ARIZONA INDEPENDENT REDISTRICTING COMMISSION

Thursday, May 12, 2011
9:30 a.m.

Location
Arizona Industrial Commission Auditorium
800 West Washington
Phoenix, Arizona 85007

Attending
Colleen C. Mathis, Chair
Jose M. Herrera, Vice Chair
Scott Day Freeman, Vice Chair
Linda C. McNulty, Commissioner
Richard P. Stertz, Commissioner

Raymond F. Bladine, Executive Director
Kristina Gomez, Deputy Executive Director
Buck Forst, Information Technology Specialist
James E. Barton II, Assistant Attorney General

REPORTED BY:

Marty Herder, CCR
Certified Court Reporter
CCR No. 50162
Phoenix, Arizona
May 12, 2011
9:30 a.m.

PROCEDINGS

CHAIRPERSON MATHIS: The meeting of the Arizona Independent Redistricting Commission will now come to order. Today is Thursday, May 12th, and the time is 9:35 in the morning.

Let's rise for the pledge of allegiance.

(Whereupon, the Pledge of Allegiance commenced.)

CHAIRPERSON MATHIS: I'd like to inform everyone that we're going to have a public comment section as we always do. If anybody would like to speak to us during that time, fill out a request to speak form and give it to the executive director Ray Bladine.

We're actually also going to also have a public comment section today at the end of the day for those hardy souls who are still with us. After, we just thought it would be a good opportunity for the public to provide comments at that time, since these interviews will be in public session.

I'd also like to note that we have a court
reporter this morning transcribing the proceedings, and so I remind the commissioners to all speak one at a time so that we get an accurate record.

I'd also like to acknowledge Assistant Attorney James Barton, who's providing counsel for us today.

And if I could begin with roll call.

Vice Chair Freeman?

VICE CHAIR FREEMAN: Here.

CHAIRPERSON MATHIS: Vice Chair Herrera?

VICE CHAIR HERRERA: Here.

CHAIRPERSON MATHIS: Commissioner McNulty?

COMMISSIONER McNULTY: Here.

CHAIRPERSON MATHIS: Commissioner Stertz?

COMMISSIONER STERTZ: Here.

CHAIRPERSON MATHIS: We have a quorum.

VICE CHAIR FREEMAN: Madam Chair?

CHAIRPERSON MATHIS: Yes.

VICE CHAIR FREEMAN: Do we have a minute taker?

CHAIRPERSON MATHIS: I do not know. Do we have a minute taker?

RAY BLADINE: The court reporter will also provide the minutes for us, and we'll provide him an outline to follow, so yes.

VICE CHAIR FREEMAN: Thank you.

CHAIRPERSON MATHIS: Good question.
Thank you for playing the dual role today.

So that takes us to item two on the agenda, call for public comment.

And at this time I don't have any request to speak forms for this first public comment. I do for the later one.

Does anybody now like to address us?

(No oral response.)

CHAIRPERSON MATHIS: Okay.

Hearing none, we'll move on to the -- I'm going to actually -- the next item is the executive director report, but I would like to take the agenda a little bit out of order.

We have with us today some people from state procurement, and I'd like to move agenda item seven up.

And we may go into executive session -- the Commission may go into executive session for the purpose of discussing contract matters relating to the hiring of legal counsel and for reviewing confidential documents.

And since they are here now, and we're going to be proceeding today with interviews with legal counsel, I'd like to take that agenda item out of order, and, without objection, go into executive session in order to discuss these contract matters with our state procurement administrator, who is Jean Clark. And Don Ellwanger is the
state procurement officer. And they're both here.

VICE CHAIR FREEMAN: No objection.

COMMISSIONER McNULTY: No objection.

JAMES BARTON: Madam Chair, I would have a motion
to go into executive session.

CHAIRPERSON MATHIS: Okay. I do need to have a
motion.

Do I hear a motion to go into executive session
for the purpose of discussing contract matters relating to
hiring legal counsel and reviewing confidential documents
with our state procurement administrator Jean Clark and Don
Ellwanger for state procurement office?

VICE CHAIR FREEMAN: So moved.

VICE CHAIR HERRERA: Second that.

CHAIRPERSON MATHIS: Any discussion?

(No oral response.)

CHAIRPERSON MATHIS: All in favor?

(Unanimous "Aye.")

CHAIRPERSON MATHIS: Any opposed?

(No oral response.)

CHAIRPERSON MATHIS: Okay. So we will go into
executive session now. The time is 9:39.

And I hate to tell the public this, but

unfortunately with our court reporter here we're going to
have to ask the public to go out.
(Whereupon, the public session recessed and executive session ensued.)

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(Whereupon, the public session resumes.)

CHAIRPERSON MATHIS: Okay. We'll go back into public session now.

The time is 10:23 in the morning.

And since we are a little bit off schedule now in terms of our planned interviews, I'd like to go ahead and take another agenda item out of order, and that's agenda item number six, which is interview of law firms that have submitted a proposal to be the Commission's legal counsel.

And I thank Mr. Bladine for getting a legal counsel interview schedule together on very short notice.

And the schedule I believe is in alphabetical order.

I'm checking that now.

Yes, it is.

And so our first interview, that was to begin at 10:00 a.m., is Mr. A. David Braun.

And if he is here.

And I believe if there were any other law firms, we wanted to have them leave the room, just to allow for a
fairer process, so that they don't hear the questions ahead of time.

But I don't see any others.

VICE CHAIR HERRERA: These are law firms that are being -- that we're interviewing; correct?

CHAIRPERSON MATHIS: Correct.

Mr. Braun, thanks for being here. Sorry we're running late.

DAVID BRAUN: Thank you for inviting me.

CHAIRPERSON MATHIS: You're welcome. Good to see you.

So what we'll do is ask the questions in kind of a round-robin format, but we would be happy to entertain an opening statement or comments from you if you have any. Otherwise we can begin questioning.

Or whatever your question.

DAVID BRAUN: I'm ready for your questions.

CHAIRPERSON MATHIS: Okay. Great.

And, commissioners, if we could just go in a round-robin format, that would be wonderful.

VICE CHAIR FREEMAN: Madam Chair.

CHAIRPERSON MATHIS: Mr. Freeman. Yes.

VICE CHAIR FREEMAN: Thank you, Mr. Braun, for coming today.

Your background includes working as a lawyer
representing clients who have brought lawsuits against past IRC; correct?

DAVID BRAUN: Correct.

VICE CHAIR FREEMAN: And that could be regarded as a partisan representation or at least representing clients with partisan objectives.

The goal and mandate of this Commission is to be fair, to be independent, to be politically balanced.

Could you please take a moment just to allay the concerns that any member of the Commission or public might have as to your ability to provide this Commission with fair and independent legal advice, being as specific as you can, citing examples either from citizens where you worked with co-counsel or counsel or firm that you worked on these.

DAVID BRAUN: Thank you.

I know that this is an issue of concern to the Commission, as it rightly should be.

As the application asks for, as far as identification of past political functions, I am the Democrat, and the plaintiffs that I represented were primarily Democrats, though not all of them, in reference to the lawsuit that I filed against the Commission.

That was in reference to the Congressional redistricting.

And my clients believed that the first Commission
failed to comply with all the six conditions that are imposed upon the Commission in the constitutional amendment that was passed by the voters.

So that was the factual basis of my complaint.

And the argument, of course, to the courts had nothing to do with necessarily a partisan perspective, but rather the compliance with the statute and with the constitutional amendment in question.

As I've discussed before the Commission previously, I believe that this Commission, just like the prior Commission, should have two attorneys representing the Commission. One a Democrat and one a Republican.

The reason for that, that the Commission gave again ten years ago, was that, first of all, there's certainly plenty of work for two attorneys, even two law firms, that is going to be created by the Commission.

But, secondly, to make sure both internally in your operation and from the public's perspective, each side, each party is fairly a participant in the process, and that basically that nobody's pulling a fast one.

After all, you are a partisan body, if you will. You're two Democrats and two Republicans and one Independent, to make the most political decision that previously the Legislature made, but now that you're making, and you were chosen partially because of your partisan
identification.

When it comes down to actually representing the Commission, that is, in my advice to the Commission, to my legal work for the Commission, I will tell you now, very specifically, it will be to the decisions of the Commission itself as an institution, the agency, your specific constitutional creation is an entity that is a party.

And last time, in fact, was sued as a specific state agency.

And that will be my representation, and I will be representing you based on your decision. And I'm going to be an honest broker, both in my advice and, if you so desire it, during these -- the months that we would have to work together, and certainly an honest broker in my dealings of the drafting of the submission, in further representation if there is a lawsuit, and I'm sure that there will be, one or more lawsuits.

That's something that I've done as a lawyer for more than 35 years, and I expect to continue doing if I represent the Commission.

Let me take just a second and in reference to my prior representation in political cases.

I've represented Democrats. I've represented Republicans. I've dealt with clients who I didn't know whether they were Democrats or Republicans. Didn't know,
I didn't care, didn't ask, because it wasn't relevant to their case.

I've -- as you know, I was on the bench for 12 years.

Never in the litigation or litigants before me would I ever ask, did ever ask, want to know whether they were Democrats or Republicans.

Occasionally when somebody was in front of me, and they would say, well, I voted for you, Judge Braun, I would say, well, that's not going to make a difference to me, you're going to jail anyway.

So, these -- I suspect all the attorneys that answer this sort of question will be honest brokers and very straight with the Commission as far as their dealings with you.

Thank you.

VICE CHAIR FREEMAN: Thank you.

CHAIRPERSON MATHIS: Other questions for Mr. Braun?

COMMISSIONER McNULTY: Mr. Braun, thank you for coming today.

Would you talk a little bit about the factors that you think will be most important to consider in submitting our preclearance package?

DAVID BRAUN: Well, it's pretty clear both from
the Arizona constitutional amendment that the voters passed
to create the Commission, and also from the DOJ rules and
regulations that interpret the Voting Rights Act, and from
the Voting Rights Act and from additional federal law, that
those six requirements that the constitutional amendment
create are the factors that have to be considered and have
to be complied with as strictly as possible.

Now, the problem is this. And, again, I mentioned
it in my submission.

This is a six-sided Rubik's Cube that can't be
solved to make a perfect solution.

There's the push and pull of if you're going to
make something more competitive, maybe the district won't be
as continuous as you would like.

You've got limitations on numbers that have been
imposed by the courts in reference to the congressional
district, as you know. Basically it has to be within one or
two or maybe three voters. That's the most restrictive
condition so far that the Supreme Court has seemed to
indicate.

It's a less numerical restriction in reference to
the legislative districts where there you can get away with
basically equal population plus or minus three or
four percent.

And last time the variation was somewhere in the
four percent range and was ultimately approved by the Department of Justice after all the litigation, after litigation and the re-submission.

So that's the first condition.

And then the other five conditions have a push and pull.

Competition, I think, is very important.

That's what the voters wanted, certainly out of the initiative that they passed.

But they also established the other condition, and of course of rule, quite rightly, they all matter.

You have, however, great discretion in how you do it.

You know, you can make those -- you as a body can make those decisions. And that's the whole process that you're going to be going through.

It's not an easy decision.

As I said, there is no perfect solution.

So you'll make your best judgment to figure out what you believe is fair, what you believe will satisfy DOJ and the U.S. Constitution and the Arizona Constitution and that what you believe is appropriate.

So there's a lot of tough decisions that you'll have to make.

COMMISSIONER STERTZ: Madam Chair.
CHAIRPERSON MATHIS: Yes, Mr. Stertz.

COMMISSIONER STERTZ: Mr. Braun, thank you very much. Thank you for continuing to attend and be participating with us during this process.

In your application, you had made a statement the appellate court ultimately decided that the competitive districts were equal to the other goals as set forth as evaluated by the Commission.

The definition of community of interest is of great interest to me, and as you would be of counsel to us, of that definition, could you describe to me in detail how you would advise us of what the definition of community of interest would be?

DAVID BRAUN: I'm sure you've all noticed of course that in the initiative they did not define exactly what community of interest is.

They left that up to your broad discretion, but they also imposed the Voting Rights Act.

And they are -- there are certain communities that have been protected by the Voting Rights Act that you're going to have to consider as part of that broader definition of community of interest.

So, because of Arizona history, prior voting behavior, and such, you're going to have to probably consider the Indian tribes, American Indian tribes as a
community of interest.

However, last time they weren't in complete agreement among themselves.

We have a history of the Hopis and the Navajos having some political conflicts.

And part of that strange configuration of District One, if you look at it now for the Congressional district, was designed ultimately to take into consideration the Hopis' concern about the Navajo tribe dominating them.

There will be a lot of pressure upon you in reference to the Hispanic community.

They will certainly lobby correctly -- it's correct to lobby the situation in reference to their interests.

But community of interest is basically thereafter almost anything that you think is important.

For instance, are people who live in the areas of the state that don't get very much rainfall a different community of interest than people in Flagstaff and other areas that get a lot of rainfall?

You'll have people speaking to you, lobbying you in reference to their own definition of community of interest.

And ultimately the commissioners as a group will have to decide what they think is significant.
I can give you advice and recommendations and counsel as an attorney to comply with the Voting Rights Act, but ultimately the definition of community of interest is your decision and your evaluation of all the groups that are going to be coming in front of you and that you define in your own mind as something, you know, if that's a valuable category to describe as a community of interest.

So it's up to you, gentleman and ladies.

COMMISSIONER STERTZ: May I follow up with that, Madam Chair?

CHAIRPERSON MATHIS: Please.

COMMISSIONER STERTZ: The reason I ask the question is because you have given it equal balance to competition. You made a statement in your application that communities of interest have equal balance of competition --

And competitiveness is based on numerical and factual information, and you've just given a definition that by its own definition has no definition.

I'm trying to ascertain how you can have something that has no definition equal balance against something that is by organization statistical.

DAVID BRAUN: The reference to the equal concerns or the equal balance or the equal weight of the six conditions was specifically to the 2009 Arizona Supreme
Court, that last finally handled all the issues concerning the first redistricting.

And the court said very specifically, because it happened a legal issue with -- in parts of the litigation, that each one of the six conditions was of equal value or equal importance in your evaluation of the law.

It came up because very consciously the first Commission first balanced or handled the five conditions, the five conditions that did not include the competition clause. And then, thereafter, after the first map was actually prepared, they then, when the second map came up, the written map, a first draft map of proposals, they're taking testimony, and the ultimate map, when they prepared the ultimate map, the submitted map to DOJ was the first time that the Commission formally said now we're going to evaluate all the lines, all the statistics in reference to competition.

And that caused part of the litigation last time.

And ultimately the court said, no, that was a mistake by the Commission, the first time. They were evaluating the initiative for the first time.

And the courts were evaluating it also for the first time. And they said, no, you've got to take into all six conditions.

They're not necessarily equal. They're of equal
value as far as goals and standards.

But then when you impose them, when you decide how this particular line is going to be drawn, it's up to you to use those six conditions to actually determine what the decision will be.

And you're given pretty broad discretion, because the court also said, you're basically a mini Legislature, and you have as much discretion as the Legislature that used to do these lines.

So it's up to you, folks, and that's why you're going to be in a lot of hearings and get a lot of e-mails and have a lot of phone calls.

And it's a tough job. I don't envy you at all.

COMMISSIONER STERTZ: Thank you.

CHAIRPERSON MATHIS: Okay.

Any other questions?

VICE CHAIR HERRERA: Madam Chair.

CHAIRPERSON MATHIS: Mr. Herrera.

VICE CHAIR HERRERA: Thank you for being here.

I think you've attended all the meetings since we started.

DAVID BRAUN: Most of them.

VICE CHAIR HERRERA: Correct.

And can you explain for me your interest in redistricting if -- let's just say you weren't applying.
Would you still be attending and if -- would you just tell me your interest in why you're here, other than applying and redistricting in general.

DAVID BRAUN: Well, this has been an interest of mine for years. I was a political science and history major back in college.

I interned for a congressman in the Washington, D.C., law office during one of the years that I was going to college.

The political process basically has been something of always just a personal interest.

As I said, when I was on the bench for 12 years, as you know, JPs are partisan elected positions. So things like the numbers and the configuration districts was of a very personal importance to me.

Though JP districts, of course, don't have to be equal population. They're not actually subject to the Voting Rights Act, because a judge is not considered a representative. He's not considered, you know, subject to those sort of same political concerns.

But still the lines that were drawn by basically the Board of Supervisors was of concern.

This is something that I've just always been interested in.

Personally I've represented political candidates.
I've given advice to PACs and political organizations. This is an area of law that is of a particular interest of mine. And I would think there would be no better opportunity for me to act as a lawyer. This is the name of the game. This is something that is a rare opportunity for any practicing attorney, especially one who's so interested in the intersection between politics and law.

VICE CHAIR HERRERA: Thank you.

CHAIRPERSON MATHIS: Okay. I have a question. As the lone independent, I want to ask a partisan question.

If you were selected, do you anticipate a time when you may need to provide partisan counsel to the commissioners? And, if so, how would that work, and who would be privy to that information? Would it only be those who share your political affiliation, or how would -- do you see that happening?

DAVID BRAUN: That's a pretty good question.

And my inclination is to say, no, I'm representing the Commission as an institution, as an entity, and that it would be perhaps inappropriate for me to give advice to two members of the Commission outside of the presence of the other three.
I don't think that's how my role would be in a situation like that. If issues of partisanship came up, and the Commission or a commissioner wanted advice in reference to how is this going to affect this partisan situation, certainly in the presence of the other commissioners and with co-counsel, if you decide to appoint one D and one R as counsel, I think that's something that that would be appropriate, it would be responding to the commissioners' concern.

And that sort of advice, I think you would want to be able to have supplied by an attorney. It really goes to how attorneys act for their clients.

I've always thought attorneys -- you don't just go in and take orders from your client. You're there to counsel and advise and explain and assist your client in what he or she is trying to do.

You're hiring basically hopefully two lawyers with some expertise in the Voting Rights Act and some expertise in the submission process and in all the things that you're going to be doing.

I have that expertise and experience.

There's a couple of the other attorneys that you're interviewing that have that experience and a couple
of others who don't.

And I think that experience is certainly valuable. It isn't to denigrate the ability of the other attorneys to prepare and represent the Commission. But, issues will come up, factual issues, legal issues will come up that my experience, I believe, will be helpful.

You're a pretty sophisticated bunch. I know you've got two lawyers on there and, you know, people around lawyers and know what they're doing.

And so I think being a sophisticated client you're going to pretty much be able to advise me as to what things -- what are the things that you want to accomplish.

My expertise is in the Voting Rights Act, the submission process, in the litigation that will probably result, and I can tell you and advise you about those sort of issues throughout this whole process to help you do your job to the best possible result.

VICE CHAIR HERRERA: Madam Chair.

CHAIRPERSON MATHIS: Thank you.

Yes, Mr. Herrera.

VICE CHAIR HERRERA: Mr. Braun, can you -- let's just say put your personal feelings aside. I see you want to be chosen.

If you were to opine but you had a voice or a vote, who would you recommend that we appoint as the
Republican counsel and also -- for now just the Republican
counsel, as your co-counsel, out of the people that we're
interviewing?

    DAVID BRAUN: I know most of them, though there's

a couple that I don't know quite as well as the other
attorneys.

    I dealt with Lisa Hauser ten years ago. She's a
fine, able attorney. And she'll be a very effective
attorney for the Commission.

Let me get that list.

    VICE CHAIR HERRERA: If you can make it easy on me
and just pick one.

    DAVID BRAUN: I know Mike Mandell, though I think
he is a Democrat in this situation. He was a participant in
a process ten years ago.

    I've met and spoken to Tim LaSota during the
various meetings of the Commission that he and I both
attended. I don't know him as well.

    And I don't know Mary O'Grady. Basically I know
her by reputation.

    Again, I believe all these attorneys seem to be
fine and able and qualified at the minimum for
representation of the Commission.

    VICE CHAIR HERRERA: So can I have a follow-up
question?
CHAIRPERSON MATHIS: Yes.

VICE CHAIR HERRERA: Would you be able to work with Gammage and Burnham and Lisa Hauser?

DAVID BRAUN: Absolutely.

All these attorneys are professional. They have professional courtesy, professional dealing.

And, again, as co-counsel, we would be representing the Commission's ultimate decisions.

I have, you know, very cordial relationships with the attorneys who were involved in these proceedings last time, both on my side, on the plaintiff's side, and on the defense side.

So I have no concerns about that working relationship.

VICE CHAIR HERRERA: Thank you.

CHAIRPERSON MATHIS: Other questions?

COMMISSIONER McNULTY: Madam Chair.

CHAIRPERSON MATHIS: Yes, Commissioner McNulty.

COMMISSIONER McNULTY: A follow-up to the question that you asked.

Mr. Braun, you mentioned that we are a mini Legislature, and that it makes sense for us to have both Democratic and Republican counsel.

It seems to me that we are different from a Legislature, however, in that there are only five of us, and
one of us is a non-party affiliate.

Given that, do you think that we should as a Commission have some sort of ex parte rule if we hire two lawyers we're almost having a bench trial without any of the rules that apply to a bench trial?

What do you think we should consider as a group to make sure that we have protections in place that create rules for communications among the counsel and the members of the Commission?

DAVID BRAUN: I think generally the advice that a commissioner gets from the attorney, and the issues, as a general rule should be probably in open meeting where all five commissioners are present.

That would be the best and most ideal situation.

I can conceive of times where one commissioner in responding to an inquiry to the public, or if you're on a road show where only one or two of you is at a meeting, you know, taking testimony from the public, where if the attorney is present, you may want legal advice.

I think if the legal advice is in open public forum, again, that's probably permissible under the circumstances, and there isn't anything improper in that situation.

I would be always a little concerned if there was a private communication between one commissioner, one
attorney, outside of the presence of either a public meeting situation or the other commissioners.

Again, that may come up.

And the remedy for that is a prompt reporting of the discussion to the rest of the commissioners.

I don't want to make it too -- I wouldn't recommend to the Commission that it gets too rule bound, where the normal flow of communication between an attorney and a client is hindered.

But, you are a public agency, a public entity, and these things have certain requirements that they be done openly and in public.

And that's what the law says, and that's what the constitutional amendment says, and that's the way that you folks have done it so far, and I'm sure you'll continue to do so.

So I think that would be perhaps, you know, the most practical remedy to some sort of communication.

I suspect most of that sort of communication would be almost an administrative nature, rather than, you know, anything substantive.

There's going to be just a lot of paperwork.

