is dispositive, but as I mentioned, there  
13 are two in particular that the Supreme Court has indicated  
14 are most important.

15 And the question becomes, you know, how do you  
16 establish or prove these factors. Well, the factors that  
17 deal with racial polarization, you prove them similarly  
18 through the *Gingles* factors; you do that through statistical  
19 analysis. The other factors, as I mentioned before, some of  
20 these factors deal with more historical facts, are based  
21 largely on historical social conditions, and you get an  
22 expert, you know, with expert reports or testimony from  
23 historians or demographers talk about those historical or  
24 social conditions to establish those factors.

25 So the -- the final section that I'm going to talk

1 about here is racial gerrymandering. I think that's -- it's  
2 important, you know, it's not a directly a Voting Rights Act  
3 issue, although, like I said, there are some principles that  
4 are shared between to two, but it is important to consider  
5 because it is possible to state that a redistricting plan  
6 can face a racial gerrymandering objection or claim against  
7 it.

8 So what is gerrymandering? Gerrymandering is the  
9 practice of drawing lines to favor one group over another.  
10 You know, historically gerrymandering could be considered  
11 either partisan gerrymandering or racial gerrymandering, but  
12 under the *Rucho v. Common Cause* decision from 2019, so a  
13 very recent decision, partisan gerrymander is no longer  
14 judicable. So, in other words, you can't bring a partisan  
15 gerrymandering case anymore in federal court.

16 But nevertheless racial gerrymandering remains as  
17 something that can be brought; and as I mentioned before,  
18 racial gerrymandering implicates the principles of the equal  
19 protection clause as well as the VRA. We've seen through  
20 modern jurisprudence that there's been a distinction made  
21 between racial gerrymandering claims under the 14th  
22 Amendment under equal protection of the clause of  
23 14th Amendment, and then the VRA claim. And I'll get into  
24 it in the next slide, at times you can view them potentially  
25 as being conflicting of each other. So they're -- they're

1           seen by the courts as two different types of claims.

2           As mentioned here: It's often related to both a  
3           dilution claim, in other words the principle would be the  
4           same, but it is a distinct claim under the 14th Amendment.

5           The different types of racial gerrymandering: You  
6           have negative racial gerrymandering, either where lines are  
7           drawn to prevent minorities from electing their preferred  
8           candidates; and then you have the opposite, you have  
9           affirmative racial gerrymandering where lines are drawn to  
10          favor racial groups.

11          The first modern decision that dealt with racial  
12          gerrymandering was *Shaw v. Reno*, 1993. This was in a  
13          situation -- I have the -- in the graphic here, the  
14          particular congressional district, but this is the second --  
15          this is -- it's in North Carolina, this is the second  
16          majority Black district, and the court referred to it as  
17          winding in a snake-like fashion until it gobbles in enough  
18          enclaves of Black neighborhoods.

19          So you can see just from the map the unusual shape  
20          of that particular district. Now in that particular case,  
21          and this goes back to what I mentioned before about the  
22          distinction between vote dilution claims and then racial  
23          gerrymandering claims, that particular case, the challengers  
24          did not argue that the plan diluted majority voting rights,  
25          but that it was an effort to segregate the races for

1 purposes of voting without regard for traditional  
2 districting principles and without sufficiently compelling  
3 justification.

4 Now, going to the flat slide, which is little bit  
5 more of a practical slide, you know, what would -- you know,  
6 what would you have to do to show a racial gerrymandering  
7 claim or make a racial gerrymandering claim?

8 Well, a plaintiff -- a plaintiff must show that the  
9 redistricting plan on its face has no rational explanation  
10 save as an effort to separate voters on the basis of race,  
11 so that's something the plaintiffs would have to show. And  
12 it arises in situations where race predominates over other  
13 neutral criteria in a redistricting plan. And when I say  
14 "other neutral criteria," I'm talking about things like  
15 compactness, you know, respect for communities of interest,  
16 things like that.

17 Now, to withstand a constitutional challenge, the  
18 state must show the plan is narrowly tailored to meet a  
19 compelling state interest. So, in other words, the state  
20 could rebut a claim that the plaintiff brought that there's  
21 racial gerrymandering by determining or establishing that  
22 there was a compelling state interest for a particular plan.

23 Now the case law as I state here does not provide  
24 bright-line guidance on this as far as, you know, again,  
25 just sort of the interaction between the VRA and -- the



1 requirements of the VRA and the 14th Amendment racial  
2 gerrymandering claim. So, in general, I would say the  
3 compliance with the VRA, in other words drawing  
4 majority-minority districts which may be required under  
5 Section 2, is a compelling state interest that -- that the  
6 particular state can refer to as a compelling state interest  
7 in this kind of claim.

8 However, the prevailing view is that a state must  
9 comply with the VRA but do no more than necessary to meet  
10 those obligations. So the idea that it -- referring to it  
11 this way, which I think is a kind of a good way to refer to  
12 it, is that the 14th Amendment provides a ceiling to the VRA  
13 floor of ensuring adequate minority representation.

14 But, you know, ultimately in this last bullet point  
15 here, it's an important consideration, you know, that state  
16 should draw districts with consideration of all criteria,  
17 and that includes of course the neutral criteria and not  
18 just race, that's generally guidance the courts have  
19 provided in this area.

20 So these -- this is my sort of overview of the  
21 various requirements. You know, and at this point, Madam  
22 Chair, you want to entertain questions or move to executive  
23 session?

24 CHAIRPERSON NEUBERG: Can I just ask you to repeat  
25 your last -- you said the 14th Amendment provides a floor --

1 just repeat that last piece, and then we'll entertain a  
2 motion to go into executive session.

3 MR. HERRERA: Yeah, so it's -- it's the other way.  
4 The 14th Amendment provides a ceiling to the VRA's floor of  
5 ensuring adequate minority representation.

6 CHAIRPERSON NEUBERG: Okay.

7 MR. HERRERA: So what I'm referring to there is  
8 that, you know, the VRA can require one thing, for example,  
9 drawing majority-minority districts, but one can go too far  
10 in doing that in violation of the 14th Amendment equal  
11 protection, and so there's this sort of range between the  
12 two that, you know, redistricting commission or, you know,  
13 redistricting legislature would have to consider.

14 CHAIRPERSON NEUBERG: Okay. Unless there are  
15 specific questions to the meaning of a slide, I thank you so  
16 much for that, you know, substantive presentation, and I  
17 will entertain a motion to go into executive session.

18 To clarify for the public, the rationale for going  
19 into executive session which will not be open to the public  
20 is for the purpose of obtaining legal advice to further  
21 implement and/or advance the legal issues we are discussing  
22 pursuant to A.R.S. 38-431.03(A)(3).

23 And, with that, I will entertain a motion to move  
24 into executive sessions to apply what we've learned to our  
25 own endeavor.

