ARIZONA INDEPENDENT REDISTRICTING COMMISSION

Monday, August 22, 2011
9:13 a.m.

Location

DoubleTree by Hilton Hotel
445 South Alvernon Way
Tucson, Arizona 85711-4198

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
Mary O'Grady, Counsel, Osborn Maledon
Joe Kanefield, Counsel, Ballard Spahr

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CHAIRPERSON MATHIS: Good morning. This meeting of the Arizona Independent Redistricting Commission will now come to order.

Today is Monday, August 22nd, and the time is 9:13 in the morning.

Let's all start with the Pledge of Allegiance. So if you will all please rise.

Thank you.

(Pledge was recited.)

CHAIRPERSON MATHIS: We'll start 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.

And I would like to introduce some of the
other people around the table today.

We have our legal counsel, Joe Kanefield and Mary O'Grady.

Our mapping consultant, Ken Strasma and Willie Desmond.

And we have some staff in the room. Buck Forst is our chief technology officer. Our public information officer is Stu Robinson.

And we have some folks in the back. Our Executive Director, Ray Bladine, he's standing, and Ray -- and then Kristina Gomez and Anna Garcia.

And all of these folks can help you. So feel free to approach any of them if you have any questions throughout the day or need anything.

That takes us to item II on the agenda, presentation and discussion with Mr. Bruce Adelson, Esquire, federal compliance consultant regarding the Voting Rights Act, Section 5, DOJ submission preclearance process and redistricting issues relating to prison populations.

So a lot things that Bruce is going to be talking to us about this morning -- and feel free to add to the introduction about yourself, too, who you are and where you come from.

BRUCE ADELSON: Thank you, Madame Chair,
and good morning, commissioners. It's my pleasure and privilege to be here this morning.

And the information that you detailed about me or about the items that we are going to be talking about today are the complex underpinnings of redistricting.

CHAIRPERSON MATHIS: Can everyone hear him?

UNIDENTIFIED SPEAKER: No.

BRUCE ADELSON: Is that good? Can I take this out?

How is that?

CHAIRPERSON MATHIS: Much better.

BRUCE ADELSON: Thank you.

Let me tell you a little bit about my background.

I'm a former senior attorney for the United States Department of Justice. My team is the team that wrote the letter in May 2002 objecting to the State's Legislative redistricting plan the last time around.

We also wrote the letter that precleared the Congressional redistricting plan and our team reviewed the entire redistricting submission.

During my career with the Justice
Department, I was the Department's lead attorney for voting enforcement in Arizona. In fact, during my career, I had the pleasure to deal with your counsel on many occasions during their lawsuit enforcement careers with the state and I was a law enforcement officer for the United States.

I had primary law enforcement responsibility in nine Arizona counties for various aspects of the Voting Rights Act, including the minority language provisions of the Voting Rights Act.

So I had thought that one thing that we could do today is that I could give you some examples of how the Justice Department reviews redistricting submission from a Section 5 perspective, what the process actually looks like from the inside. Talk a little bit about what we did nine years ago. Discuss a little bit about the law, and I understand that you've had a lot of briefings about the legalities, so I don't want to get into the technicalities of various cases and supreme court decisions. And then, of course, be available for whatever questions that I can answer about the -- primarily the Section 5 standards. But anything from a federal perspective.
As you know, Section 5 of the Voting Rights Act requires all covered jurisdictions, which includes the entire state of Arizona, to submit voting changes such as redistricting for preclearance approval by the United States Justice Department or by the United States District Board for the District of Columbia.

Once a submission to the Justice Department is made and received, the Department has 60 days to render a decision. That decision could be preclearance, which means approval of the plan, it could mean objection or rejection of the plan, which means the plan cannot be used.

It could also mean something called a request for additional information, which means that the Department feels that the jurisdiction submitting the redistricting plan has not met its burden of proving that it's not discriminatory.

That's a very important point. Under federal law the State of Arizona, Pima County, Pinal County, Maricopa County, City of Phoenix, any jurisdiction within this state must prove that what it's proposing does not discriminate.

You have the burden. The burden -- it doesn't shift to the Department. You have to prove
So in a way it's counterintuitive. You have to show Justice or show the court that your plan is not discriminatory. And under Section 5, the discrimination is called retrogression.

Retrogression means that you cannot put minority groups, both racial and -- racial minority groups and also minorities by national origin and by language -- in a position that worsens, weakens, diminishes or reduces their opportunity to elect whom they want.

Their catch-phrase is elect candidates of choice. And as the Department of Justice said very specifically in the guidance that its issued recently, the ability to elect candidates of choice either exists or it doesn't exist.

It may exist. If it doesn't exist, you don't have to somehow create it to comply with Section 5.

But the key is, that if it exists -- and whether it exists is determined by a lot of analysis -- then that right cannot be reduced, diminished, or weakened.

Now, just referring very briefly to what we did nine years ago when we sent out objection
letter in May 2002, we determined that the State had retrogressed in three districts, meaning that the State's redistricting plan took away or reduced the right of minority groups in three districts to elect whom they wanted.

Under Section 5, the key element that you look at as you begin the mapping process is something called a benchmark.

The benchmark is the last precleared plan or the last plan that was approved by a federal court that a state or a jurisdiction covered by Section 5 is using.

The benchmark legislatively in Arizona is that there are nine districts that we determined nine years ago, or perhaps seven years ago, that minorities had the right or had the opportunity or the ability to elect whom they wanted.

So you start with that nine districts. You can't go below that. You can't say, well, we're not going to go with nine, we're going to go with six or eight or seven. That's retrogression; clearly prohibited by federal law.

You have the opportunity, given census numbers and given the demographics and geography in the state to increase that, depending on what the
population is. But by law, you can't go below it. So that's the floor. You can't go below nine.

So let me go back to the track of what does Justice do when you make the submission.

Well, right now the team that will be reviewing Arizona has already been assigned. It's likely to be two attorneys and somebody called a Section 5 analyst who is a nonattorney, and that will make up the team of people who will be directly involved in reviewing the submission.

Justice is likely to assign teams to review all statewide redistricting plans and all states that are covered by Section 5. And there are 16 states that are covered all or in part by Section 5.

So let's say -- let's imagine today that your plan is received by the Department of Justice.

First thing that Justice will do is they will look at the plan, scan it into their computer system. If it's nonelectronic -- if it is electronic, they will put it into their system and then begin printing out copies for many different people to review, the team to review, the head of the voting section of the Justice Department to review, the Assistant Attorney General, who is the
head of the Civil Rights division to review. And let me back up a little bit.

The entity that will be reviewing this plan is called the voting section of the Civil Rights Division of the Department of Justice. That's a division that the Attorney General has delegated with the responsibility to handle Section 5 enforcement and Section 5 obligations of covered jurisdictions.

So the plan will go to the voting section. Voting section will open it, scan it, document it, docket it. Then within a couple of days that plan will be distributed to the members of the reviewing team.

What happened nine years ago, and my presumption is the same thing will be true now, is that for statewide submission, there's a very high priority and a very high interest in the Department.

So within a week, we were told to come up with a preliminary assessment of the plan, whether it's retrogressive, whether there were issues, whether we see potential problems.

And initially our initial report was that we thought the plan, based on what the State was saying, looked pretty good. We didn't see any
facial issues. We didn't see that there were maps missing. We didn't see that there were a lot of questions that we would have. So initially, we thought everything looked okay.

Now, that report goes to the head of the voting section, then reports to the Assistant Attorney General, who represents to the Deputy Attorney General of the United States. The Attorney General and then I believe nine years ago that went to the President, which may happen today. Again, I'm just presuming that the same thing we did before will happen again.

So then you're on the a 60-day clock. So a week has already gone by and there is a tremendous amount of work that goes into reviewing these submissions, just as there is a tremendous amount of work on your part in putting redistricting together.

One of the elements of redistricting that I find that many people don't appreciate is that redistricting is a lot more than moving people around or renumbering districts.

Redistricting in a Section 5 state, like Arizona, involves a tremendous amount of analysis. Analysis to show whether there's retrogression or not. We can talk a little bit about that later. A
lot of analysis.

So as we were reviewing the plan, Justice has its own experts that it tasks to do the same analysis that you're required to do.

So we gave your data -- or your predecessor's data to our experts. The expert was -- expert was statistical -- a statistician and a historical demographer. And they did various analyses and plots and they created various maps.

We had various time frames that we were operating under.

One of the things that I think is very important is that in the objection letter that we sent and also the request for more information, which was sent about a month after we received the submission, those letters are very informative about what we were looking at and frankly what the Department will be looking at when you make your submission because they are very much road maps of the concerns that we had, the issues that we found, what is retrogression, what is not retrogression.

And what I found particularly interesting in looking at the request for more information last night is that it really does highlight, and, frankly, provide some very clear clues about what
our thinking was. Because we asked very specific questions of your predecessor.

The question is going to the issue of basically you made certain conclusions; we can't really understand those conclusions based on the what you've submitted. Explain that to us, please. Because remember, you have the burden. If Justice feels you have not met your burden, that can be the basis of an objection.

But let's go back and talk a little bit about time frame.

So the submission is Justice analyzing the submission and let's go back nine years ago. Within a month, we determined there were questions that we could not answer.

We called the Commission's attorneys, we spoke to people in the community, and that's important to realize, too, Justice will speak to dozens of people in the state, legislators, they make speak with you, they will speak with your counsel, they make speak with people in this room, they will speak with election officials, dozens and dozens of people.

That's all part of the Section 5 review process, to understand what the submission is, to
get the reaction of people in the state, to get the reaction of people in the minority community because the Voting Rights Act is intended to protect people who are minorities either by race, color, or national origin, get their opinions.

And basically you put all of this information together with the analysis that you do and see where you are.

The information that we were getting anecdotally corresponded with the questions that we had that we couldn't figure out and we weren't getting the information that we needed under the law to make a determination.

So we sent out a request for additional information in March 2002. And as I said, the letter is very informative because it really does give some very clear indications of what the requirements are and what questions we have.

Justice can only send out one of these letters. Justice is very careful about not sending out a letter too quickly because if it does, that's its only opportunity. It can't do it again.

Since this is a very time-intensive process, Justice is very aware of the time considerations.
We sent that letter out when we did to give the State as much time as possible to respond to our concerns because we were aware of the -- your State deadlines, qualifying deadlines and other deadlines that were relevant to elections in the state. So we wanted to get that out quickly. Then the State responded.

Now, under federal law, Justice can decide -- Justice gives -- in these letters, the jurisdiction gets 60 days to respond. The clock -- that initial 60-day clock that I talked about has stopped. As soon as Justice sends out that letter, the 60-day clock that Justice is on stops and it gets puntet over to the jurisdiction. So now the jurisdiction is on the clock and has 60 days to answer Justice's questions.

If the jurisdiction does not answer at all, which does happen, in 60 days, then Justice by law can object to whatever the voting change is to the redistricting plan.

If the jurisdiction does respond within the 60 days but the response is considered to be unsatisfactory, the response doesn't satisfy the burden under the Section 5 regulations, then Justice can also reject.
In looking at the objection letter from May 2002, we objected based on substantive issues under federal law with some of the districts that had been proposed.

We also objected because we determined the State had been met its burden to provide us with information to prove that the redistricting plan was nondiscriminatory.

And one of the things that I recall very well actually in coming back to Arizona this trip -- writing that letter -- we finished that letter at 5 o'clock in the morning on the date on the letter, May 20th.

We went home, we went to sleep for a couple of hours and then we came back and talked to the Assistant Attorney General. The Assistant Attorney General, his signature is on the letter as to approve all objections to statewide plans, and I think even to countrywide plans.

So we had to explain to him, well, why we were -- why we had determined what we had determined. We had a long talk with him. We had a long talk with some deputy Assistant Attorney General and -- Attorneys General, I'm sorry. And then at the end of the conversation he said, "Okay,
let's finalize the letter, send it to me, we'll send it out today." And that's basically what we did.

Now, as you know, we had also precleared the Congressional plan, Congressional redistricting one. We did that relatively quickly because we didn't really see any -- we didn't see any retrogression in there. And found that that -- we didn't have any questions about retrogression on that submission. We thought that submission laid out what we needed to look at as far as our obligations under Section 5.

My recollection is that there were two benchmark Congressional districts that -- where minority voters had the opportunity to elect their candidates of choice, just as you have nine benchmark Legislative districts. My recollection is you have two Congressional districts where the same issues will apply.

So then after that, there was obviously some federal court intervention and we had continuing interests in what was happening in the redistricting.

I think we eventually did preclear the Legislative lines I believe in 2004. That was after the State had remedied the concerns that we had and
remedied the objections. And in the subsequent
review of the new plan, our concerns had been
satisfied.

So since we did not determine there was
retrogression and since we felt that the State had
satisfied its burden of showing no discrimination,
we precleared that plan. As I said, I think that
was in 2004.

That's kind of a very quick overview of
the Section 5 process. But one of the elements that
I really wanted to stress for you today is the
importance of analysis. That -- I could draw a map
right now of any state in the United States and
redistrict it. It's not difficult to do that.
Technology exists today that didn't exist ten years
ago to draw maps relatively easy.

The difficulty is, in a state like
Arizona and in other Section 5 states, is that you
have to do a regression analysis, for example. You
have to have various analyses to prove, okay, you
say you have nine benchmark districts. You say the
minority population is of a certain portion in each
one. Prove it. Show us. Show us the minorities --
voters in that district can elect whom they want.

One of the issues previously, which I'm
sure you will encounter because of the grid map approach, is that there were Legislative districts that were combined.

Let's say if you combined Legislative District A and Legislative District B to create C and you want -- that district is one of your benchmark districts where minority voters have to be able to retain that ability to elect. In A, A is let's say 60 percent Latino voting-age population and B is 20 percent. You combine them and there's a diluted effect because that second District B is overwhelmingly Anglo.

So you're combining two districts, one of which is majority Latino, one of which is very majority Anglo into one district where you are making the point that this is a district where minorities can elect.

My question would be, show me. Show me the analysis that proved that. Show me that these voters are citizens. Show me that these voters are of voting age. Show me that these voters in their previous district had the opportunity to elect. Show me that they are registered to vote and that they turn out. Show me the patterns that they -- of elections over the last ten years. That's what you
have to do.

Without doing that, you run the risk of an additional information request, and, of course, eventually you run the risk of an objection.

Without the analysis to prove what you're claiming, Justice will have a difficult time with preclearance.

And I wanted to -- just as a matter of illustration, I wanted to point to the letter we wrote in March 2006 -- I'm sorry, March 22nd, 2002.

In one of the parts of the letter, we had said, provide the factual basis, including documents, data, studies, analyses that the State relied on in reaching a certain conclusion that minorities can elect in certain districts, and that's what I'm talking about.

You can't under Section 5 create districts and just leave the districts as they are, perhaps as you can do in New Mexico or Nevada or in Colorado. Those are not Section 5 states. In a Section 5 state, you can't do that.

Now, frankly, I would say in other states you should do something similar because you do have other federal -- can you hear me?

UNIDENTIFIED SPEAKER: No, can't hear
BRUCE ADELSON: Hello?
UNIDENTIFIED SPEAKER: Yeah, that's better.
BRUCE ADELSON: Usually I don't have a problem with people hearing me.
I think you have to do that analysis regardless. Because there are other aspects of the Voting Rights Act, like Section 2, for example, that have their own requirements and their own dynamics. Doing that analysis makes it likelier that there will be a preclearance, makes it likelier that your liability risk in federal court is lower than for a jurisdiction that does not do analysis.
I have reviewed -- in my career with Justice and in my current career in working with jurisdictions around the country, I have reviewed hundreds of redistricting plans, and I have seen plans that look like this, it's just a sheet of paper.
Now, under Section 5, that's really not going to get you where you need to go. Section 5 submissions that have the best chance of preclearance are going to have -- you know, I don't like to use sports analogies but I will now. They
have grand-slam analysis. They have analysis that
after Justice looks through them over and over
again, they will say, looks good. Okay. Okay. And
Justice's experts will say the same thing. That's
what you want, because frankly, that's -- there's
really no choice. That's your obligation under
federal law.

So if it's okay with you, Madame Chair, I
would like to entertain any questions that you have
and I would be very happy to help you in any way I
can.

CHAIRPERSON MATHIS: Great. That was
very informative.

Did you also want to cover the prison
populations, too?

BRUCE ADELSON: Sure I would be happy to.

CHAIRPERSON MATHIS: Great.

BRUCE ADELSON: There's no specific
federal statute that says you should or should not
count prisons population as part of redistricting.

The difficulty with prison populations in
any state is that if a prison has a majority of
minority prisoners, you cannot take that prison
population and say, okay, that district we were
talking about before, District C, where minorities
can elect, well there's 55 minority population but
10 percent of them are in prison.

So what you've done is you've
artificially inflated the minority population from,
let's says, a theoretical 55 percent -- up to
55 percent so that it's really 45. Minority's
ability to elect at a 45 percent voting-age
population is much different than at 55.

During the last round of redistricting, I
saw several plans from other parts of the country
where jurisdictions had done that, where they would
say, oh, we have 70 percent minority population
here. We can -- the minorities can elect.

And a significant number of that
population, they were incarcerated. And under that
state's laws, they couldn't vote, even if they had
been released that day.

So the Voting Rights Act challenges you
cannot use prisons to create an artificial
majority/minority district or a minority-influenced
district or coalition district. You have to use the
population of people who are citizens and above 18
who can vote and who are not incarcerated.

Now, there's been no supreme court
decision and no federal statute that says you cannot
include prisons at all for purposes of population.
That's kind of a -- I don't want to say it's a gray area, but it's a gap in the federal statutes and it's something the supreme court has not clearly not addressed because you could also make the argument that prisons are part of the population and are part of an elected representative's constituents.

That is an argument. There are equal protection issues, too. But I think that from a Voting Rights Act perspective, Section 5 as well as Section 2, you cannot use prison populations to augment a district's minority population.

And Justice will know the same as you. They have access to the same amount of information. They know where the prisons are in this state just as you do. So if you create a district and claim there's -- minority population is a certain threshold but that threshold is only achieved because of a prison, then you run a significant risk of an objection. But before an objection of an additional information question because Justice -- let's say you do that and Justice sends that letter to you and says we understand that there's a prison in District C. Please explain how your minority population there can elect without the prison
population. But if you've artificially increased the percentage, you won't be able to explain. That means Justice will object.

So prisons are part of redistricting in overall population but they cannot -- you have to be very careful in making sure that prison populations do not dilute minority voting strength under federal law and don't augment artificially a district minority population.

There will be less of an issue in a district that is 75, 80 percent nonminority. From a Section 5 perspective, Justice really won't care about that. There may be other issues, but they are not Section 5 objection issues. That's only going to come when you're at the tipping point of minorities in a given district being able to elect whom they want.

CHAIRPERSON MATHIS: Thank you.

BRUCE ADELSON: You're welcome.

CHAIRPERSON MATHIS: Any questions for Mr. Adelson from the other commissions?

VICE CHAIR HERRERA: Madame Chair.

CHAIRPERSON MATHIS: Mr. Herrera.

VICE CHAIR HERRERA: Thank you for your presentation.
BRUCE ADELSON: Thank you.

VICE CHAIR HERRERA: You mentioned retrogression, and my concern with retrogression would be the other way around where you are packing people into districts.

We hear a lot of individuals who -- some and also politicians that seem concerned about the current majority/minority districts and they want to keep them at the way they are now or even increase them.

What should we be looking out for when we have people that are addressing the Commission and are concerned about, you know, the Voting Rights Act minority -- especially from those individuals that typically in the past don't tend to really -- aren't too concerned about minority issues, only when it comes to redistricting and also politicians that live in those areas that want to keep getting elected.

BRUCE ADELSON: That's a very difficult issue, and I'll give you an example of something that happened in another state nine years ago.