I mean, as I said, I went through this ten years ago. The submission consisted of just boxes and boxes of substantive electoral data, and things of that sort, that
had to be presented basically in a legal brief to DOJ, had to be presented pretty quickly.

That's why I've indicated there's plenty of work for two lawyers. This is a -- you know, so far this has been certainly a, you know, slow part of taking testimony. But once it gets into the drafting stage, there's going to be a lot of legal work involved in actually doing it.

CHAIRPERSON MATHIS: Thank you.

Any other questions?

VICE CHAIR HERRERA: Madam Chair, one more question.

CHAIRPERSON MATHIS: Mr. Herrera.

VICE CHAIR HERRERA: Thank you.

We're interviewing six attorneys or six law firms. Two of them happen to be sole practitioners, you and Mr. Mandell.

What issue do you see in the sole practitioner, advantages, disadvantages that you would have if we were to appoint you as one of the co-counsel?

DAVID BRAUN: As you'll see in the substantive portion of my application, I did indicate that in all likelihood I probably would attempt to join a larger firm.

I think all the attorneys last time were sort of overwhelmed with the amount of work.

It seemed like a less intensive job from the
outside.

But last time, in fact, this situation arose with Lisa Hauser. She was in a relatively small firm. She represented the Commission for a couple of months.

In my discussions with her, she's indicated, and I think she'll probably indicate to you today, she went to a larger firm just because of the legal resources, the paralegals, the support network that you need in order to adequately represent you as a client.

If I don't join a firm, if that doesn't come to pass, I probably then would expand my own firm to more than adequately handle the legal issue, the legal work, that has to be done.

And I would -- that expansion would not be at the expense of or charged to the commissioner or the Commission, or re-commissioned. I would incur that sort of capital costs.

But I would hire perhaps one additional attorney, I think one or two paralegals, sufficient secretarial support to handle the matter.

My inclination is, and the probability is, that I will be able to join a larger firm with that support network already in place. Because there's going to be a fair amount of legal work involved in this representation.

But you're hiring me.
You're hiring the lead attorney who has some experience in this area of law. You're not just hiring, you know, a firm.

I think you will quickly realize you're going to have to have one attorney who's always present at those meetings and doing all the work that needs to be done for representation of the Commission.

VICE CHAIR HERRERA: Thank you.

COMMISSIONER STERTZ: Madam Chair.

CHAIRPERSON MATHIS: Yes, Mr. Stertz.

COMMISSIONER STERTZ: Just a very brief follow-up.

In the last litigation that you brought against the Commission, you actually co-counseled with an out-of-state firm.

How did you make that choice?

DAVID BRAUN: You want the long version or --

COMMISSIONER STERTZ: No, just the real quick capsulated.

DAVID BRAUN: The short version was that Mr. Still was recommended to me by a number of people.

The litigation last time occurred -- there were so many people that were suing the Commission in the initial lawsuit, there were the period between December and February, December of 2001 and February of 2002, there were some 15 or 20 lawsuits that were filed, some 30 different
lawyers who, in fact, showed up at the very first hearing concerning the litigation. And most of the attorneys who had real expertise in voting rights were already hired by in-state firms or already had commitments to clients that prevented them from joining my litigation.

So I did some research, found Mr. Still as outside counsel, and he appeared with me.

COMMISSIONER STERTZ: Thank you.

CHAIRPERSON MATHIS: Any other questions?

(No oral response.)

CHAIRPERSON MATHIS: I see the time is 11:02. And I have no further questions either.

It sounds like all the other commissioners are satisfied.

I really appreciate you being here today and thank you for coming and speaking with us.

DAVID BRAUN: Thank you very much. I appreciate it.

CHAIRPERSON MATHIS: Thank you.

VICE CHAIR HERRERA: Madam Chair?

CHAIRPERSON MATHIS: Commissioner Herrera.

VICE CHAIR HERRERA: As I mentioned to you, Mr. Braun, you've been attending most the meetings, and I really want to thank you for that. Regardless of what happens, whether we choose you or not, I really appreciate
your interest. I wish more people showed an interest in the process. I really do appreciate getting to know you, and thank you for being here.

DAVID BRAUN: Well, thank you very much. I appreciate that.

CHAIRPERSON MATHIS: Thank you.

DAVID BRAUN: Thank you.

CHAIRPERSON MATHIS: So, our next interview is going to be a videoconference.

And I really appreciate Buck rising to the occasion. He's our chief technology officer for the Commission. And has had to move mountains, I think, to get us ready for this videoconference, and I appreciate doing that.

The next firm will be Ballard Spahr. And unfortunately they were not able to be here in person today due to an annual meeting of their firm back east. And they were very apologetic and wanted to participate today, and we wanted them to participate, so this was our next best option.

VICE CHAIR FREEMAN: Can we have a couple minutes?

CHAIRPERSON MATHIS: Yeah, you need a break? Maybe we can take a quick break for the court reporter too.

Does that work?
It's 11:04 a.m. We will take a quick recess.

(A brief recess was taken during which a videoconference connection was established.)

CHAIRPERSON MATHIS: Can everyone hear okay in Philadelphia and Washington, D.C.?

JOSEPH KANEFIELD (Via videoconference): Yes.

CHAIRPERSON MATHIS: Wonderful. I'm very impressed.

Buck, thank you very much.

He's our chief technology officer, as I mentioned earlier.

Our recess has ended. It's 11:12 in the morning Tucson time -- Phoenix time, sorry.

I really appreciate Ballard Spahr being able to join us today. They had, as I mentioned, an annual meeting that prevented them from being here in person.

But they were able to accommodate us and get us into the mix.

So we apologize, Ballard Spahr, for being a little late in our schedule today, but we'll go ahead without further ado and offer you the opportunity to make any kind of opening remarks, if you'd like. Otherwise we can just begin questioning you in a round-robin format.

JOSEPH KANEFIELD: Thank you, Madam Chair. Can you hear me okay?
CHAIRPERSON MATHIS: Yes, we can.

JOSEPH KANEFIELD: Thank you so much for accommodating us here in Philadelphia. We are sorry we couldn't be there in person.

My name is Joe Kanefield. I am -- will soon be joining Ballard Spahr as a partner, actually on Saturday.

With me today is Steve Savage, who is the managing partner of the Phoenix office of Ballard Spahr, and Jaclyn Foutz, who is an associate in the Phoenix office, who would be helping with the work if we are awarded the contract.

Joining us in Washington, D.C., is Bruce Adelson with Federal Compliance Consulting. He also would be helping on voting rights issues if we were awarded the contract.

So we are absolutely thrilled to be a finalist. We believe we would be able to offer the Commission great representation, both in terms of your meetings and Voting Rights Act issues and everything else.

Without saying too much more, I'll be happy to answer your questions.

CHAIRPERSON MATHIS: Wonderful. Thank you. We'll go ahead and start.

Any commissioners that would like to begin?

VICE CHAIR FREEMAN: Madam Chair.
VICE CHAIR FREEMAN: Mr. Kanefield, Mr. Savage, this is Scott Freeman. Thank you for appearing today.

Mr. Kanefield, your background includes most recently being counsel for the Governor's Office and for Secretary of State Brewer before that. And that position could be regarded as a partisan person position with perhaps partisan objectives.

The goal, if not the mandate, of this Commission is to be fair, to be independent, and to be balanced politically.

If you could just take a moment and address or allay any concerns that any commissioner might have or the public might have about your ability to provide this Commission with fair and independent legal advice. And be as specific as you can, and citing examples from working with other lawyers or opposing counsel, if you have any.

JOSEPH KANEFIELD: Commissioner Freeman, Madam Chair, members of the Commission, I understand the concerns or why the question would be asked. Let me start by saying I've been working doing election work for over ten years now.

The great portion of that time was as an election attorney for the State and the Secretary of State, where, although elections are partisan by nature, it was important that I operate in a non-partisan way and give advice in a
non-partisan manner. So I think I successfully accomplished that.

I'm sure if you talk to folks in both all of the recognized parties in Arizona as well as candidates and political committees, I pride myself on fairness, on being a straight shooter with folks, and not operating, at least as a lawyer, in any kind of partisan way.

I stay true to our rules of professional conduct.

The representation, the scope of legal advice is number one.

And although when we moved to the Governor's Office things most definitely became more partisan just by nature of the governor being the governor. That's true of any governor. I still believe I have managed to maintain my ability to be fair, objective, and to give legal advice based on the law, and to, of course, not let partisan considerations factor in any way into the advice that I give my client.

VICE CHAIR FREEMAN: If I could just follow up on that.

CHAIRPERSON MATHIS: Of course.

VICE CHAIR FREEMAN: Lawyers, of course, our work is grounded in the law. And sometimes we're called upon to advocate positions or provide advice where personally we might disagree with those positions, although there is
certainly nothing requiring a lawyer to undertake such
representations.

Then, again, I can see circumstances where it's
conceivable that the political affiliation of a lawyer might
be important to the client, perhaps believing that that
political affiliation would make them a more effective
advocate for that client.

And I guess likewise, or perhaps conversely, I'm
not sure, it's conceivable that a lawyer might hold certain
partisan political beliefs and might seek out clients who
share those beliefs.

Would you consider yourself falling into either
one of those camps, or do you reject the construct entirely
and, if so, why?

JOSEPH KANEFIELD: Well, I -- that's a tough
question.

Obviously I consider myself a lawyer, number one,
president elect of the State Bar, and so I believe very
firmly in the rules of professional conduct.

And while certainly in election law, political
law, there are attorneys who are better known representing
candidates, individuals, political committees associated
with one party or another, I would hope that I would be
sought out as counsel in my new role as a private
practitioner who plans to begin a -- shortly begin an
election practice based on my integrity, reputation, and then if that -- you know, if that means that I end up getting work with folks that fall on the Republican side, then that's fine. If Democrats seek me out too, that's fine.

Obviously I would -- my number one priority would be to my client, making sure I give them the very best representation possible.

So in my mind, if I understand, Commissioner Freeman, what I think you're talking about, our rules tell us that we're not necessarily to be tagged with the political views of our clients, but in my experience that doesn't always -- that's not always true, at least with the public.

So that's a long answer that I believe that I can be fair, objective.

And it's hard for me to say who will seek me out, given that I spent many years doing non-partisan election work before going to work for a Republican governor, where some folks may perceive me as more partisan because of that affiliation.

VICE CHAIR FREEMAN: Thank you.

CHAIRPERSON MATHIS: Great.

Any questions from other commissioners?

COMMISSIONER McNULTY: Madam Chair.
CHAIRPERSON MATHIS: Ms. McNulty.

COMMISSIONER McNULTY: Madam Chair, Mr. Kanefield, thank you for taking the time to be with us today. We really appreciate it.

One of the issues that will be important to us is the preclearance process and our preclearance submittal, and I see that you've had a fair bit of experience in that area. Would you please talk about what will be critical for us to look at, a little bit about the type of experience you had, a little bit about how Mr. Adelson would fit into that.

JOSEPH KANEFIELD: Sure. Thank you, Commissioner McNulty, Madam Chair, members of the Commission.

I obviously have a substantial amount of experience doing preclearance work both as an assistant attorney general doing election work for the State of Arizona, the Secretary of State, the Clean Elections Commission. I did a stint working for this Commission ten years ago.

And I have both drafted preclearance submissions, I've reviewed preclearance submissions. And then when I became state election director at the Secretary of State's Office under then Secretary Brewer, preclearance was the name of the game. So I oversaw all statewide preclearance
The Attorney General's Office actually did the submissions, but, of course, we were part of that process because we had to be.

We have consulted Bruce Adelson, who is with us and I introduced him earlier, brought him on because I believe that the Commission -- one of the big challenges the Commission is going to have to face is going to be in compliance with the Voting Rights Act. And that of course would include Section Five preclearance requirements.

Bruce is an expert in that area.

I have a fair amount of expertise myself obviously.

But what Bruce brings to the table is his experience working for the Department of Justice for many years. Bruce actually was part of the team that reviewed Arizona's preclearance submission in which we received an objection.

And he's been -- he's in touch with the Department of Justice. He knows the current players there. He knows the efforts that they're undertaking to scrutinize the redistricting plans, not just in Arizona but all over the country.

So I think he will be an invaluable member of our team to make sure that the Commission at every step of the
way is in full compliance with the Voting Rights Act and that we are appropriately advising the Commission with respect to your responsibility to create a record, to stay within the parameters that Section Five of the Voting Rights Act requires, and to ultimately make sure that when the Commission makes its submission that it is all the T's are crossed and I's are dotted, and it is pre-cleared upon the first submission.

That is our goal first and foremost.

CHAIRPERSON MATHIS: Any other questions?

COMMISSIONER STERTZ: Madam Chair.

CHAIRPERSON MATHIS: Ms. McNulty, did that satisfy your question?

COMMISSIONER McNULTY: Yes, thank you.

CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: Madam Chair.

Thank you, Mr. Kanefield, Mr. Adelson, who looks wonderful there sitting there by himself in Washington, D.C.

The question that I've got pertains to your understanding of the competitive districting versus communities of interest and their priority or equality.

And, if you could, give me a definition as you best would understand it to be, what a community of interest is.

JOSEPH KANEFIELD: Well, let me start by,
Mr. Stertz, Madam Chair, members of the commission, that issue obviously is an issue of substantial amount of debate this last round.

One of the challenges brought to the last plan submitted by your predecessors was based on the fact that there was no definition followed by the Commission as to what competitiveness -- what criteria was considered when competitive districts were being drawn and what criteria were considered for communities of interest.

So I don't -- I can't sit here today and tell you -- give you a black letter definition of what that means.

We have some guidance from court decisions as to what the courts are looking for. People who share communities that share a common economic interest, common political interest, common social interest.

Obviously sometimes that may square directly with geographic or municipalities. Other times not. It might just be neighborhoods.

But these are considerations that the Commission is going to be tasked with making.

So it won't really be for your lawyers to tell you whether you've appropriately identified a community of interest.

It will be you five commissioners making that
determination, of course with advice from counsel, making sure to stay within what we know are some of the legal parameters.

And what we also learned during this last Redistricting Commission is that the Arizona Supreme Court and courts below are going to give you a great deference in making those determinations.

So that's why you've been assembled.

If you will choose us as counsel, I assure you that we will stay out of your way in making those kind of determinations, because that's what you're appointed to do.

Our job is simply to make sure that you stay within the scope of the law, and that we give you as much guidance about what communities of interest mean, at least in terms of the limited court decision and discussion on that topic.

COMMISSIONER STERTZ: Thank you.

As a follow up to that, the question of competitive districts and it bearing equal weight to competitive districts by definition are definable by statistical calculation, whereas communities of interest by definition has no definition.

How would you as counsel give us recommendations on how to bear equality or deference to those two obviously unequal judgment calls?
JOSEPH KANEFIELD: Madam Chair,
Commissioner Stertz, are you asking specifically about competitiveness or communities of interest? I'm sorry.

COMMISSIONER STERTZ: Competitive districts, as,
as -- then discussed as having equal weight to communities of interest.

JOSEPH KANEFIELD: Right.

Well, one thing, I just recently taught a seminar on Arizona redistricting going forward. And one of the things we talked about was lessons learned from the past decade.

And one of those lessons, of course, would be for you to, as a Commission, as suggested by the Arizona Supreme Court in its opinion, although not in -- probably more in dicta, was that you take -- you view the competitiveness component along with the other five factors when you publish that first map out.

That's one piece of advice I would offer early on, that before you publish that map, that you make that determination as to competitiveness, that you establish a very good record as to why you are making -- why you're settling on the number of competitive districts that you settle on, why you're unable to make more competitive districts, probably because they're competing with the other goals, and then, you know, you'll obviously have a map
drawing consultant who can help you with the statistics and the numbers more so than counsel will be able to.

But, you know, we'll be there, I'll be there, and my team will be there to help you best we could in terms of, you know, again, like communities of interest, competitiveness is going to be -- a lot of deference is going to be given to you all by the courts as to determining what competitive districts are.

So I will -- we'll make sure that you're operating as a reasonable Commission would do as the court has set forth that standard.

I hope that answers your question.

COMMISSIONER STERTZ: It does. Thank you.

CHAIRPERSON MATHIS: Questions from other commissioners?

VICE CHAIR HERRERA: Madam Chair.

CHAIRPERSON MATHIS: Mr. Herrera.

VICE CHAIR HERRERA: Hello, gentlemen. Actually thank you, guys, for participating via videoconference. I think it's a cool technology that we probably should be using at my work. It's a great idea.

But what I wanted to ask, Mr. Kanefield, are you familiar with the two court cases, one being a Supreme Court case, the other one being a Court of Appeals case, pertaining to the previous redistricting?
JOSEPH KANEFIELD: I'm sorry. Madam Chair, Commission Herrera, I missed -- are you asking me if I'm familiar with a Court of Appeals decision?

VICE CHAIR HERRERA: Correct. And also the Supreme Court case pertaining to the previous redistricting.

JOSEPH KANEFIELD: Yes -- relating to --

VICE CHAIR HERRERA: The previous redistricting. Are you familiar --

JOSEPH KANEFIELD: I am.

VICE CHAIR HERRERA: Can you explain to me -- thank you -- can you explain to me how they're important to us in going forward and what that means for the Commission now?

JOSEPH KANEFIELD: Sure.

Madam Chair, Commissioner Herrera, I'm familiar with the court decisions from the last round.

Obviously the Arizona Supreme Court decision is very important to the Commission. And I sort of hit on some of the importance of that decision in response to previous questions.

But what we learned from that decision is that the Commission's going to be given great deference, not just with respect to competitive -- drawing competitive lines, but also with respect to determining communities of interest and the other factors that the Commission's going to have to
The Court of Appeals decision is important because it established that the commissioners are, in fact, operating within the -- as lawmakers, more or less, so that you all will enjoy legislative privilege in your deliberations. And what that means is that you can't be subpoenaed to court to testify as to why you did or didn't do something with respect to the line drawing.

The Court of Appeals decision has also taught us about the scope of expert witnesses and how you should and shouldn't use your consultants when you settle on who your consultant is going to be.

The one of the issues that the Commission had to deal with last round was they listed the consultant as an expert witness, and the Court of Appeals said that you can certainly -- the consultant will enjoy the same legislative privilege that the commissioners enjoy, except if you use that person as a witness, then the privilege will have to be deemed waived and they will, of course, be subjected to possibly being called as a witness in a legal proceeding.

So those are sort of the high points of those cases.

But I am familiar with them, and of course would re-familiarize myself with them again and again and again if you do hire us as your team.
VICE CHAIR HERRERA: Thank you.

I do have a follow-up question that's not really not related, but I would like to ask you.

CHAIRPERSON MATHIS: Go ahead.

VICE CHAIR HERRERA: Mr. Kanefield, are you familiar with the other individuals that we're interviewing?

JOSEPH KANEFIELD: Yes, I am.

VICE CHAIR HERRERA: If you had to vote, who would you choose as your co-counsel?

JOSEPH KANEFIELD: If I had to pick?

VICE CHAIR HERRERA: Yes, please.

JOSEPH KANEFIELD: Oh, my goodness.

Well, you're really going to put me on the spot.

Well, you are interviewing a fine group of attorneys today. I know them all in some capacity, some obviously better than others.

I hate to pick one or the other.

I will say that of course Lisa Hauser is a person who I have known a very long time. I have nothing but respect for her. She has my former job as general counsel to Governor Symington, so she's been a source of support and advice on occasion. And she also, of course, works as an election and redistricting expert as the Commission's prior counsel.

So I think very highly of her.
And, Mary O'Grady, I also think the world of her. Mary O'Grady and I were colleagues when we were in the Solicitor General's Office under Attorney General Janet Napolitano.

We both did election work together, and I very much enjoyed working with her. She is absolutely brilliant. I consider her an election law scholar.

And I think you would be well served by either one of those. And I hope I, bashfully, include myself in that same class.

But I think -- Tim LaSota, I'm also very fond of. I think very highly of him.

I don't know David Braun as well. He was involved in the process many years ago.

And, and of course Mike Mandell, who I know also because we've worked together -- not together, usually been on the opposite side of issues over the years, but I have a lot of respect for him and his legal expertise. He also is very knowledgeable about election matters, redistricting matters, having served as counsel for the one of the challenges of the previous plan, the Arizona Minority Coalition, and then as in-house counsel for the minority in the Arizona Senate.

It was a long answer, but I think you obviously
have done your job in selecting a very talented group of lawyers.

I don't think you can go wrong with whatever team you choose to hire out of that list.

VICE CHAIR HERRERA: Thank you so much.

I know it was a difficult question to ask, but I think you've done a great job answering it. Thank you.

CHAIRPERSON MATHIS: Okay. I'm going to go ahead and take the floor now.

This is Colleen Mathis. And as the lone Independent on the Commission, I thought I'd ask a partisan question of you, Mr. Kanefield.

If selected to do this work, do you anticipate a time when you may need to provide partisan counsel to only those members of the Commission who share your political affiliation?

JOSEPH KANEFIELD: Madam Chair, I don't see the role as your counsel in that manner.

I believe that we can provide -- whatever team you choose should be able to provide you with non-partisan legal advice.

And, you know, I struggle to think of scenarios by which counsel would be in a position to be giving you all political advice or anyone in the Commission.

But you sit together as a Commission more than you
do as individual Commission members. So I would hope that you can do the job that you are tasked with doing, which is to draw fair districts in an impartial way.

And partisanship should not be a primary consideration.

So I would not take this job intending to be a partisan advocate. I would take this job as a counsel who intends to provide you with the very best legal advice within the scope and parameters of the case law and statutes that govern this process.

And if there is legal room for partisan maneuvering and Commission members feel that that's necessary, well, that's something the Commission members can do so long as it's within the scope of the law.

And that's what I see as the role of counsel, is to provide you with the very best legal advice so that you can make those decisions on your own, without relying on counsel to try to steer you in any particular direction.

CHAIRPERSON MATHIS: Thank you.

VICE CHAIR FREEMAN: Madam Chair.

CHAIRPERSON MATHIS: Yes, Mr. Freeman.

VICE CHAIR FREEMAN: Mr. Kanefield, this is Scott Freeman.

Conflicts of interest, either direct or potential, or even the appearance of conflicts of interest, sort of go
with the territory with attorneys and law firms.

Going forward, if your firm is retained, do you have any concerns about potential conflicts, whether real, potential, or perceived?

JOSEPH KANEFIELD: Madam Chair, is that Commissioner Freeman?

CHAIRPERSON MATHIS: Yes.

VICE CHAIR FREEMAN: Yes.

JOSEPH KANEFIELD: I don't see that as an issue, Commissioner.