1 COMMISSIONER YORK: This is Commissioner York. So  
2 moved.

3 CHAIRPERSON NEUBERG: Do I have a second?

4 COMMISSIONER MEHL: This is Commissioner Mehl. I  
5 second.

6 CHAIRPERSON NEUBERG: Any further discussion?

7 We'll move to a vote.

8 Vice Chair Watchman.

9 VICE CHAIR WATCHMAN: Aye.

10 CHAIRPERSON NEUBERG: Commissioner Mehl.

11 COMMISSIONER MEHL: Aye.

12 CHAIRPERSON NEUBERG: Commissioner Lerner.

13 COMMISSIONER LERNER: Aye.

14 CHAIRPERSON NEUBERG: Commissioner York.

15 COMMISSIONER YORK: Aye. And I'll also request a  
16 five-minute break.

17 CHAIRPERSON NEUBERG: Absolutely. I was going to  
18 say maybe even seven. Five to seven. Maybe we'll  
19 compromise on six.

20 COMMISSIONER YORK: Okay.

21 CHAIRPERSON NEUBERG: But -- but Commissioner  
22 Neuberg is an aye.

23 With that, we'll move into executive session. We  
24 have -- I sometimes forget to do this.

25 In terms of moving into executive session we have

1 the five Commissioners, we have Director Schmitt, Val, our  
2 transcriptionist, and our legal counsel, and I believe that  
3 is it.

4 And, with that, we will take a six-minute break.  
5 We will see you soon.

6 (Recess taken from 9:24 a.m. to 9:33 a.m.)

7 (Whereupon the proceeding is in executive session  
8 from 9:33 a.m. until 9:57 a.m.)

9  
10 \* \* \* \* \*

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

14 CHAIRPERSON NEUBERG: Okay. It looks like we have  
15 our Commissioners, our director, transcriptionist, Val, our  
16 attorneys.

17 Does -- is our entire team in place? I believe so.  
18 Okay. With that, thank you for the public's  
19 patience and thank you for your legal counsel for  
20 entertaining our -- our questions regarding that, you know,  
21 very substantive presentation.

22 One follow-up from the conversation, our counsel is  
23 going to do additional work on understanding the application  
24 of the VRA to the Native American population in Arizona and  
25 so we will look forward to that public report in due time.

1           And, with that, we will move to Agenda  
2           Item No. VIII(C) [sic], which is Arizona constitutional  
3           redistricting requirements presentation.

4           Again, we will start in public session, followed by  
5           the opportunity for Commissioners to elect to go into  
6           executive session to discuss specific legal implications as  
7           it relates to our Commission.

8           With that, I believe we're turning it over to  
9           Mr. Eric Spencer.

10          And you're on mute.

11          MR. SPENCER: Chairwoman can you hear us okay here?  
12          There we go.

13          All right. I'm going to share my screen. Okay.

14          So Roy is going to be a tough act to follow, but I  
15          will -- I will do my best.

16          I'm going to shift into Arizona law and the Arizona  
17          Constitution.

18          I have called these -- these clauses that we're  
19          going to discuss "the mapping clauses," I haven't seen a  
20          court or a case call them those, but there are four  
21          provisions in the constitution that I'm just going to call  
22          the mapping clauses.

23          I'm not going to the other Arizona Constitutional  
24          provision that -- that guides us because it's coextensive  
25          with federal law and therefore we will talk about the equal

1 protection clause of the 14th Amendment, but there's a  
2 synonymous clause in the Arizona Constitution called the  
3 equal privileges and immunities clause in Article II. I'm  
4 just highlighting so you're aware of its existence, but  
5 95 percent of the presentation is going to focus on the  
6 mapping clauses.

7 I think everybody is aware of how those provisions  
8 came into being. Prop 106 was passed by the voters in 2000  
9 that amended the Arizona Constitution and created the body  
10 of which you have been appointed, and it has complete power  
11 to draw the legislative and congressional lines; other state  
12 commissions have bifurcated those processes, some -- some  
13 states have held on to one of those but delegated the other,  
14 but Arizona is pretty -- is pretty comprehensive.

15 Okay. So this is just a screenshot from the  
16 Legislature's website. I want to show you where this --  
17 where this was codified.

18 The left side of your screen is the first 15  
19 articles of the Arizona Constitution, and the voters made an  
20 amendment here in Article IV. Article IV has, you'll see in  
21 the first two items at the top, Part 1, and then the rest of  
22 Article IV is in Part 2, and the voters amended Part 2  
23 Section 1. That provision already existed in the  
24 constitution, but they plussed it up significantly.

25 So here's the structure. Before the voters amended

1 Part 2 Section 1 in 2000, these were the two provisions that  
2 were in the Constitution. It's that we have a House and a  
3 Senate; they can call a special session, and then the voters  
4 added about a dozen or more different provisions.

5 These are the mapping clauses here. A lot the of  
6 these you're familiar with because they are what got you  
7 into office, about how the IRC Commissioners were nominated  
8 and selected; there's a few provisions in there about how to  
9 fill vacancies -- let's hope that doesn't occur; how our --  
10 our -- our esteemed chairperson was selected and vice chair;  
11 we're never going into Section 10 there, impeachment, but  
12 it's in the constitution; 12 and 13 also are in there  
13 governing how we vote and some restrictions on -- on what  
14 you all can do before and after being Commissioners; then  
15 it's 14 through 17 that govern your map drawing process, and  
16 those four provisions are what I'm calling the mapping  
17 clauses. We're going to go into those in detail.

18 And there's some cleanup details that the voters  
19 put in there about how we're funded, how we can hire  
20 staff/consultants/lawyers, how you can go into courts to  
21 defend your maps, how you can get paid for expenses, and  
22 how -- how we end up winding down.

23 So let's get into what these four clauses say.

24 The meat of this is in 14. First of all, the  
25 Commission is bestowed the authority to do congressional

1 legislative districts. That's the guide star of your -- of  
2 your job.

3 It begins with the creation of districts in equal  
4 population in a grid-like pattern across the state, that's  
5 what we're going to call phase one, and then you're going to  
6 make adjustments to that grid map.

7 There's six different criteria: Compliance with  
8 Constitution and the Voting Rights Act; equal population in  
9 both the legislative and congressional districts to the  
10 extent possible; geography compactness or contiguity to the  
11 extent practicable; respecting communities of interest to  
12 the extent practicable; visible geographic features,  
13 city/town/county boundaries, undivided census tracts, again  
14 to the extent practicable; and, finally, favoring  
15 competition when it wouldn't create a detriment to other  
16 goals.

17 Don't worry there will be lots of detail here.

18 All right. Sticking with my overview in  
19 Section 15. Can't use party registration and voting history  
20 data upfront when we're creating the grid maps, but those  
21 can come into play later when we're creating the draft maps.

22 Incumbent or candidates, where they live never  
23 comes into play. I'll go into this more detail, but  
24 consider that completely off limits.

25 Sixteen we get into our public comments in



1 advertising. You got to put it out to comment for at least  
2 30 days. Obviously, that can be longer than 30 days, that's  
3 a policy decision; I'm sure our calendar might dictate  
4 whether we do more than 30 days, but that's a minimum  
5 requirement.

6 Not only does the public get to comment during this  
7 period, but as we've spoken about in prior Commission  
8 meetings, the legislature has a constitutional right to  
9 submit a memorial, a majority report, a minority report  
10 which the Commission is required to consider; and then the  
11 last phase here is establishing the final boundaries after  
12 you've taken into account the public comment.