Small southern community. Let's say 2 or 3,000 people, deep south. City council redistricting.
One of the districts was 90 percent African American, and I spoke with the council member in that district who had voted to approve this plan and he told me -- he was very defensive, and he said, you know, that's just the way I wanted it. I voted for the plan, I like the way the plan it is.

Well, people in the community said, you know, he doesn't need 90 percent of this particular district, African-American population, to elect.

And using your point about packing, packing is a term of art under Section 2 of the Voting Rights Act and Section 5, to a limited degree, where you are putting arguably too many minority voters in a district that need -- that that district needs to be able to elect candidates of choice.

So in my 90 percent example, the analysis we did was 90 percent was way, way too high. But under Section 5, Justice doesn't look at that particular issue. Under Section 5, Justice looks at retrogression only. Can you -- can minorities elect candidates of choice in the districts that you claim they can.

The retrogression standard is purpose,
which means intentional discrimination, or effect, which can be accidental.

Nine years ago, we found purpose, intentional discrimination, in one district because in that district, two plurality Latino towns had been moved out, one town that was overwhelming Anglo was moved in.

The Assistant Attorney General determined -- and he said this in the phone call, he said, "Bruce, this sounds like intentional discrimination to me."

And my response was, "Yes, sir."

He made that determination and we did because taking two towns out of a district that were 38 to 40 percent Latino, replacing them with one that was, I think 85 percent Anglo, perhaps, diluted the minority voting strength.

Going back in a little more to your question in my example, determining what level of support, what level of participation, what level of population minorities need to elect candidates of choice is done by analysis. You make a determination. Let's assume that it's 53 percent. Just take a number out of the air. 53 percent voting-age population.
Okay. So if it's 53 percent, let's say that's statewide, then you know that's the number that you're dealing with.

If you're looking at 70 percent, maybe that's packing. Maybe that's putting too many minority voters in a district, because if do you that, then are you diluting the ability of minority voters in another district to elect. And that's more of a Section 2 issue than Section 5.

Packing is something that happens in many places around the country, but I think that often happens because analysis -- good analysis isn't done to determine, okay, we need 53 or 54 or 56 or 51.

Now, not surprisingly the rate at which minority voters can elect candidates of choice will vary within a state and arguably within a city.

One of the things that I remember from nine years ago was there was a Legislative district where minorities could elect in a proportion in the 30s. That was an anomaly. I was -- this happened to be the district -- one of the districts I was responsible for.

When I was told this by people in this state initially, my response was, wow, really? That doesn't seem like it can happen. But the analysis
we did showed that it could. So that informed other analyses and other determinations that we made.

Doing county-level redistricting in this state, I can tell you that there are supervisory districts where minorities can elect in percentages in the 30s. Now, that varies by county, it varies by geography. So there's no, like, absolute you must have 53 percent statewide. The analysis has to go into more depth than that. Because if you don't, then you leave yourself open to Section 2 liability issues.

VICE CHAIR HERRERA: Madame Chair, just a quick follow-up.

Mr. Adelson, you had mentioned that the -- that in a majority/minority district, that the minorities living -- living and voting in that district need to elect a candidate of choice.

What does that mean exactly because I -- let me give you an example.

So there's high minority district, 53 percent voting age, Hispanic Latino, and they are, let's just say in a Democratic area, there's a Hispanic candidate running, there's a Caucasian candidate running. It doesn't necessarily mean that they need to elect a Hispanic candidate; is that
right?

BRUCE ADELSON: Not at all. It's the race of the vote that goes into these determinations. Candidate of choice can be anybody. It can be Latino, African American, Native American, Anglo, Asian American, anyone.

If the analysis goes to the point of showing who that candidate is -- now, I've seen in examining districts in other parts of the country, I've seen minority voters elect Anglos, elect people from every racial group you can imagine, whether or not they were from that group. Because there's something called coalescence and coalition voting.

So then let's say you have a district that has Native Americans, African Americans, Asian Americans and Latino and Anglos and there's one group among those five, let's say Asian American that's a plurality. Your analysis could show that all portions of all five groups coalesce so that the minority, the racial minorities are able to elect whom they want. Let's just presume it's an Anglo.

So the race of the candidate is not part of the analysis in this way. It's the race of the voter. But the race of the candidate does come into play in other parts of the analysis.
But I agree with your point, Commissioner, absolutely. The candidate's race does not determine exclusively whether or not that person is the candidate of choice of that district minority voting.

VICE CHAIR HERRERA: Thank you.

BRUCE ADELSON: You're welcome.

CHAIRPERSON MATHIS: Other questions from other commissioners?

COMMISSIONER MCNULTY: I do have a question, many questions, but let me ask one right now.

So I understand you to be saying that we will early in our process do an analysis of the voting patterns of minorities in Arizona or we should so that we understand as we are drawing these districts where minorities have the ability to elect a candidate of their choice and to ensure that we don't retrogress that ability and that that percentage may be different in different areas or different districts and then it also may be the case as Mr. Herrera was saying, that you could have a minority group that makes up 60, 65 percent of a district and our task -- when we think about a benchmark, our charge is not to make sure that we
don't go below 65 percent, but that we don't retrogress the minority's ability to elect a candidate of choice, which could be -- could mean based on the analysis that the percentage needs to be higher or lower than 65 percent.

Is that right? It's -- the analysis is whether they can elect their candidate of choice, not whether the percentage of minority voters remains 65 percent?

BRUCE ADELSON: Yes, Commissioner, that's correct. It's -- the first level is can minorities in a given district, in your hypothetical, do they have the current ability to elect candidates of choice.

If they do, the next level is what level of population is needed to avoid retrogression.

Let's assume it's 65 percent. Let's say your analysis shows in this particular district minorities in order not -- they are not -- to be retrogression, you need a 65 percent voting-age population. Then you look at surrounding demographics and surrounding facts on the ground.

Let's say in this particular district that's a housing development that's being built where the expectation is that the majority of people
living there will be Anglo and will that dilute this 65 percent?

Do you need to maybe raise 65 percent to, let's say, 67 to avoid retrogression by effect future retrogression in let's say two years after this housing development has been completed? That's a possibility.

But let's assume that doesn't exist, but your point, if your analysis shows the minority voters can elect candidates of choice and the level that is needed to maintain that is 65 percent, that's where you start.

So going below that -- I don't want to say that you absolutely cannot do that. Your analysis will inform where you go.

But what I think is also important to realize is I understand very well having worked for Justice and the work I do now, that there's a tremendous anxiety, interest, eagerness, pressure to have maps done and have them all precleared so that everybody can move forward with elections. And I know that all of the election officials in the state that I talked to nine years ago and that I talk to now, I know they all have their calendars and they are very -- they have their concerns about balance
and process.

My concern is a little different. My concern is -- I shouldn't say it's a concern. I don't like risk from a legal standpoint.

To me, risk is what happened in the jurisdiction in another part of the state that I worked with. They had done their redistricting but they had not done outreach to their local language minority community and they wanted to make the submission to the Justice Department. And I said, I don't think it's worth it to take the chance that they will punt it back and ask where is your -- in this jurisdiction, where is your Spanish language outreach? Where is proof that you had Spanish language assistance, for example, in your meetings? What's your proof that the Spanish-speaking community approved that?

So what my suggestion was, let's have some meetings, do some outreach and then we'll go ahead. So they've done their meetings, they've done their outreach and now we're moving forward with submitting to Justice.

What that -- how that connects in a way to what you're asking me is, the analysis is ongoing. If you do all of your analysis today, you
won't be done. There will be other analyses that you will need to do. And I see that -- I see that regularly.

That's something that's very important to realize in a Section 5 state because you really don't have a lot of margin for error. We are not talking about the Section 2 where you might have liability if we pack a district. We're talking about no preclearance, no election. No preclearance, everything is pushed back.

Now, unfortunately, in this state, there have been objections either in whole or in part to the last three redistrictings. Justice has a file of every state, and in that file is information that's related to previous redistrictings, all of the analysis of the Department and the analysis of the jurisdiction.

So Justice looks at the file, the team for Arizona has likely looked at the file by now and is aware of our conclusions from nine years ago, the conclusions from the '90s, and the conclusions from the '80s. And that -- to them, that -- I don't want to say it confirms what they will be looking at, but they have an idea of what -- of the history of the jurisdiction because the people who are going to be
reviewing your submission were not there nine years ago. They weren't part of my team and they were not -- have not been involved with redistricting previously.

So in order for them to get up to speed on the hundreds of issues involved in redistricting, they've looked at this file, because that's what we did nine years ago and I'm pretty confident they did the same thing.

So I'm sorry if I kind of went astray from your question, but your point -- I agree with you. Determine ability to elect and then determine that level that's needed and then see whether that level should or can be reduced or increased.

CHAIRPERSON MATHIS: Questions from other commissioners?

VICE CHAIR FREEMAN: Madame Chair.

CHAIRPERSON MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: Mr. Adelson, you mentioned in your presentation that Arizona has nine benchmark Legislative districts, two for Congressional.

Would the Voting Rights Act require under certain circumstances the creation of additional minority/majority districts?
You also referenced minority-influenced jurisdictions and how does the Voting Rights Act apply as to those jurisdictions and would retrogression also come into play with those?

BRUCE ADELSON: Thank you for the question.

The nine is the floor. You're -- I take your point, you could need to create more depending on the minority population growth in this state over the last ten years.

One of the things that we had noticed nine years ago was the Latino population had increased dramatically. I think at the time it was six or seven points. I haven't looked at in detail how the population has changed here in the last ten years. Arguably, the increase has been about the same and maybe even more.

So from a Section 2 perspective, it may be necessary to have an additional district. Just speaking hypothetically, let's say one Legislative district and let's say one Congressional district, and, of course, that's just hypothetical because I don't know that.

That's -- your analysis will show that.

Your analysis will show where your population growth
is, what the population growth has been, because just speaking, you know, in -- statewide, let's say statewide has four Congressional districts, and of those four, two can elect candidates of choice. Their minority population has increased 25 percent. So that population has been concentrated in one particular area in one district where minorities can elect now.

Given that hypothetical, my advice to that jurisdiction would be you need to look at creating a third district where minorities can elect, because if minority population has increased 25 percent in that one district, you have a one-person, one-vote issue under the Constitution and you mostly have a vote-dilution issue, too.

So that -- all of those questions will be answered through the analysis. So it is conceivable that that could happen.

Influenced district is something -- is a term that -- I like the term "coalition district" better. The coalition district issue is something that the supreme court really had -- has not specifically ruled on from a Section 2 standpoint.

What a coalition district means is, let's say there a district that is 35 percent minority.
There's no absolute numerical majority of a minority group. But in that district, minorities can elect the -- let's say that 35 percent is Native American and let's say they are at 10 percent Asian Americans.

Analysis shows that the Asian American voters and the Native American voters' coalition or coalesce and together, with the help of some Anglo voters, they can elect candidate of choice.

Now, that's not a so-called majority/minority district but it is a coalition district where analysis reveals that minorities clearly can elect whom they want.

So if they can elect whom they want, retrogression then comes into play and you can't reduce or weaken that ability.

My caution always with redistricting is the possibility of having to increase minority population in districts to avoid retrogression. So that, in my example where you don't have a numerical majority, I think the ability to elect is more fragile than in a district where minorities make up, let's say, 60 percent. And if you're at 60 percent, your ability to elect is likely going to be stronger than it is at 35 percent.
But the analysis will show that. Analysis could even show that that group of 35 percent is -- turns out in such strength that 35 -- they are pretty strong at 35.

I would still -- my advice would still be to bump that up a little bit. But analysis, good analysis answers all of the questions. And these are the types of questions that Justice will ask and these are the analyses that Justice will perform.

VICE CHAIR FREEMAN: Thank you.
BRUCE ADELSON: You're welcome.
COMMISSIONER STERTZ: Madame Chair.
CHAIRPERSON MATHIS: Mr. Stertz.
COMMISSIONER STERTZ: Your presentation was a small drop in a large ocean of information that we are going to need to grasp from you as this process moves forward.

Justice obviously has their own weighting criteria of some of the analysis, analytic points and data points that are going to be coming forth.

How does voter turnout come into play in that analysis?

BRUCE ADELSON: Voter turnout can be an element in the analysis. I know that's something we looked at nine years ago. How in certain
districts -- let's say in my hypothetical district with minorities that are not an absolute numerical minority -- majority, we found in the district that I mentioned earlier that in that district, minorities turned out at a higher rate than let's say in adjoining districts. That had to do with reasons of demography and history but those are things that Justice will look at.

Justice will look to see the political history, not in a partisan way, not in an electoral victory way, but more people being active in community affairs, that's probably a better way to look at it, in this particular district or this particular area.

So turnout can come into play. It's not dispositive, but it is one factor in the larger pool of factors that's examined, and that's certainly something that we looked at.

COMMISSIONER STERTZ: As a follow-up to that, as a hypothetical or an actual example, voter turnout in the two Congressional districts in the state of Arizona is significantly lower than in the other seven districts, and that would -- would that be reason to actually increase the minority population in those districts to offset the lower
voter turnout?

BRUCE ADELSON: It could be. It could be and in relation to other potential factors. One of the factors we haven't mentioned is something called racially polarized voting, RPV.

Racially polarized voting analysis is the cornerstone for many of the things we are talking about.

If voting is polarized by race, what that essentially means is that can voters choose candidates based on the race of the candidates and the race of the voter.

So let's say, taking myself as an example, that I strongly prefer Anglo candidates and I don't prefer non-Anglo candidates. That's racially polarized voting.

If you have racially polarized voting, which the vast majority -- I shouldn't say that. Jurisdictions around the country have it. That was prevalent in Arizona nine years ago. That was the Commission's analysis revealed nine years ago.

With racially polarized voting, there may be more of a need, as you're suggesting, to increase minority population to avoid the dilutive effect of,
let's say, Anglo voter. So that is -- is possible.

But racially polarized voting is essential to the Section 5 analysis and also Section 2.

If there were no racially polarized voting and there is -- that is true in parts of this state and in parts of the country, then many of the issues that we are talking about will be less important because for minorities to maintain the ability to elect, if voters don't choose candidates based on race, then there will not be a difficulty in having a larger Anglo population since in that particular jurisdiction, Anglos support non-Anglos at the same rate that non-Anglos also support Anglo candidates and vice versa.

So I think we all learned in law school that sentence that I know drives my wife crazy, "It depends." And that's true here. It does depend, but I take your point and I could see that that could be -- it could very well be true, certainly if the analysis works.

COMMISSIONER STERTZ: As a follow-up to that and then I'll continue on with the other commissioners, where we've got population transfer that were isolated in a particular area where have
actually a population reduction because of movement, and the movement to be able to create a majority/minority district or to maintain the position where we would not fall into retrogression, would create a complex creation of a district by jumping -- jumping over counties and counties to be able to capture population. And I know that in other states and other southern states I know that I've read some interesting articles about what's taking place in Louisiana right now as being a challenge after Katrina because there's such a large movement of the population.

There's been a -- how do we approach something like that where we actually have some population movement where they've gone from rural districts into urban districts and those districts are hundreds of miles apart and with counties in between?

BRUCE ADELSON: As you suggest, that is a very difficult issue and is a complex problem with redistricting here and, frankly, in many other places.

In Louisiana, one of the issues that I had thought might come up which I don't believe did, there's a -- an out, in a sense, for retrogression
if you can claim unavoidable retrogression.

Like in Louisiana, with the catastrophes there, when you've had such a steep drop-off in population, does that somehow relieve you of the Section 5 obligation.

I'm not aware that Louisiana claimed that in this round of redistricting.

In Arizona, I think that that might be difficult to claim because the numbers would have to be pretty high. You know, I'm talking about a 60 percent majority/minority district that's now 20 percent minority. I'm exaggerating, of course.

I think that what's -- what I find a lot of people don't appreciate with redistricting, and certainly this is something that we all know because this is what we do, state considerations, county lines, maintaining communities of interest, not splitting municipalities, can all fall by the wayside in order to comply with the federal ones.

Meaning one person, one vote and the Voting Rights Act.

So that if, for example, you have to divide a community of interest or divide a municipality in order to comply with the Voting Rights Act, that's what you have to do. That's what
federal law says.

I know we've all seen maps with strangely-shaped districts which can raise their own concerns, and I see it at the county level that there have been situations where we've had to bring minority population in to support various districts that we had not expected to do initially because of population laws.

But invariably, we've been able to do that without, you know, having the city here and another city 500 miles away that's in the same district.

I don't want to say that you absolutely won't be facing that or that's necessarily problematic, but that is clearly -- I agree with you, that is one of the challenges not just here but really everywhere because you are such a rural state outside your large municipalities, that's a challenge. And I know that that was a challenge to a certain extent nine years ago. I expect it will be a challenge again.

COMMISSIONER STERTZ: Thank you.

VICE CHAIR HERRERA: Madame Chair.

CHAIRPERSON MATHIS: Mr. Herrera.

VICE CHAIR HERRERA: Let me use District
7 -- or Congressional District 7 as an example where representative Grijalva, majority/minority district in 2010 barely won but previous elections he had won easily.

Could we use that as an anomaly because most Democrats lost -- you know, I think all Democrats lost statewide and the safe seats were no longer safe.

So instead of increasing the Hispanic voting population, can we use the data that says 2010 was an anomaly, therefore, you don't need to adjust the numbers to create -- to have more Hispanic -- to increase the Hispanic voting population?

BRUCE ADELSON: Well, that's a -- I appreciate your question, Commissioner, because what that leads into is something that's very important, too, is you don't just look at one election.

In this state, you arguably start with 2004, which was the year I believe that you ran your first elections under the precleared plan that you currently have.

So when you're looking at Congressional elections, Legislative elections, but you're going to be looking at other elections, too. You can look
at supervisory elections, you can look at sheriff elections, justice of the peace elections even because these are all exogenous elections where you're polling elections from outside the district or the issue that you're primarily focused upon.

It could be that you're not -- if you're not getting the data you need to have the analysis to support what you have to do, then you go mine elections.

I mean, I remember in an effort to examine what the State had submitted nine years ago, we looked at dozens of elections below the Legislative level to make -- to try to figure out, okay, the State is saying that District C is a district where minorities can elect. They haven't really given us what we need in a clear way. Let's see if we can figure it out based on what we have.

So we would run election after election and the statistician would keep coming back, Bruce, I don't have a clear answer for you.

Okay. Let's go to the 2006 constable election in precinct 5 and we would continue to do analysis.

So taking your point, if you look at -- excuse me, if you look at one election, no matter
where it is, one election will not be enough.

You're going to be looking at dozens of elections. State, county, below county, maybe municipal. It really will depend on the location.

So taking your point, if one election is an anomaly for whatever the reason is, the question is why is it an anomaly. What happened that year? Was turnout particularly low. In a presidential general election, for example, turnout is very high. That could skew results. So then you have to look at other elections; Congressional, primaries. You're looking at primary and general election.

So it's not just one election. You're looking at a lot of elections.

VICE CHAIR HERRERA: A quick follow-up.

You talked about Louisiana and the -- and after the disaster people leaving, the minorities in that area. We have sort of the same -- I guess sort of the same issue in Arizona, just not a natural catastrophe. It's a politician-driven catastrophe where we had SB 1070 and we had minorities leaving the state.

How would that impact and can we make that justification if we have retrogression in maybe one district?
BRUCE ADELSON: Let's assume that you've had a 15 percent drop in minority population as a result of nonnatural issues. Let's assume that.

Would that be high enough to be unavoidable retrogression? I don't know the answer to that and I'm not going to say, yes or no, but I will say the standard for unavoidable retrogression is incredibly high.

My presumption is that's not applicable here because I don't think it was applicable in Louisiana.