Because for one, I don't start with Ballard Spahr until Saturday.

So obviously if I'm so fortunate as to get this representation, you, the Commission, would be one of my first, if not my first client. That would then dictate what future clients I could or could not retain.

We don't have any conflicts within the firm that we've identified that would be any issue for myself or the firm or the Commission.

So we come -- we would come to you with a clean slate.

And we would represent you in a way that going forward that would not present future conflicts or considerations that could somehow hinder the work of the Commission. So I would be devastated if that was the case,
and do not intend to take -- would not intend to take this representation on if I could not give it my all until the very end, and would not -- I would do everything I could to allow -- to make sure that there are no future conflicts that could cause this representation any kinds of issues.

VICE CHAIR FREEMAN: Thank you.

CHAIRPERSON MATHIS: Other questions from commissioners?

VICE CHAIR HERRERA: Madam Chair.

CHAIRPERSON MATHIS: Mr. Herrera.

VICE CHAIR HERRERA: Mr. Kanefield, I know you touched a little bit on this, but I want you to elaborate. Both Ms. McNulty and I were appointed by Democratic leaders in the House and the Senate. If we were to choose you as the Republican co-counsel, how could you put us at ease that we would be able to work with you? And give us any examples of how you worked with people that you may not have agreed with politically. So any -- put me at ease.

JOSEPH KANEFIELD: Madam Chair, I had a little trouble hearing that. Was that Commissioner Herrera?

CHAIRPERSON MATHIS: It was.

VICE CHAIR HERRERA: Let me repeat that. Can you hear me now?

JOSEPH KANEFIELD: Yeah. I think were you asking,
if I were hired on to be Republican counsel, how would I work with the Democrats in the community, the Democrat community? Is that what you're --

VICE CHAIR HERRERA: Particularly the Democrats on the Commission.

Give me examples of where you've worked with people that you may not have agreed with politically but you were able to come with a consensus or work with them despite these differences.

JOSEPH KANEFIELD: Absolutely, Madam Chair, Commissioner Herrera, I don't believe that would be a problem.

My entire -- I'm very proud of my many years in practice in government where I've worked for elected officials, both elected Democrats and elected Republicans.

And obviously sometimes in some very partisan issues.

I think that if you talk with those folks, including the elected officials I've represented on both sides of the aisle, I think they would tell you that I'm someone of high integrity.

I pride myself on my professionalism and my communication, my ability to communicate with people and keep my clients and other interested stakeholders and parties informed, again, in a very fair manner.
By the very nature of our profession, it's a contention profession, and we're often on competing sides. And I have been on competing sides of both partisan issues, but I think that I have managed to navigate that process without being labeled as a partisan operative, but more as a professional who elected officials and others have looked to for help in any way, in any way they have needed it.

And not so much as a partisan player.

You know, there's a whole different profession of political consultants that do this kind of work that are employed.

I've always felt that they're much better at the political stuff than I am.

My role is to be a lawyer, to give advice within the scope of the law.

I prided myself as state election director on my neutrality and ability to work with everyone from the Libertarian Party to the Democrat and Republican parties, to even the folks who weren't in recognized parties.

And, again, I'm not asking you to do this, but if you talk to the chairs of those parties that were there when I was elected director, I think they would all say the same thing, I hope they would say the same thing, because I certainly worked very hard to maintain balance and
neutrality to make sure everybody knew I did my job in a very fair manner.

Obviously I had to take sides sometimes and make hard decisions, but I always made sure it was done in a very fair manner.

VICE CHAIR HERRERA: Thank you, Mr. Kanefield.

CHAIRPERSON MATHIS: Questions from other commissioners?

COMMISSIONER McNULTY: Mr. Kanefield, I have two completely different questions.

One is, which I think you've already answered, but I'm going to ask it a different way.

We're going to be drawing some maps, the five of us. What do you see your role in that process?

And the other unrelated question is: How would Ms. Foutz, I'm not sure I'm saying her name correctly, be involved in our project?

JOSEPH KANEFIELD: Madam Chair, Commissioners, I heard the first -- I think the first part of your question was what role do I see in the map drawing process for counsel, and I think I missed the second part.

COMMISSIONER McNULTY: The second question is how Jaclyn Foutz will be involved in our project. And to correct my pronunciation of her name if required.

JOSEPH KANEFIELD: Oh, Jaclyn. Okay.
Madam Chair, Commissioner, on the map drawing process, again, I think I answered this earlier where I see the role as counsel to keep the Commission abreast of the relevant legal authority, of course the Voting Rights Act, to make sure that you're in compliance with Section Five, section 203, the language, minor language provisions of the Voting Rights Act, when you start to do your outreach communication with the citizens of Arizona.

What I don't see the role, again, is to inject myself into that process, to offer my thoughts on how you might move one neighborhood into a district or out of a district.

That is your role as commissioners, and my job is not to inject myself into your process, but to make sure that you have advice -- the best advice possible.

Jaclyn is an associate with Ballard Spahr. She has a great background. She clerked for Justice Hurwitz. So she has a great background in case law research, and would be a tremendous help to me and to the Commission when going through the process, when doing research, keeping up on the other states and other issues that they're facing.

And she would, of course, be a help to me on staffing you and making sure the Commission is in compliance with the open meetings law, the public records law, the public finance laws, and everything else that you're going
to have to do on a day-to-day basis as you take on your substantive responsibilities.

    So I'm thrilled to be working with Jaclyn.

    I hope that her and I get to be a team working with you all, but I'm absolutely thrilled that I'm here at the firm and working on other matters too.

COMMISSIONER McNULTY: Thank you.

CHAIRPERSON MATHIS: Questions from other commissioners?

COMMISSIONER STERTZ: Madam Chair.

CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: The time frame for this Commission is compressed.

    And from the previous Commission, we are looking at we'll be selecting legal counsel in the near future.

    Our requests for proposal are currently out for our mapping consultants, which we anticipate back in the next two weeks.

    And then the ground is going be to hit running.

    You're starting with a new firm, separating the relationship that you've had with the Governor's Office.

    How do you see the next 30 days running for you and this team that you've assembled?

JOSEPH KANEFIELD: Madam Chair, Commissioner Stertz, I am ready to go.
My last day with the governor is Friday and my first day with the firm is Saturday.

I'm going to take a few hours off in between to relax, but in all seriousness, I am not really a down time kind of guy. I'm ready to get going. I'm very excited about joining the firm.

Having come from government practice, I come into the firm a little bit differently than others without, you know, a client base.

And so, in some respects, with respect to the Commission, again, if I'm fortunate enough to get the contract, I would be ready to hit the ground running with Jaclyn and Bruce. So we would be available right out of the chute without much conflict.

The other, you know, the next 30 days is really more about getting situated, established with the firm, try to reach out to existing clients of the firm and potential future clients, that kind of, you know, client development kind of work.

In terms of having representations and clients and obligations, there are very few at this time. So I'm perfectly positioned to come in and hit the ground running with you all.

COMMISSIONER STERTZ: Thank you.

CHAIRPERSON MATHIS: Mr. Kanefield, just a
follow-up question to Mr. Stertz' question.

Beyond 30 days, I'm curious to know, if you're selected, do you have any conflicts the rest of the year that would make you unavailable to the Commission?

JOSEPH KANEFIELD: Madam Chair, my biggest conflict, which I don't think is really an issue, is that I will assume the presidency of the State Bar of Arizona following the June convention.

What that brings is a monthly meeting, Friday morning meeting, with the Board of Governors for the State Bar.

Another obligation in between those meetings, but as every prior president before me carried on a full law practice, I anticipate being able to do the same.

The Bar is very accommodating, recognizing that we're volunteers, we're not full-time employees of the State Bar, and that although there will be some obligations, they would never -- the client comes first.

And that's certainly how I have managed -- I've been on the State Bar board for many years now, four years as an officer, and doing that work as president elect, while serving as counsel to the governor, and have managed to make it work just fine.

I don't anticipate it being a conflict with my work for the Commission.
But it is out there. It is something I'm committed to doing from June to June.

But, again, I can't emphasize enough that I hope you won't take that into consideration as a factor with respect to my time, because the Commission and clients come first, the Bar stuff comes second, and that has always been understood by the State Bar and the rest of my fellow bar members.

CHAIRPERSON MATHIS: Thank you very much.

VICE CHAIR FREEMAN: Madam Chair.

CHAIRPERSON MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: Building from the last two questions, Mr. Kanefield, can you share with us your knowledge of the calendar of events for the IRC, and what we need to accomplish, and by what time frame? And in particular share with us your view of where this IRC stands in terms of meeting its goals.

JOSEPH KANEFIELD: Commissioner, you asked me what is the time line for the Commission over the next several weeks?

VICE CHAIR FREEMAN: Yes, the time line for this Commission, and where we stand vis-a-vis meeting our target, which is having the maps prepared and approved in a timely fashion.

JOSEPH KANEFIELD: Well, obviously the --
your work -- you've begun your work. You've hit the ground running. You're off to a good start.

The map drawing process needs to begin very shortly, and you will need to work through that process in open session over the next several weeks.

And I would think about the time line, you would want to have that map submitted to the Secretary of State's Office hopefully by late -- sometime this summer, as soon as you possibly can, although you don't want to short change the voters and the citizens through having enough time for outreach and public input on the process.

So that would be -- you know, you'll have a lot of work ahead of you over the next weeks as you undertake that process.

And then, of course, following that process will be preclearance, so we will have to be ready to submit that map to the Department of Justice for Section Five preclearance.

That's where Bruce will come in and help.

Bruce will also be available through the process to be looking and reviewing the work of the Commission to make sure that we're staying within the parameters of Section Five, and frankly to make sure that the Commission puts together the best map that is most definitely going to get preclearance submission. Because if that doesn't
happen, as we learned ten years ago, that really sets the process back and creates a lot of problems for candidates going into the 2012 elections.

That's as they're circulating their nominating petitions and everything else.

So the goal would be to have those maps done and submitted to the Department of Justice by late summer, if possible, and early or mid to late summer, and then see, and hopefully the Commission escapes any major legal challenges.

But looking at the history since the '60s and the apportionment decisions from the U.S. Supreme Court, we have not had a round of redistricting in the state that didn't have legal challenges to it. So you can expect that some group or someone will take issue with the manner in which the districts are drawn, and that hopefully we'll be able to get into court and get your maps judicially secured next year well before those elections.

So I see a lot of work over the next few weeks and months, especially going into the spring and as we get into election season next year.

VICE CHAIR FREEMAN: Thank you.

VICE CHAIR HERRERA: Madam Chair.

CHAIRPERSON MATHIS: Mr. Herrera.

VICE CHAIR HERRERA: This will be my last
question, Mr. Kanefield.

JOSEPH KANEFIELD: Because I think I'm getting hungry. I should eat.

VICE CHAIR HERRERA: You were very complimentary about the attorneys that you knew that we're planning on interviewing, and you said some nice things about at least four of them that you knew.

But what I want to know is what sets you apart from the other individuals.

You know, as you mentioned, this is going to be a tough decision for us, and I'd like for your help in letting me know a couple things of what sets you apart from the other individuals and why should we hire you over the other individuals.

JOSEPH KANEFIELD: Madam Chair, Mr. Herrera, well, again, I can't say anything disparaging about my opposition.

Like I said before, I won't repeat it all, but they're all fine attorneys and would do an excellent job.

I think what I bring to the table is my election law background and expertise.

I've lived and breathed election law for the last ten years, both as an attorney, as an election official, as an adjunct professor of election law at the University of Arizona.
And then what I bring -- I guess I bring two things additionally to the substantive knowledge and expertise in the area that you all will be handling.

The first is, in addition to your substantive responsibility, you are a state agency, a commission that has a lot of responsibilities administratively to run, to run your operation. And you are going to need legal advice navigating your way through the different issues that you're going to face on a day-to-day basis from everything from personnel issues, to open meeting law, to public record issues that will no doubt be coming your way, to public finance issues and everything else. And there I also bring an expertise to the table, a lot of experience. I've represented boards and commissions before.

I've continued to do that even as counsel for the governor.

She has several commissions that work directly under her. And as her counsel, I've had to staff and advise those entities.

And then finally what I also bring frankly is Bruce. I think Bruce is -- Bruce hasn't spoken yet. He's sat there patiently smiling, but Bruce is just a fabulous individual, an attorney, great guy, but more importantly, truly an expert who is dialed directly into the Department of Justice voting rights section, both as a past
attorney there and someone who's very closely connected to
the department and the current administration and others
that are there.

And I've enjoyed working with Bruce on both the
issues where we've been on opposite sides and issues where
we've been on the same side.

I think he brings a lot to the table in terms of
making sure, again, that the Commission stays within the
scope of the Voting Rights Act, which I think is the
number one -- is going to be the number one obstacle that
the Commission is going to have to overcome when drawing
these maps.

I think that's what separates me apart from my
counsel -- my colleagues who are also applying for this
position.

VICE CHAIR HERRERA: Thank you.
CHAIRPERSON MATHIS: Questions from other
commissioners?

COMMISSIONER McNULTY: Madam Chair.

CHAIRPERSON MATHIS: Ms. McNulty.

COMMISSIONER McNULTY: Mr. Kanefield has suggested
that Mr. Ellison might speak, so I'll ask him to.

Tell us a little bit about the current situation
at the Department of Justice and what your relationship is
there, whether you know the team that's being assembled for
BRUCE ADELSON: (Via videoconference) Thank you for the question, members of the Commission and Madam Chair. I very much appreciate the opportunity to speak with you today, and I very much appreciate the opportunity to work with Joe Kanefield.

As Joe said, he and I have known each other for a long time and have dealt with many, many different election matters, both in my capacity as the enforcement attorney for Arizona and now in private practice.

In response to your question, coincidently I met with the Justice Department today to discuss some federal compliance matters and matters that relate to voting and redistricting.

Having been with the department in the previous round of redistricting and know the training that was given to us nine or ten years ago, and how many people were hired nine or ten years ago to deal with redistricting, the current department has hired even more people than during the previous round.

The department from an enforcement perspective takes redistricting probably more seriously than anything from a voting perspective.

So the department is ready. They're reviewing redistricting right now.
And I will tell you that just to add on a little bit to what Joe was saying, I think that what I bring to the table as far as this team is that unlike anyone else that you're considering, we know what the Justice Department will do as far as what they must see, what the red flags are. We don't have to guess about that. We know. And I deal with the department on a regular basis in discussing various issues with them on behalf of clients. So I am very familiar with the people who are there now.

The current voting section chief is a redistricting expert. This is his third round of redistricting. His name is Chris Herron. Chris and I know each other quite well. We speak pretty frequently on various matters. Chris is an expert on redistricting. So I think the learning curve for the department this time is much lower than previously. The expertise, at least from a management standpoint, is even higher than it was during my justice career during the last round of redistricting. So just to end, I appreciate the opportunity to talk with you. And as I said, I think affording the Commission an
opportunity to kind of see inside of the department, know what the department is looking at, what they will be looking at, what we looked at nine years ago, what problems we found nine years ago which led to our objections, I think is a tremendous asset to the Commission, because, as I said, we don't have to speculate about that. We know what the answers are.

Thank you.

CHAIRPERSON MATHIS: Thank you.

Any other questions from commissioners?

COMMISSIONER McNULTY: Madam Chair, I do have one question. I don't know whether I should ask this now or later, but I'll go ahead and ask it now.

If we hired two counsel, we aren't going to want to pay them different things I don't think.

And so my question is can we have a discussion about your rate?

JOSEPH KANEFIELD: Madam Chair, Commissioner, are you asking what our rate would be?

COMMISSIONER McNULTY: I'm asking if we can have a discussion about the rate you submitted, given that if we hire two counsel, I think we've already agreed that we're going to want to achieve symmetry with regard to the rate for each counsel.

JOSEPH KANEFIELD: Madam Chair, commissioners,
absolutely we can talk about that.

And we understand that that's the direction that
the Commission is moving. And like I told you before, I
think very highly of all the attorneys on that list, and
certainly could work with any of them and would never do
anything to duplicate efforts, understanding the Commission
is going to be a tighter budget than it was ten years ago,
so we would certainly be mindful of those considerations,
and we certainly would be open to discussing the
compensation arrangement. If you are interested in hiring
us, we would be willing to sit down and talk with you about
that.

COMMISSIONER McNULTY: Thank you.

CHAIRPERSON MATHIS: Questions from other
commissioners?

(No oral response.)

CHAIRPERSON MATHIS: Well, it doesn't look like we
have any more questions for any of you.

As you start this new chapter, Mr. Kanefield, I
just want to thank you for your public service and wish you
well on your new -- in your new role at Ballard Spahr.

JOSEPH KANEFIELD: Thank you, Madam Chair. Thank
you, members of the Commission. We very much appreciate
this opportunity.

CHAIRPERSON MATHIS: Thank you for taking time
meet with us today.

COMMISSIONER McNULTY: Enjoy the rest of your meeting.

JOSEPH KANEFIELD: Thanks.

COMMISSIONER STERTZ: Thank you.

VICE CHAIR FREEMAN: Thank you.

CHAIRPERSON MATHIS: Please bring in the next one, Lisa Hauser from Ballard Spahr.

Hi, Ms. Hauser.

LISA HAUSER: Hi.

CHAIRPERSON MATHIS: I'm sorry we're running late.

LISA HAUSER: That's okay.

CHAIRPERSON MATHIS: We're about a half hour behind schedule. I appreciate your patience. So thank you for being here today.

We have given each of the firms an opportunity to make an opening statement, if they wish. But if not, we can just begin with the round-robin format of questions.

LISA HAUSER: Okay. Well, I would like to open with a couple of statements. And I do appreciate the opportunity to be here today.

I've gotten to know you a little bit in watching you through your prior meetings. But it feels as if we're really getting to the point where you're about to embark on the real work of the Commission, and I'm happy to be here.
and to answer your questions.

I think your selection of counsel is absolutely critical to the Commission's success.

I stand before you today as the only candidate who has actually represented the Arizona Independent Redistricting Commission.

I'm the only candidate who has the experience in every step of the Commission's mapping process, of the legislative and Congressional districts.

I'm the only candidate to have actively participated in each one of the cases filed against the Commission and who successfully litigated each one to conclusion in favor of the Commission.

Those cases made the law that you are going to follow.

And I'm the only candidate who worked with the Commission's experts to analyze competitiveness and to analyze the strength of voting rights districts, and who worked to secure preclearance of Arizona's Congressional and legislative districts for the last decade.

I didn't do this alone.

I worked shoulder to shoulder with Jose Rivera, a former U.S. attorney for Arizona in the Clinton administration.

He, a Democrat, and I, a Republican, were in
different firms, and were selected to ensure that the
Commission received non-partisan advice.

It was important for the commissioners to know
that the legal advice they received had been vetted by two
experienced attorneys of different political stripes.

The Republicans initially, I think, looked to me
for assurance that the advice was not slanted or tainted.
And the Democrats did the same with Jose.

But it didn't take long, I think, for the
Commission to realize that together we represented the
Commission as a whole.

Almost as important as that relationship is the
fact that selecting a bipartisan team of counsel gave the
political parties and the members of the public some
assurance that the Commission would not be getting legal
advice colored by one political point of view.

And that perception is extremely important.

You're going to find during this process that how
the public perceives your work is going to be almost as
important as the work itself.

So it is -- and the only recommendation I'm going
to make today is it's my strong recommendation that whatever
you do in selecting counsel, that you do select the best
Republican and the best Democrat you can find from different
firms to serve as your counsel.
The reason I say from different firms is this. Within the same firm, those of you who are in private practice probably experience this, there's always some level of inequality.

There's a little bit of a pecking order that goes on within firms. And not all partners are created equal. You want your counsel to be equal to each other. And when they come from different firms, they come in as equals.

You're not going to have one partner overruling the other.

I know, and I will give this by way of example, but to give you something about the perception issue, I understand that Ballard Spahr was interviewed just before me.

And Joe Kanefield is a Republican. Now he is there, or about to go there.

I understand Bruce Adelson is a recent addition to Ballard Spahr. And he is a Democrat.

I know both of them well.

But more senior than either of them within that firm is Ed Rendell. And Ed Rendell is in the Philadelphia office. He is the former Democratic Governor of Pennsylvania and former chairman of the National Democratic
And I think that is the kind of perception issue that you have to be cognizant of. Is it my hope that this Commission will be spared litigation. But, it's maybe a little naive to think that that will be the case.

Litigation seems to follow redistricting, particularly in Arizona. So it is important to keep in mind that the best trial preparation is the record that you will be building as you make your decisions.

Counsel should be working with you every step of the way to make certain that your record is developed and your decisions are protected.

I have successfully done that, and require no on-the-job training.

I know the time commitment. I know the hard work involved. I know the pressure that goes with this job. I've been yelled at by all kinds of people, including Republicans -- actually mostly the Republicans yelled at me and the Democrats yelled at Jose.

But you get used to that.

And, I'm ready for the job.

I have done my best to try to keep my work situated in such a way that I would be able to jump into this task whenever the Commission was ready to hire counsel.
Finally, before we get to your questions, I want to address something that comes up for me all too often. I want to address what I view as inevitable concerns that I am somehow too political. I don't know why that happens, because there are lots of other folks in this process that you're interviewing that have a political background and have been involved in the political process. It's the nature of people who work in election law and who've been involved in redistricting. Just last year I was a candidate for a vacancy on the Arizona Supreme Court. I was the only private attorney interviewed by the Arizona Commission on Appellate Court Appointments. And I faced this exact criticism. That's why I figure it's probably out there. The Democrat member of the Appellate Court Commission who performed my due diligence, sort of a background investigation, reported back that the concern didn't hold up to scrutiny. An extreme partisan would not have my history of representing candidates and issues on both sides of the aisle. In addition to having served on the staff of Republican Governor Fife Symington, I represented, while I was at the Attorney General's Office and in the Solicitor
General's Division, I represented Secretary of State Mofford, Karen Osborne, Jim Shumway, and Dick Mahoney. All Democrats.

In private practice I work closely with Kyrstin Sinema to oppose an initiative that would not only ban gay marriage but domestic partner benefits.

And, for example, I represented Sandra Kennedy, a Democrat, that now sits on the Arizona Corporation Commission.

Read through my list of former and current clients, and you will find it difficult to stereotype me politically.

I have been a registered Republican since the age of 18.

I'm not a newcomer to the Republican party. Redistricting is the most important and the most political really of all exercises.

Subject to partisan pressure from both sides, the Commission's attorneys last time advised our clients according to the law.

We did not -- we did so independently of our respective political parties.