13 Finally, Section 17 is self-executing. What that  
14 means is is the legislature is not required to go in and  
15 further define anything found in the constitution. I'll  
16 talk about a statute that's relative here in a moment, but  
17 this doesn't require any legislative gloss; we're able to  
18 act directly as the voters drafted this.

19 And finally we give to the Secretary of State. The  
20 Secretary of State will distribute that to the counties and  
21 -- and publish new signature requirements and do all of the  
22 necessary cleanup work to adjust our maps and let candidates  
23 start using and running on those.

24 Now, here's -- or I should mention, if you have any  
25 questions, feel free to ask. There's a good chance I've

1 covered this on the future slide but this can definitely be  
2 an interactive process.

3 This is a graphical representation about how the  
4 timeline is going to go this year. You go from grid maps to  
5 draft maps; and between the draft maps and the final maps  
6 we're both getting public comment and the legislature's  
7 recommendation; and then finally we certify it to the  
8 Secretary of State.

9 Okay. So let me start on the grid map. I think  
10 the word "grid" can connote in common language rectangular-  
11 or square-shaped patterns, but I want to highlight two  
12 things from the constitution. Not only does it describe a  
13 grid-like pattern, but importantly it says "equal  
14 population." And if we try to divide the state into  
15 equal -- geographical equal grids, we would be no means  
16 satisfy the equal population requirement.

17 Just as a reference, here is a proposed grid map  
18 from IRC 2.0 on the congressional side. You'll see that the  
19 grid does not conform to rectangular or square shape. So  
20 grid -- I think the best way to think about the word "grid,"  
21 it means contiguous; that these shapes should be defined  
22 unto themselves, and at this point we don't need to stretch  
23 those with -- with loose connections geographically; they  
24 should be contiguous plots of land and -- and the important  
25 part here, though, is equal population.

1           So they're going to more look like what you see on  
2 the right and definitely not what you see on the left.

3           Let's talk about how the last Commission did the  
4 grid map.

5           There's nothing in the constitution that prescribes  
6 how you do this, but I want to talk about this just to give  
7 you an idea about what's been done in the past. On one hand  
8 -- so this is the congressional map. The last commission  
9 created one grid map where they started the numbered in the  
10 middle of the state and worked in a counter-clockwise  
11 direction. You'll see in the southeast corner of the state,  
12 Cochise County, that's District 9.

13           They also put out an alternative congressional grid  
14 map where they started the numbering in the southeast  
15 quadrant and worked their way clockwise around the state,  
16 and the final District 9 was in the middle of the state.

17           Similarly, on the legislative side one of the maps  
18 started in the middle and went counterclockwise, because --  
19 you can't see District 1, but it was -- it was essentially  
20 in the middle of Maricopa County I think in Glendale in this  
21 map, and they created another version where they started in  
22 the southeast corner and worked clockwise around the state.

23           There's -- there's no right way or wrong way to do  
24 it and that will be your -- your -- your discretion under  
25 the law.

1 I do want to mention something about district  
2 numbering.

3 There's -- there's not a requirement -- let me go  
4 back up just for reference.

5 By and large these numbers, if you -- if you follow  
6 them carefully, there is a sequence of numbering. For  
7 example, down here: District 1, District 2, District 3,  
8 they do -- they are adjacent to each other, and they do  
9 follow a pattern. There's no requirement for you to do  
10 that, I'm sure our great consultants at Timmons/NDC will  
11 have recommendations on that issue.

12 But here are the -- here is a legal consideration  
13 for you: There was a great lobbyist for -- for the Prescott  
14 area because in statute there is a requirement that Prescott  
15 be in LD-1. Keep in mind, this doesn't apply to the  
16 congressional maps, just the legislative map; but we would  
17 be foolhardy to ignore this requirement that, in fact,  
18 existing LD-1 under the current maps is -- is in Yavapai --  
19 it's mostly in Yavapai County and Prescott.

20 Keep in mind the constitutional provision that says  
21 you have to adjust off the grid map. So what does that  
22 mean?

23 Our recommendation is that you maintain contiguity  
24 when you're moving from the maps. In other words, if you  
25 start the Prescott area at being in LD-1 right from the

1 get-go, then that will allow you to adjust from the grid map  
2 to the draft map, from the draft map to the final map,  
3 instead of having the Prescott area being in some other LD  
4 and then having to make a leap.

5 And let me show you what I mean here.

6 Here are the two grid maps from the last  
7 Commission. LD-1 was placed in Maricopa County in one and  
8 in Cochise County in the other, but Prescott is up there.  
9 Prescott LD-15 on the left and what looks like LD-14 in the  
10 middle, those don't even touch the LD ones created in the  
11 draft maps -- I mean the grid maps from a decade ago; and  
12 when they went from the grid maps to the final maps,  
13 Prescott of course is now in LD-1, but you can make an  
14 argument that the Commission did not adjust off of the grid  
15 map.

16 Now, at the end of the day, that wasn't challenged  
17 in court, and I think the courts would afford you  
18 substantial deference, but I just want to flag this issue  
19 for your consideration that we will mitigate litigation risk  
20 by really trying to adjust off of the grid map when we get  
21 to the draft map, and there is not really a good argument  
22 here that LD-1 was adjusted. In fact, it was wholesale  
23 leapfrogged over to Prescott.

24 Just something to consider.

25 Now prohibited considerations at this part of the

1 map drawing process. Party registration and voter history,  
2 the -- the constitution says you can't use these in the,  
3 quote, "initial phase." I think that's synonymous with the  
4 grid map phase, so let's assume that to be true.

5 Party registration is pretty obvious what that  
6 means, who is Republican, Democrat, Independent in each  
7 district.

8 Voter history is not defined, but I think a fair  
9 definition of that term is -- is how often people vote, by  
10 what method do they vote, are they early or in-person vote,  
11 whether they vote at all. That can all can be gleaned from  
12 the voter registration file that is acquired from the  
13 Secretary of State and/or the counties going to be; and, in  
14 fact, parts of this is already in the possession of our --  
15 of our mapping consultants, but this is off limits to be  
16 used at the grid map stage because we're just looking for  
17 equal population.

18 Incumbent residences. This also applies to  
19 candidates' residences but it has much more importance in  
20 the incumbency realm. At -- at no time can this information  
21 be considered by the Commission.

22 Now, the constitutional says "identified or  
23 considered." This generated some significant litigation in  
24 the past. I'll explain what -- what we mean here. Can our  
25 consultants acquire this information -- I'm not talking

1 about whether the Commission is using it, but can it be in  
2 the possession of either your attorneys or your mapping  
3 consultants; and the answer is, probably, yes.

4 Now these are some excerpts from litigation  
5 16 years ago, and the court cited the arguments of IRC 1.0  
6 about why they acquired information about incumbents'  
7 addresses and it was to test competitiveness.

8 The Court did not rule directly on whether it was  
9 appropriate to acquire that information, but implicitly it  
10 was okay for the ruling I'm about to explain in a moment.  
11 But just be aware, we're probably allowed to possess it.

12 But here's the rationale that the Court of Appeals  
13 went through in 2005. It determined that it would be  
14 completely unworkable to craft a rule that said you are not  
15 allowed -- you as Commissioners are not allowed to possess  
16 the information in the first place.