So you may have additional challenges, which I'm sure you -- just like your colleagues across the country do, in basically finding the population to avoid retrogression.

But I would -- my presumption would be that unavoidable retrogression probably is not an issue here. I could see intellectually it could be in many different places, but that's something -- again, like we've been saying, you have to show me. The analysis would have to show that. You would have a big bar to jump over with Justice.

VICE CHAIR HERRERA: Just one more follow-up question.

In areas where you have the non-Hispanic
voters coalescing or building a coalition with Hispanic voters, could you decrease the Hispanic voting population and increase the other voting -- so let's just say that the Hispanic voting population is 56 -- 56 percent and the other larger group is -- votes with the Hispanic population. Could you either decrease the Hispanic voting population slightly considering that they vote for -- or formed a coalition with the non-Hispanic group to elect a candidate of their choice?

BRUCE ADELSON: As a general proposition, I would say, yes. You have to be careful, though, because the new regulations are stronger than the regulations we used nine years ago, and they were pretty strong.

I mean, there is -- you can't -- retrogression is no reducing, weakening, diminishing. Those are pretty strong words. So if you're looking at a minority district where -- let's say a coalition district, let's say is 25 percent Native American and 15 percent Latino and analysis shows that minorities can elect whom they want in that district but I decide to take 10 percent of the Native American population, bump it down to 15 and
move the Latino population up by 5, I would say I
don't really have to see analysis for that. That's
retrogressive because the drop is too much.

If you're looking at dropping population
and maintaining the ability to elect without
retrogression, we're talking about very small
changes, 1, 2 percent, maybe 3 percent vary on the
district and it depends on the strength of the
minority community as it is now.

The margin of election -- let's say in
your hypothetical district, that minorities can
elect -- have elected for ten years by 20 points,
every single election. Okay. Then I might be more
comfortable with reducing the population beyond two
or three points. But the analysis will have to show
that.

I -- it's unusual for that to happen.
Frankly, I haven't seen that in any part of the
country. But analysis drives all of this. So if
the analysis shows that, okay, then that's something
we would look at. I've never seen that, though.

VICE CHAIR HERRERA: One last question.
In the -- so what if we were trying to
create another majority/minority district by simply
increasing the majority -- the majority/minority
district in a certain -- in a district that has
60 percent and maybe moving some of them to another
district to prove to the Department of Justice that
we could create another majority/minority district.
How would they see that?

BRUCE ADELSON: Well, I mean, you're
first going to have to -- let's assume that. Let's
assume that you're creating an additional district,
whether it's Legislative or Congressional where
minorities can elect.

At the starting point, you're going to
have to show that your population supports that. I
mean, if you had zero population growth, which
obviously you haven't, then you can't do that. If
you've had zero population growth in your minority
community, you can't do that.

If you have the population growth to
support that, then what you would do is you would
take -- you may have enough minority population in
the geographic area where you want to create another
district and you don't have to bring minority
population from elsewhere. Or if you do, then let's
say you have your 60 percent district and let's say
analysis determines that minorities in that district
can elect at 52 percent. Okay. Then maybe you take
2 or 3 percent from that district to the new
district.

Now, I wouldn't go from 60 to 52 because
that's just too -- you don't leave yourself a margin
for error.

But let's say you got from 60 to 58,
maybe, and you move that 2 percent into the
district.

One of the issues that came up nine years
ago, and I had a lot of conversations with people
about this, was let's move 10 percent. Well, we
have 60 percent here. Let's bring 15 percent.

And, you know, my comment was -- we were
talking about before, your state consideration for
redistricting or your state considerations, just as
every state has them, but they take a back seat to
the federal ones.

Unless you can show you're complying with
federal law and complying with one person, one vote,
all your state consideration don't matter. The
federal ones are paramount under our system. So
they must be complied with.

But I had conversations with elected
officials in the Legislature at the county level and
the municipal level nine years ago, and many of the
comments were can't we move 10 percent or why can't we create this district and you're standing in the way of being able to move these people from here or there.

My comment always was, you know, the law is the law. I mean, this the Voting Rights Act of 1965. It's been the law for 46 years.

So while I understand your local priorities and preferences, that has to be addressed first. If you can address it and still move population, if that's your choice, then you have the legal support and the analysis to do that.

But a lot of jurisdictions don't do it in a way that you're suggesting. They just move and then they figure that everything will just work out. It doesn't work like that. And I had to tell many jurisdictions nine years ago, sorry, this doesn't work.

VICE CHAIR HERRERA: Thank you.
CHAIRPERSON MATHIS: Other questions from other commissioners?
VICE CHAIR FREEMAN: I think I had one.
CHAIRPERSON MATHIS: Mr. Freeman.
VICE CHAIR FREEMAN: Mr. Adelson, I think I know the answer to this. I think it's going to be
based on analysis performed on every area of the state, but I think other states use their old maps as a starting point and it's easy to sort of conceptualize, at least for me, how using these benchmarks would come into play.

In Arizona, not only do we wipe the slate clean and start from -- draw new maps but we also have a reapportionment to perform on the Congressional level.

Can you --- and I'm not exactly sure how to formulate the question, but can you kind of talk about from our perspective starting purely from a blank slate, how do we employ those benchmarks from the old maps to create the new maps?

BRUCE ADELSON: Well, I think -- and Commissioner, I think that your challenge is unique nationally with the grid system, because I agree with you, that your colleagues don't have that same grid requirement. So they will look at the maps they have now and then overlay what they are proposing and it is a less complex task.

From a benchmark perspective, I think the important thing is you start with the numbers, the nine and the two. And again, my recollection is the two, not two Congressional and nine Legislative.
If you -- and then look at where is your population concentrated in the state. Pima County, Pinal County, Maricopa County, for example.

So you're arguably going to have more districts that -- more population concentration in those areas. You probably don't have the same level of population increase in some of the more rural parts of the state.

From a retrogression standpoint, if -- let's say District D now can elect, the Justice Department looks at retrogression across your submission so that if instead of District D, you have District E electing, that's not necessarily problematic because District D doesn't but District E does.

So as long as you're keeping that number of nine or two, that's the important part. And I think from a preliminary standpoint, doing analysis or mapping to show where your population growth has been highest will give you some good ideas about where you will be concentrating your efforts.

Certainly when it comes to creating your new Congressional district, for example, you may look at areas of higher population growth because that will relate to the vote dilution, the Section 2
issues, the cracking and packing issue that we talked about.

So I appreciate that your challenges are unique from the grid standpoint, but looking at the numbers and then getting some maps and analysis to show you where your population growth has been, where it's been highest, can be very helpful because I know that in my work, looking in -- at the county level looking at jurisdictions and voting precincts where you have a voting precinct that has 500 percent population growth, I know that we may have to split that precinct to keep one person, one vote. Or in a precinct that's lost 10 percent and that precinct is majority/minority, I know we are going to have to move minority voters into that precinct from elsewhere.

So those dynamics will drive your further process and drive your additional analysis.

VICE CHAIR FREEMAN: Thank you.

CHAIRPERSON MATHIS: Other questions?

Ms. McNulty.

COMMISSIONER MCNULTY: Mr. Adelson, I have a couple of questions.

You mentioned that nine years ago the Justice Department found intentional discrimination
My question is, is there a carryover from that that we need to be cognizant of in particular with regard to -- are there any particular geographic, you know, locations that we need to be paying special attention to given that that finding was made nine years ago or are there other things that we need to be cognizant of as a result of that? And a completely unrelated question I think is would you talk a little bit about citizen voting-age population, how that -- how that extrapolation is done and how it fits into our analysis.

BRUCE ADELSON: Let me start, if I could, with the last part of your question about citizens voting-age population or CVAP. That is a census-driven dynamic in that -- in the sense that is data that is retrievable.

If you have a district that is 55 percent minority voting-age population but the citizen voting-age population is 30 percent, now there won't be that big of a disparity. But if there is, then that district is not going to go able to elect arguably candidates of choice because the percentage of people who can vote are very low.
Now, we did look at CVAP in Arizona. That is something that Justice does look at as part of its redistricting submission -- redistricting analysis. In a way, it's a corollary to prison population.

If you're creating districts without regard to citizen voting-age population, you're flying blind, in a sense. You're just assuming that various districts have the population to elect without knowing age, without knowing turnout, without knowing registration possibly, and without knowing whether or not they are citizens.

Nine years ago, we did determine that we didn't know, based on the data that we were given, whether some of the populations had the requisite percentage of people who could and are qualified to vote. So that is a data set that is available. That is a data set that Justice does look at.

Going back to your first question, and for all of my friends in Washington who may be watching me, I'm not going to make any presumptions about whether there's carryover for them. But I will tell you that there are certain realities in the environment that we live in today. The Justice Department is conducting at least two civil rights
investigations in Arizona right now that I know about.

Justice monitored elections in Arizona last year. Justice will be monitoring elections in Arizona next year. Justice is aware of the controversies that have occurred in Arizona concerning various policies in this state.

Justice also is aware of your redistricting history. I mean, as I said, your last three redistrictings have either been objected to completely or in part, '80s, '90s, and 2000. Justice knows that. And as I said, there is literally a file on every state. Justice has the file and has read through the file about the dynamics that are here.

Now, are they going to prejudge your redistricting because of observing an election in Navajo County last year? No. But as part of their research into preparing for redistricting, they are aware of what has happened in redistricting over the last 30 years in Arizona and they are aware of their own investigations and their own enforcement efforts in the state.

So I think that they are not going to prejudge your redistricting. I won't say it informs
the redistricting, but they certainly are aware of it. I think it's important that everybody understands that that is a live issue and something Justice knows about.

A lot of jurisdictions that I've worked with around the country have suggested to me, oh, you know, well, we had this happen. Well, we don't have to tell them that, do we?

And my point is, yeah, you do. Because all of the times that I talk to Justice and all of the times that I worked with Justice on behalf of my clients, and I do this fairly frequently, they tell me one thing, and they always say, "Bruce, we know you know this, but this is for your clients. Don't hide things from us. Be straight with us. If there's a problem, tell us, we'll work through it with you." They don't like surprises.

Nine years ago, we were surprised because we found things in the redistricting submission that we didn't expect to find that we weren't told about, but we were told this by people in the state, Legislative -- by elected officials, by voters, by people who would just call us and say, Bruce, that district in XYZ county is a real problem and here is why. Those were all things we had to investigate
and all things that Justice will investigate again.

So Justice, just as we all bring, you
know, whatever our -- our own research into
anything -- we bring to the table for any matter
that we're dealing with, Justice does the same
thing. They have the folder. They know what's
happened here the last three redistrictings. They
know what we did nine years ago.

So that's background information that
they take very seriously.

CHAIRPERSON MATHIS: Thank you.
BRUCE ADELSON: You're welcome.
CHAIRPERSON MATHIS: Any other questions
for Bruce -- for Mr. Adelson?

COMMISSIONER MCNULTY: I have one more.
CHAIRPERSON MATHIS: Ms. McNulty.
COMMISSIONER MCNULTY: So you're our
lawyer now, right?

BRUCE ADELSON: Yea, I am a lawyer.
COMMISSIONER MCNULTY: So we are going to
be turning to you for some advice and perspective on
this issues over the next weeks and -- over the next
weeks as we draw these maps?

BRUCE ADELSON: I'm very helpful to work
with you and assist you in any way that I can. And
I appreciate that. Thank you.

CHAIRPERSON MATHIS: Any other comments?

COMMISSIONER STERTZ: Yes. Madame Chair.

CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: I want to go back to the question of voter turnout because over the last ten years in the nine Legislative and two Congressional districts, there's been an increase and a decrease of voter turnout on an ongoing basis, including going through the last 2010 election.

When you're looking at those particular districts, and again as Commissioner Freeman had pointed out, we are going back to now going back to a clean slate, so we are going to use benchmarks that don't exist based on voter turnout as we're -- as we're isolating that.

How do we cull together that data to be a firm representation of analytical data points that will prove both Commissioner Freeman's question and Commissioner Herrera's concerns about, you know, do these -- how do these pieces fit together in this puzzle in a clean slate such as what we are doing here?

BRUCE ADELSON: Well, I think if you look at -- first you do a racially polarized voting
analysis to get an idea of statewide where things are at the state level. Then you'll drill down a little bit and look perhaps county by county. You look at turnout in, let's say, all federal elections since 2004, primary and general, see how they vary in different parts of the state.

    Turnout, as I said, is a factor but it's not dispositive. Your plan, as you formulate it, will not be based solely on turnout.

    But you're -- if I was still with Justice and you are presenting me a district which you say is a district where minorities can elect, let's say 53 percent and the turnout in that district has varied over the last eight years in federal, state, and local elections and your analysis shows that minorities can elect in the range that I'm talking about, my analysis will show the same thing.

    The fact that turnout has varied won't distract from the bottom line analysis that minorities can elect in the percentages that we are talking about.

    However, you may find that if turnout has fluctuated wildly, and by "wildly," I mean -- let's say in the 2008 presidential election in District A, turnout was 55 percent. Turnout in the 2000
election was 35 percent. Why would there be such a tremendous swing?

Frankly, it's unusual for a swing like that to exist. If it did, frankly, you would have analysis that would answer the question of why.

So there are many different metrics and levels of analyses that could answer virtually every question that we are talking about.

Turnout -- if redistricting were just based on turnout, we would be here for years because that would be so incredibly difficult to get to. But while it is a factor, it's not a depository factor. And even in looking at the clean slate grid system, it will be one factor that you will need moving forward in seeing how turnout may vary from La Paz County to Pinal County in the Congressional primary in 2006, for example. Maybe it varies because there was a candidate who was running who was from Pinal County.

Those are all factors that go into this, which is why, you know, I always have that -- the questions and the concerns from people about why -- let's just draw the maps right now. Let's -- we could do it. We draw -- I could draw a map in 20 minutes right now. It's not going to get
precleared. And that in the end is our burden, and the burden of 16 like states around the country. Is in order to get the preclearance, we have to do -- drill down maybe further than New Mexico does.

But, frankly, the analysis that we do also insulates you and insulates the State and the taxpayers from liability in federal court from the challenges that are already happening in other parts of the country.

I think at my last reading, there were twenty -- have been 20 lawsuits filed in Texas challenging redistricting. There have been about 5 lawsuits in Illinois challenging redistricting. So those are expensive.

UNIDENTIFIED SPEAKER: What about the ones in Arizona?

BRUCE ADELSON: Those are expensive.

And I think doing the analysis supports preclearance and also insulates folks from there not being -- not being like what's happening in Texas.

COMMISSIONER STERTZ: Madame Chair, as a follow-up to that, the -- and again, as we drill down, I think we are going to be hitting lava by the time that we drill down to what we are looking for.

One of the goals I believe out of the
Voters Rights Act was to eliminate disenfranchisement as well. And when voters stop turning out because there is an increase of voter apathy because the belief of a -- no longer having competitiveness in a particular district, the -- that seems to me to be counterintuitive to the goals of the Voting Rights Act.

Could you extrapolate on that for me for a bit?

BRUCE ADELSON: Well, I agree. I mean, the voter apathy is an issue throughout the country, and I think that in this country in contrast to other western democracies, we don't criminalize not voting. Not voting is a First Amendment freedom of speech decision.

There are parts of this country where voter turnout varies widely depending on the state, county, or city you're living.

So I agree with you, Voting Rights Act clearly is about enfranchisement. And I've seen situations where apathy consistently has driven down turnout.

I've also seen situations where discrimination has driven down turnout. Whether it's discrimination that's national-origin based or
race-based.

And one of the stories that I like to tell about Section 5 in a jurisdiction that's not here, on the East Coast, on the eve of the 2004 election, the local election officials had moved a polling place one mile down a rural road from one building to another. And at the time, didn't really think that this was a big deal.

The attorney who was involved in the submission came to me and said, "Bruce, there's something weird about this. I want you to tell me what you think I should do."

He had gotten some phone calls from older voters. The place they moved the polling to had been a Ku Klux Klan headquarters in the '70s. So voters were starting to oppose the change.

And voters that he talked to said we're just not going to vote there. And we are -- we are very interested in voting in this community. We are not going to vote if it's there. And in the end, this particular county withdrew this change and decided to move the polling place elsewhere.

So I've seen apathy, I've seen discrimination. I've seen that in many different parts of the country, and I take your point that
redistricting is not going to be informed by low turnout because voters just don't care.

That's why turnout is not the only factor. It is a factor. It may be a significant factor depending on the jurisdiction, depending on the county, depending on the district, but it's not the sole factor it's a factor.

COMMISSIONER STERTZ: Mr. Adelson, this is my last question, and thank you for your indulgence.

The reason I was asking was because of actually opposite of the way that you were presenting that, is that in the two Congressional districts and the nine Legislative districts, that the apathy is driven down so that voter turnout is quite low because there is a presumption of election results. And the presumption of election results have actually created disenfranchisement not by the majority/minority but by the overall population because there is a predetermination of results.

And, for example, in the state of Arizona, we have close to 50 percent voter turnout in the last election. Just slightly under 31 percent turned out in Congressional District 4 and because of the assumption of a predetermination.
I don't think that's the goal of the Voters Rights Act and I don't think that that's the goal of what our Commission Redistricting wants to be.

BRUCE ADELSON: No, I take that point. I think that I can -- whether it's here or in my own state of Maryland or in Mississippi, Montana or North Dakota, they are in exactly the same situation, that voters don't turn out at certain rates but perhaps because of a presumption of an election result.

To the extent that that is an issue that can be reconciled with the requirements of the Voting Rights Act, I applaud your point and the importance of that.

If that issue, voter interest and voter apathy, can be reconciled and voter presumption of result can be reconciled with the Constitution of one-person, one-vote requirement, Section 5 and Section 2, to that extent, I think that that's a very laudable goal to be working towards. Whether it does or not, of course, will depend upon your work, on what the analysis shows and what the demographics are in this state.

COMMISSIONER STERTZ: Thank you.
BRUCE ADELSON: Thank you.

CHAIRPERSON MATHIS: Thank you.

Ms. O'Grady.

MARY O'GRADY: If Ms. McNulty has a comment, I can wait until the commissioners are done.

COMMISSIONER McNULTY: I do have one more question.

Would you talk a little bit about what our -- what we need to do to outreach, whether you have any advice for us for what Justice is going to want to see in that file about how we've done our outreach?

BRUCE ADELSON: Yes. Thank you.

One of the issues that came up nine years ago is that I got a lot of calls from minority voters and Indian nations and community organizations giving me information about various issues. You should look at this or look at that. We have a problem with this. They didn't do that.

One of the paramount issues is that Arizona, under the Voting Rights Act, is covered by something called Section 4(f)(4), which means that every bit of information that you provide that's related to elections and voting has to be in English.
and Spanish. That's statewide. Every jurisdiction in this state that holds public elections has to do that.

There are also various counties, like Pima County, has various language obligations for Native American language. Like in Pima County there's the O'odham requirement and the Yaqui requirement. In Navajo County is Navajo, Apache, and Hopi.

So I think that reaching out to the Native American communities, to the tribes, to the Intertribal Council, for example, working with Latino organizations, Latino community-based organization is important.

You're required to do that. The Voting Rights Act regulations require that you show Justice this is what we did. This was our outreach.

Outreach can be very challenging because you're talking to a lot of people. And in addition to your obligations of doing the analyses that we are talking about and the map drawing and having meetings like this, doing outreach is also a component of that.

So one of the things that I looked at nine years ago was as part of my checklist,
outreach. Let's see what happened. Whom did the Commission speak to. What groups are -- am I talking to. What are the groups saying. Is that consistent with what the Commission has said?

Doing out- -- no outreach is very problematic. How much outreach you do is really -- there's no threshold where you have to have X number of meetings and speak with X number of people.