If I were too partisan, I can assure you that I would not now have the support of former commissioner and Democratic leader Andi Minkoff, whose letter I have included.
with my proposal.

And, I would not have the support of a true lion
of the Arizona Democratic Party, and my friend, Paul
Eckstein.

During the Supreme Court nomination process, Paul
wrote a really lovely letter to the Appellate Court
Commission in support of my candidacy.

And given the kinds of cases that Paul and I have
litigated against each other over the years, including the
redistricting litigation, Paul was the lead counsel on the
other side, I don't think he would have wanted a truly
partisan, extreme Republican on the State's highest court.

This morning Paul gave me his permission to share
that letter with you in support of my candidacy to serve as
your counsel.

And I will give that letter to Mr. Bladine, and he
can distribute it to you.

He specifically in that letter addresses the work
that I did for the last Commission.

Again, if he thought that I engaged in overly
partisan behavior during that process, he would not have
supported me to sit on the Supreme Court and would not have
stood by those words in this context by allowing me to share
that letter with you today.

I thank you very much for giving me the
opportunity to make those statements and look forward to answering your questions.

Thank you.

CHAIRPERSON MATHIS: Great. Thank you.

VICE CHAIR FREEMAN: Madam Chair.

CHAIRPERSON MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: Thank you for coming today, Ms. Hauser, and thank you for that statement.

You've made my job a little tougher, because you addressed many questions.

LISA HAUSER: Maybe it will help you move things along and get back on schedule.

VICE CHAIR FREEMAN: Lawyers, we practice law. That's our business. Sometimes we're called upon to advocate for positions that personally we may not share the same beliefs, although we're not required to take such representation.

LISA HAUSER: Right.

VICE CHAIR FREEMAN: Then, again, it's certainly conceivable that in terms of a political background, a client may seek out lawyers who share their political beliefs thinking they would be more effective in advocating a case, and perhaps conversely there may be lawyers who seek out clients who share their political views thinking that they'll mesh better.
Do you think that yourself, an identified Republican, do you think you fit into either one of those camps, or do you reject the construct entirely? And, if so, why?

LISA HAUSER: No, Commissioner Freeman, I think that is somewhat true. And I certainly think that when I first went into private practice, the Republican clientele seemed to come my direction.

I eventually found that, you know, as you're working on those kinds of matters and those kind of cases, you do come in contact with folks from the other side.

And eventually found that there were members of the Democratic party, or Independents, or Libertarians, that would come to me. And especially with the Democrats, I just considered that to be a huge compliment, because, you know, I might not have agreed with them on all of their party platform, but I was really always honored that they were willing to come to me as a Republican and trust that I would do the best job that I could for them.

Especially in this line of work, I mean, if you're an election law attorney, avoiding those conflicts of interest is important.

But, you know, it has been a very long time since I represented the state party, so it's given me some flexibility in that regard.
But I really feel privileged to have worked closely with people on both sides of the aisle and to enjoy their respect. And it's really something that I treasure.

VICE CHAIR FREEMAN: Thank you.

CHAIRPERSON MATHIS: Questions from other commissioners?

COMMISSIONER McNULTY: Madam Chair.

CHAIRPERSON MATHIS: Commissioner McNulty.

COMMISSIONER McNULTY: Thank you for coming, Ms. Hauser.

LISA HAUSER: Thank you.

COMMISSIONER McNULTY: You have such a distinguished resume that it doesn't make sense to ask you a lot of the questions that are on my list.

So let me ask you one that is towards the end of my list.

Talk about the pros and cons of a group of five, two Democrats, two Republicans, and one Independent, having counsel from each party, the way in which, in my mind, there are -- we are different from a Legislature. This is a different situation from a legislative situation in important ways.

What ground rules should we put in place, would you follow, to address things like the ex parte communications between counsel and the commissioners?
LISA HAUSER: I think that one of the things that Jose and I did early on last time was to sit down and figure out how we were going to work together to represent the Commission.

And one of the things that we did, and one of the things that we made certain that our clients collectively understood, is that, you know, I didn't represent just the Republicans and Jose didn't represent only the Democrats, and that we represented the group as a whole.

Now, that said, sometimes, as I said initially, the Republicans might have felt a little bit more comfortable coming to me saying, is that really, that opinion that you and Jose gave, is that really, did you get pushed into that, or, you know, they wanted to test those boundaries a little bit to see.

And those conversations, again, because Jose represented the entire Commission, just as I did, each of the members has to understand that you don't have necessarily a separate privilege of your own with respect to counsel.

We don't represent you individually.

So one of the things with the Commission's certainly permission that we agreed to early on was to disclose to each other if we had commissioners who came to us seeking particular advice.
And that did happen from time to time, and it wasn't always because, you know, there was something nefarious going on, but just because it was maybe a little easier one day to get a hold of me than it was Jose or vice versa.

But we made sure that we stayed in contact with each other regularly, and that we worked together, and we didn't allow commissioners, that was our concern up front, that we didn't allow commissioners to try to co-opt one of us, to peel us off from the herd or anything like that.

So I think that that is an important ground rule. And it is a relationship that takes, you know, maybe a little bit of time to get used to and to build, but it was certainly one that worked very well for us.

And I think in most instances, and certainly if we were asked to give an opinion, we definitely consulted. We would sometimes divide up the work obviously.

I would answer one particular -- draft one opinion, and he might do another, and then we would review and make sure that we were in concurrence.

And those rare times when we were not, we gave both opinions to the Commission, and it was up to the client to decide which way to go.

I think that that system seemed to work very well. And I would talk to co-counsel about going that route again.
COMMISSIONER STERTZ: Madam Chair.

CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: Thank you for coming, Ms. Hauser. We appreciate the time and the previous time with the Commission.

It's obvious by your resume and by the attachments that you come highly recommended by both sides of the previous Commission. And that's very interesting to see as part of your application.

My question deals with litigation that you were involved with, which was the communities of interest or more specifically the competitive districts, and how you -- give me your understanding of what your -- how would you define or your understanding of communities of interest and how they balance in the perception of equality with competitive districts.

LISA HAUSER: Communities of interest are -- they're very difficult to describe.

This was an initial frustration I recall in the last Commission who wanted the definition.

And they are essentially something that is self-described.

So what you will find is you will have interest groups, citizens, from various parts of the state who will come in and describe to you a community of interest.
There are certain things that you can look at in figuring out what makes sense for you to use to get a handle on what is a community of interest and what isn't. Some of the concerns were maybe there's some little parochial concerns in the neighborhood, and don't really constitute a community of interest, but basically what you're looking at is something that pulls that group together and makes them vote in a similar fashion. So it could be economic. It could be language-based concerns, racial. It could be any number of things.

And you'll get a sense of it eventually. At first there will just be a barrage of information. And trying to sort of weed out what is a community of interest and what isn't is up to you. And you will make some decisions and recognize some communities of interest and not others.

Now, once you have, you know, you'll have some communities of interest that you're recognizing. Then in terms of the competitive districts, you will, if faced with the opportunity to create a competitive district versus having some impact on a community of interest, again, that is your decision to make as to whether, in that particular instance, any impact on that community of interest is of
significant detriment.

That's what the Constitution says, is that you don't create a competitive district if it causes significant detriment to one of the other, what I call, neutral criteria.

But, again, what the Arizona Supreme Court ultimately determined, affirming prior Court of Appeals decisions, is that that's your decision.

It's not going to work for somebody later to come in and second guess that, well, really that wasn't a significant detriment. You five may have all unanimously thought it was, but you were wrong. Someone's going to come in and substitute their judgment for yours, that's not how it works.

You get to make those decisions.

But the thing that you will do that is so important in this process is to make sure that you have properly documented that decision so that you don't step into a situation where you don't know why the district is the way it is and someone can make the allegation that you abused your discretion.

Your discretion isn't unfettered. You have limitations on it. The limitation is that you can't abuse your discretion.

So it's a balancing act all the way through the
map.

And sometimes the competitive interest is going
to -- a competitive district is going to trump every other
criteria, you'll make that decision, and sometimes it won't.

But those are your decisions.

And you've got to make your record, and that is
what your attorneys are there to help you do.

COMMISSIONER STERTZ: As a follow-up to that, the
Department of Justice's review of this package that we'll be
submitting is what you're talking about. They're speaking
about this is the package, this is the document that's going
to be submitted that they're going to review.

As you would be giving counsel as a co-counsel to
this Commission, how would you best guide us and help to --
and what is your perception of the compilation of that
document so that the Department of Justice would see it as
being something that would not -- that would stand the test
of scrutiny.

LISA HAUSER: Well, to clarify, this balancing act
that you're going to go through in dealing with all these
criteria, that is really more a matter of satisfying the
Arizona Constitutional requirements.

In terms of Department of Justice, there is one
criteria that they really care about, and that is compliance
with the Voting Rights Act.
Whether you have created a competitive district or a community of interest is really not something that they care about greatly one way or the other.

You may have to explain why you configured a Voting Rights Act district in this way instead of maybe pushing it that way because of these other concerns. You put it in context what you did.

But their goal is really quite limited to make sure that you have created maps that at least meet the benchmark of the number of effective minority districts from the last time.

So, again, it's a matter of testing those districts during the process to try to establish where they are at their effectiveness level without going too far beyond that, and documenting that for the Department of Justice.

Does that answer your question?

COMMISSIONER STERTZ: It does. Thank you.

CHAIRPERSON MATHIS: I have a question.

I'd like to first acknowledge that you've provided us with some very useful documentation from the last Commission, and I really appreciate that, and I'm sure the other commissioners do as well. Thank you.

There's been a length to that.

Given your role with the past Commission, I'm
curious to know your thoughts on the DOJ today as compared
with ten years ago, and what's the same, what's different,
and how you perceive maybe us approaching them, if anything
has changed.

LISA HAUSER: Well, there are a number of people
there. It's a very -- it's very interesting actually.

There are a number of sort of the line attorneys
who have turned over. There was a quite a bit of turnover
during the last decade.

But there are some senior folks who have been
around a long time, people that I've worked with who are
still there, who were helpful. For example, I think I
referenced in the proposal that I submitted having worked
with the Community College District in Pinal County that
faced a rather monumental problem in that they had submitted
their districts to the County Elections Department, the
Board of Supervisors signs off of them, and they send them
to the County Elections Department. And they've been doing
this for 30 years, and assumed that the County was
submitting them to DOJ. And they found out lo and behold
they had never been submitted.

So trying to unwind 30 years of preclearance
was -- Jim is smiling down there -- I'll tell you it turned
out to be a much bigger task than I thought when I signed on
to get their lines pre-cleared.
But in working with the various senior folks at DOJ, because we had some particularly steep challenges with respect to missing records and those kind of things, they were as helpful as they could be.

That said, DOJ is a very -- they are very close to the vest.

If you were to call up DOJ and say, hey, what percentage is going to work, they're not going to tell you that.

They tell you very nicely, well, submit your plan and we'll take a look at it.

That, I think, is a constant.

But it will be interesting to see how DOJ performs in this particular cycle given that, I'm sure you've heard this, this is the very first redistricting cycle since the Voting Rights Act was adopted where there's a Democrat in the White House. And so some folks are saying maybe that -- you know, is that going to make a difference or not.

My guess is not too much.

Because, again, it's a career department. And I think they take their responsibilities toward enforcement of the Voting Rights Act very seriously, and they're not likely to vary too much from what has gone on before.

But unfortunately you're not going to know a lot about how they're going to act until you actually send them
CHAIRPERSON MATHIS: Great. Thank you.

Questions from other commissioners?

VICE CHAIR HERRERA: I have a question to ask.

CHAIRPERSON MATHIS: Mr. Herrera.

VICE CHAIR HERRERA: Thank you for being here.

And I think, like Mr. Braun had mentioned, he has attended most of the meetings, you have as well. So thank you for your dedication and for being here and for supplying us with the information that we were missing as commissioners.

What I wanted to ask you, when we -- you know, you obviously represented the previous Commission.

What pros and cons do you think we would face by hiring someone like yourself that has that expertise, and also I would say baggage as well?

Because depending on who you talk to, they would say that as well. So how would you answer that? What are the pros and the cons of hiring someone like you, Ms. Hauser?

LISA HAUSER: Well, certainly the cons -- let me take the cons first.

The cons would be, well, you're new, you're different. You don't want to have any of the connection to the past Commission.

Certainly the criticism, I would say the criticism...
that the last Commission faced was its emphasis on other criteria versus creating competitive districts.

I know that they believed that they created the very best map that they could given their collective points of view on how the criteria should be respected.

And that's important.

Because you will feel the same way about your maps.

There's always something for somebody to criticize.

I'll tell you this for sure, and I'm sure you know this, that you cannot make everyone happy when you draw Congressional and legislative districts.

I would say it's near impossible. So there's always going to be some criticism.

But I think that the criticism, for example, what I addressed in my opening statement, this notion that I'm too political or you would be making a mistake if you were to hire me as part of your counsel team, it's just misguided in the sense, as I said, the lawyer that I litigated against for the better part of the decade doesn't believe it's a problem for me to return.

And I think that speaks volumes to that concern.

The plus, of course, is I know that record from the last Commission like the back of my hand.
We had over 6,000 trial exhibits.

And, you know, I understand what happened last time. I understand why the Commission made some of the decisions it's made — it made.

And those don't have to be your decisions. You are your own Commission.

This will be your work product.

But should you have questions about what happened last time, or didn't do X, get the last Commission into trouble, I can put that into context for you, and at least sound that warning bell or give you the assurance that it isn't maybe quite the problem that someone has led you to believe.

So I think that rich sort of treasure trove of history that I possess would be of great benefit to you, and would certainly outweigh any of the potential negatives that somebody might raise.

I think all the negatives are false negatives anyway, but I think that you would be well served by having me on the team.

VICE CHAIR FREEMAN: Madam Chair.

CHAIRPERSON MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: Ms. Hauser, you're aware of the identities of the other law firms, the three or so other law firms that would serve as a complement to you if you
were retained as counsel.

Can you share with us your views on those lawyers and their experience level and whether you think you would work effectively with those lawyers or could effectively with those lawyers.

LISA HAUSER: On the -- if I miss somebody on the Democrat side, let me know.

But as far as I can tell, it would seem to me that Ballard Spahr is coming in like the mix of Republican and Democrat, so I'm not necessarily going to address them, because I know that Bruce is there and Bruce is a Democrat and Joe's a Republican.

On the Democrat side, I would be talking about Mary O'Grady from Osborn Maledon, David Braun, and Mike Mandell.

I've worked with each one of them in different contexts.

I've known Mary since probably the late '80s. Mary was -- when I first met her, she was minority counsel -- she was the Democratic counsel for the House of Representatives.

She worked for Art Hamilton, if any of you remember Art.

And we worked a lot on various pieces of election legislation.
I was dispatched from the Attorney General's Office to go down to the Legislature and work on those matters, and I worked with her extensively during the 1990s redistricting, which was kind of a bear.

The Republican -- the House and Senate were controlled by different parties. Symington was governor. I was over at the AG's office and doing all the State's preclearance work. And the Republicans and Democrats couldn't really agree with respect to the legislative redistricting how to handle clearance. So I took charge of the preclearance process and worked with all four caucuses in getting that presented.

So I worked with Mary in that context.

Mary is a lovely person. I have always enjoyed working with her.

I've seen her work while she was Solicitor General. I think she's -- she would bring a lot of quality to the process and would be a very pleasant person to work with.

We were both strong advocates, but I don't see any problem working with Mary.

David Braun, I worked -- I've had cases against him where we've represented candidates, one candidate challenging another's right to be on the ballot and that kind of thing. And David represented one of the groups of
plaintiffs, Congressional plaintiffs in the last round of litigation.

David is also a very pleasant person to work with, and I know I could work with David.

I wouldn't say he has maybe the same level of experience as Mary, but, again, I think that those are decisions for -- you know, obviously decisions for you to make.

But I can at least assure you that I could work with David.

Mike Mandell worked for Paul Eckstein. He was at Perkins Coie during the last round of litigation.

I don't remember him being around the mapping process until after the litigation started.

We did have some mapping that went on post-commencement of the litigation, and Michael was around and observed that.

And I know that he has been, I think, the Senate Democrat or the point person for redistricting, so far during this process, and I think he probably has a good grasp and understanding of the redistricting process, even if he hasn't yet actually done that himself.

So, you know, from having been around Michael during years of litigation, I think I could work well with him also.
VICE CHAIR FREEMAN: Thank you.

CHAIRPERSON MATHIS: Other questions?

COMMISSIONER McNULTY: Madam Chair.

CHAIRPERSON MATHIS: Ms. McNulty.

COMMISSIONER McNULTY: Ms. Hauser, how do you see your role, the role of counsel in the mapping process?

LISA HAUSER: Well, paying close attention is really, really important.

Counsel should be working closely with not just the commissioners, but with the mapping consultants, and, again, making sure that the record is protected, developed and protected.

I don't see the role of counsel as telling you what -- telling you specifically how to exercise your discretion.

To tell you that, gosh, you know, I really think that that constitutes significant detriment to criteria, I think that's inappropriate for counsel to do. Those are your decisions.

But what I can tell you is, for example, things like you may have respected the Voting Rights Act, for example, in a particular district, to the point that perhaps you've gone so far as to create what we call a Shaw violation. Shaw versus Reno is the case that indicated that, you know, you -- it is possible to basically have a
racial gerrymander and to maybe go too far in using race as a redistricting criteria.

So those are the kinds of things to watch out for, during the mapping process, to let you know as you're trying to strike those important balances when you might have gone too far into an area that might get you in trouble.

And, as I said, I think those kinds of instances of maybe sticking your head up and saying, hey, you need to take a look at this, or maybe we need to chat for a minute, because there's a concern we see developing in a particular area like that.

Those are the very, very important roles that counsel play during the mapping process, which is why you pretty much have to have those attorneys around throughout the process, instead of maybe thinking, well, we'll have attorneys here to deal with open meeting law issues and whatnot and keep those mapping attorneys off in the background.

It all comes together, and they really need to be with you there right at the elbow, watching carefully, to make sure that they can sound the alarm if there's any possible issue or trouble that might pop up.

But not interfering with the exercise of your discretion.

I feel very strongly about that.
CHAIRPERSON MATHIS: Other questions?

VICE CHAIR HERRERA: Madam Chair.

CHAIRPERSON MATHIS: Mr. Herrera?

VICE CHAIR HERRERA: We have three Republicans to choose from and three Democrats. I think they're all well qualified, and I could go with flip a coin and pick either one and I wouldn't be disappointed.

But what I'd like you to do is make it easier for me and tell me -- I know you've said it throughout your presentation, but if you could summarize and tell me why we should pick you and why you stand out above the rest.

LISA HAUSER: Well, I think certainly in terms of the work that this Commission has before us, as I said in my opening statement, I am the only attorney that you're going to talk to today that has actually done that.

And I've lived this process for -- from March of 2001 through whenever it was in 2009 that the Supreme Court finally ruled.

I think, again, that, as you said, you have lots of good choices out there.

But whether it's on the Republican or the Democrat side, that's the thing that I bring to the table that is so different than everyone else.

I did it successfully. I did it working with co-counsel. I have a proven track record and ability to
work closely with Democratic co-counsel to produce a product that will stand up.

And I think that that is something that would serve you well in this next process. And when you pick your Democrat counsel, at least that is somebody that I can sit down and speak with and talk about how to make sure that you're working well together drawing on my experience from the last decade.

So I think the Republican counsel pick, I hope, is an easy one for you to make.

VICE CHAIR HERRERA: Thank you.

CHAIRPERSON MATHIS: I have a question. As the lone Independent, I thought I'd ask a partisan question.

LISA HAUSER: Okay.

CHAIRPERSON MATHIS: So with the last Commission, were there times when you were asked to provide partisan counsel to the commissioners who shared your political affiliation?

And, if so, how did you handle that?

LISA HAUSER: You know, I didn't see it come from the commissioners as much as it would come from the outside. I won't say who, but --

VICE CHAIR HERRERA: Please do.

LISA HAUSER: But, you know, there were at least -- there was at least one time when a Republican party
official was giving me the business on the telephone, because of something that the Commission was doing, and frankly I had to remind that individual that I didn't work for them, I worked for the Commission.

You know, I'm not here to do the bidding of the Republican party.

Why they had that idea in the first place, I have no idea.

And I know that Jose had similar experiences.

The commissioners themselves, however, they might have a particular interest in looking at an issue that might have a political motivation behind it, but, again, in providing the answer to that question, I worked with my Democrat co-counsel in terms of providing that advice, so that getting that bipartisan advice would then mitigate whatever partisan intent might have been behind the particular question.

CHAIRPERSON MATHIS: Thank you.

LISA HAUSER: You're welcome.

VICE CHAIR HERRERA: I do actually have one more question.

CHAIRPERSON MATHIS: Mr. Herrera.

VICE CHAIR HERRERA: Is there anything that you would tell us that if you would do things differently, if you were to -- if we were to select you, anything that you
12:48:17 would do different going forward that you did last time or
12:48:18 that you maybe regret doing that you wouldn't do it this
12:48:19 time?
12:48:20 LISA HAUSER: Something I personally did?
12:48:22 LISA HAUSER: Well, part of that is in connection
12:48:23 with the case law that developed. And so the thing that I
12:48:24 know very clearly that would be, I think, done differently
12:48:25 this time was that Jose and I both, based on the
12:48:26 Commission's determination, protected them from voter
12:48:27 registration and voting history data while they were making
12:48:28 their first adjustments to the grid.
12:48:29 And until they had sent out a draft map, we didn't
12:48:30 get into those -- the use of that particular data, because
12:49:18 of some concerns about how the Constitution would be read.
12:49:19 It was a close question.
12:49:19 And we had plenty of input from high powered
12:49:19 Republicans and Democrats alike, and basically nobody, you
12:49:19 know, was going to be happy.
12:49:32 So when the Commission made their decision about
12:49:32 how to proceed, we protected them from receiving that data
12:49:32 and potentially violating the Constitution.
12:49:32 Now we know the court has clarified the language
12:49:32 and indicated that that data can be considered earlier in
12:49:55 the process.
So, as I answered a question of the Supreme Court during oral argument, I said, yes, I would say to the next Commission, consider that data as soon as you create the equal population grid.

Frankly considering the data earlier makes the work a little easier in the sense that you've got maybe more time to pull that data together and analyze it, rather than holding it in abeyance and, you know, trying to ramp up very quickly.

So that is the one thing that I know for certain I would do differently.

But, again, it's driven by the case law.