17 Number one, this is going to be everywhere as soon  
18 as the maps -- the draft maps are -- are published, numerous  
19 media organizations, political parties are going to find out  
20 where the incumbents live, and they're going to probably run  
21 stories about which existing incumbents might be pitted  
22 against each other; and you're not a sequestered jury;  
23 you're going to read the news so that information will be  
24 out there.

25 Some lawmakers will probably appear at some of

1       those hearings, and if there's a sign-in sheet either  
2       physically at that meeting or electronically as a  
3       prerequisite to speak at that meeting, an address might put  
4       there -- a lawmaker might put their address down on that  
5       sheet. Now, the first Commission went through and redacted  
6       that from the first speakers list just to be -- just to be  
7       careful. But we would inhibit those lawmakers potentially  
8       from attending your meetings and speaking if -- if we were  
9       so worried about them giving an address.

10             You're likely to have knowledge about where some of  
11       the incumbents live. Maybe not their address, but you  
12       probably know what city or town they live in, and you might  
13       accidentally get this information or your staff might get this  
14       information. So for all these reasons, the Court laid down  
15       these tests.

16             You're only prohibited from using these addresses.  
17       The goal of the Constitution is to make sure you're not  
18       weakening or strengthening a particular party's political  
19       base when drawing these districts. For example,  
20       intentionally pitting two incumbent democrat congressional  
21       members against each other in order to facilitate retiring  
22       one of them; that -- that's totally off limits.

23             And here what I've underlined in the second quote  
24       is the takeaway: The key is knowledge combined with use.

25             And -- and our recommendation here is -- is for the



1           Commissioners to never make a request or a direction to our  
2           consultants, to your lawyers to use that stuff. If you --  
3           if you know of any incumbent's address, don't mention that  
4           during a Commission meeting; don't put that on the record,  
5           and just don't consider this at all.

6                       We're going to leave it to our mapping consultants  
7           to acquire what they need in order to run the reports or,  
8           frankly, we might hire other experts as well, not just  
9           mapping, but those experts might need incumbent information  
10          to conduct some sort of analysis for some other legal  
11          purpose, but it should not ever come from the Commissioners.

12                      Okay. That was draft maps -- I mean the grid maps.

13                      Let's move on to the draft maps.

14                      I mentioned this before, but I want to emphasize  
15          it. The constitution says you need to adjust the grid.

16                      Now there was litigation in the last decade about  
17          the maps created by IRC 2.0, and I've got an excerpt here  
18          from a superior court ruling. This is not binding; this is  
19          persuasive but not precedential, but I think it's  
20          instructive.

21                      What the court concluded was -- let me give a  
22          little bit of background.

23                      The prior commission I would say had some  
24          difficulty in creating a compromised set of maps. There was  
25          some acrimony involved, and I think the clock was ticking,

1 and so a compromised effort was made where maps were  
2 proposed that incorporated comments that had been made in  
3 prior meetings but they were swapped in; and that process of  
4 swapping in these -- these proposals were created offline,  
5 arguably did not constitute an adjustment from the grid.  
6 There was not a time to my knowledge where the grid was  
7 displayed on the screen and this boundary was moved here and  
8 this boundary was moved there and -- and an adjustment was  
9 taking place, instead there was a substitution of maps.

10 The Court, to be very clear here, upheld what the  
11 last IRC did. It -- it held that it did not mandate, the  
12 Constitution that is, does not mandate that we show our work  
13 to that nth degree, but it created a litigation issue. And  
14 we would -- we would avoid quite a bit of litigation  
15 potentially if -- if we were faithful to this proviso that  
16 you have to adjust the grid map.

17 The court a decade ago -- the decision was in 2017  
18 -- but the court a basically said that adjustments to the  
19 grid maps were discussed extensively in open meeting, and  
20 while there was no physical display where those boundaries  
21 were being adjusted, the record was -- according to the  
22 trial court -- replete with information about the  
23 decision-making calculus that the last decision went through  
24 in order to metaphorically adjust the grid map into the  
25 draft maps.

1           So I'm just flagging this issue for your  
2           consideration, and we'll have additional detail for you in  
3           executive session on that topic.

4           Now, getting into compliance with the constitution  
5           and the Voting Rights Act. Thankfully Roy took care of half  
6           of this for me.

7           The two constitutional provisions to be aware of  
8           are the equal protection clause and the 14th Amendment and  
9           apportionment clause in Article II of the constitution.

10          I've only got one slide on this but I want to flag  
11          some of tissues.

12          Equal protection is probably going to be the most  
13          likely constitutional argument I think that any commission  
14          would get. I mentioned this earlier, it's -- it's been  
15          interpreted by our courts to be under the same standard as  
16          our state constitution equivalent. So if someone were to  
17          sue, they would probably allege violations under both the  
18          federal and the state constitution; but all of the case law  
19          comes from federal, and that's what the court will -- will  
20          probably focus on.

21          There's a few different types of potential  
22          violations to be aware of. We're not going to commit any of  
23          these, but this is what the menu looks like for potential  
24          plaintiffs.

25          One is impairing the -- the right to vote. This is

1 also a right to guaranteed by the First Amendment. So when  
2 I see litigation in this area, the cause of action is titled  
3 "burdening the right to vote" or "impairing the right to  
4 vote under the First and 14th Amendment." But -- but for  
5 this purpose, I'll just discuss the 14th Amendment.

6 If it's a substantial or severe burden on the right  
7 to vote then the court will subject this to strict scrutiny.  
8 Three different types of scrutinies exist: A rationale  
9 basis review, which is least restrictive. You just have to  
10 have a logical rationale for -- for doing what you do;  
11 there's intermediate review which doesn't really come up in  
12 redistricting. I see that applied in gender-based decisions  
13 in other areas of the, law, but I haven't seen that come up  
14 in redistricting, so let's ignore that for -- for this  
15 purpose. If the burden is severe, then strict scrutiny  
16 would be applied; that's very difficult to survive. You  
17 have to have a have a compelling government interest in  
18 doing what you did, and you have to have chosen the most  
19 restrictive and narrowest means possible to accomplish your  
20 goals. So a lot of the game there is trying to convince a  
21 court that it should or should not be evaluated under a  
22 strict scrutiny standard, but I find this as a type of  
23 action to be aware of.

24 Another one is decision based on race or some other  
25 suspect class like nationality. If -- if race is used as a

1 predominant factor in drawing districts, then you've also  
2 got a potential equal protection violation, and you're also  
3 going to potentially subject that to a strict scrutiny  
4 analysis.

5 There are -- I think as -- as intimated in Roy's  
6 presentation, there's a give and play between what you can  
7 and can't do in this area. Compliance with the Voting  
8 Rights Act is -- is traditionally recognized as -- as a  
9 reason why race might need to be taken into account. In  
10 fact, a lot of the litigation over the last decade was about  
11 whether Commission 2.0 allegedly overcomplied with the  
12 Voting Rights Act to the detriment of this provision; but,  
13 you know, this is where racial gerrymandering comes into  
14 play; Roy's excellent presentation described what that  
15 means.

16 But if someone accuses a commission of racial  
17 gerrymander -- gerrymandering, then this is the component of  
18 a 14th Amendment equal protection claim that they're going  
19 to make. As Roy mentioned, political gerrymandering is not  
20 judicable, you can't go into court and argue that a  
21 commission was unduly motivated to help a political party,  
22 that -- that's not something that's recognized anymore.