But bringing as many people into the tent, to the redistricting tent about what you are doing, what your requirements are, what the federal legal obligations are is helpful to you and the State because it eliminates an issue for Justice. It eliminates a potential liability issue in federal court, it also brings more people in the state into the process to understand what it's all about.

One of the comments that I always get about redistricting nationwide is many people look at redistricting, if they have -- you know, I voted for Joe Smith in the last election; he lost and I want to have redistricting so he will win.

So the concerns that they have are very real and very valid but they are not necessarily consistent with what the legal requirements are. And I find that -- I spent a lot of time this summer
just talking to people about the Voting Rights Act and about enfranchisement issues and disenfranchisement issues, about the one person, one vote, what does that mean.

A lot of people think that the Voting Rights Act guarantees the ability to elect people. It doesn't. A lot of people think that one person, one vote means you have to have an absolute at the Legislative level -- each district has to be completely equal. Doesn't mean that.

So I find that the more outreach you do, whether it's voting -- voter rights outreach and outreach generally like this, explaining to people what's involved, what we are talking about, the process, the very significant requirements that you have to operate with, what preclearance is all about, the more people hear that and understand that, the more they appreciate the process generally.

And going to your core point, the easier your path is as you move down the road, because Justice has only looked at two state's submissions so far, Louisiana and Virginia. I don't know that any other state -- I should say have precleared. I'm not sure that other states have gotten -- have
even gotten to the point of having submitted their plans yet.

So we are still very early in the process. This is going to be going on nationwide for a long time.

The more you can do to ease your process, in my mind, the better it is for everyone.

COMMISSIONER MCNULTY: Thank you.

CHAIRPERSON MATHIS: Other comments?

Ms. O'Grady.

MARY O'GRADY: Madame Chair, commissioners and, Bruce, this is sort of a proc- -- in terms of getting through all of this and in a reasonable way, recognizing at the end of the road what we want is a map that is not retrogressive and that we have the analysis to support that and that we've also weighed and considered all of the other constitutional criteria in the process of coming to that map.

And also kind of accepting that there often are multiple ways to draw districts that don't have a retrogressive affect. There's not just one nonretrogressive map.

And so to a large extent, it's not like we will simply, because the Voting Rights Act
compliance is an absolute, it's not like you ignore the other constitutional criteria and just draw a voting rights district and set those aside. It's a very fluid process, I think, like we are starting out.

So we've started out with some what-ifs based on public input. And into those what-ifs, we fed don't split Indian reservations as a -- in terms of modifying our grids -- and we started out, like with Congressional, we know that we have two districts with an opportunity to elect. We know that we have two majority Hispanic districts.

So that's in our what-ifs, maintain those two majority Hispanic VAP districts. That doesn't mean we are doing that deeper analysis and we are not done with that analysis, but it also seems what we're sort of in that fluid what-if phase, we don't -- we shouldn't do that drill-down analysis on every what-if that's parsed out, because as you said, you could say -- you can see right off the bat that sometimes you get a district that the drop is just too much or when they try and create some what-if scenarios, that -- and still maintain two Hispanic districts, it may get really ugly or cause a lot of -- or cause some other things that in terms
of our State constitutional criteria they look at it and say, well, let's see if there's another way.

So this whole thing is sort of a fluid process recognizing that at the end of the road, what we want is a map that's retrogressive -- that is not retrogressive and has the analysis to support it, but we are not necessarily going to analyze doing statewide racially polarized voting analysis. Because what you really need to do is analyze it in the context of the district that you are creating when you get to that drill-down analysis.

And so that's sort of the what I'm saying, kind of a fluid process that I don't think we need to stop and sit back and do nothing until -- let's have this abstract analysis of the state because you need to look at it in the context of the districts that you are creating and you also don't need to ignore all of the other State constitutional criteria. It's all part of one big fluid process at the end of the road we have maps we can preclear.

BRUCE ADELSON: Well, I think that your point that this is one big fluid process and just as with jurisdictions that I'm working with where we have maps but we've had to go back and do additional analysis because issues came up, maybe prison
populations, for example.

So that, yes, they are not mutually exclusive where you do racially polarized voting analysis but then you're not at the same time looking at the grid issues that we've been talking about and not drawing maps and moving forward.

But it is like it's -- this is a very fluid, complex, time-consuming process. And all of the things that we are talking about can -- will happen. They are obviously all not going to happen today, but moving forward with your maps and your considerations as you are charged under State law is an ongoing process.

But there will be -- it's not a straight line. It's going to bump, because you're going to find things that we don't know about yet. You're going to discover issues because of population or other concerns or community concerns we just don't know about them. And the jurisdictions that stick to that, we will not vary from this, our strategy, those are the jurisdictions that get those letters. Those are the jurisdictions that have problems with their elections. Those are the jurisdictions that get objections because it's maintaining that fluidity, maintaining that awareness that this is an
ongoing process.

It's very important just because all of the things we talked about today are involved and we haven't discussed every possible issue. We've discussed a lot of them and there will be more as you continue to move forward.

VICE CHAIR HERRERA: Madame Chair.
CHAIRPERSON MATHIS: Mr. Herrera.
VICE CHAIR HERRERA: Two quick questions.

When we submit our plans to DOJ, we have 60-day review period. I was wondering if the Department of Justice were to send us a letter making -- recommending a change, does the 60 days start all over again?

BRUCE ADELSON: Well, if the Justice Department sends you a letter -- this is March 26th, 2002, this is our request for additional information. We sent this about a month after we received the submission. That 60-day clock stopped when this letter was signed and put in the mail.

Then you get a 60-day clock -- or your predecessor had a 60-day clock to get us information in 60 days, which they did.

Well, we determined that the information was insufficient under federal law, so the trap,
though, is if you don't respond at all in 60 days, Justice can object just for that. If you respond but your response is not sufficient under federal law, Justice can object, which is what we did nine years ago for some of the districts.

So to me, I think this request for more information can be even worse than an objection because then you have 60 days to answer.

We had a lot of questions and a lot detail because, remember, Justice gets one letter. They want to put every conceivable thing they can in that letter. And when we were drafting that letter, we were told, "Are you leaving anything out? Make sure you don't have any other questions because this is it."

So Justice is very aware of that. They get one. They are not going to just send a one-sentence request for information. It's going to be big.

So I think that this is something that can be even worse than an objection.

VICE CHAIR HERRERA: My other question is Mr. Stertz brought up the issue about the voter apathy and disenfranchisement, and I think in general but also what I to focus on, are those
majority/minority districts where lower voter turnout could easily be explained when people have -- the majority has this preconceived notion that they already know who is going to win the election. For example, I'm going to use District 4 as an example, Congressional District 4, Pastor. Those people will assume whether he has a competitor or not, he will win the election, therefore, people may not want to go vote.

How do you -- without retrogressing, how do you address that issue as competition to make it more competitive or what? How do you address that issue?

BRUCE ADELSON: Well, you look at -- remember, we talked about exogenous elections. You look at other elections.

So let's assume in a Congressional district the turnout is relatively low. Let's assume it's because that voter presumed what the outcome would be.

But I would bet you that if you look at, let's say, a supervisory election at the county level, perhaps a Legislative election, maybe even a sheriff election, perhaps the turnout is higher because there is not that same level of presumption
of a certain result.

That's why if you're looking at one election -- in the 2010 election you mentioned before, can be anomalies for whatever reason.

If in one particular race turnout is low because there's a view that, well, we know who is going to win and that person always wins by a significant amount, then you look at other elections.

That's why looking at various elections over time, looking at various types of elections is part of this analysis. So it's not just one election, one snapshot in time. It's a move -- over a fair amount of time so that you can meet your burden under federal law. Without doing that, you don't. So that's why you look at it as a continuum.

VICE CHAIR HERRERA: Thank you.

CHAIRPERSON MATHIS: Ms. McNulty.

COMMISSIONER McNULTY: I would like to follow up on that.

Is this working?

Following up on Commissioner Herrera's question, let's assume, and I don't know if this is true, but let's assume that we look at those exogenous elections and the conclusion that we reach
is that people aren't voting. How does that then bear on the effective voter rate for purposes of a Section 5 analysis?

BRUCE ADELSON: Thank you.

Let's assume you look at ten elections and the turnout, participation rate is basically the same in all of them but minorities in that district can't elect. What that's likely telling you is you can't reduce the minority population.

Maybe you have to punch it up a couple of points, maybe, but you certainly can't reduce it because if turnout is low but minorities can still elect, you can't possibly reduce that even -- I would say even by a point or two because it arguably if -- the ability to elect is precarious.

But again, if the minorities in that district are a numerical majority, 55, 60, 65 percent, even with turnout being low, I think there might be -- still be some play there about the percent of the minority.

If it's 38, 39, 41 percent, I would caution very vigorously against reducing that. If it's 60 percent, all right, I could certainly see that there would be analysis that could show, all right, maybe we could reduce that. But the analysis
will show that.

This is analysis that shows -- it typically shows pretty definitively what the rate -- the population rate needs to be to maintain the ability to elect and avoid retrogression. And so that -- this is something that is often not speculative.

So it's really just going to depend, again, on what that percentage is so that even if turnout is low, higher the percentage, more play, the lower the percentage, less play, as far as reducing or changing the number.

CHAIRPERSON MATHIS: Other questions or comments?

Okay. Mr. Adelson, thank you very much.

This was super helpful and we are grateful that you're part of the retention of Ballard Spahr to join our legal counsel and helping us through these preclearance and Section 5, Section 2 navigation. This is not the end. And we've already gone over 40 minutes than what we had intended initially for your presentation. So thank you for indulging us.

VICE CHAIR HERRERA: And, Madame Chair, I apologize, I do have one question real quick, and this might be a silly question, but I still want to
ask it.

In the previous Commission there were no minorities that served on the Commission. There were five Caucasians.

This Commission is a little different. They have me, but I think I represent everyone, including Hispanics, Blacks, Native American, White, doesn't matter, but I am the minority and we have a mapping consultant who has a good reputation with minority issues and making sure they are well-represented.

How much of an impact does that have with the Department of Justice?

BRUCE ADELSON: It's something that -- Justice certainly knows, you know, who is part of a body, a commission. Is that going to make the difference? No.

I mean, we knew who was part of the Commission nine years ago. Something -- okay, it's this person, this person, this person, they come from this part of the state, that part of the state. Okay. Now let's move on. So it's something that's noted but it's not in any way part of the analysis or the eventual determination.

CHAIRPERSON MATHIS: Thank you. And with
that, I think we'll release you and I'm sure we'll be asking for questions as time goes on. So thanks for being here today with us.

BRUCE ADELSON: Thank you, Madame Chair, and thank you members of the Commission.

CHAIRPERSON MATHIS: So it's 10:57 now and we'll go ahead and take a five-minute recess. So if everyone could plan to be back after that, that would be great.

(A recess was taken from 10:57 a.m. to 11:11 a.m.)

CHAIRPERSON MATHIS: We'll enter back into public session now. The recess is over. The time is one 11:11 a.m., and we'll move to agenda item III, which is presentation and discussion of issues concerning redistricting databases.

I think Mr. Strasma is going to speak.

KEN STRASMA: Thank you, Madame Chair. The timing of this is good. I apologize if it's fairly dry and technical information, but it's important to go through Mr. Adelson's presentation. I don't know how many times he mentioned the analysis will tell us the answer to this.

The analysis for voting rights issues and also for competitiveness can't be done unless we
have an accurate database of past electoral results.

It's been brought to the Commission's attention, I know I saw Mr. Tony Sissions spoke a couple of times at different meetings and we've been working with him on this issue. Also the Maricopa County JS manager had contacted the AIRC staff about issues with scrambled names on precincts and electoral results.

There are a number of different issues that we have to deal with in matching the election results from the individual counties to the census geography. Some of them are obvious and -- which makes them reasonably easy to fix.

For example, if a county has 20 precincts and they are numbered 1 through 20 but on the census they have written out names rather than numbers, that clearly doesn't match; we have to call the counties to figure out what does precinct 1 correspond to.

A much more dangerous problem is when the names match but refer to different precincts. And that turns out to be the case in a number of counties in Arizona.

There may be precincts 1 through 20 in the census, precincts 1 through 20 in the election
results but they actually refer to different
geographic areas.

We've been going through a project since
our start with the Commission of identifying
documenting and fixing these issues. We wanted to
make sure that we presented the process here to the
Commission so that it's on the record and that we
make our documentation available to the public.

When DOJ is doing their analysis, when
other interested groups are doing their electoral
analysis, it would be very easy for them to reach
the wrong conclusion if they assume, in this case,
that precincts 1 through 20 matching precincts 1
through 20.

So we want to make sure that all of our
fixes and the documentation for those fixes is
available publicly and that everyone has a chance to
look over them to let us know if there are any
issues that we haven't caught or that they disagree
with and that everyone be working off of the same
electoral database that we've prepared. We've been
working through it since up until yesterday
afternoon.

We expect that there will probably be
some more changes, although we hope that they will
be minor.

I'm going to turn it over now to Mr. Desmond who has been heading our team who has been working on the VTD matching issue to go through some of the more technical details.

WILLIE DESMOND: Thank you.

Can everyone hear me?

All right. So today we'll be presenting exactly the process and the reasoning behind our match of the census voter tabulation districts, which we'll be referring to as VTD throughout this process, to the Arizona election results and every county's own precinct maps and files.

All right. What are VTDs?

As I mentioned, they are voting tabulation districts. They are the level of census geography at which election results are supposed to be reported.

They are based on each county's own precinct. So they are not something that a census assigns and then the counties go off them.

The counties create their own precinct maps and then the census bases its VTDs off of those precinct maps. They are intended to allow election results to be matched to the census easily.
In Arizona there are 2,224 VTDs and 2,224 precincts in the 2010 census and for the last two elections.

Why do we have to worry about VTD?

Well, as we've gone through extensively today, the Voting Rights Act needs to have accurate election information to do analysis on regression.

Under Section 5, Arizona redistricting plans cannot be retrogressive. The plans cannot weaken or reduce minority voters' rights. And the presence of discrimination can be determined by analyzing population data and election results.

So this is all part of getting the election results in a format where we can say with confidence that they are matched to the correct census locations. Also, competitiveness needs election results in order to be analyzed.

Proposition 106 established competitiveness as one of the criteria for redrawing Arizona's Congressional districts. And there are many measures of competitiveness that use past election results in their formulas.

I think at some point we'll be presenting on competitiveness and Ken will emphasize more how past voter history is important for those.
All right. How are the election results matched to the census?

Well, the census VTDs are supposed to match every county's precinct from the last two election cycles, 2008 and 2010.

Counties were asked not to change the precincts during these times and no counties did change their precincts. However, once they -- counties are set in -- before the 2008 election, they are shipped off to the census and they cannot be changed.

Unfortunately, the original submission had many scrambled precinct names, as you will see in this presentation and is documented in some of the supporting documentation that we'll be releasing.

The census VTD, it's important to know, are comprised of the census blocks so that we will know the exact numbers of people that reside in each one of the VTDs.

The way we take voting results and match them to the census block is by disaggregating those results to the block level.

So if a precinct or a VTD is comprised of ten census blocks, the result from that VTD is doled
out to each one of those census blocks based off of how large of a percentage that block is to the overall voting-age population.

I'm sorry if I'm unclear here. Please anyone on the Commission let me know if I need to clarify.

So each block is allocated a percentage of the voter's based on the proportion to the VTD's voting-age population.

What issues are?

Well, the census VTDs are wrong in some places. Of the 2,224 VTDs in Arizona, we found that many cannot be easily matched to the election results.

If the correct election results are not assigned to the correct geographic area, it will be impossible to perform correct Voting Rights Act and competitiveness analysis.

Okay. There are several methods for matching the VTDs to county precincts, the first of which is unique codes.

Every census VTD comes with a VTD code. It's comprised of the county's five-digit FIPS code, which is unique to every county in the United States and a unique precinct number.
The example I have is Maricopa's Alta Vista precinct is FIPS code 04013 and precinct number 15. So the VTD code is 0401315.

However, there are some counties where the VTD code uses 0 fill, so that a 15 will actually be 015 or 0015. An example of that is Yavapai's Castle Hot Springs 1 precinct, VTD code is 04025015. If it was in Maricopa, it would have just been 15 at the end. So even among the VTD codes in Arizona, there is an internal inconsistency. It's just consistent among the different counties.

Another method for matching census VTDS to county precincts is based off of the name. All of the census VTDS come with a name field. Counties also have names for their precincts. Sometimes there are minor differences that prevent matching but are pretty obvious when you're looking at it. Those include things like Villa La Paz and Villa De Paz, Santan Heights, Santan spelled as one word or San Tan Heights spelled as two words.

Apache Junction NW or Apache JCT NW or Kearny or Kearney spelled with and without an E are all examples taken from the election results and the census that don't quite match, but it's pretty apparent what they were talking about there.
The last method that we used for matching these two things would be the location and shape of each VTD in each county precinct.

Each one occupies a unique spot on the map. And so by overlaying maps of the census precinct -- or the census VTDs and the county precincts, you can see that these two are -- you know, these two line up and match and they are in the same area. So it's obvious that these two shapes are referencing the same thing. They could have different names, they could have different codes, but they are talking about the same thing.

Another way to kind of easily do that would be just to look at the area that -- the total square feet or total square miles of the census VTDs and the county precinct shapes. And as you'll see when we go through some of our workbook, you'll see that we used area commonly and it was a good check.

All right. How was the match done?

Strategic Telemetry called to every county and requested maps of their precincts. When available, we preferred to use .shp, which is an ESRI file that can be loaded up directly into Maptitude. It's pretty standard. So any of the larger counties that had a GIS department or an
elections person who specializes in GIS, usually had shp files available.

Some of the counties, and especially some of the smaller ones, don't have a dedicated GIS person, so we worked with pdf maps or else also like JPEGs that we were able to pull from county-run voting result sites or, you know, different county mapping sites.

The match was conducted by one person, primarily myself, and then independently verified by another person in our office. All identifiable features were used. So name, code, area, and, you know, location on the map were all used to conduct the match.

So for the census VTDs, we had county, we had VTD code, we had VTD name, and we had area of each precinct or VTD in square miles. The square miles is important because the counties that came with area were often in square feet. So we had to convert it and there was not an exact perfect conversion because when you're calculating something in square miles, it's, you know, two or three decimal places. When you multiply that by hundreds of thousands, it doesn't necessarily meet a square-foot calculation.
So there you'll see some variation. We accepted anything that was plus or minus 3 percent as a valid match. And I feel comfortable that that's fine.

And then to the census VTDs, we created a brand-new unique precinct code that we were able to add to all three stages so that they could all be easily matched in the future. We call that the IRC precinct code and it was a 12-digit code that was a combination of three things.

The first three characters of the letters IRC. The next five are the county FIPS and then the final four are a four-digit unique precinct number that was zero filled. So if it was precinct 1, it was 0001 so that every one of the IRC codes is 12 characters long, just to make it a little easier to sort and stuff.

The county precinct maps, when they came with a .shp and shape file, they often had the precinct's name, the precinct's number, and the area in square feet.

Now, these weren't always the case, but by and large they had these three fields. If we just received a pdf, all we really had was the shape of the district and the name to go along with it.
And again, we added the IRC precinct code to these.

Finally there was the precinct election results that we got from the Secretary of State's website and aggregated. These include fields unique precinct's code. This was assigned at the county level so that there was in many cases several, you know, precinct 1's because every county had their own first precinct and the unique precinct's name also assigned at the county level. So it's possible that there's two precincts that are named courthouse or some other common type of precinct name. And again, we added the IRC precinct codes so these three pieces can all be matched together for future analysis.

Okay. Issues that we determined during the match.

As Ken mentioned, probably the most dangerous and most common were the VTD names that don't match the precinct name. So if you'll indulge me, I know this may be a bit small for members of the audience, I apologize. This PowerPoint will be available on the website and you will clearly see what we are talking about.