But overall, notwithstanding the fact that we were like a science experiment last time, it was all so new, by and large I think the way Jose and I worked together, and the way we worked with the Commission, that was spot on. We hit it right.

And that I would hope to see replicated.

VICE CHAIR HERRERA: Thank you so much.

COMMISSIONER STERTZ: Madam Chair.

CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: Ten years ago when you first started this process, you said this is a sort of a experiment of the petri dish styling, you had the tenor and nature of partisanship existed on a particular level.
How do you feel it is -- it exists today, and how do you feel that the partisanship in the groups that will be lobbying for position will market themselves to the commissioners and to the selected mapping consultants and the selected attorneys?

And, lastly, are you a believer in the dual counsel representation, and can the dual counsel representation, if you are a believer in it as you've participated in it fairly as I've read most of the record that's available, why?

LISA HAUSER: Let me take that last one first, because I can hit it the quickest.

I think as I said in the opening statement, I'm a huge believer in the dual counsel role.

I pointed out, I think, where trying to pick one firm where you have Republicans and Democrats involved, even though you might have both the Republican and Democrat attorney assigned to you, there's an inequality that may be afoot that would make -- would create an imbalance that might make that unworkable.

So I think two different firms are important.

And having two different firms is good, not just for you all, because you know we're watching each other. If you pick smart lawyers, we're going to watch each other all the time and make sure that everything is being done
appropriately, no shenanigans anywhere.

But it's also, I think, extremely important for the public perception.

People don't trust this process.

They got it out of the basement of the capital, and entrusted it to the five of you.

But they're still worried about it. And they worry who's pulling your strings and how you're being manipulated perhaps in reaching your decisions.

And that's an awful burden to place on one attorney.

Because that attorney, whether it's a Republican or a Democrat, no matter how non-partisan or fair they are, it's going to be a truly difficult task for them and a difficult -- it creates a difficult perception for you all to deal with.

Again, perception is going to be -- a lot of the things you're going to do are not just good ideas for purposes of getting through the mapping process, but they're good ideas for purposes of the perception it creates and the trust that it creates in your work product.

So I think it's hugely important.

How people market themselves, or, if I understand the question correctly, how they will maybe try to influence the Commission?
COMMISSIONER STERTZ: Before you alluded to the allusion or the perception of co-opting.

LISA HAUSER: Right.

Well, you will get, if you haven't already, you will get a lot of pressure, and so will the consultants that you hire.

And I think that in terms of the political environment, I don't think it's ever been a politically neutral redistricting process.

This is mighty important to a lot of people and their political careers, and you'll get a lot of interest, whether the political rhetoric out there in the community is at an all-time low and everybody is being nice to everybody else, or it's a time when people are really, you know, bashing each other's heads in.

This is about the most political kind of process there is.

And so people will try to come up with ways to get you to do what they want.

And I think Commissioner McNulty and Commissioner Freeman were at the Morrison Institute presentation and heard one of the professors comment on how people go about doing that, and that pretty much everybody who comes in front of you has something that they want.

They may tell you very directly what it is, and
that may be exactly why they are asking for whatever it is, but a lot of times there's a subliminal message. There's something else going on.

And, you know, you're not allowed to consider the residences of incumbents, for example. But everybody else is thinking about it.

And so sometimes you'll see some little change come before you and some little inexplicable jog in a district line.

Ask questions. Find out why that line needs to be there to develop your record of why you created that particular, that particular line.

And so in terms of guarding against manipulation, it's a lot about asking those questions and making sure that you know why you're developing the lines that you're developing.

COMMISSIONER STERTZ: I want to go back, Madam Chair, if you'll indulge me for a second to the petri dish comment.

You were successful in crafting a defensible record over the term of this.

And in concert you were working with many different litigators, including Mary O'Grady at one point.

LISA HAUSER: A little bit.

COMMISSIONER STERTZ: A little bit.
That experience base, explain to me how that's -- how you're going to be able to parlay that, because you're no longer looking at that petri dish now. We're looking at an experience where the ground is already -- we're already running, and we also have a very compressed time frame. How do you see the next 30, 60, 90 days playing out?

We're going to be hiring counsel here in the next -- short period of time. Our mapping RFPs are out. We'll be hiring mapping consultants in the next two to three weeks.

So we're looking at mid-June assembling or looking at grid mapping being done, and we're looking at a back end date.

Explain to us how you're looking at the schedule of deliverables and who you are going to help us to -- and guide us through the experiences of the petri dish through success to have this be a successful summer and fall.

LISA HAUSER: You know, in terms of -- and I know it feels to you like it's been a long time since you got appointed and you really haven't started making maps yet. The last Commission issued the grid on June 7th, I believe, early June, of 2001. And then proceeded with six weeks of roaming around the state and collecting information and coming up with a draft map.
I think in terms of, you know, initially, because the mapping consultants aren't there yet, I think that counsel, amongst the very first things that we should be doing, is, first of all, talking with you about the process, and what is it about the last time line that you like and what you would want to change.

Secondly, and maybe more importantly, is to get a handle on the data and make sure that everything is in place to begin the work when, you know, we reach that point of actually working with the data.

The beginning -- the first set of data that you're going to be working with is exclusively the census data, because the equal population grid is the only thing you take into account when you create the legislative and Congressional districts and the equal population grid. You don't look at anything else.

And how you want to go about doing that equal population grid.

And certainly I can explain to you how the last one was created. It was kind of a novel and unique concept, and the last Commission spent a lot of time talking about different things and different ways to come about the grid.

You can probably compress that a lot, because the grid doesn't last long. It's a starting point. It's, you know, it's gone.
The next -- I think the other thing I would mention to you is that, you know, I think the last Commission felt that it didn't get the big pat on the back for tromping all over the state and listening to everybody.

First of all, it's sort of a thankless job you have anyway, but I think what they may have overlooked is that it was really important to those people that got to see them and come to -- you know, step up to the microphone and speak to them in person about their concerns.

And it also gave the commissioners a chance to get a little bit of a sense of that community to actually be there.

But you may not have the luxury of time depending on when you want to conclude the process to do that.

So the technology of allowing those remote hookups for meetings and doing things online is better than it was ten years ago. And it may afford you some opportunities to compress that schedule a bit and allow you to pick up some speed.

The mapping process itself, it just takes a little bit of time. And you just have to allow for that. And that's where I would suggest that you really spend some time trying to block out schedules to allow you to spend the time you need to make those critically important discretionary decisions.
VICE CHAIR FREEMAN: Madam Chair.
CHAIRPERSON MATHIS: Yes, Mr. Freeman.
VICE CHAIR FREEMAN: How are we on time? Do we have time for one more?
CHAIRPERSON MATHIS: Yes.
VICE CHAIR FREEMAN: Ms. Hauser, you've had a law career, election law lawyer in these kind of issues. It's been ten years since the last IRC. What is motivating you to want to go through the process again?
LISA HAUSER: That is an excellent question. Jose tells me I'm nuts. But, I said that may be true. I think I'll share with you that when the Redistricting Commission -- the redistricting proposition was on the ballot, I voted against it. And so I came to the Commission having not supported the concept of taking this away from the Legislature. But I became a real convert of this process, because I think it can be done so well and so great and give so many opportunities to the citizens of the state of Arizona to participate in the redistricting process that they had never previously experienced. That, you know, done right, it's a wonderful, it's
a wonderful thing.
And having spent eight years -- no, litigation started in 2002, so seven years.

Litigating the -- and I outlined in the proposal, it was a bunch of different lawsuits, the one that took the longest was the legislative competitiveness case. And having gone through that and developed all that case law, it's not just one Supreme Court decision, it's a lot of case law out there. Not having the opportunity to apply it, I told somebody it would feel a little bit like helping to create the cure for some disease and never be able to use it on a patient.

And I think that I've had a long career, even though I've been in private practice since '97, a long career in the public sector, and I guess I sort of think of myself as a public sector lawyer who just happens to have a lot of private clients lately, but I think that having that opportunity to sort of come full circle on this process and to help you all do the job you're capable of doing is the reason that I remain interested.

I can't promise that I will be back ten years from now, because I don't know if I have any more redistricting left in me.

But I'm here today.

VICE CHAIR FREEMAN: Thank you.
CHAIRPERSON MATHIS: Any other questions?

COMMISSIONER STERTZ: No, ma'am.

CHAIRPERSON MATHIS: No more questions. Thank you very much.

LISA HAUSER: Thank you.

COMMISSIONER McNULTY: Thank you.

CHAIRPERSON MATHIS: Our apologies for our lateness.

LISA HAUSER: I hope you have a chance to have lunch.

CHAIRPERSON MATHIS: Thank you.

VICE CHAIR HERRERA: Thank you.

RAY BLADINE: Madam Chair, do you want to establish a break time for lunch and then come back? And I think you will also probably want to meet with the purchasing staff in E session.

CHAIRPERSON MATHIS: Right. So it's 1:06 p.m. We'll take a recess.

I'm sure the court report is excited about that. We'll come back -- can we do this sort of quickly? The next interview is scheduled currently for 1:15.

(Lunch recess taken.)

CHAIRPERSON MATHIS: I'm going to call the meeting back to order.
It's 1:53 in the afternoon.

And wondered if I could get a motion to go into executive session for the purpose of discussing contract matters relating to hiring legal counsel.

COMMISSIONER STERTZ: So moved.

CHAIRPERSON MATHIS: And confidential documents.

COMMISSIONER STERTZ: So moved.

COMMISSIONER McNULTY: Second.

VICE CHAIR HERRERA: Can I --

CHAIRPERSON MATHIS: Discussion?

VICE CHAIR HERRERA: Thank you. We have one of the interviewees here.

CHAIRPERSON MATHIS: I know. We do.

And I apologize to Mr. Mandell, who's due up. And actually we have gone over more than a half an hour from his originally scheduled time.

But we have state procurement office here, who needs to speak with us about some matters, so we'll just have a brief executive session and then start again.

I'm sorry about that.

VICE CHAIR HERRERA: Why can't we wait until after we interview Mr. Mandell?

CHAIRPERSON MATHIS: I believe that there are issues that they need to speak with us about before we continue the second half. Okay? So I apologize.
We'll be brief.

VICE CHAIR HERRERA: Okay.

COMMISSIONER STERTZ: We'll be brief.

CHAIRPERSON MATHIS: Apologies to the public.

All in favor?

(Unanimous "Aye.")

CHAIRPERSON MATHIS: Any opposed?

(No oral response.)

(Whereupon, the public session recessed and executive session ensued.)

* * * * *

(Whereupon, the public session resumes.)

CHAIRPERSON MATHIS: We'll go back into public session.

The time is 2:12 p.m.

Thank you everyone for your patience, going in and out of the doors. And for Mr. Mandell, who we're starting an hour late for. And I appreciate that, you being so flexible.

We've given all the other candidates an opportunity to make some opening remarks, if they have any. And you don't have to feel compelled to do so, but if you have any and would like to, please go ahead.
MICHAEL MANDELL: Thank you very much, Madam Chair, for the opportunity to meet you all today. I certainly am familiar with the timing issues. At the Legislature nothing really starts on time. As a legislative body, it's appropriate for you to do the same.

A little bit about myself. I am a native Arizona. I grew up in Florence, Arizona. Lived there until I went to undergraduate at ASU.

I passed out my resume. I'll go back on that.

I apologize for not having that be part of the packet that I submitted. It should have been, so I wanted to make sure that you have that now.

I attended ASU undergrad where I received a B.S. in psychology. I went on to law school, also at ASU. And, in fact, that was only school that I applied to as my family was here and everything for me was in Tempe.

Once I graduated from law school, I clerked on the Arizona Court of Appeals for a year with a judge named Noel Fidel, who is now retired.

Then went and actually worked at the Arizona House of Representatives for a couple years. In fact, the attorney who is going to be speaking to you after me held a position that -- or I came into the position that she had before my time.

So we actually are friends and go back quite a
After serving at the Legislature for a couple years, I went and finally actually went to Brown and Bain. I had been recruited as a summer associate and kept deferring my time, but did end up going there and practicing.

Was there for about three and a half years, and did a lot of election law, commercial litigation. Really kind of came in actually at the time redistricting was going on.

And that was really the first case that I started on, once I got there.

We had a number of people who had come in seeking representation to challenge some of the things that the previous Commission had done, and so we immediately began to work on that.

And that consumed actually a large chunk of my time while I was at Brown and Bain, which eventually became Perkins Coie.

I had a family at that point, and was spending way too much time at the law firm and not nearly enough time with them, and so I decided to go back to the Legislature, and have been in the Senate since that time.

Because it did allow me to spend more time with my kids and watching them grow up and doing those kinds of
things that I think as a parent you need to do.

And so I guess with that, one of other things that
I wanted to mention too. Being one of the few solo
practitioners that are coming before you, I wanted to
address being a solo practitioner.

As part of that, when I -- as I worked at the
Legislature, I've also maintained a side legal practice as
my predecessor did when he was there.

In that role I've taken mostly small matters,
mostly transaction, small litigation matter, that don't take
up a great deal of time, because obviously my number one
focus was on matters of Legislature.

But during the interim times when things are
certainly a little slower, time was allotted for those types
of things.

And so as part of that, I think actually a solo
practitioner could provide benefits to the Commission.

One in the sense of cost, as an example.

Certainly one of the things that, having come from a large
firm, and having come from sort of the nature of the law
firm, a lot of times what happens is some of those cases get
overstaffed.

And as the initial part of the redistricting
occurs, there really isn't the need for multiple lawyers to
be -- and multiple lawyers for the same firm to be at a
Commission meeting, for example.

And a lot of times that might happen.

So from a cost standpoint, it's certainly a lot cheaper, and I think I can provide very good representation for that.

The other thing it would be the focus of my time.

So, from the standpoint of how -- of other lawyers having additional cases and things that they would need to work on, this would be the main focus of my time, and I would certainly devote whatever time was necessary to make sure that quality representation of the Commission was provided.

And then finally I think one of the things that -- just about me in general is the experience that I bring from a well-rounded standpoint as a public lawyer.

I have experience in public records and open meetings law, in providing public service orientations, which you all are going to have to at some point in time undertake if you haven't done it to date.

So as part of that, I think that I bring up a well-rounded legal perspective to the Commission and can provide a very quality representation.

The last thing I want to address was partisanship. I know I come from a partisan position. I'm a registered Independent. I'm a registered Independent, not as a ruse so
that people don't know where my leanings are, but actually
because I don't follow the principals of either party, and
my views are, in fact, independent, and I follow a lot of
the views of both parties.

And so I want to keep that option open when I want
to decide which primary I want to vote in, and just didn't
want to be labeled one thing versus the other, even though I
am in a partisan position.

On the social side, lean to the Democratic side.

That's probably why I am where I am.

I certainly have no problem working with anyone
from Republican or Democrat, but, in fact, two of the
Republican lawyers who I often work with are here.

But a lot of the members, whether they be
Republican or Democrat, I have no problem working with any
of them.

CHAIRPERSON MATHIS: Thank you, Mr. Mandell.

MICHAEL MANDELL: Sorry that if was long winded.

CHAIRPERSON MATHIS: Not at all. No, that was
great.

So we'll proceed in round-robin format. Any
questions from the Commission?

VICE CHAIR FREEMAN: Madam Chair.

CHAIRPERSON MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: Mr. Mandell, thank you for
coming. Sorry we're running behind schedule. Thanks for sticking with us.

Conflicts of interest, whether they be direct or potential or even the appearance of a conflict of interest is the nature of the beast for lawyers and law firms. It's what we have to deal with all the time.

You're currently representing the Democratic Caucus in the Legislature. And I guess I can't -- I'm not allowed to ask what you advise them on. I suppose it could be redistricting issues.

I believe you're also chief of staff, are you not, for the Democrats in the Legislature?

MICHAEL MANDELL: I am.

VICE CHAIR FREEMAN: And you've also taken litigation adverse to the interests of the IRC.

Given that, do you feel that there are any concerns that you have about potential conflicts of interest with respect to your representation of this Commission?

MICHAEL MANDELL: Commissioner Freeman, I appreciate the question. It's certainly one of the things that I thought of when I decided to place a bid.

I certainly do advise members of the Democratic Caucus on a host of legal issues while at the Legislature. It is my role. Most of them are actually constitutional issues and typically refer to legislation that's before
And I did represent the Arizona Minority Coalition for Redistricting, although that was a different Commission and a different time.

And so given those things, I certainly have no problem in the sense of not associating with members the Legislature who would have an interest in a particular district being drawn one direction or another during my time of representation with the Commission.

I also don't think that my former representation would -- I actually think that it would provide useful information to the Commission, and certainly some of the different principles that we learned along the way would certainly be useful to the Commission.

I do not think that it would create a conflict of interest in any way.

VICE CHAIR FREEMAN: Would your intent be to resign as counsel for the Democrat Caucus if retained?

MICHAEL MANDELL: My intent is to take a leave of absence for a period of time and then see how long the process lasts. And if the process lasts beyond the period of time that they would allot me for a leave of absence, I would certainly resign if that was needed for continued representation of the Commission.

VICE CHAIR FREEMAN: Thank you.
Chairperson Mathis: Other questions?

Commissioner McNulty.

Commissioner McNulty: Would you talk about what you think the most important issues that we will face regarding our preclearance as a Commission.

Michael Mandell: Voting rights are certainly, I think, going to be the chief issue that you'll have to deal with as a Commission.

A big part of it will be -- and certainly being brought up to speed on the requirements of the Voting Rights Act, understanding what the benchmarks are, and what needs to be done as far as percentages in a particular district.

The biggest hurdle that I think you're going to have is making sure that you meet with the minority communities, that you hear input from the minority communities, that you focus on trying to draw competitive districts in addition to Voting Rights Act districts, which there certainly is an inherent conflict as part of that process.

But not to say that it absolutely can't be done. But those are certainly -- from that standpoint, I think it's going to be the cornerstone, especially given the court cases that came out during the last redistricting and what you're likely to face potential litigation on.
Given the Supreme Court case last time and the fact that the Commission has been given extreme discretion and the drawing of the lines, it really remains that the Voting Rights Act is one of the only remaining areas that the Commission could be vulnerable to adverse litigation.

And so from that standpoint I think the Commission wants to pay particular attention to the -- to what it does, make sure that it understands the procedures that DOJ has in place, and the factors that they look at during the procurements which are listed in the CFRs.

And so as you're going through and drawing the lines, making sure that you're adhering to those factors, that you're addressing them, and those includes things like meeting with minority representatives, taking in their input, if they provide alternative maps make making sure that you review those, and doing those like kind of things.

But you're going to have a benchmark, and you're going to have to adhere to the benchmark.

Chairperson Mathis: Other questions?

Commissioner Stertz: Madam Chair.

Chairperson Mathis: Mr. Stertz.

Commissioner Stertz: This is a two-part question regarding competitive districts and communities of interest.

In your case where you were representing the Arizona Minority Coalition, your argument prevailed;
MICHAEL MANDELL: It did at the trial court.

COMMISSIONER STERTZ: At the trial court level.

In discussing the concept of competitive districts, which is something that is inherently numeric, versus communities of interest, which is by definition without definition, how do you use those two on a side-by-side when you will be giving us counsel and advice about how to manage the natural push and pull between those two?

MICHAEL MANDELL: Commissioner Stertz, and other members, really the reality is you can certainly have communities of interests and competitive districts.

It really depends partly on what you as the Commission decide your communities of interest are going to be. Whether or not -- like the last Commission made it a little more difficult, because they decided that whole counties were communities of interest, or perhaps the city of Phoenix was adopted as a community of interest.

When you've adopted 1.3 million people as a community of interest, there are obviously vast diversities within that community.

But then they also adopted things like the Isaacs School District, which is a very small community of interest.
And the way I view the constitutional requirement, community of interest is identification of the communities, deciding what those boundaries of that community is, and then making sure that you attempt not to split that community into various districts.

If, for example, though, you have multiple communities that can be placed within the same district, but the entirety of that community is kept intact, then you've adhered to the constitutional criteria and what needs to be done.

So, for example, Arcadia was also considered to be a community of interest last time.

Well, Arcadia could be looked at in moving towards central Phoenix as well, as you could potentially have a district that has Arcadia and central Phoenix for the most part, and you would very likely -- I don't know that for certain, but you would very likely have a potentially competitive district, but you kept the Arcadia community intact.

COMMISSIONER STERTZ: Are they inherently in conflict with one another or --

MICHAEL MANDELL: I don't think so.

Like I said, it just depends on -- they could be.

If you create very large communities of interest, then I think it's going to be very difficult not to split
them into multiple districts. And trying to adhere to those boundaries, I think it becomes more difficult in trying to make districts more competitive if you've got very large communities and you're trying to keep the entire community into a single district.

COMMISSIONER STERTZ: As a final follow-up. If I understand it, communities of interest for you would take a higher level of priority over competitive districts.

MICHAEL MANDELL: Well, I think what you do is you look at the wording of the Constitution, and you look at what the court cases say.

And from those, the court cases basically say that competitiveness is a mandatory criteria, much like the other five. But if creating a competitive district causes, in the minds of the commissioners, a significant detriment to a particular community of interest, then the competitive district needs to yield to the community of interest.

COMMISSIONER STERTZ: Thank you.

CHAIRPERSON MATHIS: Other questions?

VICE CHAIR HERRERA: Madam Chair, I'd like to ask a question.

Mr. Mandell, thank you for your patience with us and for waiting.

You mentioned that you registered Independent and you talked about why you're a registered Independent.
But can you go into detail of why you're registered Independent in terms of the views that you say fall on both sides of the political aisle?

MICHAEL MANDELL: Sure.

From a political perspective, I'm probably more on the Democratic side for a lot of the social issues. But having grown up in rural Arizona, certainly a gun advocate. Having grown up in a prison community, I've seen a lot of issues with prisoners and those kind of issues, and so I certainly probably when it comes to the death penalty I fall on the Republican side.

To me, it's just issue by issue, and just deciding on those issues where I end up.

It's why, for example, in my -- if you look at my political contribution history, I've donated money to both Democrats and Republicans.

VICE CHAIR HERRERA: Can you elaborate?

MICHAEL MANDELL: On that in particular?

VICE CHAIR HERRERA: Can he do that?

VICE CHAIR FREEMAN: That's public.

MICHAEL MANDELL: I put it in my submittal, so you're certainly free to ask whatever question you want. I certainly have nothing to hide.

Who it is that I contributed to?

VICE CHAIR HERRERA: Recently, recently for both
sides.

MICHAEL MANDELL: Well, recently as being -- I haven't made contributions since, I believe, 2005, so they were all prior to that.