23 As for legislative districts, a component of the  
24 14th Amendment is something recognized over -- over the last  
25 50 or 60 years, and that's the one-person, one-vote

1 principle. This is most recently affirmed in a case coming  
2 out of the last Commission *Harris v. IRC*. If someone  
3 complains that our legislative districts are not  
4 sufficiently equal, they would allege a one-person, one-vote  
5 claim under the -- under the equal protection clause. We're  
6 not going to go there, though.

7 Finally, this is a claim alleged during  
8 Commission 1.0 in the 2000s, that the IRC's declination to  
9 formally adopt definition of certain terms in the  
10 constitution such as communities of interest or substantial  
11 detriment, those plaintiffs allege that the failure to adopt  
12 definitions caused that Commission to engage in arbitrary  
13 decisions, which allowed some folks' rights to be burdened  
14 more than other voters' rights/citizens' rights, and that  
15 was an alleged equal protection violation; but that -- that  
16 claim was shot down in the 2005 appeals court case.

17 So the top three here are -- are the most likely  
18 types of equal protection claims that -- that a Commission  
19 could see and that we would obviously seek to prevent.

20 Under the apportionment clause of the constitution,  
21 this is what governs population equality for congressional  
22 district. Remember legislative districts have to be equal  
23 based on the 14th Amendment; congressional districts have to  
24 be equal based on Article I, Section 2 based on the  
25 constitution. And that has consequences, which I'll get

1 into when we get to the equal population section of the  
2 presentation.

3 But these are the basic consti- -- U.S.  
4 Constitutional provisions that we -- we need to comply with.

5 Luckily I get to skip this slide on the Voting  
6 Rights Act because Roy -- Roy did such a great job.

7 Okay. Now, we're in the second prong of the  
8 mapping clause, congressional districts and legislative  
9 districts shall have equal population.

10 How close to equal must it be? Congressional  
11 districts have to be as close as we can possibly get to  
12 equal. It doesn't have to be perfect, but we need to try to  
13 be perfect.

14 Here are some excerpts from various Supreme Court  
15 cases decided over the years and I think the *Kirkpatrick*  
16 case is a good one. The standard requires that we make a  
17 good faith effort to achieve precise mathematical equality.

18 These other excerpts make -- make clear that some  
19 deviations might exist in reality; and to the extent there  
20 is a deviation in population equality for our congressional  
21 district, we've got to justify that. We've got to have a  
22 really good reason why we couldn't achieve population  
23 equality. Again, I'm not talking about the grid map here,  
24 I'm talking about the draft map for the congressional  
25 district.

1           This is a very high standard that -- that we need  
2           to meet.

3           For legislative district, since the requirement  
4           stems from the 14th Amendment, not from the constitution,  
5           there is a bit more flexibility in the deviations in  
6           population that can occur between legislative districts.

7           A rule of thumb is that they can vary by up to 10  
8           percent. So, for example, if we've got the population that  
9           the Census Bureau has -- has computed for the state of  
10          Arizona, we divide that by 30 for our districts, that's  
11          the -- the perfect number of persons that should be in each  
12          legislative district. One district might be 3 percent below  
13          that, and there might be another district that is 3.5  
14          percent above it.

15          In -- in trying to use all of these constitutional  
16          factors -- communities of interest, compactness -- there  
17          could be a hypothetical scenario where you might need one  
18          district at -- at negative 3 and other one at plus 3.5; that  
19          collectively is a 6.5 percent deviation and that, as a  
20          default matter, is probably constitutional under the law.

21          But if you get close to these boundaries, you're --  
22          you're increasing your chance of litigation, so we would  
23          obviously be very careful if we would begin to get up to the  
24          10 percent range; but we've got a bit more flexibility.

25          Okay. Going into the third mapping factor:



1 Districts must be geographically compact and contiguous.

2 This is about the district's shape. If you think  
3 about it, a compact district that is contiguous will inhibit  
4 if not prevent gerrymandering because the requirement, for  
5 example, to connect parts of the district with another  
6 reduces -- reduces the ability to gerrymander, and you keep  
7 the communities of interest -- the communities of interest  
8 together. So this has an effect on some of the other  
9 factors in the constitution.

10 What does "compactness" mean? That's the length of  
11 the borders. So just add up the geographic length around --  
12 around the borders; the shorter the distance around the  
13 district, the more compact it is.

14 "Contiguity" means the connection uniting the  
15 district. You can't have either congressional or  
16 legislative districts that are completely separated without  
17 anything in between connecting them.

18 So what's the minimal connection that is necessary  
19 for it to be contiguous?

20 There's been some litigation on this -- on this  
21 issue. In the first go-around in IRC 1.0, the Court issued  
22 a decision that said it just needs to be to the extent  
23 practicable, striking a balance. The court won't  
24 second-guess that balance as long as you had a reasonable  
25 balance -- reasonable basis for your decision. So you have

1 to be able to articulate why you -- why you did it that way.

2 Here's an example from 20 years ago. This isn't  
3 too easy to see, but in -- in the right side of this map in  
4 black is the Hopi tribe. It's surrounded by the Navajo  
5 reservation. The area in -- in the middle in white is still  
6 District 1 back from -- back from the 2000s; that's part of  
7 what -- what the Navajo Nation is in. And on the far left,  
8 the upper left corner is the parts of District 2. So you  
9 can see here that the Hopi tribe was put into District 2 and  
10 that very thin line of contiguity is the Colorado River  
11 running through the Grand Canyon.

12 The plaintiffs in that first decade alleged that  
13 this district, District 2, was not sufficiently contiguous  
14 because contiguity in their mind meant accessibility; it  
15 needed to be a road, for example, that is capable of being  
16 traveled; and the Court of Appeals rebuffed that notation  
17 and held contiguously does not means accessibility, and the  
18 court upheld the maps.

19 So you don't need to -- to have the ability to  
20 traverse the area, and this river connection was enough.

21 Now, it's up to whether, from a policy perspective,  
22 you want to have a connection between districts that is more  
23 fulsome than -- than what was accomplished here, but this  
24 was deemed to be constitutional.

25 Communities of interest, the fourth criteria in the

1 Constitution.

2 Now, I've created a definition here; this isn't  
3 drawn from Arizona law, but I think this is a good way to  
4 think about the concept: It's a geographically cohesive and  
5 connected population that has a common set of concerns where  
6 the community would benefit being grouped into the same  
7 district.

8 There could be multiple ways for this community  
9 that's united: Ethnic, racial, religious, even lifestyle or  
10 economic interests, or -- or even rural/urban.

11 You are required -- and so -- so the town hall  
12 we're going to do in the next couple of weeks are designed  
13 to identify and better flesh out what this concept means,  
14 and -- and you'll get some great information about what the  
15 communities of interest are, but this is a working  
16 definition to think of.

17 You can't interfere with communities of interest to  
18 the extent possible. Now, does that mean you can't split --  
19 ever split a community of interest? No. The proviso that  
20 it be to the extent possible or to the extent practicable,  
21 respected means there can be cases where the communities of  
22 interest are divided, and there's been some cases of that.