But if you look right here, it's census VTD named Tempe 24 and that shape on the county
precinct file is Tempe 25. Next to it, this is what's called census 25 and this is what's called census -- or county 26.

So if you were just taking the two files and you were matching 25 to 25, you would actually be talking about two different areas on the map.

So anyone who does an initial analysis just using the precinct and census VTD names would encounter this type of problem. And as I said, this was fairly widespread in some counties. As you can see just from this little cutout of the map, nearly all of these are scrambled so that the county uses a precinct name, Tempe 19, that there is a census precinct 19, Tempe 19 but they are not the same shape on the map. They are not referring to the same area. They are not referring to the same people that comprise that area.

So this is what initially inspired us to do a much more in-depth match and really go through the process of ensuring that every census VTD matches the correct precinct and the correct election results.

Other issues were VTD codes that don't match precinct codes. This was much less common. It only happened in Gila County. Unfortunately,
this doesn't display it that well but there was an issue where Claypool 1 on the census VTD was the same area as Claypool 1 on the county precinct file; however, they had different unique codes. So that if you matched 10 to 10, you were matching the wrong names. And if you matched the name to name, you were matching the wrong number.

So it was clearly scrambled just the opposite of the other one. Instead of the names being scrambled, it was the numbers being scrambled. So anyone who tried to match on numbers only would have these precincts backwards.

Another problem, only this time only in Navajo County was split VTDs. So that the census comes with 54 VTDs in Navajo County. Precinct election results for Navajo County, that's 70. So there's 16 times when the election result is only half of a VTD. So you couldn't do a one-to-one match there either because you would be losing 16 of the 70 election results.

So we had to go through and find instances where there is a census VTD that's split and then find the two election results that comprise that split and assign them both to that VTD.

The last type of problem that we found
was unaligned precincts. As you can see, these two
lines clearly are meant to capture roughly the same
area; however, they are just slightly unaligned.

I can't say definitively why this would
be. I imagine it's something where if you are
drawing lines based off of roads, the census uses
the centroid of the road, it uses the very center as
the line, whereas counties might use one side or the
other. So it could be slightly shifted like that.

We did pay attention to areas where these
were particularly egregious and verified that there
was no whole census blocks that were in one VTD or
another as opposed to the precinct.

In many cases, when you saw, you know,
big clumps that seemed to be missing, you know, not
huge, but if you zoomed in it would look big, those
were over areas that were like a mountain range or,
you know, there was no population in that area. So
it was -- it just got drawn different probably based
off of geographic features.

The counties where we found really no
issues were Apache, Coconino, Greenlee, Mohave,
Santa Cruz and Yuma.

The first county where we found some
issues was Cochise. There's 64 total precincts.
I'm sorry, I butchered that. I apologize.

The total issues were 3. The VTD -- the issue was that the VTD area didn't match the precinct area. So this was one of our internal verifications.

Again, this is very small but this is a screenshot from a workbook that will be made public on the IRC website either today or tomorrow that goes through each set of information.

So it starts with the census information and then in the middle of the green and red is the match and then next is the information received from the county and then finally the election results precincts.

If you pay attention, the first set of columns is the code match. So these -- where it's green -- it means that there was a perfect match.

The next is the name match. So there were good name matches.

Then finally, there is the area percentage match, and the area match is a yes-or-no field.

So there were three cases where the percentage was slightly more than 3 percent off. And the first case it was 3 and a half and the other
two -- yeah, it was about 3 and a half both times.

So in these cases, we then went through -- we looked at these precincts and we verified that they were referring to the same place.

As you can see, this was a case where there was slightly misaligned precincts and they were referring to the same areas. There wasn't any population that would have been shifted. It was probably just the case that some were slightly more misaligned than others and it was enough to flag us that these two shapes don't share the same area.

Gila County, there was 39 precincts.

And again, I apologize that we're going to go through every one, but I think it is important that we make this part of the record so people that want to independently verify, have the opportunity to look at what we have done and can confirm or hopefully alert us if there's any issues.

So there's 39 precincts. There were 4 issues we identified. And this was the county where the VTD codes didn't match the precinct number.

So again, I'm sorry this is small, but if you look at the sheet Claypool 1 matches Claypool 1 in name; however, one of them has the VTD code ending in 15 and one of them has it ending in 18.
Then the next three following that are similarly scrambled.

So once we sorted that out, we were able to look at the map and we could see that each one of the sorted districts was referring to the correct geographic area. We were comparing apples to apples, the same precinct -- from the county it was matched to the same precinct from the census.

All right. Graham County, there's 19 total precincts and we found 4 issues. There was one case where the VTD code didn't match the precinct number and there was 1 case -- or 4 cases where the VTD names didn't match the precinct names. This is a good example of, you know, minor name match issues. So -- for -- by and large, Fort Thomas didn't match Thomas. Let's see. Stafford 15B didn't match Stafford 15 B with a space between the 15 and the B.

There was 1 case where we believe and we verified that the precinct name that came from the county was just mislabeled. So for whatever reason, they have two Jackson 18s. We believe that the first one should actually be Cactus 17. And when you look at the map, you know that that first Jackson 18 is referring to the correct shape, which
is the Cactus 17. And you can see that right in the
middle here, that shape is Cactus 17 and the County
calls it Jackson 18.

La Paz County, there's 12 precincts, there were 3 total issues. In this case, it was all
issues where the VTD area didn't match the precinct area. This is very similar to the previous example
where they are just outside of our tolerances for a match, so slightly more than 3 percent deviation.

As you can see, this is one of those
times when there's, I guess, a big zig when it
should have zagged.

I do want to point out this is very
zoomed in. If you were to look at the county as a
whole, it would look like just a tiny little
deviation.

But it's hard to see here, but if you
can, there is census blocks showing underneath the
population there. You'll notice that all of those
census blocks have zero population.

So the fact that this doesn't match isn't
really affecting us because there's no people there
that would need to be switched from one precinct to
another.

All right. Maricopa, there's 1,142
precincts. There was 367 total issues, by and
large, the bulk of our issues.

In 4 cases, we had VTD codes that didn't
match the precinct number. These turned out not to be
too much of an issue. For whatever reason, some
of the VTD codes had the letter B at the end. So
when you're looking at it, it was obvious that 17B
matched 17.

There was 281 cases where the VTD names
didn't match the precinct names. There was 47 cases
where the areas didn't line up.

All right. So this is, you know, just
showing some of the name match issues that we had.

Laveen Meadows didn't match Cash. This
is a case where there wasn't -- in the precinct file
from the County, there wasn't another Cash. They
just had different names for whatever reason. So
using the number, they were talking about the same
areas they just had different names.

There's a case here where it says Shadow
Mountain and Shadow Mtn. Those don't match because
mountain is abbreviated in one. And those all make
sense. When you look at that intuitively, you get
that those two should be talking about the same.

Bethany and Bethany Park, for instance.
All right. In areas such as Chandler, there was large swaths of scrambled precincts. As you can see from the red, all of these names didn't match and that's because they were -- they were different. They were scrambled. Chandler 16 is referring to something else or a different name.

And then finally, in Gilbert and Mesa, there was also large swaths of nonname matching.

So this slide we used earlier, but it does illustrate places where in Tempe the codes were just scrambled so that 31 is referencing two different areas depending on whether or not you're using census or you're using the County's precinct file.

Here is a unique case in Maricopa, this is the only instance of this we found. If you look, the County called this area St. Moritz and it has a code of 0822 and then the census calls this St. Moritz and it has a code of 0822.

So if we are using either code or name, these would match. However, when you look at them on the map, when you compare their areas, that's the only red flag you would have.

So these two are flipped. They both have consistent names and consistent codes but are
referring to different areas on the map. So you couldn't even do -- you couldn't just use name and code, you would have also put these on a map or compared the areas or perimeters or something.

There was a few other cases like this that were particularly tricky to find. And so as a result, if -- there is potential that we missed one or missed two. So if there are any that arrive -- arise, we'll deal with them accordingly. I don't think there is, but I can't say for certain.

All right. Navajo County, as we discussed before, the census has 54 VTDs and the County has 70 precincts. So there was 12 issues on the census, 2 of which were VTD codes that didn't match and then 10 of which were areas that didn't match.

And the reason the area wouldn't match is because the census is referring to a big area and the counties are only talking about a portion of that VTD. So there was 16 extra or split county precincts.

I'll just, you know, pick one of these and read it to you. So for Forest Lake, it matched initially to the election result Forest Lake number 2 but it also contains Forest Lake number 1. So you
have to assign the unique IRC code to two of the

election results in order to do a perfect match,

which may cause problems to someone who is trying to
do analysis because for every precinct, there will
be two results for president and two results for
senate, et cetera.

So just anyone who is going through --
would want to pay particular attention to that
issue.

And again, Navajo County was one of the
ones we were not able to get a shp file, so in this
case we took a pdf map and did what's called a
rubber sheet in Maptitude where we kind of pinned it
to certain locations on the map and were able to
verify that the precincts did match. But you can
see that black line running down the middle, that is
a split census VTD where these two precincts -- two
County precincts or election results.

Pima County, there's 417 total precincts,
there was 45 total issues. There was 2 cases where
the VTD code didn't match the precinct number and 2
cases where the names don't match the precinct's
names and then 44 areas where the area was outside
of our deemed acceptable match percentage.

The 2 name and code matches -- the name
ones I would like to just call out. Precinct number 12 is actually referring to precinct number 365 and vice versa. So this is a case where the name and the code matched but they are referring to two different areas in the census and county thing.

The bulk of the area matches were very, very slight, just outside of the 3 percent threshold we had set.

When you look at the map, you can see why. The lines, again, don't match up perfectly in Pima County with the census VTD lines. Again, it was in areas where there was zero percent population, but you can see why you might have an area that doesn't quite match because it is slightly different -- different sizes.

This is the particular case of 365 2. Census calls this area VTD number 365. Well, the county calls this precinct number 365 and vice versa.

Pinal County, there was 88 total precincts and there was 43 total issues. The VTD names that didn't map was 38 of the issues and the VTD areas that didn't match were 6.

Some of the names were flipped, so there is a Thunderbird Farms from -- in the election
results and -- from the county and there is a Thunderbird Farms in the census VTDs but they are not referring to the same areas.

And what's helpful is that all of the codes did match, so it was pretty obvious where those names did get flipped. And we did go through and manually look at -- so in this case, there's a column that's called name match and that's just the exact name, do they match, and then there's a manual name match.

So in the cases where it's a manual name and places where the census calls it Hidden Valley and the county calls it Thunderbird Farms, places where there is a manual name match and we said it was yes and there's cases where it's Casa Grande W and Casa Grande West. So it's pretty obvious there was just abbreviations on a bunch of these.

One thing I do want to point out is at the end of the county file -- or at the end of -- the county file was two split precincts that showed up in the map that they had sent us. This is kind of a unique case. The only place this split occurs is in the county precinct file. I think it's a new split that happened just recently, so it's not reflected in either the census VTDs or the election
When we look at it, we can see that it's just taking an existing district, in this case, Maricopa precinct is split into Maricopa and Maricopa X.

So fortunately, when you look at the census VTD and the election result for Maricopa, those are a one-to-one match. It's only when you introduce that middle step, which was verifying from the counties that you have a problem.

I did want to flag this, but there's really nothing to be alarmed about here. It's just they've added these -- they've split these two precincts. And so going forward, that might be something you have to pay attention to, but for right now, there's really nothing we could or would need to do about it.

And so you can see one of those right here where just for whatever reason, now it's split.

All right. Yavapai County, there's 112 precincts, there's 19 total issues, 14 of which were names that didn't match and 6 of which were areas that didn't match.

Again, these were all pretty straightforward. Prescott Valley number 1 is not an
exact match with Prescott Valley number 1/Navajo.
And again, the areas were all very, very slight,
just outside of the 3 percent threshold we had set.
And again, that was just an arbitrary
threshold that we set for us to easily scan and look
for major problems to look at.
And as you can see, some of those area
matches, again, are the result of just slightly
off-centered lines. In this case, all of the
vertical lines seemed to match up very well but all
of the horizontals didn't, for whatever reason.
All right. That's all of the issues by
county that we found. Not all of them, but at least
identified the types.
I do want to say the workbook that --
it's an Excel document that has a tab for every
county that we used to kind of go through and
manually do this match and show our work will be
available on the website either today or tomorrow.
It's listed here. It's called Census VTD to County
Precinct Verification Worksheet.
I would encourage anyone who is
interested or who plans on doing their own election
result analysis to look at this. Let us know if you
find any problems. I hope it's of help to you
because it's -- there is a real danger of just assuming that two precincts that are named the same thing are referring to the same area.

   Additionally, the IRC precinct code that we created, there is a census to IRC precinct key that we'll be putting on the website also. So you'll be able to do -- if you just assume that our work is correct and you just want to use that match, you'll be able to do that also.

   And these are available on azredistricting.org.

   I just would like to encourage anyone interested to take a look at this. You know, check our work. We've tried to lay it out as explicitly as possible.

   If you have any questions, let us know. The more people we have looking at this, the safer we'll be in our assumption that each census VTD corresponds to each precinct.

   So thank you very much.

   CHAIRPERSON MATHIS: Thank you, Mr. Desmond. That was a lot of work, I have a feeling.

   Do commissioners have questions on what Mr. Desmond just presented? Comments?
COMMISSIONER McNULTY: I have one quick question.

So my understanding would be that will be part of our preclearance submission so that the Justice Department will be able to use that key and that works from Mr. Adelson's perspective?

He's nodding.

BRUCE ADELSON: May I?

Yes, and also in listening to this, I recall in our more information letter, one of the things that we asked about was something similar to this because the data that we received nine years ago was not fully accessible or fully understandable.

So we asked not the same questions but data-related questions in our letter and those questions were not answered. So that was part of the objection.

So making sure the data is clear, understandable, glitch-free, and explaining whatever issues there are, yes, it's a very important part of the submission.

Thank you.

COMMISSIONER STERTZ: Madame Chair.

CHAIRPERSON MATHIS: Commissioner Stertz.
COMMISSIONER STERTZ: Mr. Desmond, in the data -- give me a description of where the data moves. It moves from the county, who designs its precincts, going -- and it goes to the Census Bureau; is that correct?

WILLIE DESMOND: That's correct. So the counties all draw their own precinct boundaries, and that's just for their ease of conducting elections.

They are asked to lock those in for 2008 and 2010 to kind of ease this analysis, and they submit those to the census and then the census VTDs are based off of those county submissions -- or those submissions from the state.

COMMISSIONER STERTZ: So the mapping that's now been -- the analysis that you've done has been -- has been more two-dimensional. This isn't a GIS mapping analysis; is that correct?

WILLIE DESMOND: That's correct.

COMMISSIONER STERTZ: Okay. Is it incumbent upon -- since this work has been paid for by this Commission, other than for the use of our submission for the use of the counties now tying these data points together, is there anything that's going to send this data back to the individual counties to correlate the discrepancies that were
20 percent, approximately, of every precinct had some correlation issue statewide?

WILLIE DESMOND: We haven't made any plans to resend our data back to the individual counties. Part of that is that we -- just until, you know, this weekend were finalizing all of this work.

If you wanted us to or we're directed to, we would be more than happy to share this with anyone. We would encourage anyone to use this information. It will be made public on the IRC website and we'll -- but we can, you know, go back and ask for independent verification from the counties where we flagged issues also.

Like I said, there are some counties with GIS departments who are, you know, ready to handle these types of queries and there's some that just have a paper map hanging in an election's office and we kind of got a copy of that.

So we can do whatever you would like us to do with this information.

COMMISSIONER STERTZ: Madame Chair, it seems to me that if we're -- that when -- if it's moving from the county level up to the Census Bureau and the Census Bureau is coming back and there's
correlation issues, that there's a bust in the data somewhere and it would be incumbent upon the state to -- and the counties and the Census Bureau to sort of tie all of these pieces together or this is going to be -- this process is going to continue the next time around.

KEN STRASMA: If I may, Madame Chair and Commissioner Stertz, we'll definitely follow up on that suggestion to make sure this is available to all of the county GIS managers and flagged for them.

I should point out that in the areas where it's a major problem, they are very much aware of it already and oftentimes were the ones who came to us to flag the issue, as was the case in Maricopa County.

COMMISSIONER STERTZ: And the last question, as I saw some of those overlaps taking place, I'm assuming that there haven't been any -- you said in the one that you pointed out there was zero population that was affected by a lost piece.

Did you -- were you able to look at that statewide in each precinct to make sure there wasn't a lost population in any voter districts?

WILLIE DESMOND: For the purpose of our analysis, the only precincts that we particularly
zoomed in and looked at were the ones where we had more than a 3 percent deviation in the area.

    I should mention that there were some counties where we did not receive a shp file and thus did not have the square feet or square miles of every precinct. So it's possible that there would be, you know, clumps that are missing from one or the other.

    We did, you know, look at every map. We overlaid the lines and, you know, that example that I showed was unique in that there weren't that many cases when that happened. And when it did, we did zoom in and verify that it was a nonpopulated area that there was a difference.

    COMMISSIONER STERTZ: So for the purposes of your analysis, you've created a new numbering system that's pertinent to this particular work product, is that correct, the IRC numbering system?

    WILLIE DESMOND: That's correct. And what that is is just a way for us to link the census VTD to the election results.

    So I should say that the county precinct maps that we received were more of like a middle party. We used those to translate. So we matched census to the county maps and then the county maps
to the election results because we couldn't go straight from election results right to census.

COMMISSIONER STERTZ: So when I look at an IRC number that was -- that had a -- had a variance of plus or minus 3 percent, is there going to be a variance analysis line item or a note that's going to correlate with that.

WILLIE DESMOND: Well, as it currently stands in the workbook that we are making public, those are flagged. So that's where you would have a red "no" there where it says that this did not meet the 3 percent criteria for a match. So you could go through and see those.

As far as how are we going to document this as part of our submission, I hadn't really considered that yet. I'm sure we will need to go through and do a substantial amount of write-up to describe what each one of the columns is, what they each mean, and how the match was conducted. But we haven't begun that process yet.

KEN STRASMA: If I may add, I don't know if this helps with the question, but one of the columns in the spreadsheets is the percent deviation on the area. So if someone did want to look up the deviation for any one of these precincts, they
would.

Also jumping back to one of your previous questions about the zero population, I'm not sure if this speaks to your question or not, but all population in the state is now accounted for. There is no population for which we do not believe we know their correct voting precinct.

COMMISSIONER STERTZ: Very good. That is -- that was the follow-up to the question.

Thank you.

CHAIRPERSON MATHIS: Other questions? Comments?

Mr. Strasma.

KEN STRASMA: One additional note. Mr. Adelson had referenced some of the problems in the request for clarification from the DOJ last time around. One of those issues involved voter registration data. So far we've only been talking about past electoral results. We are proceeding a parallel tract with getting voting registration data.

We are working with the Secretary of State's Office. They are still waiting for information from two counties with FO history issues that they have flagged and we want to make sure we
get that right before any of that is loaded up
because that was one the issues with active versus
inactive voters that caused delay last time. So
that is still in the process.

COMMISSIONER STERTZ: Madame Chair.

CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: As a follow-up to
that, Mr. Strasma, the cells, the data cells that
are now integrated into the Maptitude software that
we are using or that you are using for forecasting,
is that -- that is all census-based, correct?

KEN STRASMA: Correct.

COMMISSIONER STERTZ: So will we be
having the new precinct correlation numbering system
tied into those data cells?

KEN STRASMA: Yes. As of yesterday
afternoon, that is ready to be loaded on our laptops
and the commissioners'.

COMMISSIONER STERTZ: So I'll be able to
see an IRC-040130015 number?