But they included -- Gabrielle Giffords was one. Barbara Leff was one. Bob Robson was one. And there may have been one or two others, but that's all I can recall off the top of my head.

VICE CHAIR HERRERA: Just for the record, Gabrielle Giffords is a Democrat; right?

MICHAEL MANDELL: And Barbara Leff and Bob Robson are Republican.

VICE CHAIR HERRERA: Thank you.

CHAIRPERSON MATHIS: I have a question. As a fellow Independent, I sympathize with your views, but I have kind of a little bit of a partisan question for you. Do you anticipate a time -- go ahead.

Take your time.

If selected to be counsel for the Commission, did you anticipate a time where you could be asked by any of commissioners, particularly those that share your political views, partisan counsel, to speak to just them, and, if so, how would you handle that, and who would be privy to that information?

MICHAEL MANDELL: I think it would be important
for the Commission itself -- I apologize, the water went down the wrong way -- for the Commission to determine when it hires counsel how it wants them to proceed.

Whether or not you have a Democratic counsel or you have a Republican counsel or if there are two counsels for the Commission themselves.

And certainly, I think, having counsel for the Commission is far better than having a Republican and Democratic only counsel, because I think the legal advice that's provided by the attorneys should actually be legal advice based on the law. And based on the law, it shouldn't matter whether or not it's a Republican or Democratic question. The law is the law, and the interpretation should be the same for both.

And so from that standpoint, I would certainly hope that if there is a Republican counsel as well, that those consultations would occur between the two, and that they would come up with a cohesive answer that can be provided to everyone.

CHAIRPERSON MATHIS: Thank you.

Other questions?

VICE CHAIR FREEMAN: Madam Chair.

CHAIRPERSON MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: Build upon that. You mentioned that you met two of the Republican candidates
today, I believe, did you not?

MICHAEL MANDELL: I was actually referring to two
of the attorneys that I work with at the Legislature.

VICE CHAIR FREEMAN: All right.

MICHAEL MANDELL: I do know all the other
candidates.

VICE CHAIR FREEMAN: Potentially if you're the
complementary attorney for one of the Republican counsel, do
you have opinions about the other Republican --
proposed-Republican counsel, and can you share with us how
you think you would be able to work with each one of them?

MICHAEL MANDELL: Certainly Lisa Hauser and Joe
Kanefield I've worked with much more so than Tim LaSota. I
worked with Tim and worked with him a little bit, but not to
the extent of the other two.

Doing -- the legal community is small enough as it
is, but when you do election law, it's even smaller. So you
often see the same list of people, on the same cases, over
and over again.

And so Lisa, actually when I was looking at some
of the cases I submitted, and there was a common theme to
the cases that I submitted in that Lisa was the attorney on
the side of all of them.

And so we've developed a professional rapport.

They are all quality attorneys. The nice thing
about, I think, the list that you have is that there's --
there aren't poor attorneys on the list at all. And so
whoever it is that the Commission seeks to have, they're
going to have quality representation.

But working with either Joe or Lisa or Tim, I
certainly would have no problem working with them at all.

CHAIRPERSON MATHIS: Any other questions?

VICE CHAIR HERRERA: We had -- you kind of touched
on this, but if you can elaborate, the suit that you were
involved in with the previous Commission, how does that hurt
or help you if we decide to pick you as a Democratic
representative?

MICHAEL MANDELL: I think it would definitely
provide a perspective from a -- any time you have a
plaintiff's side who then become defense counsel, much like
a county attorney who becomes defense attorney, you have
some insight to how it is that the lawsuit -- or the
potential vulnerabilities that may be forthcoming to the
Commission as time progresses and what the Commission could
potentially be sued on.

So from that perspective, I think the other thing
is that, that I possess -- having been one of the few people
who have litigated issues in redistricting matters, having
that particular area of expertise, that isn't found in most other lawyers.
And understanding what actually needs to be done, what the legal requirements are associated with the Commission, and what its work entails, I think that would be beneficial to the Commission as well.

VICE CHAIR HERRERA: Thank you.

CHAIRPERSON MATHIS: Other questions?

COMMISSIONER McNULTY: Madam Chair.

CHAIRPERSON MATHIS: Commissioner McNulty.

COMMISSIONER McNULTY: Mr. Mandell, could you talk a little bit about how you would view your role in the mapping process?

It seems to me that having worked for the Legislature, that you might have some insights into that process that might be helpful.

MICHAEL MANDELL: Sure. I certainly have insights to it. One of the things I was tasked with doing the last time around was actually understanding -- knowing the software and understanding how to use it.

I do not see that as anywhere close to my role as being legal counsel for the Commission.

It's certainly not the legal counsel's role to draw any maps.

It is, I think, the legal counsel's role to opine on the legalities of the districts in those maps. It certainly from a voting rights perspective, as well as the
other perspectives that are associated -- the other
principles that are listed in the Constitution.

But from that standpoint, I think that I would
certainly hold off on providing any kind of opinion. I
would never advise the Commission that they should draw a
district in a particular location or for a particular member
in any way.

I think counsel's role in the map drawing process
is simply providing legal advice to the Commission, as you
all move forward in actually drawing the districts, and just
giving you -- you may want to look at, for example, if the
benchmark is for a particular district is at 55 and your
proposed district is at 51, would be advising you what the
benchmark would be, and that you're creating potential
vulnerability by not meeting the benchmark.

And giving the -- letting the Commission go and
figure out how -- you know, whether they wanted to meet that
benchmark and how they would go about doing that.

COMMISSIONER McNULTY: Thank you.

COMMISSIONER STERTZ: Madam Chair.

CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: This is inherently -- the
concept of the Independent Redistricting Commission is
terrific, but it is inherently partisan.

With the position that you currently hold and your
decision, if so selected, to take a leave of absence, how can you see that the public would view your role, knowing that you would still have a -- as a leave of absence that you've not severed your relationship with the Democratic party, the Democratic Caucus, and representing and that you would be coming at this from a place of giving neutrality to -- or neutral position to recommendations to our Commission?

MICHAEL MANDELL: I think part of that is the fact that Democrat and Republican attorneys are being interviewed and potentially selected.

If, in fact, there is a Democrat and if, in fact, there is a Republican selected to provide advice, I think that inherent partisanship label is already there, regardless of whether or not one is still attached or not attached.

For example, if, for example, there was an issue that came up with one of the other attorneys where they were brought a case by a particular member for a different election issue that didn't relate to redistricting, but was still an issue that would be brought forward, I would imagine that that attorney would very likely still take that case.

Even though they're working on the redistricting. But I don't think there would be an inherent
public perception problem from that perspective, because as
lawyer we represent our client regardless of who our clients
are.

But given the labels associated with them already, having a Republican and Democrat, I just don't think that would be a problem.

COMMISSIONER STERTZ: I'm not sure if that was the question.

The question was more that you would still have a foot in the door with a group of individuals that the public might perceive you to be co-opt -- that that may co-opt your position or your recommendations to us.

MICHAEL MANDELL: I think I would certainly, if that became an issue, then I would do what was necessary to make sure that it was no longer an issue.

COMMISSIONER STERTZ: Okay. Thank you.

CHAIRPERSON MATHIS: Other questions?

VICE CHAIR FREEMAN: Madam Chair.

CHAIRPERSON MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: In terms of resources, right now you've got your own shop, and I think you mentioned earlier that at least it was your view that at least initially the load might not be so great, and potentially you have co-counsel to share the load with, is that a concern going forward once we go through the mapping process
and potentially litigation, do you see yourself needing to associate other counsel, joining a larger firm, something like that?

MICHAEL MANDELL: I think if, in fact, litigation were to ensue, I would certainly talk with the other co-counsel, see what resources that counsel had available to them.

And if, for example, I felt that if my action, the additional counsel were necessary, I would certainly come to the Commission and have that discussion with all of you to say -- to let you know that additional resources would be necessary, that I would want to associate with another firm, or figure out how it was that we could -- how to achieve the appropriate manpower necessary to provide the quality representation.

But I certainly think that's an issue that can easily be addressed if that were to occur.

VICE CHAIR FREEMAN: Thank you.

CHAIRPERSON MATHIS: Any other questions?

COMMISSIONER STERTZ: I'm good.

CHAIRPERSON MATHIS: Mr. Herrera?

VICE CHAIR HERRERA: I do have a question. I know you had an opening statement, and throughout some of your answers, can you summarize what sets you apart from -- a little disparaging a candidate, not that you would, but what
sets you apart from the other candidates that we're reviewing, both Republican and Democrat, what qualities to tell us that this is the right person that you would pick?

MICHAEL MANDELL: I would certainly never disparage any of the other counsel. As I said, they are all quality counsel. And whomever you choose, you will be well represented.

Partially what sets me apart is the fact that redistricting is a very specialized area. Very few people have been through a redistricting process.

I've certainly read Article 4, Part 2, a number of times, and so I think I'm extremely familiar with it.

It's also the fact that I do understand what's necessary to comply with conflicts of interest statutes, with nepotism statutes, with all the other associated governmental statutes that you as public officials are likely to have to deal with as time goes on, whether it be open meetings or public records or those types of issues.

Certainly one of the other areas is the fact that, you know, when we look at some of the cases that were created last time, one of them being, for instance, in the Independent Redistricting Commission versus Fields case, that went to the Court of Appeals case, it was all about what records are or are not privileged or will need to be shown to the public or other counsel, if litigation is
required.

And so a lot -- having a lot of that knowledge, having been through that litigation, and understanding what's required, I think would be very beneficial to the Commission.

VICE CHAIR HERRERA: Can you repeat the last part, the last comment about --

MICHAEL MANDELL: About the specialization? Of the records?

VICE CHAIR HERRERA: Yes.

MICHAEL MANDELL: Sure. In the case of IRC versus Fields -- actually what had happened was the attorneys for the Commission had designated their mapping consultants to be testifying experts.

And so there were a lot of e-mail communications that had occurred between those testifying experts about their areas of expertise and different things that they were going to talk about.

So we tried to obtain all the e-mail communications that had occurred through -- within the mapping consulting community, not wanting to get into work product or attorney-client privileges, but certainly trying to find out from a discovery standpoint of what existed and what communications were made amongst the consultants themselves. The Commission attempted to shield those.
The court ruled that once they designated them as testifying experts, that all the communications or materials that they had reviewed about which they were going to testify, all those communications had to be turned over to the other side.

VICE CHAIR HERRERA: Thank you.

One quick last question.

CHAIRPERSON MATHIS: Go ahead.

VICE CHAIR HERRERA: A last question.

I think I felt very comfortable with the three Democrats that we chose to interview.

And if we decide to go either one of them, I will feel comfortable working with any of the three. But what I want is for the Independent and for the Republicans to feel comfortable working with the Democrat that we choose.

So what would you do to make sure that you develop a relationship with the two Republicans on the Commission and also the Independent.

MICHAEL MANDELL: I think I would follow the same manner that I conduct myself in the Legislature.

I've certainly tried to make myself available and have been available to a number of different Republican members. I think I am friends with a number of Republican members. I have given legal advice to a number of Republican members.
Sorry, Greg.

You know, but I think I just would follow that same thing.

I don't see myself as an overtly partisan person.

When somebody comes to me for legal advice, the legal advice is the legal advice regardless of their party label.

VICE CHAIR HERRERA: Thank you.

CHAIRPERSON MATHIS: I have a quick question.

So if selected to be counsel for the Commission, do you have any conflicts the rest of the year?

We know we're on a tight time line. I'm wondering what kind of conflicts or scheduling issues that would prevent you from being available.

MICHAEL MANDELL: There are certainly the hopes of my kids that they have a summer vacation to go somewhere. We don't have anything currently planned, so I can be as flexible as possible.

There certainly -- there are school issues and baseball and other types of things that I try to do as a parent as well, but I don't see them as being inherently conflictual with my role as attorney.

CHAIRPERSON MATHIS: Thank you.

Any other questions from the commissioners?

(No oral response.)
Chairperson Mathis: Thank you.

Vice Chair Freeman: Thank you.

Vice Chair Herrera: Thank you.

Commissioner Stertz: Thank you.

Chairperson Mathis: The next interview -- thank you, Commissioner Herrera -- is Osborn Maledon, Mary O'Grady.

Ms. O'Grady, thank you for being here.

We're sorry we're running late. Thank you for your patience.

Mary O'Grady: It happens.

Chairperson Mathis: So we've given everyone an opportunity to make an opening statement, if they have one. You don't have to feel compelled to do one, but if you have one, you're welcome to do so now.

Mary O'Grady: Well, I didn't prepare an opening statement.

But I guess in terms of why I want to do this work, I think I would be good at it. And I think I'd enjoy it. Those are the two things that sort of motivate my career choices in large part.

Why I think I would be good at it. I think I have the experience, in terms of election law, constitutional litigation, advising public officials, advising legislative bodies, to do the job.
I think I have the skill. I am good at those things.

I think over the course of my career I've shown that.

And I think I have the temperament -- I do have the temperament to do this kind of work.

I'm used to dealing with public officials, dealing with constitutional officers, dealing with significant constitutional issues, public policy issues, things that stress people out. And I can keep my eye on the ball in terms of my responsibilities as an attorney to make sure that whoever I'm working with, whoever the client is, has the information that they need to do their job well and to help them make decisions that they feel comfortable with.

And so those are the kinds of things that I think I bring to the table in terms of why I would be good at this.

I like it. I like those kinds of things.

I have been sort of following the Commission's work, to the extent that time permitted.

I think I could work with this group, and so that's why I'm interested in this work.

CHAIRPERSON MATHIS: Great. Thank you.

So, we'll just be asking questions in a
round-robin format, no particular order.

If anyone would like to kick it off.

VICE CHAIR FREEMAN: Madam Chair.

We'll stay on the ground. Don't worry.

CHAIRPERSON MATHIS: Lift off.

Mr. Freeman.

VICE CHAIR FREEMAN: Thank you.

Your background includes being counsel for the Democratic Caucus and the Legislature, and I believe your response noted that you were an advocate for the Democratic Caucus on redistricting issues in the 1990 census go-around.

If I've got that wrong, correct me when I'm finished.

But the goal of this Commission, which you know, is, if not the mandate, is for us to be fair, to be independent, to be politically balanced.

And the perception for counsel, both from the commissioners themselves and the public, is going to be important.

Could you please take a moment and address or allay concerns that we may have or the public may have about your ability to provide this Commission with fair and independent legal advice, and being as specific as you can to cite examples of working with opposing views or opposing counsel with opposing views, feel free to do so.
MARY O'GRADY: Okay. Sure. Happy to do so.

Drawing from the experience of the '90s, working at the Legislature, I do believe, in response to your question, I can be absolutely fair, impartial. You know, my job is to be a good lawyer, whatever the context, whoever the client, and that's what I do.

I try to give good, solid legal advice.

My role in the '90s was as one of the four caucus attorneys, and since the decision making then, the policy makers were the legislators, I was advising them on the law as your lawyer will advise you on the law.

Although the law was different in terms of the state law and additional developments at the federal level as well.

So that was my basic job. Advise them on the law. And then looking at plans and critiquing those plans in terms of how they measured up to the legal standards. And as they make the decisions again, the decision-making process and the legislative body is the 90 numbers, all get together and kind of figure out what they are going to do.

In terms of advocate, I didn't make court appearances in that role.

It was internal adviser.

We did get involved with preclearance process as legislative lawyers, because ultimately the Legislature did
agree on a legislative plan that was submitted for preclearance. And it didn't make it through the first time, the Legislature came back and made some modifications, which the Department of Justice again rejected, and then we went on from there.

But after the first rejection from the Department of Justice, and once we had a plan, the lawyers at the Legislature were working together, four caucus attorneys, in terms of for the request for reconsideration and the subsequent preclearance submissions. It was a bipartisan effort and a bipartisan plan.

And so we all argued together, worked together, and tried to persuade the Department of Justice to approve the plan that had been adopted.

In terms of politically balanced advice, my experience with that frankly, I remember at the Legislature laughing that sometimes, you know, a big decision would come down. Roosevelt v. Bishop, a big school finance case when I was at the Legislature, that the Democrats were really happy about and the Republicans were not.

I think the lawyers were saying the same thing. It's just that the people's reaction was different. In one caucus it was viewed as good news and in the other caucus it was viewed as not so good news.

But the legal device, we all read the case, and we...
didn't really read back that differently.

Although do some lawyers do.

Those don't always fall on party lines. Those are just -- lawyers often view things differently.

So in terms of bias, I try to give -- I try to read the cases, do the analysis, and give the best legal advice I can.

I'm also willing to listen to others, and I think that's healthy.

In the legislative type sphere, there are lots of people. In any kind of public policy issue there's lots of people with legal opinions or views on what the body is doing. And I think those are important to be heard, and I will listen to them too.

And sometimes that fine tunes your advice and helps you give better advice.

Another example at the Attorney General's Office, we worked on AG opinions. And sometimes we got opinions that we knew there were others in the community that may know more about than we did.

And so we would let folks know that we're working on this, and if they had input, give it to us. We'll still make our independent judgment, but it's not a bad thing to listen to what others have to say while you formulate your guidance.
VICE CHAIR FREEMAN: Thank you. Just sort of building on that.

There are some clients who perhaps seek out lawyers who share their political views because they think that might be a more effective advocate or more sympathetic. And I suppose there are some lawyers who may seek out clients who have their own views and seek out clients who have those views because they're pursuing their interest.

And you've also worked under a couple of attorneys generals, Janet Napolitano and Goddard and briefly under Mr. Horne.

Did you fall under either one of those camps, do you think, or do you reject the construct I've set up altogether?

MARY O'GRADY: Two levels of analysis. One at the AG's that I work for and the clients I represented.

I've represented Janet Napolitano. I've represented Jan Brewer. A whole bunch of folks across the -- and ultimately -- and often that's more in -- again, my job is to be a good lawyer, and try and give, you know, good legal advice.

And in terms of this body, I really do believe that this by Constitution is supposed to be an impartial body here to make good decisions consistent with the constitutional framework.
And I am committed to giving -- you know, playing that role in terms of a legal adviser whose responsibility it is to do just that.

If that's answer the question.

VICE CHAIR FREEMAN: Yeah. Thank you.

CHAIRPERSON MATHIS: Other questions?

COMMISSIONER McNULTY: Mrs. O'Grady, thank you for coming.

MARY O'GRADY: Sure.

COMMISSIONER McNULTY: You've had a lot of experience in the preclearance area. Could you talk about what you see as the key issues that we'll be facing putting together our Commission and satisfying the Voting Rights Act?

MARY O'GRADY: Well, the basic is keeping your eye on the legal standard of not having a retrogressive effect.

In terms of how to get there, and I have read, in preparation for this application, I've brushed up on -- you know, read through all the case law and that sort of things, but I have not started to look at the facts, look at the census numbers, look at what the numbers say.

Because as the lawyer I am really focused on the legal preparation piece.

And so I view it as one -- in terms of how to help us comply with that, making sure that you're all well
briefed on the requirements of Section Five.

And both on the law and then understand, since it is a retrogression standard, what's the baseline that's going to be used and understanding that.

And so you can know what you need to do to accomplish that.

There's also an issue, I think, in terms of preclearance piece, looking at the time line, knowing that you want to make good decisions, you want to make good decisions, but also want to get this done so that we can so that the State can have its 2002 elections in an orderly way.

And I think it will be helpful to, while you're working on the project, to really be starting on the preclearance package.

Because a lot of it can be done in advance.

The history of preclearance, and there's a lot of boilerplate that you know what it's going to say.

So start working on that so that between when a final adoption and submission, you can maybe have that done as quickly as possible, again, with a good work product.

So kind of thinking in terms of two layers, understanding the law, the facts, working with the consultants, but also working on the submission so that that can be done as timely as possible.
CHAIRPERSON MATHIS: Other questions?

COMMISSIONER STERTZ: Madam Chair?

CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: Ms. O'Grady, thank you for coming. You have a fantastic resume. And thank you for all the hard work you've done for the State.

MARY O'GRADY: Thank you.

COMMISSIONER STERTZ: Our mandate of looking at criteria includes two really important things, which are communities of interest and competitive districts.

Communities of interest by definition has no definition.

Competitive districts by definition have brackets. They're bracketed. They're created.

How do you look at those two as complementary or conflicting, and how would you advise us from your experience on how to marry those two together?

And do you see how the creation of community of interest can be -- as a definition of a community of interest can be crafted?

MARY O'GRADY: Interesting.

Well, in terms of crafting a definition of community of interest, I think there are definitions that are on the website from last go-round that are at least worth taking a look at for guidance.
But I do think that all six factors, well, you have the constitutional requirement, equal population and voting rights, that have to be complied with in relatively absolute, in an absolute sense.

Although even there there's some play in terms of community of interests. For example, we saw in the Texas litigation last decade where there was a Section Two violation, because although they had strung together enough Hispanics to come up with a majority minority district, they had in the process destroyed some communities of interest and that sort of thing.

So I don't come today to offer a definition of community of interest.

But I do think those factors are as the Supreme -- as our Supreme Court said, it's really up to you all to weigh those and figure out on a fact specific basis when looking at the plan how you think they ought to best be married or whatever the term would be to come up with a plan that makes sense.

I don't think there's an absolute right or wrong. And that's really what we learned from a legal perspective from the Supreme Court.

You have to consider them, but how you weigh them is up to the Commission.

COMMISSIONER STERTZ: How you weigh that, which is
a very movable target, very creative, with lots of different influences coming from lots of different directions, about how to create communities of interest, how do you weigh that against competitive districting?

MARY O'GRADY: Well, again, I don't know that I would use the word weighing against, but in terms of the balancing --

COMMISSIONER STERTZ: Balance, yes.

MARY O'GRADY: -- that will be the ultimate chore of the policy makers, to figure out when they look at the map, what -- how they want to best achieve the constitutional objectives in terms of competitiveness, communities of interest, physical boundaries, and all the things that the Constitution will allow.

That may not be the definite answer you'd like, but, again, I think what the State Supreme Court says that those are the kind of policy calls that are up to the policy makers es to make in terms of weighing those.

I do think in terms of legal guidance it's clear that -- and the representations of the prior Commission made to the Supreme Court, competitiveness is part of the mix. It's not a secondary goal. It's part of the mix with the other goals.

And it should be part of the up front evaluation of the districts, not something that's delayed until, you
know, a later phase.

I think that's clear from the cases in terms of the approach.

COMMISSIONER STERTZ: Thank you.

VICE CHAIR HERRERA: Madam Chair.