23 Putting an entire community of interest in one  
24 district is -- is the most commonly thought of way to  
25 respect it, but it's not necessarily the only way. Again,

1 20 years ago the Navajo Nation dispute over the dra- -- over  
2 the maps that were created, and if you go back to that map I  
3 showed you a few slides ago, when connecting the Hopi tribe  
4 to then District 2, that river connection swept in 42  
5 members of the Navajo Nation and put them in the same  
6 district as the Hopi tribe.

7 The Commission did its best to minimize that, but  
8 in the end the Court held that it was appropriate to respect  
9 the Hopi tribe's community of interest by not only keeping  
10 it cohesive with other Hopi members, but to separate it at  
11 the time with the Navajo Nation. So it was okay and  
12 somewhat di minimis that a portion of the Navajo Nation's  
13 members were split off because the Commission was accorded  
14 deference in its decision that respecting the Hopi tribe's  
15 community of interest separating it from the Navajo Nation  
16 was important.

17 These are policy decisions that you're going to  
18 have to make, but I -- I show that case just to -- to  
19 demonstrate the deferences you'll be accorded. As long as  
20 you show your map.

21 Okay. Visible features, this is the fifth  
22 component of the mapping clause.

23 Visible features are like mountains, streets,  
24 roads, streams, railroad tracks; these can be naturally  
25 occurring, geographic, or they can be manmade.

1           A census tract is a subdivision of a county  
2 uniquely numbered, there's usually about 4,000 residents or  
3 1,600 housing units. In a moment I'm going to show you some  
4 census tracts in Maricopa County just to show you how  
5 numerous they are.

6           So when can you divide a census tract? It's almost  
7 the same logic as where you're allowed to divide a community  
8 of interest.

9           It can be to accommodate a different constitutional  
10 goal. The first IRC was sued on this basis, very much tied  
11 into the Hopi tribe-Navajo Nation dispute going on or -- or  
12 the claims made in that case; and not only was there  
13 litigation about whether or not those two districts were  
14 contiguous enough, but there was a census tract that was --  
15 that was split as well, and the Court upheld that for  
16 largely the same reasons why it upheld the district's shape.

17           Here's an example in Maricopa County alone. I'm  
18 sure our great consultants will do their best not to split  
19 tracts, but there's -- there's a lot of them so that's no  
20 easy task.

21           Finally, we're on the last item mentioned in the  
22 mapping clauses, dealing with competitive districts. You'll  
23 see this is phrased a little bit differently than the other  
24 goals, and I'll explain why that is the case.

25           What is competitiveness? It's -- it's trying to

1 have a relatively even partisan balance where there is a  
2 heightened chance that one party or another has a shot at  
3 winning that particular race. It's the opposite of a safe  
4 district where the outcome cannot basically be foreordained  
5 based on party representation.

6 You're going to hear a presentation from --  
7 actually multiple presentations from some experts over the  
8 next couple weeks and from our mapping consultant about  
9 potential different ways competitiveness can be measured.

10 These are just some buzz words of different  
11 competitive -- competitiveness measures that you might hear  
12 from. There's probably a hundred different potential  
13 measures; we're going to narrow it down to maybe a handful  
14 that are -- are worth considering; you might hear the  
15 academic literature on that issue; you might hear the  
16 author, you might just hear our great folks from  
17 Timmons/NDC. But you're going to be presented a  
18 different -- a range or a menu of different ways to measure  
19 competitiveness.

20 And here's the great news: You're not limited.  
21 Let a thousand flowers bloom is a phrase that recently  
22 expressed to Brett and I, and I think it's a good example.  
23 So you'll choose which measures of competitiveness you want  
24 to use.

25 You can use as many as desired, and the court --

1 the Supreme Court in 2009, the Arizona Supreme Court said  
2 that your choice of competitive measures is entitled to  
3 deference. In fact, they said it's as a scope of judicial  
4 review.

5 You can also combine some of these are use some  
6 averages, but we're going to get some greed feedback from  
7 our mapping consultants on what -- what to use.

8 So what's the role of competitiveness versus the  
9 other five goals in the Constitution?

10 What is clear from the first appellate case in  
11 2005, is that you cannot ignore this -- this issue  
12 altogether. In the first go-around of IRC 1.0, the  
13 Commission produced a set of draft maps where it did not  
14 take into account competitiveness; then there was some  
15 preclearance issues with the DOJ where they objected to a  
16 few districts in the legislative map; and for reasons that  
17 would take too long to explain, the IRC went and created  
18 another set of maps, and in the second go-around, they did  
19 include a competitiveness analysis, and so they -- they in  
20 it in essence cured the problem from their first  
21 advertisement.

22 It's just best practice to make sure that we have  
23 accounted for all of the constitutional goals before we put  
24 these out for public comment.

25 Now, here's what has best been described by our

1           appellate courts: Achieving competitiveness is mandatory  
2           but conditional.

3                   And I want to read this quote because it was first  
4           cited by the Court of Appeals in 2005, and it was directly  
5           reproduced by our Supreme Court in 2009. "If drawing  
6           competitive or more competitive districts would not be  
7           practicable or would cause a detriment to the other goals in  
8           the constitution, the Commission must refrain from  
9           establishing such district; conversely if it would be  
10          practical to draw a competitive or more competitive district  
11          and doing so would not cause a significant detriment to the  
12          other goals, the Commission must establish those districts."

13                   The conditional nature is what separates this from  
14          some of the other five goals. The Supreme Court has  
15          disavowed thinking about competitiveness as a subordinate  
16          goal, and I think it imposes the wrong frame of reference if  
17          we try to figure out whether or not it is equal with other  
18          goals or whether it is not equal.

19                   I think that's just the wrong way of looking at it.  
20          It is a mandatory goal, but it is conditional. Let me give  
21          you an example.

22                   If the Commission is faced with keeping the Navajo  
23          Nation and respecting it as a community of interest into one  
24          district but doing that requires the population between that  
25          district and an adjacent district to be unequal, that's a



1 policy decision that the Commission is allowed to make. It  
2 can place a higher premium if it so decides to respect that  
3 particular community of interest even though it might cause  
4 some detriment to contiguity or some detriment to equal  
5 population. It can even do that if it caused a significant  
6 detriment to population equality or contiguity.

7 Constitution allows you do that, but  
8 competitiveness is different. If -- if the Commission was  
9 faced with a decision to split the Navajo Nation into two  
10 different communities of interest in order to favor  
11 competitiveness, it cannot do that because this is the one  
12 area of the constitution where you cannot cause significant  
13 detriment to the other goals.

14 So in the example I just gave you while you could  
15 play around with the criteria amid these policy decisions  
16 after a lot of thought and deliberation, playing with  
17 communities of interest and population and compactness, you  
18 really can't do that with competitiveness. You have to try  
19 to make it more competitive if you can do it, and it won't  
20 significantly affect the other criteria.

21 In -- in the first go-around of the Commission, the  
22 plaintiffs alleged that the Commission didn't make any  
23 objective findings that the other goals were not -- would be  
24 significantly -- would have suffered from significant  
25 detriment. That Commission didn't go on the record and say:

1 I hereby find that a community interest -- a community of  
2 interest would have significant detriments; therefore, I  
3 refuse to make this -- this district more competitive.