KEN STRASMA: Well, I should clarify.
The IRC code isn't loaded as part of Maptitude.
It's used for moving the election results.
So what you will be able to see for any
census block, block through tract, VTD, city,
county, et cetera, election totals. So if you want
to go back and see, you know, votes cast for McCain
for Senate, 2010, that is now all tied into the
geography on Maptitude.

COMMISSIONER STERTZ: But not tied into
the precinct?

KEN STRASMA: It is. One of the layers
on Maptitude being the census VTD, so the election
results are tied into that.

If I'm understanding your question
correctly, would you like to be able to see the IRC
code in addition to the VTD code?

COMMISSIONER STERTZ: I'm trying to
figure out -- I want to make sure that we've got a
baseline tracking device, and it seems like you guys
have created an IRC tracking mechanism that is an
amalgamation that follows census that cleans up or
clears up some questionable issues between
precincts, state, county, et cetera, and at least
would allow us to follow what precinct design and
what votes were taken place in that precinct by the
new name.

KEN STRASMA: Okay. That makes sense.
We will follow up on that suggestion and add IRC
code to the VTD layer so you will be able to see the
names and codes as defined by the census. Also the IRC code in addition to the election results that are available now.

COMMISSIONER STERTZ: Thank you.

CHAIRPERSON MATHIS: Other questions?

Okay. Hearing none -- Mr. Herrera.

Okay. Thank you very much for all of that analysis and walking us through it.

Our next item on the agenda was something that I had requested at the last meeting, but given the fact that we are already at noon and we have a big agenda ahead of us, I was thinking that we might cover agenda items IV and VI, which is something we've also -- it's kind of a recurring agenda item that we are covering each time, the definitions, to a later time and going straight -- taking advantage of our mapping consultants while they are here and going into agenda item V.

I'm not sure if that's an easily dividable agenda item. This agenda item V, it says 60 minutes. That would take us to 1 o'clock, which is when people would break for lunch at that point or not.

VICE CHAIR HERRERA: Madame Chair, is there any way we can delay that until after lunch?
It's already 12 o'clock and I would like to eat.

CHAIRPERSON MATHIS: Okay. We have a hungry commissioner.

VICE CHAIR HERRERA: I'm looking at some of the -- if you're okay with -- some of the agenda items that are little that would take less time, starting with X, discussion of future meetings and future agenda items and possibly IX and VIII. So VIII, IX, and X.

CHAIRPERSON MATHIS: Okay. I'm open to that.

Anybody -- is that okay with you guys, that we would after lunch cover the Congressional and Legislative what-ifs and then the other items that are on the agenda after that.

But, yeah, that sounds reasonable.

So our next item would be number VIII, action to reaffirm contract with Strategic Telemetry.

COMMISSIONER STERTZ: Madame Chair.

CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: I had requested this item to be brought back on to the agenda after the release of the last set of meeting minutes in an effort to close the gap on any lose ends that there
may be on the affirmation on whether or not there
is -- there was authorization to actually enter into
a contract by our executive director. And there was
a question that I had had regarding the -- his
authority at that time and I had suggested to you
that we put this on the agenda for today.

CHAIRPERSON MATHIS: That's true.

Thank you for that background.

Mr. Bladine, would you want to come up
because I think he did some research since our
last -- when this first came up and since our last
meeting. He can tell us what he discovered.

RAY BLADINE: Madame Chairman, Commission
members, I did provide you some information from
the -- I'm going to have this trouble.

I did provide information to you from the
transcripts that lay out the basis upon which I felt
that I had been given direction to enter into a
contract and negotiate and sign it.

I think that is -- it's now up to you to
decide whether want to proceed to reaffirm that or
take whatever action you would like.

CHAIRPERSON MATHIS: Okay. Thank you,
Mr. Bladine.

Yeah, I think Mr. Bladine sent around
excerpts from transcripts from the relevant meetings.

VICE CHAIR HERRERA: Madame Chair.

CHAIRPERSON MATHIS: Mr. Herrera.

VICE CHAIR HERRERA: Just for the record, I don't know if you have -- Mr. Bladine, do you have the transcripts in front of you?

RAY BLADINE: Yes, I do.

VICE CHAIR HERRERA: Could you read them to, I think, confirm what we did and then we did give you the authority to enter and execute a contract with Strategic Telemetry?

RAY BLADINE: At the meeting on the 29th, the specific wording of the authorization, and it was made by Commissioner McNulty, was to negotiate a contract for providing us with mapping services with Strategic Telemetry.

And then I repeated back, "To negotiate a contract for mapping services with Strategic Telemetry?"

Then you voted on that. And at that point, one of the commissioners asked for clarification, "To be clear, then, there is no additional steps for this Commission to make with respect to retention of mapping consultants?"
And our attorney answered, "That is correct."

Then on the 30th, the following day, we had a meeting and ended up getting into a discussion about whether or not the contract would be authorized or had been. And again at that meeting, one of the commissioners mentioned that, "Mr. Bladine was given authorization to enter into the contract with that company."

There was further discussion on that day and then Commissioner McNulty commented back, "Mr. Bladine, Counsel, I think our vote is that Mr. Bladine have the authority. He was directed to enter into contract negotiation with the consultant and contract with the consultant."

I then talked about the fact that unless someone objected or I hear differently, that once approved by the lawyers -- or by legal, we'll go ahead and post them on our website.

Again, there was a recollection by a commissioner that, "Yesterday Mr. Bladine was authorized to enter into a contract. Basically the authority has been given yesterday, but I also want to see the final product and perhaps it's irrelevant, but at least I would like to have the
opportunity to review it."

Our legal counsel then also commented, "I guess the Executive Director has the authority to execute the agreement but you just want to be sure and be aware of the final product; is that right?"

And that was correct.

And our legal counsel said, "So we may execute the contract."

And basically, after reviewing all of those, I felt that your intent was for us to proceed to execute the contract, so I did so.

CHAIRPERSON MATHIS: Thank you, Mr. Bladine.

We just received the transcript -- the pertinent passages from the June 29th and June 30th meetings where this was discussed.

Did anyone have any comments or questions on that?

VICE CHAIR FREEMAN: Madame Chair.

CHAIRPERSON MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: Mr. Bladine, I have never taken issue with anything that you have done. I do think that the motion that was voted upon was to, as the transcript says, to negotiate a contract, which to me, has distinct legal meaning than
negotiate and execute a contract that's binding on the Commission.

I may disagree from counsel upon that.

There are two different distinct things.

I think basically -- I did vote against the contract. I wanted to have a say in how the contract looked. If three commissioners were in favor of it, hoping to add additional terms that perhaps would allay, I would hope, some public concerns.

We did have over that long holiday weekend, we had some back and forth about some contract terms but because of some various scheduling issues, we never really could close the loop on that.

And the ultimate contract that you did negotiate, which then you did execute, had some of those terms in it. And I think an initial agenda item on today's agenda is to address some further modifications that I thought would be helpful.

I think basically while I would stand by everything I have said in the past, I think given where we are in the process, the ship has sailed on this issue and I want to thank the chair for putting that agenda item on the agenda because I think it
would be helpful if we really put this issue to bed.

I believe this is an action item that the Commission can take. I would certainly -- I would, given my reservations and not any way detracting from positions I've taken in the past, I would support a ratification of the contract that you negotiated with the additional modifications that were discussed at the last hearing and then reappeared on today's agenda as agenda item, I believe, IX.

RAY BLADINE: Yes.

VICE CHAIR HERRERA: Madame Chair.

CHAIRPERSON MATHIS: Mr. Herrera.

VICE CHAIR HERRERA: I would like to make a motion, if that's okay.

I move that we reaffirm that on June 29th, we authorized Executive Director Ray Bladine to both negotiate and execute a contract with Strategic Telemetry.

CHAIRPERSON MATHIS: Is there a second?

COMMISSIONER MCNULTY: Second.

CHAIRPERSON MATHIS: Any discussion?

COMMISSIONER MCNULTY: Yes, I would like to make a couple of comments.

Mr. Bladine, I made the motion for you to
negotiate the contract. I do that all of the time in my practice. What I intended was that you close the deal.

If I had intended to reserve the need for this Commission to ratify your contract, I would have explicitly said so. And we didn't do that, and I think it was clear from all of the facts and circumstances surrounding that hearing that what we intended for you to do was to go ahead.

I think you were justified in acting in reliance on what appear- -- would have appeared to you and certainly would have appeared to the vendor to be our authorization to proceed with the contract.

And for all of those reasons, I would support Mr. Herrera's motion.

CHAIRPERSON MATHIS: Okay. Other comments?

COMMISSIONER STERTZ: Madame Chair.

CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: Thank you again for bringing this back on to the agenda.

This is not meant to be of any disrespect to Mr. Bladine, and given the authority that you've had, I've got the highest level of respect for you
and what you are doing, but I do know that there is a significant difference in legal terms between negotiate and enter into. And I felt that it was important and incumbent upon us that subsequent to the actual motion being put into the record at the last vote that we clear that last piece up. And I appreciate you bringing it on for the agenda.

CHAIRPERSON MATHIS: Thank you.

Other comments.

Okay. All in favor?

CHAIRPERSON MATHIS: Aye.

COMMISSIONER MCNULTY: Aye.

VICE CHAIR FREEMAN: Aye.

VICE CHAIR HERRERA: Aye.

CHAIRPERSON MATHIS: Any opposed?

COMMISSIONER STERTZ: I'll vote present.

CHAIRPERSON MATHIS: Okay. We have four ayes and Stertz voting present.

Thank you, Mr. Bladine.

And that takes us to a related topic, which is agenda item IX, discussion and possible action regarding contract modification with Strategic Telemetry to clarify possible clients and documentation of contacts regarding the Redistricting Commission.
And I remember Mr. Freeman did raise this a while back. I can't remember if it was the June 30th meeting or sometime back then. And I know legal counsel spoke with our mapping consultant about some of those suggested modifications and they have come up with, I think, some draft language that might be available.

VICE CHAIR HERRERA: Madame Chair.

CHAIRPERSON MATHIS: Yes, Mr. Herrera.

VICE CHAIR HERRERA: One of the reasons we brought it back up, because it was approved at the last meeting when we had -- it was the meeting where we had Sandra Day O'Connor. I just remember it was the meeting where we had Sandra Day O'Connor.

CHAIRPERSON MATHIS: Right.

VICE CHAIR HERRERA: The issue of excluding the media, including bloggers, because I think that would make sense. I really do feel that -- I don't think we were intending to include the media in this, including bloggers. I think they should be able to contact Strategic Telemetry without having to feel like -- that they are being lumped in with lobbyists and people that are trying to persuade Strategic Telemetry. So I feel like they should be excluded.
CHAIRPERSON MATHIS: Okay. Thank you. Ms. O'Grady -- oh, Mr. Kanefield.

JOSEPH KANEFIELD: Madame Chair, members of the Commission, at the last meeting the question -- legal question was raised and counsel was directed to follow up on -- as I understood, the question was the proposed amendment to the contract that requires the -- Strategic Telemetry to log contacts from outside -- others outside the Commission, including contacts with the media, raised any legal issues.

My team did the research on this over the weekend and the conclusion, we determined that there are no legal issues associated with -- the manner -- the language in which has been proposed to amend the contracts.

CHAIRPERSON MATHIS: So in other words, the language that you supplied at the August 17th, I think -- well, the meeting where Sandra Day O'Connor spoke is -- stands as is.

Okay. Did others have questions or comments on that?

VICE CHAIR FREEMAN: Madame Chair.

CHAIRPERSON MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: Certainly the
language that was presented to me, I thought included all contacts. And in approving it, approving that language, I was approving all contacts. It was not my intent to exclude bloggers or members of the media.

So I think we should -- well, we approved it last time and I think it should stand as a contract modification as is.

VICE CHAIR HERRERA: Madame Chair.

CHAIRPERSON MATHIS: Mr. Herrera.

VICE CHAIR HERRERA: I would like to revisit this and change the -- that amendment that excludes members of the media, including bloggers. I just don't think -- we want these individuals, members of the media, to able to exercise their right to provide the public with information. And I think having them to -- subjecting them to this, that does bother me. I don't think that we intended to do this.

I mean, I completely understand when there's people that are trying to persuade Strategic Telemetry or lobbying them for maybe three border districts or four or whatever the case may be, they should be writing down the information on who they spoke to but not members of the media. I really
I don't think that's necessary. They are there to do a job and they shouldn't be subjected to this. I wouldn't -- I would vote that we -- or at least consider rewriting the amendment excluding the media and bloggers.

CHAIRPERSON MATHIS: Other comments or questions?

VICE CHAIR FREEMAN: Madame Chair.

CHAIRPERSON MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: Frankly, the exclusion for a blogger is a loophole you could drive a Mack truck through. I don't know exactly how a blogger is defined.

We as a Commission can create this requirement and ask our consultant to abide by it, provide us that information, and have it be made public, if we so chose.

I think that goes to our transparency and openness and people should have some assurance that the consultant is being open and transparent with us at all times, and I think this contract modification serves that.

CHAIRPERSON MATHIS: Other comments?

Ms. McNulty.

COMMISSIONER MCNULTY: Yes, I agree with
Mr. Herrera. It just doesn't feel comfortable to me. I don't think we intended when we did this to require all of the same disclosure on behalf of the First Amendment press as we do of lobbyists.

I understand that we are really trying here to come together on things wherever we can, but my sense of this is that we didn't think about that when we entered into the contract, and I'm with Commissioner Herrera on this issue.

VICE CHAIR HERRERA: Can I make a motion to amend the amendment to exclude members of the media? And members of the media would be Arizona Republic, Capitol Times, the New Times, Phoenix New Times, any blogger that blogs on this topic I think should be excluded.

I think that these individuals should be able to approach Strategic Telemetry without having to worry about do I need to -- you know, if I call ten times, are people going to wonder why is this individual calling ten times. They have a right to.

I don't think having this amendment really means that we are having -- whether we have it or not doesn't mean we are not having transparency. I think we are having transparency by bringing them here, Strategic Telemetry, by having
people voice their concerns here in public, having them -- I don't think proves that we are having transparency.

COMMISSIONER MCNULTY: Madame Chair, Mr. Herrera, I think part of having transparency is allowing the press to do their job.

VICE CHAIR HERRERA: I agree.

COMMISSIONER MCNULTY: This may be a bigger issue than our little Commission can take on, but I agree with you.

CHAIRPERSON MATHIS: Is there a second to Mr. Herrera's motion?

COMMISSIONER MCNULTY: I second it.

CHAIRPERSON MATHIS: Discussion?

COMMISSIONER STERTZ: Madame Chair.

CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: It was my request to legal counsel to do an analysis of this -- of the amendment to the contract. Our legal counsel has recommended to us that the terms -- the conditions as outlined in the amendment that were voted on unanimously by this Commission, including the maker of the motion and the second of the motion, to accept this with my abstention to be an amendment to this contract. It would also give me the
opportunity to say I am now a blogger and --

COMMISSIONER McNULTY: No, it wouldn't, Mr. Stertz.

COMMISSIONER STERTZ: See, this is the Mack truck argument that Mr. Freeman has just brought forward.

So I'm going to encourage my fellow commissioners to continue going down the path of openness and transparency and to -- and as we move forward, if this motion that you are making does hold, that we be more cautious going forward in not reading or not being clear and concise of what the underlying components of motions -- when you are making them, they have -- they are being made for a reason and we shouldn't be continually going back and revisiting things.

VICE CHAIR HERRERA: Madame Chair.

CHAIRPERSON MATHIS: Mr. Herrera.

VICE CHAIR HERRERA: That is funny you bring that up, Mr. Stertz, because we just brought up a motion -- we discussed the motion that we discussed in terms of allowing the -- our executive director to proceed with -- proceed and also enter and execute the contract with Strategic Telemetry.

So this has happened numerous times that
we have -- a couple commissioners have been bringing things up that have been discussed and been approved.

So I don't think that that should stop us from bringing things up. You guys have done that and I'm okay with that, as long as we are able to make a decision and then move forward and not bring this up again.

I think this issue is important. I believe in freedom, and I believe that the people that are reporting on the work of the Commission should be able to do so without having to register their names as -- every time they call. I don't think that's necessary. I think that creates a burden and I want to do away with that.

CHAIRPERSON MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: Madame Chair, I would like to know, then, what procedure is proposed for Strategic Telemetry to take in identifying the credentials of people who contact them and claim to be a blogger and I would like to know who they have assigned or categorized as bloggers and free to contact them at will. How am I going to know? Like Mr. -- Commissioner Stertz just said, he is now a blogger. I'm not a blogger; maybe I am. I'll have
to think about it.

I think it's an unworkable exception that creates a huge loophole and I cannot support it.

VICE CHAIR HERRERA: I just don't see the need for -- first of all, just to clarify, I never saw a need for that amendment. I thought it was just creating more burden on Strategic Telemetry and also the people calling in.

I mean, if somebody wants to call in to us, to me, will I eventually have to be doing that as well?

I think people should be able to feel free and open to be able to call myself or anyone on the Commission, including the staff, without them having to log the name of the person they spoke to, whether it be they met them in a grocery store, if someone who runs into Ken or Willie at the grocery store and asks them a question about the job they are doing in Arizona, do they have to log that as well?

That just seems burdensome and really unnecessary. Again, I want to create more freedoms and not restrict people. And I think that's what we are doing by correcting this amendment, is restricting the people and being that big brother,
that watchdog that people sometimes in this
Commission and this -- when they attend meetings,
they talk about that and I don't want that to be
created. I don't want that perception that we are
doing a big-brother type of amendment to oversee who
is contacting the -- our mapping consultant and
watch over them. That's just completely
unnecessary.

CHAIRPERSON MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: Commissioner

Herrera, you're a little different, though. You're
a commissioner and Strategic Telemetry is a
contractor that works for us. And the Commission is
supposed to conduct itself in a way that builds
public confidence in the process. It is supposed to
be an open and transparent process.

There has been a lot of concern raised by
members of the public about the Commission's hiring
of Strategic Telemetry and the perception of
political bias out there.

The purpose of this -- the contract
modification was try to allay some of those
concerns, some, perhaps not all. And this amendment
would serve that end, because it would give the
public an opportunity to see who is contacting
Strategic Telemetry and to see if there is an issue
of influence or bias there.

I think it's a good amendment, I think we
should stick with it.

VICE CHAIR HERRERA: Madame Chair, just
one quick --

CHAIRPERSON MATHIS: Mr. Herrera.

VICE CHAIR HERRERA: I guess I'm still
not understanding what you are planning to do with
that information.

Let's just say Steve Muratore calls Ken
and Willie ten times in the span of two days. What
does that mean to you? I mean, if you look at that
information, they log it in and we get those logs.
What will that mean to you? I guess I'm not
understanding how you will use that information.

VICE CHAIR FREEMAN: Madame Chair.

CHAIRPERSON MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: Well, it's perhaps
not as important as what it will mean for me, it's
what it will mean for the public because then we'll
have the opportunity to make that information public
and the public will know what's going on.

And that's the reason, not my own reason,
not what Scott Freeman, commissioner, thinks, but
what the public thinks.

CHAIRPERSON MATHIS: Thank you.

Other comments?

Ms. McNulty.

COMMISSIONER MCNULTY: I think we know who the -- we can easily determine who the people are who are writing diligently about this process.

I guess we could have, you know, some sort of procedure where any new blogger coming in who, you know, hasn't demonstrated a record on this case, and we know who it is that has already demonstrated a record, could, you know, sort of register with us. And this whole discussion makes me wonder, do lobbyists who are coming before us and lobbying us, do they need to register in some way?

VICE CHAIR HERRERA: It hasn't happened with us.

COMMISSIONER MCNULTY: So we're having -- just a question that came to mind as we're having this conversation.

I think it's pretty clear we know who is blogging about this, and I think it's great that they are. You know, there's the Arizona Eagletarian, there are a couple other -- there's Blog for Arizona, that's Sonora Alliance or
something like that. Maybe one or two more.