CHAIRPERSON MATHIS: Mr. Herrera.

VICE CHAIR HERRERA: Ms. O'Grady, thank you for being here. Your resume is really impressive.

I believe that all of them are partisan.

There's not -- I think, just my opinion, that we've been focusing on the Democrats, but I think all of the Republicans have issues that I would see as being partisan as well as the Democrats.

So how would you, considering two Republicans and an Independent and two Democrats, how would you win over or make sure the Republicans and also the Independent feel comfortable working with you if you were indeed the one chosen?

MARY O'GRADY: Well, assuming I won over them to get the contract, in terms of winning them over in practice it would be by performance.

The same way in those controversial cases that we represented, say in Prop 200, for example, where I worked for an attorney general who had gone -- come out against Proposition 200, and I am defending it in court, and the
question from the supporters was can't you do your job.

The way we answered that question was by doing our job.

And so ultimately the court, you know, is what are you talking about, they're doing their job.

That's really the way you demonstrate it and you win people over, by doing what a good lawyer is supposed to do.

And certainly the Commission as a whole, give them the best legal advice that you can.

VICE CHAIR HERRERA: Thank you.

CHAIRPERSON MATHIS: I have a question.

So as the sole Independent on this Commission, I have sort of a partisan question.

If selected to represent the Commission, do you anticipate a time when you may need to provide partisan counsel to anyone on the Commission who shares your political affiliations? And, if so, how would that work and who would be privy to that?

MARY O'GRADY: I don't know what would classify as partisan counsel.

You know, you're here to help the people make decisions.

I know in the Legislature, going back to my experience there -- and some of it would be I want to follow
the standards that you all are comfortable with. Truly in
the Legislature redistricting process, they all should have
had their own lawyer, because there were so many conflicts,
because it's sort of a every person for himself or herself
sort of situation in terms of coming up with lines for their
district.

And so there was a lot of situations where
legislator A would come and ask you questions, and you knew,
because you know enough of the facts, that legislator A
was -- the intention was to really hurt legislator B.

And that's where that was headed.

But I would answer the question, give my legal
advice to legislator A, and how that played out between the
two of them is how it played out between the two of them as
a policy and negotiation matter. But I would try to, you
know, answer the questions.

In the legislative arena, too, see how people --
how it works with this Commission, sort of have some
confidentiality. If someone talks to you about their idea
or proposal, you don't go and tell, you know, the other
person their idea.

You're helping -- you're giving them the advice to
help them, and then they could do with it what they do with
the information is their business.

From the lawyer's perspective, you do need to be
somewhat careful. I think that's why it helps to work with the Commission and know what the standards are. Well, I talked to Mary, and she said X.

Well, not exactly. Or whatever.

So I think you need to work on it, so that there everybody works together and they know that they can feel comfortable consulting the lawyers.

Even if, even if the Commission sticks with the one Democrat, one Republican structure, I would hope that it's not -- it doesn't seem like, you know, everyone should be lawyers for the Commission, and it shouldn't be broke down to some sort of partisan basis.

CHAIRPERSON MATHIS: Thank you.

VICE CHAIR FREEMAN: Can I follow up on that?

CHAIRPERSON MATHIS: Sure.

VICE CHAIR FREEMAN: I want to make sure I understood you.

Are you saying that if retained by the Commission you would give individualized advice to the commissioners?

MARY O'GRADY: I would want to understand what the ground rules are that the Commission sets. Whether just advice at the meeting or if someone talks to us between meetings, I would want to understand what the ground rules are that the Commission sets.

So that, you know, so that Commission members
understand and the lawyers understand how we are supposed to
function.

VICE CHAIR HERRERA: Madam Chair.

CHAIRPERSON MATHIS: Yes, Mr. Herrera.

VICE CHAIR HERRERA: You've answered questions
very well. And what I want you to do for me and the
Commission is summarize why we should hire you over the
other individuals.

MARY O'GRADY: Well, I've talked a lot about me.
And I do think I have -- I'm really here to sell myself and
not talk about everybody else.

But I do think I have a mix of skills as an
adviser and as a litigant who's seen things all the way
through the Supreme Court that I can help the Commission.

One of my things I think I'm good at is strategic
thinking, where you're advising here and looking long term,
and you're seeing how this plays out at the DOJ level, and
if it goes to litigation, you know, how it plays out over
the long haul.

I think I'm good at thinking that way.

And I think my experience both at the Legislature
and significant constitutional legislation at the Attorney
General's Office helps with that sort of thinking.

And I think those are some of the things that make
me well suited for this work.
I had some additional thoughts on Mr. Freeman's earlier question on this ideological differences.

I do think that sometimes when clients prefer a lawyer who's ideologically blind, they're there to get the true belief. Some have their own blind spots, the same blind spots for the lawyer and the client.

And one of the things that I think is helpful is having people who may not agree with you, you know, vet so at the end of the day you really do have analysis possible.

And, you're not likely -- you're often likely to get judges who aren't of the same view.

And so you want someone who can talk to the judges who may think this is a horrible idea.

So I think, again, keeping your eye on good lawyering really serves everybody well, even though it's not necessarily what everybody wants up front.

VICE CHAIR FREEMAN: Madam Chair.

CHAIRPERSON MATHIS: Yes, Mr. Freeman.

VICE CHAIR FREEMAN: Perhaps building upon that is to -- perhaps one of the blind spots, if there are any, you might be working with a complementary Republican counsel.

And you know the other applicants that we are interviewing.

Can you share with us some of your thoughts about their skills and ability, and tell us if you have any issue
about working with them as co-counsel.

MARY O'GRADY: Well, let me see.

I guess I'd -- I'm not necessarily comfortable critiquing my fellow applicants. But in terms of -- I will work with whoever, and I can work with whoever the Commission chooses to retain.

VICE CHAIR FREEMAN: Fair.

VICE CHAIR HERRERA: Quick follow-up question.

CHAIRPERSON MATHIS: Commission Herrera.

VICE CHAIR HERRERA: Make life a little easier. If you had to vote, which Republican would you select to work with you, if you were the attorney?

MARY O'GRADY: I'm going to be evasive.

A lawyer for policy-making body, part of their role is not to have the Commission shift decisions to them, but really are theirs to make.

So I respect that task is up to you. And I can work with whomever, if chosen, I can work with whomever you might choose.

VICE CHAIR HERRERA: I'll call you later and ask you.

COMMISSIONER STERTZ: Madam Chair?

CHAIRPERSON MATHIS: Yes.

COMMISSIONER STERTZ: As looking over our schedule over the next couple -- could be next couple hours, that we
would be selecting our counsel for the next few weeks and selecting our mapping counsel.

You touched briefly on the preclearance sort of boilerplate stuff being crafted that takes a bit of time out of the schedule.

How do you see the next 30, 60, 90, 120 days mapping out?

MARY O'GRADY: Working off the schedule from before, the first substantive task after you get past the hiring the mapping folks is the grid.

And last time that seemed to take about 30 days.

And I'm wondering if that can be moved along any faster this time around in terms of being able to trim some time off there.

But moving fairly quickly to the grid issue and getting that done, as I think it's going to take the mapping people to input in term of a realistic time frame.

And to the extent there are policy choices to make, my hope is they can be made relatively quickly in terms of giving them the direction that they can get that done.

So, getting that kind of off the table, and then moving to the more substantive work, and the Commission then decides, I think, in its discretion, what kind of public hearing schedule it wants and when it wants to do them, you
know, and how many.

So that's -- in terms of my thoughts on public hearings, just keeping your eye on the ball and why you're having them, I think one for the Voting Rights Act, it's important to get that input from the minority communities in terms of the impact on their communities.

I think apart from that it's helpful to you all to make good decisions, so that you understand the state and feel like you understand the state. And it's helpful in terms of transparency and the confidence of the public in the process to have, I think, that sort of exposure, that is, comments on how the people in Tucson appreciated the meetings that were held in Tucson, and I would think that the outlying community would appreciate that as well when the time comes.

So when you schedule it, keep your eye on why are we doing this, how much do we even need to do them.

So at some point we have some public here, I would assume do that after the grid.

There's also important educational time there, I think, for the Commission and Commission staff, and the public, on the legal requirements, federal and state, and then the numbers.

Getting that threshold for Section Five established, so you know what needs to be accomplished and
really have a good grasp of the mission ahead when it comes
to modifying the lines.

And certainly once the lines are modified more and
the Commission has a plan that it's comfortable with
adopting and going to that 30-day notice period.

And, again, you're looking at all the
constitutional factors when coming up with that map that
goes out in the notice period for additional comment.

And how many, where, and when, I think it's just
voting rights, you doing your job, and public confidence are
the types of things I think matter.

And cost. Hopefully as cost in association with
those other matters.

COMMISSIONER STERTZ: So as a follow-up to that,
as legal counsel for the Commission, or as co-legal counsel
for the Commission, working together in concert with the
five of us and the co-legal counsel and the mapping
consultant, the documentation and creating the legacy
documents for what we're talking about are extremely
important, how do you see your role in that participation
and creation of those documents, and, for my Canadian
friends, how do you help us keep our stick on the ice, or in
Wisconsin, because to say how do you help us keep between
the ditches in moving down that path.

MARY O'GRADY: When you say legacy document, are
COMMISSIONER STERTZ: Everything that is going to support our, our, our packet going to DOJ and that is going to allow us to prevail in the anticipated litigation.

MARY O'GRADY: I see in terms of that upfront work on the preclearance, in addition to filling in your boilerplate, is working with staff to collect and organize the accompanying documentation. So starting that sort of up front.

And there's two layers, as the work being that throughout, so it would be, you know, the minutes, any handouts, whatever written materials there are, you know, meeting notices, who gets notices of the meetings, what staff has, we can go over that so we're collecting the kind of things that DOJ is going to be interested in.

As a second layer of the legacy issue is the immediate legal means, but in the long term means of the next Commission, and thinking on both tracks of doing what you need to do now and leaving a good trail so that it helps the next Commission, you know, do its job as efficiently as possible.

COMMISSIONER STERTZ: Thank you.

CHAIRPERSON MATHIS: Ms. McNulty.

COMMISSIONER McNULTY: Thank you.

You mentioned other staff in your proposal.
you tell us what the role of your associates would be and whether you could be available to us all the time for the next six months?

MARY O'GRADY: Well, I have to take my son to college in August, and I, you know, have things I do in life, but other than that, I -- and I have some other work to do, but I understand that this is important and time sensitive, and I will make sure that happens.

In terms of the associates at -- and when I wanted to decide I wanted to do this work and I was going to my new law firm, and I -- as a footnote, the other thing aside for me as to why I think I am a good candidate is I work for a great law firm and I have that behind me and its support in doing this work.

I think that helps a lot.

I was figuring availability to the Commission kind of needs to be my personal priority, and I was hoping to train and on that preclearance start-up work was figure that would be helpful for the associate to work subject to any coordination with the other law firm, you know, so that we're making the most efficient use of our time.

But I figure that my priority needed to be availability.

There may be also more detailed research products that would be probably for the associate, but I wanted to
make her priority getting off to the right start with the preclearance issues.

   COMMISSIONER McNULTY: Thank you.

   CHAIRPERSON MATHIS: I have one question.

15:18:01  With regard to DOJ, do you have any current relationships, either currently at this administration's DOJ or past, who would be helpful to you in this role if you were selected as representative counsel?

   MARY O'GRADY: It's hard.

   I do -- have dealt with people who are still at DOJ and had meetings with people who are, you know, lawyers in the administration somewhere.

   Actually who would be helpful and wouldn't be helpful, I'm not sure.

15:18:37  The name Audrey Payne was mentioned at one of these meetings as an analyst in Arizona. She's often calling our office for information on our preclearance submissions.

   But that's -- you know, it's not a real close personal relationship. And I don't know if they -- if they're tracking the preclearance work to a separate specialized group of folks.

   But I think it makes sense to make those connections too.

15:19:05  And the other things in terms of DOJ, one of the
benefits of not being the first one out of the blocks is you can see what's going on with some of the other states and following -- looking at the responses to their Section Five submissions that are going on.

There's at least one state with both Section Five preclearance plus going to D.C. District Court at the same time, and we'll see how that shakes out.

And whether that, you know, is viewed as a good strategy.

But I think it's helpful to keep an eye on what's going on there. And to the extent we can reach out, I would certainly do so.

And to make sure everything is formatted, you know, in a way that's most useful for them.

CHAIRPERSON MATHIS: As a follow-up to that, do you think this DOJ is different with the administration change than the last DOJ? Any comments on that?

MARY O'GRADY: I haven't seen enough -- well, honestly the last DOJ was in some ways different than previous DOJs.

I've been working with the DOJs since the early '90s.

We got expedited preclearance for Proposition 200, without question. I thought there would at least be a question phase, so that was a surprise.
And so that was -- so I don't have a good sense of whether this really is different.

I know there's been talk that maybe this is different, and maybe that's why you need to go to the D.C. District Court, but I don't have a sense of that really.

CHAIRPERSON MATHIS: Thank you.

Any other questions?

(No oral response.)

CHAIRPERSON MATHIS: Hearing none, thank you very much. Thank you. Appreciate your time.

Let's take a recess for five minutes. The time is 3:21.

(Brief recess taken.)

CHAIRPERSON MATHIS: I think the recess is over. It's 3:28 p.m., and we have one more interview, the Rose Law Group.

Mr. LaSota is here.

And we apologize, first of all, for running late today, and thank you for your patience and flexibility with us on this.

TIM LASOTA: Thank you, Madam Chair. Mr. Bladine was kind enough to call me, so I haven't been sitting out there since 2:45.

CHAIRPERSON MATHIS: Good. I'm so glad to hear
that.

We've allowed the other candidates to give any kind of introductory remarks they wanted to, if they have any. You don't have to do so. Otherwise we'll ask you questions.

TIM LASOTA: Okay. First of all, I'd like to thank you for giving me the interview today. And I know it's been a very long day for all of you. I can assure you it's been a long day for me in anticipation of this interview.

So I'm very glad to be here, very excited about the possibility of doing work for the Redistricting Commission.

All of you have been chosen -- you know, this is something that only comes around once every ten years, so the next time I might be standing before the Commission asking to be their lawyer would be another ten years from now.

I'm very happy to be here, very excited about the possibility.

And over the last -- well, my entire professional career, I've really lived and breathed election law.

My position now I've got a bipartisan group of clients that I serve and enjoy serving them very much.

Phoenix Councilman Sal DiCiccio, a subject in a
recall campaign, and he's retained me to help the committee fighting that.

Senator Robert Meza, who's a Democrat obviously has just retained The Rose Law Group, and I am happy to be serving him.

I have private sector clients. An interest obviously in this process, redistricting.

They want to know about Section Five, Section Two, Voting Rights Act things, and just kind of walk through the process.

And there's even a referendum I'm working on keeping a Quik Trip out of a Phoenix neighborhood as we speak. So that's a citizen referendum.

Previously worked at the City of Scottsdale. I was the mayor's chief of staff there.

I'll be perfectly blunt. The mayor and some of the council members didn't have a tremendous amount of confidence in the city attorney at that time. It's a new city attorney now, so I came up with this today. Shadow city attorney. Not really, but, I mean, they relied on me to provide some advice on them, conflict of interest laws, public records, open meetings, even redistricting.

In Scottsdale there was an effort a few years ago to have a -- to put districts in Scottsdale. It failed, but ever since that's been a topic of conversation.
The mayor didn't like it, so it was my job to arm
him with what he needed to essentially beat back efforts to
redistrict.

They didn't really go very far this time.

You know, a lot of it involved having to do things
you're going to have to do. Section Five submission for
preclearance.

Also had to work to get a diverse group of people
together. You know, the mayor -- mayors in Arizona don't
have a lot of power. By law. They're mainly -- you know,
they have a vote, and getting things done requires a
governing majority, which is I think there's a good
corollary for this position here.

There's five members here. And to get things
done, you got to bring people together and move forward.

You can't really just serve one person. You got
to serve the group and the individuals who comprise that
group.

Before that I worked for the Maricopa County
Attorney's Office.

I got to know Helen Purcell and Karen Osborne very
well. Advise the count attorney on election matters as they
come up.

Before that I was in the private sector and also
did election law there in various forms.
Rose Law Group, we've got an extremely strong litigation department. The firm is very excited about the possibility of getting the work for the Redistricting Commission.

You know, I think in terms of the job is obviously to produce a good set of maps and to make sure those maps survive legal scrutiny that will inevitably follow.

And I think our job would be to help you in that process.

And we obviously have the experience of last time. You will operate under different rules this time than they operated under before.

The law always changes. And I think we have the benefit of experience, and the goal probably ought to be try and do it better, try to hit all of those six goals that the citizens of the state of Arizona have set out for you to try to achieve in redistricting.

So with that, I'd be happy to answer any questions.

CHAIRPERSON MATHIS: Thank you. Any questions, commissioners? Who'd like to start off?

VICE CHAIR FREEMAN: Do I go in my traditional pole position?

CHAIRPERSON MATHIS: Mr. Freeman.
VICE CHAIR FREEMAN: Thank you, Mr. LaSota, for coming down and meeting with us today. And sorry about the delay.

Your background and your firm's background includes representing parties and groups that some may regard as being partisan one way or another.

It's the goal and mandate of this Commission to be fair, to be independent, to be balanced politically.

Could you take a moment to discuss with the commissioners, and for the public's benefit, and allay any concern anyone might have about your ability to provide this Commission with fair and independent legal advice, your firm's ability as well, and using as many specific examples as you might be able to marshal.

TIM LASOTA: Thank you, Commissioner Freeman. And I think that's certainly a good question.

It's true that any -- that most law firms, most individuals who apply for a position like this are going to have some kind of identity in terms of, you know, they're labeled a Republican or a Democrat.

I certainly have no doubts about our ability to serve the Commission.

I think during my legal career I've served both Democrats and Republicans. Certainly there has been more Republicans on my resume.
But, you know, the reason Democrats have been willing to hire my firm and me is the fact that they have confidence in our ability to provide them with legal advice.

They're the client.

And if you can't accept a client -- if you can't do what the client wants you to do, you ought not to take on the client.

I believe that firmly.

Here the people set this Commission up for a reason. They wanted to take the politics out of redistricting to the extent possible.

They wanted an independent Commission.

They wanted that six criteria enacted, to be taken into account when drawing maps.

And if I didn't think I could serve those -- put aside any personal interest or personal politics I had, and instead serve the Commission and the goals of the Commission, I certainly wouldn't have been here.

VICE CHAIR FREEMAN: Thank you.

CHAIRPERSON MATHIS: Other questions?

COMMISSIONER McNULTY: Could you talk about your experience in the preclearance and voting rights area and what you think the most important issues are that we're going to face?
TIM LASOTA: Yes. And thank you, Commissioner McNulty, for that question.

In terms of preclearance, my experience has essentially been -- and I'll admit freely that I haven't submitted a preclearance to the Department of Justice, but my experience has been in describing the process to others. First of all, to Mayor Lane in Scottsdale to basically -- that was one of his big arguments for why we shouldn't have districts in Scottsdale, because if you don't have districts then you don't have to go through the whole redistricting every ten years.

So I am -- I have good familiarity with the process.

And clients now want to know about, you know, preclearance Section Five, what's going to happen this time, is it going to be like last time where it takes a long time. And the Justice Department ultimately says no.

I think this time around I think the -- I'm going to go ahead and make a prediction.

Obviously you got to give them all the information they need. You have to be completely on top of that. But, I think the rumors that there's some nervousness among some that the Supreme Court will take a hard look at the Voting Rights Act, I think that there's some truth to that, and that may cause -- you know, we might have a little bit less
We also have a different administration, and frankly the rules have changed.

You know, we've got Georgia v. Ashcroft out there. For example, I don't think you get the letter that you got from the Department of Justice today. I don't how they could write that based on what they said in Georgia v. Ashcroft that, you know, there are multiple ways of ensuring that there's no retrogression and minority rights are protected.

It's not just, you know, what the court said. It's not just lumping every single minority you can find into a district. Because at some point, what does that become? That becomes packing, which is an evil that the Voting Rights Act obviously thought to -- sought to get rid of.

So those are my thoughts. It's obviously a critical step in the process.

And, you know, last time it went right up until the end, and they had to go to the court obviously to get the preclearance they needed.

But I hope that answers your question.

COMMISSIONER McNULTY: It does. Thank you.

COMMISSIONER STERTZ: Madam Chair.

CHAIRPERSON MATHIS: Mr. Stertz.
COMMISSIONER STERTZ: That feeds into my question regarding when you were talking about packing, two of the six criteria are communities of interest and competitive districts.

Now, communities of interest by nature of definition has no real true definition.

Competitive districts by nature of definition is truly numerical.

How do you look at those two as they compare against each other, and how do you see those in ranking of comparison and burden of one on top of the other or in complement with one another time?

TIM LASOTA: Thank you, Commissioner Stertz.

Yes, obviously are two of the criteria, and the Supreme Court said that one's not more important than the other, you have to consider them all.

And, that's obviously -- that's where the rubber hits the road with this Commission, because you will have times when, you know, some of those, whether they're at odds or whether people tell you they're at odds, is -- you know, that will come up.

I think it's your job to harmonize those things and to make sure they don't interfere with each other.

I mean, the last Commission, it's funny you say the definition of competitive district, that's numerical,
but I would say there's no set definition of that.

A lot of people consider five points to be sort of, you know, that's pretty competitive.

But, you know, we now have, I think, either four or five competitive districts. It depends on how you ask. That's fewer than we had in 2000.

I think that your job is to try to, try to fulfill the will of the voters in setting six criteria. They want compact districts. They want to respect communities of interest. You have the Voting Rights Act, and all of those things.

But at the end of the day, they want you to do all that stuff and they want to have some competitive districts.

So I think that's -- and probably I would hazard a guess, they probably in a 4 out of 30 is -- I was never much of a math, well, I shouldn't have just said that -- but, I mean, well, that's 1 -- 5 out of 30 is one sixth, what's that, less than 20 percent.

So I do think they -- the public when they pass that they had more in mind than that.

Obviously it's -- you know, there are some things that kind of you have to do that prevent, you know, from having total competitiveness of districts.

COMMISSIONER STERTZ: As a follow-up to that
question, do you think that the goal of competitive
districts overcomes the nature of communities of interest?

TIM LASOTA: I would say, no, I don't think either
of them overcome the other.

I think that's the job of the Commission is to try
to get, try to get all those things into the basket and try
to give the people of Arizona all six of the criteria that
they set forth when they passed this initiative in 2000.

So I wouldn't say that one's superior or inferior.