4 The Court held -- the Supreme Court need not be  
5 that explicit, you need not make an objective finding on the  
6 record. It's probably a good idea, but those maps couldn't  
7 be thrown out two decades ago because that wasn't on the  
8 record; the record demonstrated that the Court took  
9 competitiveness into account during its meeting and -- and  
10 therefore the Supreme Court upheld that.

11 I think the Supreme -- the new Supreme Court is  
12 probably going to tend in this direction as well.

13 I think I have another slide on this issue, but let  
14 me mention it here. The definition of what constitutes  
15 significant detriment is -- is yours to decide. There's not  
16 case law on this issue and -- and the Courts are going to  
17 defer to your determination about whether increasing the  
18 competitiveness of districts will cause significant  
19 detriments to some other -- some other goals. It 's better  
20 to voice that on the record and describe your thinking on  
21 it, but there is no objective standard from the law that  
22 defines what significant detriment means so you're going to  
23 be able to decide what it means.

24 Here are some other things that need to be taken  
25 into account. I know this is -- this presentation won't go

1 on much longer, but I know you're so enthralled that you  
2 don't want it to end.

3 At the draft -- Brett does.

4 At the draft map stage here you can consider party  
5 registration and voting history. Remember, we're beyond the  
6 grid maps; we're at the draft maps now and it's perfectly  
7 appropriate, in fact, necessary to think about those things.

8 How do you balance these six goals? That is a good  
9 policy debate, but our courts have given us some direction  
10 which I think may be helpful.

11 Your decisions are accorded substantial deference.  
12 You were put here to exercise your judgment and weigh those  
13 goals against each other. In fact, the court in 2005 said  
14 the voters, the people, have entrusted you, a politically  
15 balanced group of five individuals, with a discretion about  
16 how to reach reasonable conclusions; you're allowed to give  
17 more emphasis to one goal or another; you can prioritize  
18 communities of interest over contiguity or compactness.  
19 That's your decision to make.

20 You can't ignore the constitution; you must follow  
21 the procedures in the constitution that I've outlined, and  
22 you have to apply your work in a rationale way, so there's  
23 still some guardrails -- quite a bit of guardrails -- on  
24 what you do, but at the end you're a legislative body.

25 What about your personal knowledge? Courts have

1 looked at this. We accept that you bring personal knowledge  
2 and experience into this task. In fact, I would call that a  
3 benefit, maybe that's why you were selected because you come  
4 from such diverse experiences. That's a welcome part of the  
5 process. But the Courts have said we're not going to knock  
6 you for bringing your personal knowledge or experience into  
7 this. So you're allowed to do that.

8 What about the courts, how much are they going to  
9 get into second guessing you?

10 It's not the role of courts to change or improve  
11 your plan or determine whether or not it can come up with a  
12 plan that is superior. I think we're going to see a lot of  
13 this just based on history, we're going to get hundreds or  
14 thousands of maps from -- from -- from the public, which is  
15 a great thing; but some of the litigation after IRC 1.0 was  
16 a contention by some litigants that that Commission could  
17 have made the maps more competitive than they -- than they  
18 were without necessarily sacrificing any of the other  
19 constitutional goals, and the court ruled that that is not  
20 the standard.

21 Think about -- think about how endless litigation  
22 would be if -- if someone had standing to come in and  
23 present a map to a court saying they did it better than you  
24 did. That would just be an impossible situation to manage.

25 So you're going to take into account those

1           incredible suggestions that we're going to get from the  
2           public, and the appropriate time to take into account is  
3           prior finalization of the -- of the -- of the maps and  
4           certification of the Secretary of State, but litigants can't  
5           go into court and say they did better than you.

6                        To be fair, though, the court will still review the  
7           process in which you created the map. The legislature  
8           normally is not subject to that review. A court, for  
9           example, will not get into whether or not the Elections  
10          Committee in the House of Representative or Judicial  
11          Committee in the Arizona State Senate went about passing a  
12          law or whether it cut off debate or didn't follow its own  
13          rule. The courts don't get into that.

14                       But here while you are treated like a legislative  
15          body, the courts will supervise the process in which you did  
16          create the maps; so it's not unfettered.

17                       What standard is the Court going to use? I already  
18          got ahead of my skis on this. But any type of, rational,  
19          reasonable basis for doing what you did, the court is going  
20          to walk in and presume what you did is constitutional. So  
21          the wind is in the face of challengers and it's at our back,  
22          and as I mentioned before, the plaintiffs can't come in with  
23          a better map and assume a court will just adopt it and say  
24          thank you.

25                       This last point has not been addressed by courts;

1           it's really a policy decision. The constitution doesn't  
2           tell you that you have to complete both the legislative and  
3           the congressional maps at the same time and put them out for  
4           the same 30-day period of comment. I think that's probably  
5           how both prior commissions have done it, maybe for  
6           efficiency purposes; but it's your decision as to which of  
7           the two maps you're going to create first and -- and,  
8           secondly, are you going to send those out for public comment  
9           simultaneously or are you going to send them out serially,  
10          and that's just a policy decision for you. I flag that.

11                   Advertising. I promise we're almost done here.

12                   How are you going to receive public comment? I  
13           think that's a great discussion to have with our Timmons/NDC  
14           folks, with Executive Director Schmitt and his staff; we're  
15           going to get barraged here. I don't know whether receiving  
16           comments through e-mail and the website are going to be the  
17           right way to -- to absorb all of this information, but  
18           that's something to think about.

19                   How do you ingest the massive amount of data in a  
20           way that makes it meaningful for you to not only understand  
21           but to potentially incorporate into your -- your final  
22           revision before going to the final map?

23                   How are you going to record all the town hall  
24           information? You're probably also going to hold hearings --  
25           I suspect you are going to hold hearings after the draft

1 maps have been published, probably those will be in person  
2 to some degree just like the town halls. How are you going  
3 to record all that data? Something to think about.

4 All right. Legislative recommendations. You as a  
5 body must consider the legislative leadership comments and  
6 map.

7 There's been some litigation on this. What does it  
8 mean to consider it?

9 A plaintiff cannot come into court and simply  
10 disagree with how the IRC used the legislature's  
11 recommendation or what weight should be attached to those  
12 recommendations; that's a policy decision for you. These  
13 are judgment calls, and if you want to record 1 percent or  
14 99 percent weight to what the legislature says, that's your  
15 decision.

16 Now, there was litigation in the last decade about  
17 whether IRC 2.0 had sufficiently considered legislative --  
18 the legislature's recommendation. The record in that case  
19 mentioned by the trial court -- again, we don't have  
20 appellant decision on this; this is just what the trial  
21 court ruled in 2017. But those legislative leaders,  
22 then-President Biggs and Minority Leader Campbell presented  
23 to the Commission in person; they took questions from the  
24 Commission, and -- and the court basically said that was  
25 enough; they submitted reports, the legislature submitted

1 reports, and the court -- the trial court ended up deferring  
2 that the IRC 2.0 had sufficiently deferred.

3 Okay. We're in the final stretch.

4 There's almost nothing in case law in about the  
5 final maps. You just need to incorporate the comments,  
6 recommendation, and approve them; send them to the Secretary  
7 of State.