I mean, we know who those folks are and they are doing a service of getting this information out to the people. And I think that's what the free press is about and I don't want to be a part of getting in the middle of that. I don't think that's right.

COMMISSIONER STERTZ: Madame Chair.

CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: In regards to keeping a log of contacts, are you -- this is a question for Ken, Mr. Strasma.

Are you keeping a log of all of the contacts that are being made to you at this time?

KEN STRASMA: Since the vote on Wednesday, we have not logged any contacts, other than commissioners and staff and other outside of meetings, which to my understanding -- and also a further classification was brought up, if it was intended to exempt family and significant others. And we were advised that there was some level of common sense to be applied to that.

I guess I would appreciate that clarification so it's not me doing the level of common sense, but if it could be reaffirmed that we
are accepting families and significant others.

So with those exceptions, families, significant others, members of the Commission, and staff, yes, we have been logging contacts since last Wednesday.

COMMISSIONER STERTZ: Madame Chair.

CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: Mr. Strasma, is there any undue burden that's been put on you by the logging of the staff?

KEN STRASMA: Not at all.

COMMISSIONER STERTZ: Madame Chair, Mr. Strasma, do you believe that in adding to the record of -- that you are going to be preparing, that it's going to be something that's advantageous to you in building the credibility of the record that you are going to be presenting as part of this overall package to the DOJ?

KEN STRASMA: Madame Chair, Commissioner, I had not thought about it in those terms. I -- generally speaking, I do believe anything that adds to the transparency is advantageous to the process, including for DOJ submissions.

COMMISSIONER STERTZ: Thank you, Mr. Strasma.
CHAIRPERSON MATHIS: That's a good point. I hadn't thought of that one. Mr. Kanefield, I would like to hear from you more about the analysis you did just to understand -- you know, I don't know enough about logs and how other logs get handled and if press is typically excluded or included or how it shakes out. So if you could just expound a little bit.

JOSEPH KANEFIELD: Madame Chair, as I understood, the question was whether the contract -- the proposed contract amendments raised any kind of First Amendment issue with respect to the members of the media or bloggers, it would require Strategic Telemetry to log contacts from those individuals.

So we researched the general First Amendment case law and other precedents that might raise questions about whether that infringed on anyone's right, and we were not able to identify any legal issue associated with requiring Strategic Telemetry, through its relationship with this Commission, to log those contacts, simply indicating on a log that a member of the media has contacted them regarding the subject matter. It doesn't pose any First Amendment issue that we were able to identify in our analysis.
COMMISSIONER MCNULTY: Mr. Kanefield, did you find any cases in which public bodies did, in fact, log their contacts with the media and that was addressed by a court?

JOSEPH KANEFIELD: Madame Chair, Commission McNulty, we weren't -- we weren't looking for that, those types of cases.

CHAIRPERSON MATHIS: Mr. Herrera.

VICE CHAIR HERRERA: Madame Chair, I have one more point.

When we -- you know, even though you didn't look at the public bodies doing this type of thing, is it possible that we could be entering into a situation where it we might be infringing on somebody's rights and we might be facing a lawsuit, kind of like the way we did with the issue of the mapping software. The individual who wrote us that letter, I'm not saying the person threatened us, but there was that possibility of being sued or entering into a lawsuit.

Do we have a possibility here? Because that was a concern with -- when we -- with the mapping software. I just want to see if there's that concern here with this.

JOSEPH KANEFIELD: Madame Chair,
Commission Herrera, there's always a risk of the lawsuit. We can't prevent anyone from suing the Commission or raising legal challenges. So all we can do as counsel is do our best to review the law, to assess the risk and determine whether or not there is an actionable claim, whether we can defend a claim. And this was, to me, a very narrow question.

And we can expand the research if the Commission so directs, but this seemed to be a narrow question whether or not there would be any legal issue or constitutional issue associated with requiring a member of the media -- or sorry, required Strategic Telemetry to keep a log of contacts from -- received from the media during this process. We just weren't able to identify any significant risks.

So I'm not saying that that's not going to prevent someone from raising the question or making a legal argument or bringing a lawsuit, but we believe based on our analysis that we would be able to defend that decision if one was brought.

CHAIRPERSON MATHIS: Other comments, questions?

UNIDENTIFIED SPEAKER: Madame Chair, will
you take public comment on this agenda item?

CHAIRPERSON MATHIS: Let's see. We've got -- what I would like to do, and I want to see if this is first possible.

Is it -- can we expand the scope of the research a little bit just to find out what other public bodies have instituted logs and what they do, what the common practice is, which I don't know what that means for the agenda -- for the motion that Mr. Herrera has put forth and has been seconded.

Can it be held until our next meeting as a continuing agenda item or how would that work because I would like more explanation, frankly. That's part of the problem.

JOSEPH KANEFIELD: Madame Chair, I'm happy to continue the research. I can have my team look to see if this issue has ever come up with respect to another public body in another jurisdiction perhaps, and if there were any legal issues associated with it.

I'm confident that my team would have identified those in doing the research, even though they were looking at a narrow issue. If the issue had come up in the context of a public body logging, keeping a log of media contacts as public record, I
think my team would have flagged that. But we can
go back and double-check to see if there was any
more specific case.

CHAIRPERSON MATHIS: Ms. O'Grady, are you
aware of any? I'm just curious if you've come
across this issue at all.

MARY O'GRADY: Madame Chair, I haven't
done the research, so I haven't seen that.
I am aware of public entities who don't
permit media contacts throughout the organization.
Often they channel it through like the public
information officer and that sort of thing. But
that's just -- but that's not the same issue that
you are talking about.

CHAIRPERSON MATHIS: Okay.

VICE CHAIR HERRERA: You know, I do think
this is an issue that's important to at least two of
the commissioners and that two of them feel that
amendment is -- change to the amendment is not
needed.

So I'm looking for a compromise. I mean,
I'm not looking to -- even though I did not support
the amendment, I didn't think it was necessary, I'm
willing to negotiate with you. If you look at the
amendment, it's there, but then adding a change that
I think it's important to at least two of us.

And so I'm looking for all five of us to come up with an agreement, and that agreement would be a compromise where you added solely for the purpose for those members of the media and not drop the entire amendment, which I would prefer to do.

Again, I'm willing to hopefully listen to some compromise and make that change.

COMMISSIONER STERTZ: Madame chair.

CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: In light of Mr. Herrera's comment of not supporting an amendment that he voted for, I'm going to call the question on this motion.

CHAIRPERSON MATHIS: Okay. Which means I have to call for a vote, right?

COMMISSIONER MCNULTY: I think we need -- Madame Chair, I believe we need a second on that motion and then I believe we need to vote on the motion to call for the question.

VICE CHAIR HERRERA: I second that.

COMMISSIONER MCNULTY: No.

VICE CHAIR HERRERA: I don't think you need a -- we just have to vote, I think, correct?

COMMISSIONER STERTZ: Call the question
on the motion, please.

MARY O'GRADY: Madame Chair, now, do we have a second to Commissioner Herrera's motion?

CHAIRPERSON MATHIS: We do.

MARY O'GRADY: Okay. And then the call the question isn't necessarily automatic. Sometimes there's a -- that's treated as a motion itself that may require a vote, if there is additional discussion. I don't know if there is additional discussion.

CHAIRPERSON MATHIS: Okay. So I think -- I don't really see what my options are. I think they are that I have to call for the vote, is that correct, or do I need -- does something happen?

Were you saying, Ms. McNulty, that his call the question has to be --

COMMISSIONER MCNULTY: It has to be voted on, yes.

CHAIRPERSON MATHIS: Okay.

COMMISSIONER MCNULTY: Or the second to be withdrawn.

MARY O'GRADY: I don't know. It doesn't sound like the second is going to be withdrawn from the original motion.

COMMISSIONER MCNULTY: No.
CHAIRPERSON MATHIS: Okay.
All in favor?
VICE CHAIR HERRERA: (Aye.)
What is the motion?
CHAIRPERSON MATHIS: It was Mr. Herrera's original motion, which was to amend the amendment to exclude members of the media including bloggers; is that correct?
VICE CHAIR HERRERA: That is correct.
So I'm voting aye for that.
COMMISSIONER MCNULTY: I'm sorry, just to be clear, Ms. O'Grady, we had a motion on the floor that had been seconded and Mr. Stertz called the question and that has not been seconded and we have not voted on that. So I'm just a little unclear on what we are doing here.
MARY O'GRADY: Madame Chair, call of the question doesn't automatically cut off debate because that in and of itself requires a two-thirds vote to actually force the Commission to end debate.
But I also don't hear any continued debate. And so you can, without objection, proceed to a vote on the merits. But if there is additional debate, the call for the question doesn't automatically cut it off, if there is additional
debate. That takes a two-thirds vote.

COMMISSIONER MCNULTY: Thank you. I just wanted to be clear.

I vote aye on Mr. Herrera's motion.

VICE CHAIR FREEMAN: I'm sorry, are we voting? Has the question been called?

COMMISSIONER MCNULTY: The question has not been called because it hasn't been seconded and we haven't voted on that. But we apparently have no further debate, so --

VICE CHAIR FREEMAN: I was going to add, Madame Chair, if you would like more additional research on the issue, I am certainly supportive of that.

CHAIRPERSON MATHIS: Thank you.

COMMISSIONER MCNULTY: I would also be supportive of hearing from the press because I don't think we are experts in this area and I think they are and, you know, we kind of realized we have blundered into this based on one of their comments and I would like to hear their comments before we blunder back out, if we do.

VICE CHAIR HERRERA: I agree.

CHAIRPERSON MATHIS: Okay. I would, too. I would like some more insight into this matter.
So how will this be handled with the motion?

COMMISSIONER MCNULTY: Mr. Herrera, would you -- I don't think -- I could withdraw my second. Do you want to withdraw your motion in order for us to do the additional research and to get it --

VICE CHAIR HERRERA: I would. If we're going to do additional research, I withdraw my motion, but making sure that when you do the additional research, that you look for bodies, similar bodies that have excluded -- or included the individuals that are -- actual phone calls to the log, who is calling them, who is lobbying them, and that includes the media, because I would probably guess that you're not going to find many bodies doing that. But I could be wrong.

CHAIRPERSON MATHIS: Any other direction for counsel?

Mr. Freeman.

VICE CHAIR FREEMAN: Madame Chair, it might also be helpful to look at what Ms. O'Grady mentioned, circumstances where public bodies have prohibited contacts from the outside except through a designated representative such as a public information officer. To me, that is similar in a
way but analogous to what we are doing.

COMMISSIONER STERTZ: Madame Chair.

CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: Could you please recap?

CHAIRPERSON MATHIS: No.

So we've -- have you removed your second, Commissioner McNulty and he's removed his motion?

VICE CHAIR HERRERA: Yes.

CHAIRPERSON MATHIS: So the motion is off the table, it dies, I guess.

And we've directed counsel to conduct some additional research into the scope of what other public bodies, and specifically with relation to media and bloggers and how they were handled, if ever specified.

And then Mr. Freeman, can you repeat your direction that you had for Ms. O'Grady?

VICE CHAIR FREEMAN: Well, to expand the scope of the research to include instances where public bodies have excluded contacts with the outside except through a designated representative such as a public information officer or perhaps an executive director.

CHAIRPERSON MATHIS: Okay. Thank you.
COMMISSIONER STERTZ: Madame Chair.

CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: As a point of clarification, until such time as the amendment is modified, it's incumbent upon the consultant to continue to log all contacts.

CHAIRPERSON MATHIS: Yes, including media and bloggers.

COMMISSIONER STERTZ: All contacts.

CHAIRPERSON MATHIS: That's what the language was.

Yes, Mr. Herrera.

VICE CHAIR HERRERA: One last thing, I would like to encourage members of the media, including bloggers, to contact the staff and voice their concerns about this amendment and why they shouldn't be included in this amendment. So I am just encouraging members of the media to do so.

CHAIRPERSON MATHIS: Okay. Thank you.

COMMISSIONER STERTZ: And Madame Chair.

CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: In a light way, I would also encourage bloggers and media and the members of the public who would wish to continue with full and open transparency of the Commission to
contact members of the staff and this Commission so that we have real clarity and real transparency and not to try to give an overweighed sense of comfort when this research is being done to omit this transparency from the record.

CHAIRPERSON MATHIS: Thank you.

Any other comments?

Mr. Strasma.

KEN STRASMA: Thank you, Madame Chair.

Thank you.

I just wanted a clarification for our administrative purposes.

Do outgoing contacts from Strategic Telemetry, for example, our contacts with county GIS officers or interested groups who submit plans and we follow up with them if we need plan files, should we be logging outgoing contacts?

CHAIRPERSON MATHIS: Yeah, I think that's a great question and something we need advice from counsel on, too.

Did commissioners want to comment in the meantime?

VICE CHAIR HERRERA: Yeah, I just have one.

CHAIRPERSON MATHIS: Mr. Herrera.
VICE CHAIR HERRERA: It just reaffirms that when you start making motions like this without really considering, you know, the risks involved, who else it impacts, you know, then you start realizing maybe we shouldn't have made that motion. The motion -- there's so many questions that still remain to be asked.

And we even talked about the neighbors. So if Ken's neighbor asks him about the mapping -- how the redistricting is going, does he or will he need to log that? And I don't think that was covered. Or somebody at church or somebody at his gym, he looks like he works out. Does that need to be logged on -- I mean, logged in? I guess I don't -- I don't understand. I don't know. I mean, I'm assuming they don't know either.

COMMISSIONER MCNULTY: Mr. Kanefield, can you read the language of our amendment to us, please?

JOSEPH KANEFIELD: Madame Chair, members of the Commission, let me just read it. It's only three sentences and then I'll tell you what I think.

It says -- the heading is, "Documentation of contacts regarding contract." It says, "Contractor shall maintain a log describing all
contacts, oral or written, with persons other than.
IRC staff, attorneys, and commissioners regarding
the contract. The law shall include the name of the
person, the organization, who the person represents,
the date, and the topic addressed. This does not
apply to contacts made while attending a public
hearing or a meeting of the AIRC."

I highlight -- I would emphasize two
points in that language, one is "all contacts." So
arguably, that's contacts both that Strategic
Telemetry receives and also contacts that they
initiate.

And then the other specific language to
highlight is "regarding the contract," which I think
pretty clearly indicates that it's contacts made
within the scope of the mapping process and the work
that Strategic Telemetry has been contracted to
perform.

So that would not include personal
contacts with spouses and family members and others
who are contacting Strategic Telemetry and its
employees that are outside the scope of the contract
itself.

CHAIRPERSON MATHIS: Thank you.

Any questions or comments on that
clarification?

So income and outgoing.

Thank you.

That takes us to the end of that agenda item, and it is now 12:41 p.m.

There is -- I guess we could do discussion of future meetings and future agenda items if people wanted to and then break for lunch.

Okay. We haven't set any future agenda -- future meetings yet. So that's probably job one.

And we'll need some input from our mapping consultants, too, on the kind of work -- the direction they are going to need from us.

Today is Monday. We could meet later this week if there was a need to, but maybe we could talk about some of the agenda items that we know are pressing and determine when it makes sense to meet.

I open the floor to anyone.

Ms. McNulty.

COMMISSIONER MCNULTY: Madame Chair, it seems as though we have a lot of mapping work to do. I know that we asked you for a lot of material last week. Maybe you could tell us the status of that material. And my thought would be we probably should be thinking about getting together later this
week to kind of dig in and do nothing but work on these maps, the Congressional maps first.

CHAIRPERSON MATHIS: Other comments from others?

VICE CHAIR HERRERA: I would agree with that. We -- I think about a week ago, a little longer, we were requested by the IRC staff to submit dates that were either available or not available, and hopefully everyone did that. I know it took me a little bit of time but I ended up getting them information as quickly as possible.

So we should be scheduling these meetings ahead of time to allow the public enough time to prepare and for us also to prepare and for the staff and for the mapping consultant.

So hopefully we can schedule them. They have the dates now that we are not available or are available, so that shouldn't be a problem, hopefully.

CHAIRPERSON MATHIS: I would also ask commissioners if they are open to meeting Saturdays ever if we ever needed to do a two-day Friday/Saturday kind of arrangement or any evenings, too. Just curious if people have thoughts.

VICE CHAIR FREEMAN: Madame Chair, I'm
certainly not adverse to working on Saturday or the
evening, it's just in the past, when we've gotten
these requests to keep Mr. Bladine informed of our
schedules, I never thought to give him conflicts on
weekends.

So I had a conflict last weekend, I have
a conflict on this Saturday, but going forward I'll
make it a point to include that when I am giving my
availability.

CHAIRPERSON MATHIS: Thank you.

I think that would just be helpful for
all of us to keep as an option.

COMMISSIONER STERTZ: Madame Chair.

CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: May I give the
recommendation that tonight that we get a
reconflicting -- a conflict list out including
weekends out to Mr. Bladine and a new schedule can
get developed. I know time is of the essence in
getting this -- taking this to the next level.

CHAIRPERSON MATHIS: Okay. Are there --
could we at least pick the next meeting date? Would
you guys be open to that?

I don't know if Mr. Bladine -- sorry, I
should ask you if you have the actual input from the
commissioners as to when -- who is available.

RAY BLADINE: I don't have a complete list at this time, but I think maybe following up, Commissioner Stertz, I can get one tomorrow and send it out to everyone.

I think it would be kind of good to know when Strategic Telemetry would be available. Then I could merge that with their list.

I'm not helping you come to a decision today, but I don't think I have the information to help you either.

CHAIRPERSON MATHIS: No, that's fine. Thank you.

So I ask Mr. Strasma, when you all are available, too, because you are key to this.

KEN STRASMA: Madame Chair, we would be available beginning Friday and from there on.

CHAIRPERSON MATHIS: This Friday?

VICE CHAIR FREEMAN: Madame Chair.

CHAIRPERSON MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: Friday was my only unavailable date this week. I'm sorry, but I am required to be somewhere.

COMMISSIONER STERTZ: And, Madame Chair, Friday and Saturday are unavailable for me.
CHAIRPERSON MATHIS: Okay. So starting next week, I guess unless -- I guess there's the option -- we could meet Thursday, but I don't think our mapping consultant could be there so that wouldn't really make a lot of sense, unless there was some nonmapping agenda items that I'm not really paying attention to and you guys can correct me.

RAY BLADINE: Madame Chair, why don't we go ahead and I'll get availabilities from Strategic Telemetry and I'll get your availabilities and see if we can't find something maybe several days in a row next week, perhaps going back to the half day or whatever it is, and then send that out to you and then kind of on an objection basis, we'll go ahead and set something unless somebody says, you know, I can't do it.

And Mr. Freeman -- Commissioner Freeman is bringing up a good point. I'm not sure even in the last thing we asked for Saturday availability, but that would also be good if you would send either me or Anna an e-mail about the next few two months of Saturdays and then we can take a look at that, too.

CHAIRPERSON MATHIS: Great.

RAY BLADINE: We'll make that a priority
for tomorrow and see what we can do.

CHAIRPERSON MATHIS: Thank you.

Ms. O'Grady.

MARY O'GRADY: Madame Chair, this doesn't go to dates but this goes to future agenda items.

In addition to the routine mapping-type items that we've had on the agenda, two things that I thought I would mention was putting on as an agenda item a social science expert to assist with the analysis necessary for both the voting rights analysis and the competitiveness analysis. So have a discussion of that issue.

And second, and this may be a longer-term thing, but having an agenda item that involves presentation of maps by the public on specific days that we give them some advance notice because people are submitting maps but it might help to have some time actually on -- figure out the logistics for having some time where they would come and explain their maps and the Commission could ask them questions about their maps.

CHAIRPERSON MATHIS: So this would be a specific agenda item different from public comment?