And I know what the court said, that they're all
important.

I would say, you know, the one thing, we do have
the Voting Rights Act, and you can't get around the fact
that that's, you know, under our system, that's superior
law, because it's federal.

But, you know, that's -- I don't think it's your
job to sort of -- to weigh or to assign importance to the
other.

I think it's your job to assign importance to them
all and to try to give the public all six of those things in
one basket to the extent possible.

COMMISSIONER STERTZ: Thank you.

CHAIRPERSON MATHIS: Other questions?

VICE CHAIR HERRERA: Madam Chair.

CHAIRPERSON MATHIS: Mr. Herrera.
VICE CHAIR HERRERA: Thank you for being here. You have been getting some phone calls on our behalf, so I appreciate you doing that work.

TIM LASOTA: My pleasure.

VICE CHAIR HERRERA: I do appreciate hearing from both sides of the aisle. Obviously you're a Republican, but you work for a Democrat. Thank you for having called me.

On your current clients listing, a couple of them have interest in the redistricting. How does that affect your job if you were indeed hired as our Republican legal counsel?

TIM LASOTA: Thank you, Commissioner Herrera.

Let me just say at the outset, I probably should have put this up. You reminded me of something that maybe should have gone on the RFP, and that is that I do have a lot of Democrat friends. My wife is a Democrat, and her uncle is Congressman Pastor.

When I filled out the conflict of interest part, I was thinking really legal conflicts of interest. I don't think it's a legal conflict of interest. I don't think it compromises me at all, but I did want to mention that because frankly I forgot to put it on my application. Just wasn't thinking along those lines at all, because it isn't really a legal conflict of interest.

We do have some clients, their interest has
largely been sort of at the outset of the process. In other
ing words, if they don't -- if they see the districts come out
and they don't like the districts, they're not going to be
the ones calling me up and say, sue the Redistricting
Commission to, in other words, to invalidate the districts.

We have provided advice on the process that you
will go through, the preclearance, Section Five, things like
that.

I don't see them at all as a conflict because I
think the role is a small one.

If we were to get this work, we probably wouldn't
continue to serve any private clients on these exact
questions, I wouldn't think, because I would want to keep
them completely separate.

In other words, if they wanted to know more
information about the redistricting process at the state
level, you know, we advise them on county redistricting
also, which is a completely different animal, I don't think
there is any conflict there, but I would commit to
abstaining from providing legal advice to any other clients
on redistricting if we were to get this contract.

VICE CHAIR HERRERA: Quick follow-up.

These individuals that you have currently as
clients that have an interest in redistricting, you would
still keep them on, you don't see that as a conflict;
TIM LASOTA: Yes. Well, they're pretty minor. And, you know, those are clients that we serve, at least most of them, we serve in other roles also. We do provide election advice, and, you know, so we would keep them for those purposes.

If they want to know about Pinal County going from three supervisors to five, which because of their population they're doing that, you know, I don't think that's a problem. But if they want to know, you know, well, look, you know, we really need this district to look this way and, you know, can you help us provide some testimony to provide to the Commission, I think that's definitely out of bounds, and that's not something that we would advise them on going forward.

VICE CHAIR HERRERA: Thank you.

CHAIRPERSON MATHIS: I'll ask a question now.

As the lone Independent on the Commission, I have a partisan question, kind of continuing in this vein.

If selected to be counsel for us, do you anticipate a time when you may need to provide counsel to only those members of the Commission who share your political affiliation?

TIM LASOTA: Thank you, Madam Chair. That's an excellent question.
I think the role of the lawyer for the Commission is to be the lawyer for the Commission, but to also serve people who are members of the Commission with their specific questions.

I don't think that it's proper for the attorney to -- I mean, I know you've talked about maybe just hiring one counsel. I don't know what you will do ultimately. But, you know, you do -- it's sort of a balancing, if you do decide to do what you did last time and hire a Republican and a Democrat, I still don't think it's proper for the lawyer to identify himself as just the lawyer for the Republicans.

For one thing, it would leave you without counsel, which is maybe why you asked the question and maybe why it's especially appropriate.

CHAIRPERSON MATHIS: That's right. I want to know what's in it for me.

TIM LASOTA: You know, these questions aren't at all uncommon in these types of bodies, because even though, you know, there's a partisan breakdown here, you know, whether it's a city council, you know, there's going to be the same at city council.

So I think the best thing is the Commission comes first. And, you know, people have individual questions, whether it's Commissioner Herrera or you or
Commissioner Freeman, you try and help them as best you can and maintain your credibility among the whole body.

CHAIRPERSON MATHIS: Thank you.

VICE CHAIR HERRERA: Follow-up question, with regards to partisanship.

I looked at your resume, and you mainly deal with -- you've dealt with Republican either lawmakers or clients, and you've have some experience dealing with Democrats.

Can you elaborate on your experience working with the other side of the aisle?

I want to be comfortable working with you as a Democrat. So put me at ease.

TIM LASOTA: I'll do my best.

And there's no question. I'm a Republican, I have a Republican resume, and I certainly don't run from that fact.

But, you know, I'm not such that people who are Democrats lack confidence in me to do the job they hire me to do.

For one thing, I mean, I've done a fair amount of work at the Legislature, and oftentimes you will need -- I know now it's kind of gotten -- this is the most partisan I've ever seen. And I don't mean that necessarily in a negative sense. But, I mean, if you have a Republican
proposition, it really is hard a lot of times to even find one Democrat vote and vice versa.

But, you know, back a few years ago, you would sometimes need Democratic votes for some of your initiatives or bills. And I learned early on it was never a good idea to burn a bridge among Democrats even if I were a Republican.

Now, it's been a while, but Jessica Florez, she was a Phoenix city councilwoman, you know, she had no problem hiring me as her election attorney, because I think she had confidence that when it comes to an attorney-client relationship I put that relationship and the ethical duties that go with that and I give my all to the client.

There are some people I would not take on as a client. I won't name them.

But I think that's where you draw the line as an attorney. If you can't serve the client, you have no business taking them on.

And I think I've been able to instill that confidence.

Obviously Senator Meza has signed up also. You know, there are a number of Democrats that I've helped.

And I don't know if I should mention names, but I will say that there are a number of Democrats who put, you
know, sort of their utmost confidence in me because they know I'm a person of character who, you know, if they tell me something, whether it's in a professional capacity or a personal capacity, that if it's something they don't want me talking about, they know they can talk -- they can come to me in confidence.

And I wouldn't have that if I were just a partisan Republican.

VICE CHAIR HERRERA: A quick follow-up question, if I may.

Other than having money to pay you, how do you determine if you're going to be working with a particular Democrat? Like, for example, Robert Meza or Jessica Florez, how do you decide to take on this client even if they're Democrat?

TIM LASOTA: And that's certainly a good question. I have to take a look at the role I would be serving and whether I could really put my all into that role, given, A, what they want me to do, and, B, their political posture.

And after evaluating that -- I've never, I've never turned down a client because the client was a Democrat. But I would say that, you know, there's probably some people who are so diametrically opposed or they're trying to do something that is so diametrically opposed to
what I stand for, that I just -- I would feel maybe I can't, maybe I ought not to take that client on.

I'd like to clarify something I said previously.

I think I could do a good job in any circumstance, but I think, you know, there are some circumstances that even though I think I could do a good job it would be best to not take those on.

But I haven't had one yet. I'm just saying that there conceivably could be one, or there could be -- not necessarily candidates, but there could be causes associated with -- you know, causes aren't necessarily partisan, but a lot of causes are associated with Republicans or Democrats, and there are some that, you know, I would not be willing to take on.

I would say it's more in that realm than individuals.

VICE CHAIR HERRERA: Thank you.

VICE CHAIR FREEMAN: Madam Chairman.

CHAIRPERSON MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: You're aware of the other candidates that we're interviewing today. And your role, if we hire two counsel, would be a complementary counsel to the Democrat counsel.

Of the other interviewees, are there any that you feel you could work well with or perhaps not so well with?
Are you willing to share any thoughts about the abilities of those attorneys?

TIM LASOTA: Sure, Commissioner Freeman.

I can say I've worked -- I've already worked well with a number of the other candidates.

I'll just go to the Democratic side first.

Certainly Mary O'Grady, I've worked extensively with her when she was at the Attorney General's Office. I get along very well with her.

I put it in -- I was -- not one of the things up front, but I was on Attorney General Horne's transition team, and I was of the opinion that Mary O'Grady would be a person who could stay on and do a good job under a Republican administration.

So I know her well, and I've enjoyed my experiences with her tremendously.

Michael Mandell, I know some from the Legislature, and I know I can work with him too.

I've only gotten to meet Mr. Braun through this process, so I can't really speak to that.

But, yeah, I mean, I think that that's one thing I do offer is I've already worked with them -- well, on the Republican side, I mean, I think that, you know, there are -- I've worked with them over the years too. Sometimes on the same side. Sometimes on the other side.
So I don't have any doubt that we can -- if I'm on board, I can work cooperatively with any of the other five.

CHAIRPERSON MATHIS: Any other questions?

VICE CHAIR HERRERA: Just one last one.

CHAIRPERSON MATHIS: Sure, Mr. Herrera.

VICE CHAIR HERRERA: If you could summarize your qualifications for us, why we should pick you over the other candidates.

TIM LASOTA: Okay. And thank you for that question. It's good to summarize.

I think that in terms of what I offer, I know this area of the law well.

This area of the law is fascinating to me, whether it's redistricting or campaign finance is also tremendously interesting, because that law is changing also. We have the Citizen United case, which has turned the campaign finance world on its head after being turned on its head by the McCain Feingold Act, which is now in question, but certainly there's going to be another shoe to drop, I think, to the Citizens United case.

I think that's fascinating.

I mean, I couldn't sleep last night. I'm extremely excited about the possibility of working for the Commission.
I think I have the experience.

I will say I think I am younger than some of the other applicants, but I think I do bring some energy, maybe some fresh ideas on how we might accomplish all six of those goals that the people of Arizona have asked to be accomplished, and I think I've got a record of working, working with divergent interests rather.

I've been in jobs where I only -- you know, there are billions of people here, and I've been in jobs where every single person in the world can be annoyed with me, but as long as I kept one person happy I was golden.

And I've been in jobs where I had to keep more than one person happy because you just -- you know, you're in the Mayor's Office, you know, you got to -- you don't -- if you don't have a governing majority, you're somewhat irrelevant.

And the second, so I think I have experience in that capacity too, and I think that's, as between the two, I think the second one, serving multiple people, multiple masters, as opposed to one, is much harder.

And I think I bring that.

And I think I bring a wealth of election law experience that I can draw on and try to get this Commission where it needs to be, which is to fulfill the six mandates that the people of Arizona have given you, and to try to
fulfill all of them to the best extent possible and not really -- you know, try to be picking and choosing to the extent it's possible that we can do all of them.

VICE CHAIR HERRERA: Thank you.

COMMISSIONER STERTZ: I have one, Madam Chair.

CHAIRPERSON MATHIS: Sure, Mr. Stertz.

COMMISSIONER STERTZ: The next 30, 60, 90 days, we're going to be selecting legal counsel. Shortly we're going to be, over the next two to three weeks, we're going to be picking our mapping consultant.

Using the phrase the rubber hits the road, the rubber is going to hit the road.

How do you see your role -- you are, by resume, by explanation, you are a very busy man.

Right now you're representing a lot of different people.

Our expectations of this is a high level of commitment of not only the firm but of the individual representing the firm, which would be you.

You'd be working side by side with co-counsel.

How do you see us staying between the ditches as we move down this path? What is your 30-, 60-, 90-, 120-day plan to get us to the finish line?

TIM LASOTA: Thank you, Commissioner Stertz.

To go to the first part of your question, I'm
raring to go on this thing.

    I will devote whatever time is necessary. I've
really never had anyone say that I spread myself too thin
with them. I always devote the time necessary.

    I mean, this would -- parts -- for parts of the
time it would largely be a full-time position, and I
recognize that, and I've made, you know, I've made or can
make the necessary arrangements for that.

    In terms of the next 60, 90, 120 days, I mean,
it's just going to be a lot of work.

    There's going to be a lot of meetings, and it's
just going to be, it's going to be somewhat of a grind. But
it's a tremendously important job.

    And I see the next -- that period of time as being
a tremendous amount of work. Things are going to start
moving, I think, a lot faster. And I think it will be the
job of the attorneys, with the job of the executive director
and the staff, just to keep everything going and to provide
the best support to allow you to keep the momentum going and
produce a result in a timely fashion.

    COMMISSIONER STERTZ: Thank you very much.

    VICE CHAIR HERRERA: Thank you.

    CHAIRPERSON MATHIS: Any other questions?

    (No oral response.)

    CHAIRPERSON MATHIS: I don't think so.
TIM LASOTA: Thank you for the interview. I appreciate it.

CHAIRPERSON MATHIS: Thank you for being here.

COMMISSIONER McNULTY: Thank you.

VICE CHAIR HERRERA: Thank you.

CHAIRPERSON MATHIS: Okay. So that concludes the interviews that we had scheduled.

I really appreciate, again, Mr. Bladine getting all these firms lined up and scheduled today and for all the responders for coming on short notice.

Most appreciated.

I wanted to take an opportunity -- I thought we could do public comment maybe next, because we had talked about it at the beginning of the morning having second public comment. Given that --

COMMISSIONER McNULTY: That the member of the public is here.

CHAIRPERSON MATHIS: We do have a request to speak form, but if anyone else would like to fill out one and give that to Mr. Bladine, they're welcome to do so.

But I do have one form already filled out. And that would be Mr. Steve Muratore, publisher of the Arizona Eagletarian, and the subject is the interviews.

STEVE MURATORE: Thank you, Madam Chairman,
Very interesting interviews, obviously. And I'm not going to comment on all six of them, but I did want to mention that I found Ms. Hauser to be an intriguing individual with many contradictions.

Obviously she's highly qualified to be able to handle the complex issues, but in her self-awareness that there is a partisanship perception issue, she emphasized perception, and then framed her answers regarding one of the other firms, Republican firms, in terms of, oh, by the way, perceive that they're not necessarily Republican.

So I was a little concerned with that.

There were a couple of red flags there, but clearly she mentioned the -- that there's subliminal messages when people testify or make public comment.

And I think that there was that very same subliminal message with what she presented to you.

She wanted to tell you that she wasn't as partisan as everybody thought -- thinks. She said there's false perceptions.

But two or three things she specifically said made it clear that she views things, and this is not a matter of my perception, just what she said, indicated that how she frames things is in terms of extreme partisanship.

And it was her own words that perception is important.
So in spite of the fact that she's obviously capable of handling the complex issues that you guys have to handle, I have to say I have deep concerns on that, and it's because of her words that I have that.

In terms of -- well, I was impressed with the Ballard Spahr presentation, but you guys know more about all that stuff than I do.

And I also thought that Ms. O'Grady was pretty good too.

So, that's what I wanted to say.

CHAIRPERSON MATHIS: All right. Thank you, Mr. Muratore.

Anyone else from the public that would like to speak?

(No oral response.)

CHAIRPERSON MATHIS: All right.

That means that we -- looking at our agenda, trying to salvage what we have of the meeting, there are a number of items that we skipped earlier.

But I think since we have to leave this room by 4:30, it would make some sense probably to discuss what we heard in these interviews pertaining to legal counsel while it's very fresh. And so I'm wondering if I could entertain a motion to go into executive session to discuss. Is there another alternative?
COMMISSIONER McNULTY: So moved.

CHAIRPERSON MATHIS: All right.

I'm sorry, Mr. Freeman.

VICE CHAIR FREEMAN: I was going to suggest that perhaps right now we table some of the agenda items and --

VICE CHAIR HERRERA: I agree.

VICE CHAIR FREEMAN: I would also move that we table the executive director's report, item number three, number four, number five, leaving us only with agenda item seven, and our adjournment afterwards.

CHAIRPERSON MATHIS: Sounds like a good plan to me.

COMMISSIONER McNULTY: I amend my motion accordingly.

COMMISSIONER STERTZ: I'll second it.

CHAIRPERSON MATHIS: Okay. All in favor?

(Unanimous "Aye.")

CHAIRPERSON MATHIS: Any opposed?

(No oral response.)

CHAIRPERSON MATHIS: Okay. We'll go into executive session.

JAMES BARTON: Do you think that you're going to have to leave this location before the end of your executive session?

CHAIRPERSON MATHIS: I don't know. It's 4:03, and
we have to leave this room at 4:30.

VICE CHAIR HERRERA: Let them kick us out.

RAY BLADINE: Madam Chair, what time does Mr. Herrera -- do you have to leave at 5:00?

VICE CHAIR HERRERA: I have to leave at 5:00.

RAY BLADINE: I think we can stay here until 5:00, and some of us will take the whipping if needed.

CHAIRPERSON MATHIS: Thank you, Ray.

COMMISSIONER STERTZ: If we can get everybody -- let's clear the room so we can go to executive session quickly.

(Whereupon, the public session recessed and executive session ensued.)

* * * * *

(Whereupon, the public session resumes.)

CHAIRPERSON MATHIS: Okay. Go back into public session now. It's 5:11 p.m. And I apologize for the late hour.

We are still in the midst of discussing item -- agenda item seven. And have decided to continue our discussions tomorrow. We're working on a time of when we might be able to meet, so it's all fresh in our heads about what we heard today.
And so I would open it to other commissioners' comments as to what might work for them in terms of meeting soon.

I think we've been advised that we could recess this now, and reconvene tomorrow in executive session, and continue discussions, if that would be people's pleasures.

COMMISSIONER McNULTY: Madam Chair, I can meet anytime tomorrow, although I do have an 11:45 meeting that I would like to avoid canceling. If we could meet at 9:00 a.m., if we're thinking of doing it telephonically, those of us in Tucson calling those of us here in Phoenix.

CHAIRPERSON MATHIS: Mr. Freeman, will 9:00 a.m. work?

VICE CHAIR FREEMAN: Yes.

COMMISSIONER STERTZ: Works for me.

COMMISSIONER McNULTY: Mr. Freeman, do you have videoconferencing at your office?

VICE CHAIR FREEMAN: Yes, but at this hour I don't know if I could get something set up for us at 9:00 a.m. tomorrow.

COMMISSIONER McNULTY: I don't know if I could either, but... .

CHAIRPERSON MATHIS: That's a great idea.

VICE CHAIR FREEMAN: If we were doing it later in the afternoon, that might give me a chance to get the IT
people working on it.

COMMISSIONER McNULTY: Would you rather do it at 1:30 in the afternoon, we'll get our -- get or IT people to do it or ask to see if it's possible.

COMMISSIONER STERTZ: Noon to 4:00 tomorrow. I'm out of possibilities.

We can also do --

COMMISSIONER McNULTY: Never mind.

CHAIRPERSON MATHIS: What if we started at 10:00 a.m.? Is that getting too close to when you start your next --

COMMISSIONER McNULTY: No, it's not essential that I go to that.

CHAIRPERSON MATHIS: Because I was thinking if you went into your offices and were able to arrange videoconferencing.

VICE CHAIR FREEMAN: What if we started at 4:00, Mr. Stertz? Would that work?

COMMISSIONER STERTZ: Works for me.

VICE CHAIR FREEMAN: Given that it's after 5:00 now.

COMMISSIONER McNULTY: That works for me.

VICE CHAIR FREEMAN: This would have to accommodate the public as well; correct?

RAY BLADINE: Correct.
VICE CHAIR FREEMAN: So we have to make sure --

RAY BLADINE: We have to give the location now.

We don't have to know about videoconferencing, but
we have to say where we're going to reconvene and at what
time.

COMMISSIONER STERTZ: Well, teleconferencing at
9:00 in the morning --

RAY BLADINE: If Mr. Freeman knew we could have
someplace where the public could meet in his offices, we can
post it, and then if we do the video, we do
videoconferencing, if we can't, we do telephonic. But there
has to be a location at which we can say we will reconvene
that allows the public to come to the meeting to that part
that isn't executive session.

And I am looking at -- I believe that's what I'm
looking at.

VICE CHAIR FREEMAN: I don't know whether I can
secure sufficient space right now in my office.

CHAIRPERSON MATHIS: And we have to name the venue
right now; is that the rule?

JAMES BARTON: Madam Chair, yes, that's correct.

CHAIRPERSON MATHIS: That makes it hard.

COMMISSIONER McNULTY: Mr. Forst?

BUCK FORST: What if we use the Evans House as the
Phoenix location, and we could set up some chairs inside the
Evans House. And Tucson could be the Tucson location, and we could use the Skype option, with two laptops. We could send that laptop tonight home with you which has a camera in it.

VICE CHAIR FREEMAN: Okay.

BUCK FORST: I'll pick up another laptop tomorrow. I could even put a television set or something and that would allow the public to see the camera as well.

COMMISSIONER McNULTY: Okay.

CHAIRPERSON MATHIS: I like it. That's why you're chief technology officer.

Thank you. Does that sound like a workable solution?

VICE CHAIR FREEMAN: Is that 4:00 o'clock or --

COMMISSIONER STERTZ: Or 9:00 o'clock.

CHAIRPERSON MATHIS: 4:00 p.m.

RAY BLADINE: I've got a camera. I think we can use what we have.

CHAIRPERSON MATHIS: So the plan is to recess and reconvene tomorrow at 4:00 p.m.

And Mr. Forst and Mr. Bladine will work -- the Phoenix location will be at the Evans House on Washington, and the Tucson people --

COMMISSIONER McNULTY: We won't have a Tucson public location. You are welcome to come to my office.
CHAIRPERSON MATHIS: Okay. We can meet at the Lewis & Roca office downtown in Tucson.

Is there anything else regards to that?

JAMES BARTON: Madam Chair, I just want to point out that the requirement is that you reconvene within 24 hours.

So 4:00 o'clock is within 24 hours, but you have to make sure that we start -- that we get started at 4:00.

CHAIRPERSON MATHIS: But we don't have to end within a certain amount of time.

JAMES BARTON: No.

CHAIRPERSON MATHIS: Okay. Great.

That takes us to the end of the addenda --

JAMES BARTON: Madam Chair, we're not going to adjourn. We're just going to recess; correct?

CHAIRPERSON MATHIS: Yes, we are. And so we will go into recess now. The time is 5:17 p.m., and we'll reconvene tomorrow at 4:00 p.m. in the two locations, and hopefully have a videoconference option for everybody.

Thank you.

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

DATED at Chandler, Arizona, this 22nd day of May, 2011.

_______________________________
Marty Herder, CCR
Certified Court Reporter
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