8 We've already been in discussion with the staff  
9 with the Secretary of State about how the maps are going to  
10 be provided to them, in what format, and can -- can the  
11 Secretary's system accept that format and -- and be  
12 distributed to the counties; so we've had some good  
13 preliminary coordination on that.

14 And, obviously, you'll try to make your best  
15 efforts to meet the Secretary's preferred deadline. Why is  
16 January 2nd a -- inflection point? And that's because if  
17 the maps come out before January 2nd, those new boundaries  
18 are what the signature calculations to get on the ballot are  
19 going to be based on; if the maps come after January 2nd, I  
20 believe the -- the candidates for the next election are  
21 going to use the existing previous numbers to guide their  
22 signature calculations.

23 There's already a bill that's been passed that  
24 gives some flexibility here, but that's an aspirational  
25 goal.



1           Okay. That was the most enthralling presentation  
2 you've heard.

3           And if the Commission would like to have a  
4 couple -- I'm sure you need a break, by the way. Madam  
5 Chair, it's up to you whether to take a public questions  
6 here or whether you want to recess and go into executive  
7 session, but we're -- we're happy to answer in public won't  
8 get us in trouble.

9           CHAIRPERSON NEUBERG: Thank you for that  
10 substantive presentation.

11           If there are any specific, you know, questions that  
12 relate to specific content, I'll open it up to my fellow  
13 Commissioners. If not, I will open it up to a motion to  
14 move to executive session for us to be able to apply this  
15 information to our specific work.

16           Again, just to be clear to the public, the  
17 rationale for going into executive session which is not open  
18 to the public is for the purpose of obtaining legal advice  
19 to further implement and/or advance these legal issues  
20 pursuant to A.R.S. 38-431.03(A) (3).

21           So unless there are any specific questions, I will  
22 entertain a motion to move into executive session.

23           COMMISSIONER LERNER: This is Commissioner Lerner.  
24 I move to move to executive session.

25           COMMISSIONER MEHL: Commissioner Mehl seconds.

1 CHAIRPERSON NEUBERG: Any further discussion?

2 Vice Chair Watchman.

3 VICE CHAIR WATCHMAN: Aye.

4 CHAIRPERSON NEUBERG: Commissioner Mehl.

5 COMMISSIONER MEHL: Aye.

6 CHAIRPERSON NEUBERG: Commissioner Lerner.

7 COMMISSIONER LERNER: Aye.

8 COMMISSIONER YORK: Aye.

9 CHAIRPERSON NEUBERG: Commissioner Neuberg is an  
10 aye.

11 With that, we will move into executive session; and  
12 with us will be Val, Director Schmitt, our executive -- our  
13 broader team and our legal counsel.

14 We will take a six-minute break, and I will see my  
15 partners in executive session.

16 And regarding the public, it should not be, you  
17 know, more than let's say 15 -- 30 -- who knows. Would not  
18 be that long. See you soon.

19 (Recess taken from 11:01 a.m. to 11:08 a.m.)

20 (Whereupon the proceeding is in executive session  
21 from 11:08 a.m. until 11:31 a.m.)

22

23 \* \* \* \* \*

24

25 (Whereupon the proceeding resumes in general

1 session.)

2 CHAIRPERSON NEUBERG: Okay. I believe I see our  
3 broader team.

4 Thank you, everybody, for your patience. I see all  
5 Commissioners. If I could get a confirmation that counsel,  
6 staff is all reconvened?

7 I believe I see our team.

8 With that, I'm going to thank everybody for your  
9 patience. It provided us an opportunity to ask just  
10 meaningful questions. I think everybody would agree that  
11 these presentations today really speak to the heart and soul  
12 of -- of what we're doing. I -- I think the presentations  
13 will be posted online, if they are not already, and I  
14 encourage anybody if you've not seen it or, you know, to  
15 please encourage your contacts to -- to look at the  
16 materials; it will better inform our community for the basic  
17 principles as we move forward with I think some important  
18 decisions.

19 With that, we will move to Agenda Item No. X, which  
20 is discussion of future agenda item requests.

21 We have already alerted everybody that we would  
22 like -- or were anticipating listening to presentations on  
23 the pros and cons with differential privacy on the 13th; we  
24 have some specific requests from our mapping team. Are  
25 there additional agenda items that we have not yet

1 identified that the Commissioners would like to propose?

2 COMMISSIONER LERNER: This is Commissioner Lerner.  
3 I just I think that's only about a week/ten days before our  
4 first public meeting, so if we could have a detailed  
5 presentation on how our public meetings will be held and any  
6 information, that would be helpful for all of us as well as  
7 the public.

8 And if we can -- if there's anything that can be  
9 published prior to our meeting if it's available online so  
10 people can know location. I know you don't have those yet,  
11 when you get them. But I think anything that we can have on  
12 that that's more specific will be helpful.

13 Thank you.

14 CHAIRPERSON NEUBERG: We -- we will aim to provide  
15 on our agenda on the 13th very, you know, specific  
16 guidelines. Because, you're right, it's like nine days or  
17 something like that before our first meeting.

18 Any other requests?

19 Okay. With that, we will move to Agenda Item No.  
20 XI, discussion and possible action on the scheduling of  
21 future meetings.

22 As a reminder, we will be observing a July 4th next  
23 week, and we'll have our first day off. I wish everybody a  
24 wonderful holiday and enjoy the time, and we will plan to  
25 reconvene at 8:00 a.m. on July 13th, Tuesday, our normal

1 time.

2 With that, Agenda Item No. XII, announcements. I  
3 don't have any announcements.

4 Director Schmitt?

5 Okay. Agenda Item XIII, next meeting date is  
6 July 13th; 8:00 a.m.

7 Agenda Item No. XIV, closing of public comments.

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

15 With that, we move to Agenda Item No. XV.

16 I will open up a motion to adjourn.

17 VICE CHAIR WATCHMAN: So moved.

18 Vice Chair Watchman.

19 CHAIRPERSON NEUBERG: We have a second?

20 COMMISSIONER YORK: Second, Vice Chair York --  
21 Commissioner York.

22 CHAIRPERSON NEUBERG: Quick vote.

23 Vice Chair Watchman.

24 VICE CHAIR WATCHMAN: Aye.

25 CHAIRPERSON NEUBERG: Commissioner Mehl.

1 COMMISSIONER MEHL: Aye.

2 CHAIRPERSON NEUBERG: Commissioner Lerner.

3 We didn't hear you.

4 COMMISSIONER LERNER: Aye. Aye.

5 CHAIRPERSON NEUBERG: Okay. Commissioner York.

6 COMMISSIONER YORK: Aye.

7 CHAIRPERSON NEUBERG: Commissioner Neuberg is an  
8 aye.

9 With that, we will adjourn.

10 Let's root for the Suns so by next week we're in  
11 the final.

12 We'll see everybody next week.

13 COMMISSIONER MEHL: Go Suns.

14 CHAIRPERSON NEUBERG: Okay. Bye-bye, everybody.

15 (Whereupon the proceeding concludes at 11:36 a.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 14th of July, 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 14th of July, 2021.



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Miller Certified Reporting, LLC  
Arizona RRF No. R1058