MARY O'GRADY: Madame Chair, yes. We could figure out the logistics of how to structure
that, but I'm trying to think of the best way to get these third-party maps that we are getting presented to the Commission.

CHAIRPERSON MATHIS: Okay. Great.

Other agenda items that people would like to have -- see on future -- at future meetings?

VICE CHAIR HERRERA: Madame Chair.

CHAIRPERSON MATHIS: Mr. Herrera.

VICE CHAIR HERRERA: I had talked about at the last meeting having the staff let us -- informing us on how much these requests for public information -- you know, release of public documents is costing the IRC and also the inquiry of the AG's Office, how much this is costing the taxpayers.

Not to say that this shouldn't happen, meaning that people can still make public requests, but we still need inform the public on how much this is costing the State. So I would like to have that as an ongoing agenda item and an update every time.

CHAIRPERSON MATHIS: Okay. And maybe that can be part of the executive director report.

RAY BLADINE: Madame Chairman, maybe what I should do is I've got a couple of other items that I should just keep a list of agenda items all for everybody so they know they are coming up, because
some of them, until we get the data, there's no use to put them on the agenda. But you need to be assured we haven't lost them.

So I do have the cost of the information request from last time. I also have budget information that needs to be presented. I can do it in part of the report, but I thought I would get you budget information out this week, probably if not tomorrow the day after.

CHAIRPERSON MATHIS: Okay.

COMMISSIONER STERTZ: Madame Chair.

CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: Madame Chair, Mr. Bladine, it might be good for you, too, when you are sending out the request of dates, to list out what you would typically put in your executive director's report of what things you would like to see covered, some comments that you have heard from us and what we would like to see covered during that and to make sure that we have, in an effort to not infringe on our open meeting law requirements, to be able to have an open dialog with you or with representatives of your staff regarding any of those items that we may need clarification on during that time.
CHAIRPERSON MATHIS: Thank you.

Other agenda items?

COMMISSIONER STERTZ: Madame Chair.

CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: Because it wasn't spelled out specifically by either Commissioner Herrera or Commissioner McNulty, I'm just going to suggest that on the next agenda, we are hearing a report back from legal counsel so that we can address the issue at hand.

CHAIRPERSON MATHIS: For sure.

VICE CHAIR HERRERA: Thank you.

CHAIRPERSON MATHIS: Anything from the mapping consultant that you think should be on our radar that we need to be addressing soon?

KEN STRASMA: Madame Chair, we would be interested in knowing what the Commission has in mind in terms of the format that the next meetings would take.

We talked a while ago about having perhaps three half-day sessions or some back-to-back meetings. I think as we are trying to meet our tight schedule, it we would be good if we could try to schedule some back-to-back meetings. And we had suggested that the half-day so that we could have
time to go through work through suggestions that are brought up and come back and have working meetings with the commissioners.

CHAIRPERSON MATHIS: Thank you.

Okay. I guess the only other one I can think of now is public hearing, which we'll be getting to our second round starting in late September. So I'm sure that will be a future agenda item.

Great. Well, that sounds good.

COMMISSIONER STERTZ: Madame Chair.

CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: Just as point of clarification, what is the -- so we know the compression of how much we need to get in between now, what was the date that's been selected for beginning the second round?

RAY BLADINE: I think at your last meeting you talked about starting the 26th. Frankly, I would like to push you ahead a couple of days so that we could start that weekend up on Flagstaff and meet that commitment, but that's really your call.

But we've put it back to starting the 26th, which is a Monday, and it would be nice if we
could start that weekend, Friday/Saturday. Again, it assumes that you got your work done. But right now, I understand my instruction is the 26th.

CHAIRPERSON MATHIS: 25th is Sunday, 24th is Saturday, 23rd would be the Friday?

RAY BLADINE: Friday, yes, ma'am.

CHAIRPERSON MATHIS: So if we could start that Friday/Saturday, do back-to-back hearings?

RAY BLADINE: We are going to try -- yes.

CHAIRPERSON MATHIS: Okay.

COMMISSIONER STERTZ: Thank you.

CHAIRPERSON MATHIS: All right. Thank you.

Any other comments or questions?

Okay. We'll go ahead and break for lunch. It's 12:53, and if you could just take 30 minutes, I would appreciate it.

Thank you.

(A recess was taken from 12:53 p.m. to 1:58 p.m.)

CHAIRPERSON MATHIS: We'll enter back into public session now after that recess. The time is 1:58 p.m.

Our next item on the agenda is V, review, discussion and direction to mapping consultant
regarding ideas for possible adjustments to Congressional grid map based on constitutional criteria.

And at our last meeting, we gave a list of what-ifs to explore to our mapping consultant and we'll hear from them as to what they were able to accomplish in that time frame.

KEN STRASMA: So there were a number of what-ifs posed that we explored. One was to have a two-southern border district plan, another was to have a four-southern border district plan. Another was a plan that maximizes respect for county lines.

There were a few specific ones that on further discussion, were discussions of adjustments to the existing Congressional district plans, so we didn't pursue that given that we are working off of the grid map now.

And then there were some general -- some general guidance provided in that we should strive to maintain the two voting rights Hispanic districts and also a suggestion to try to have a plan that did not split any Indian reservations.

That last one, we have not pursued that yet, but looking at it, it seems like it should be doable.
What I would like to do, and by all means, let me know about time constraints here, is present what we found about the two border districts and then discuss the challenges that would be involved in getting either a three- or four border district scenario.

I had suggested yesterday that we might want to work through as a group in a working session what it would take to do a three border district plan that would be -- that would be constitutional in terms of voting rights issues.

My understanding, given the time we have, that perhaps we should defer that to a later mapping working meeting so that we can finish more quickly and also just get direction for what we want to accomplish by the next week.

CHAIRPERSON MATHIS: Sounds good.

We do have some time constraints, unfortunately, so we will be ending the meeting at 3:40 p.m., but backing up from there, we'll go until 3 p.m. with other agenda items. So if you're able to talk to us about these adjustments on the Congressional and maybe we do the Legislative next time, unless commissioners have certain what-ifs they want to cover today to bring up next time.
We did discuss maybe we could meet this Thursday as a Commission and have a meeting then and that would be on the agenda for that. So we'll go ahead.

KEN STRASMA: Okay. The -- this you see up on the screen is a two border district map that also creates the two majority Hispanic districts.

One issue here, the Maricopa County majority Hispanic district is a slightly lower percent voting age Hispanic from 57 down to 53 percent voting age Hispanic. The southern one is actually slightly higher.

That seems to fall into the territory of, you know, we don't necessarily know that that is sufficient. We don't know that it's not. That would -- that's enough on the gray area that it would require additional analysis.

The lines -- you can see that fairly squiggly on the border between 1 and 3, that's the sort of thing that could be cleaned up some if we pursue this further.

The main issue here was needing to include those two different concentrations of Hispanic population. So you can see the darker green on this map is the greater percent voting age
And so down to Santa Cruz up to Tucson and then across to the western border, those are the two concentrations that make it possible to have a majority Hispanic district in that area.

We worked a fair amount of time trying to create a three border district scenario that would have two majority Hispanic districts. And I don't want to say it's impossible, but it would be extremely difficult.

Either you would have to have some kind of horseshoe configuration capturing both of those areas or have three districts that all extended up into Maricopa County to be getting parts of that Hispanic population. And that's something that, you know, we would be happy to pursue further -- either if someone has any particular direction on how we go about that or working through as group to see what the issues were.

That issue would be exacerbated if we were to look at a four border district scenario, obviously, and the four border districts would have to go much farther north, including far into Maricopa County.

Were there questions or things people
COMMISSIONER MCNULTY: Could I take advantage of the fact that Mr. Adelson is here and perhaps ask a couple of questions related to the Voting Rights Act in relation to these issues?

My first question is, you mentioned, Mr. Strasma, that the percentage of voting age -- HVAP went down in the district -- or the area that's been drawn in the central part of the state and went up in the southern part of the state.

And so my question is, in terms of Voting Rights Act analysis, do averages count or what we are looking -- are we looking at statewide or are we looking at concentrations of population in particular areas as the basis for our benchmark?

And then the second question is, I believe we have a number of Native American minorities. How does that relate -- and we are just looking at HVAP in that green; is that right?

KEN STRASMA: Yes.

COMMISSIONER MCNULTY: How do they -- how does the fact that this area in the southwest that's been drawn contains both Hispanics and Native Americans relate to voting rights analysis?

BRUCE ADELSON: In looking at the first
question first, the Native American and the Latino population.

If the district is a majority in numbers, a majority/minority district and let's say there are 55 percent Latinos and 20 percent Native Americans, for example, then the presumption would be that the minorities in that district are already at a certain numerical threshold where they can elect. Now, you would need to do analysis. So you don't presume that. So you know that for sure.

The issue with the coalition district where you have two groups of two minorities or more who are coalescing to support basically the same candidate, you would need to have analysis that how that.

From a Voting Rights Act perspective, I have a larger concern with that coalition issue where you don't have that one numeric majority: Latino, Native American, African American.

If you have an absolute majority of one group and then a smaller -- another minority group with a smaller number, there will likely be less of an issue. Because when you get into the 65, 70, 75 percent range, that's almost actually automatic that the minorities have the opportunity to elect.
In looking at reductions in minority population and VAP, voting-age population, you have to look first at what does the benchmark say and you have two -- assuming that I'm correct -- you have two districts right now, your benchmark where minorities can elect. What's the percentage there based on current census date?

I don't know that offhand, but that would be something you would look at. What is the number now. What does the benchmark say?

If the benchmark is 55 percent, for example, and in a proposal it's 40 percent, that could be problematic. If it's 55 percent and it goes up to 60, maybe that's okay. If it goes up to 80, that's probably packing and that will -- could create some Section 2 liability issue.

Does that answer your question?

COMMISSIONER MCNULTY: Yes.

BRUCE ADELSON: Thank you.

VICE CHAIR HERRERA: Madame Chair.

CHAIRPERSON MATHIS: Yes, Mr. Herrera.

VICE CHAIR HERRERA: Do me a favor and bring up the map again.

You said the -- on your map, which do you consider the majority/minority districts?
WILLIE DESMOND: Districts number 3 and 7.

VICE CHAIR HERRERA: See, I -- the way it is now, it's District 7 that's a majority/minority, which is Grijalva's district and obviously District 4, which is Pastor's.

So how do you explain that?

WILLIE DESMOND: I just think it's -- the numbers are --

VICE CHAIR HERRERA: It doesn't matter?

WILLIE DESMOND: The numbers are a product of how the grid map was drawn in I think a clockwise motion or whatever. So that's where the numbering comes from.

We can give you the current percentages of the two majority/minority districts and the ones that would be under this scenario.

VICE CHAIR HERRERA: Sure.

WILLIE DESMOND: Currently District 4 is 57.5 percent Hispanic and District 7 is 50.2. And in this plan, District 3 would be 53.2 and District 7 would be 54.1. So one went up, one went down.

VICE CHAIR HERRERA: Can you repeat that again? District 4 went to what again?

WILLIE DESMOND: District 4 is now
District 7 in this plan. So that would be -- it went from 57.45 to 53.17. And then the district on the southeastern corner of the state went from 50.23 to 54.08.

COMMISSIONER MCNULTY: Madame Chair.

CHAIRPERSON MATHIS: Ms. McNulty.

WILLIE DESMOND: Southwest, I'm sorry. Excuse me.

COMMISSIONER MCNULTY: Are you going to load these onto our laptops so that we can understand -- for example, if we wanted to adjust that where the population would be and so that we understand exactly where these -- where these districts are?

WILLIE DESMOND: Yeah, we can load any of these up. We could also adjust it right now if you wanted to play around with it. It's whatever you want to do.

I just want to kind of caution that this map didn't meet any of the other six criteria. This was kind of a what-if to see what it would look like.

This was the easiest way that we found to make a two border district that had equal population among nine Congressional districts and two majority
Hispanic. This would not be anywhere near like a finalized. I think we would definitely want to clean up the lines a little bit. We would obviously have to pay attention to all of the other criteria and considerations.

COMMISSIONER MCNULTY: Right, and I understand that. And I think you just e-mailed these to us yesterday evening.

So I think we need -- I would personally want to spend some time studying what we've got here, but I would want to do that against the backdrop of the data so that we understand where to go from here to address both the Voting Rights Act issues and the all of the other criteria.

CHAIRPERSON MATHIS: Are there comments from other commissioners?

COMMISSIONER STERTZ: Madame Chair.

CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: I concur with Commissioner McNulty that the best thing for us to do is to start to digest the -- the first trickle in of the what-ifs and allow us the opportunity to come back with some -- because I'm sure that there are, as Mrs. O'Grady had stated earlier, there are lots of different ways to skin the same cat. And we've
got to give ourselves the opportunity to do that.

But, Madame Chair, more of an overview, maybe we could discuss at a Commission level what your opinion is regarding map concepts that the commissioners are going to be looking at independently because we've got not only the software to do so, but the data to do so as well and how we would see -- and potentially caution bringing maps forward that are preconceived.

CHAIRPERSON MATHIS: Well, I'm not sure I know how to answer your question.

My thinking on the process for this was we had kind of come up with some what-if scenarios for the mapping consultant at our last meeting and they have documented all of those. And we gave them a big list, so they haven't quite done each of them.

But I guess my thinking was we would discuss those what-ifs in open meetings at these next couple of meetings or so. I don't even think we've gotten to the Legislative ones yet. So that's a whole other issue that today I thought would be great if we could give them some what-ifs for that because we didn't really do that yet.

But I don't know. Did you have some thoughts, Mr. Stertz on how this might proceed?
COMMISSIONER STERTZ: My thoughts were to ask the question so that we could get some feedback from the other commissioners.

CHAIRPERSON MATHIS: Other commissioners? Do you guys have thoughts?

COMMISSIONER MCNULTY: I have a question. I don't know -- I guess this is sort of an answer to how I would see it working. So we've got -- in this area on the southwest, we are increasing the HVAP from -- did you say 50 to 54?

WILLIE DESMOND: Uh-huh.

COMMISSIONER MCNULTY: And then in the area that we are calling 4 -- or is it 7 -- the area we are calling 7, we are reducing that? So what if we wanted to move that balance more in line with what we think the benchmark is now, you know, in anticipation of the analysis telling us that we need to do that? Show us, you know, what some possibilities would be.

WILLIE DESMOND: So we're looking at District 3 and 7. And I guess initially the easiest thing to do -- they show very, very small borders, so it wouldn't necessarily be possible to have them, you know, trade some back and forth to bring the
levels to that current value.

COMMISSIONER MCNULTY: You mean in terms of where the grid map was -- or when you say initially they have a very small border --

WILLIE DESMOND: I'm saying in this scenario, there's a very small area of where they touch. So normally when you wanted to make -- if you wanted to move Hispanic population from one to the other to maybe approach the levels --

COMMISSIONER MCNULTY: Yes.

WILLIE DESMOND: -- as they currently are, we would go along the border and you would find places where you could, you know, add some and take some away to even it out.

In this case, we probably would have to go through some of the surrounding districts. So it would be adding some districts into 2, as it is here.

Ken do you want to talk and I can drive? Does that work?

KEN STRASMA: Sure.

So because we're trying to -- under the scenario he described, raise the Hispanic percent of the current District 7 in Maricopa district and taking away from District 3, it would be possible to
push that border farther into 3. All of the dark
green, those are the majority voting-age Hispanic
districts. So we could add those dark green at the
top into 7 and then we would have to equalize the
population elsewhere in 3. It would also be
possible to add some of that population that's
currently in District 8.

COMMISSIONER MCNULTY: Does someone have
a laser or a pointer?

KEN STRASMA: So this is the border
between the two at this point. I was saying one of
the ways to raise the population of 7, that was one
that under the current plan, the district in this
area is at 57 percent. Adding this population from
3 will lower the voting age percent Hispanic in 3
and raise it in 7.

Also this territory that's currently in
8, which is not a majority/minority district, could
be moved into the two districts 3 and 7 effectively
raising the voting-age population in those if it was
decided that we needed to do that.

COMMISSIONER MCNULTY: Now, if you did
that, then do we have a population imbalance?

KEN STRASMA: Yes, we would.

COMMISSIONER MCNULTY: So how would we
address that, for example?

It also looks like we have a line running through the middle of Maricopa, which strikes me as a problem, but let's set that aside for the moment.

KEN STRASMA: In terms of the population imbalance, we would probably need to do some kind of three-way switch. We've taken population -- or we would be taking population away from 3 and giving it to 7 and also potentially taking population away from 8. I'm not sure which district we would give it to.

Did you want to try to work through this now or just discuss it as a concept?

COMMISSIONER MCNULTY: I think the latter. I'm not sure that any of us are really quick to work through the entire issue without having a little more time digesting the map.

But in terms of the concept and how this is going to work, I think it might be helpful to --

KEN STRASMA: Okay. Could you zoom out a little bit?

So I guess in terms of figuring this out as a concept, we would need to know if we were -- if we were seeking to raise the percent Hispanic in both districts, if we were seeking to have them
roughly match what they are now. And perhaps this is something where what we need to do, pending the deeper voting rights analysis, is just prepare both scenarios. You know, perhaps we have one where the new Maricopa Hispanic District 7 is at 57 percent -- roughly what it is now.

If the analysis indicates that that's too high, that would be considered packing, then we would use a different scenario.

And the -- there is a majority Hispanic population in 8 and 9 now. Also down on the southern border of the current 7, all of this shaded white is very low percent voting-age Hispanic. So if 7 was to be moved up north and west slightly, that would raise its effective voting-age percent Hispanic.

WILLIE DESMOND: Also just to clarify, these two districts were not drawn to meet the current Hispanic percentage, just to meet two 50 percent Hispanic districts, just for the purposes of the what-if. So that wasn't a consideration in the current levels when we drew this what-if scenario.

CHAIRPERSON MATHIS: So I have a question for Mr. Strasma. Mr. Stertz raised a good point.
What is the best and most efficient way for us to be giving direction to you all both when we are in our public meetings but also, you know, are there things we can be doing outside of the meeting on our own to help with the process and keeping things moving down the track?

KEN STRASMA: I think for today it would definitely be helpful if we could get general questions asked that we can try to work through for Thursday in addition to some of the what-ifs that we haven't gotten into yet, depending on how many. I'm not sure if we'll get to them all.

And then I do think we should make sure that the commissioners are able to load up and play around with these maps. You have all of the pieces now, but I realize it's unfamiliar territory, so we can walk you through how to load up the files that we sent you last night and see the Hispanic population in order to be working through these yourselves.

Responding to Commissioner Stertz's earlier question about what-ifs and individual commissioners work-up, we would be happy to work through plans that people suggest to us outside the meeting and be able to bring them back at the next
public meeting if someone did have suggestions that
come to you in the next couple of days, by all means
let us know and we can both -- both or either --
talk you through how to work it through on your own
laptops or do the analysis ourselves.

CHAIRPERSON MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: Mr. Strasma,
Mr. Desmond, you explained how you came up with the
two minority/majority districts.

Could you explain your methodology in
creating the other seven districts?

KEN STRASMA: The other seven were left
largely as they existed in the grid map except for
adjustments to make -- reach zero-population
deviation, which does bring up a point Mr. Desmond
just reminded me of.

This map is at zero-population deviation,
as will be required for all of Congressional
district maps. We suggest in the interest of time
that future what-ifs we leave at one, 200 with the
understanding that we can always adjust blocks on
the border when it comes time to making these a real
map. In terms of exploring the possibilities, we
can more visually do it if we're not trying to zero
out the population.
Also further addressing the question of how the other districts were affected, one key point is the District 5, the northeast border, that's an oft-commented on district in the grid map given that it's so tall and it's not compact by pretty much any measure.

Also it is slightly lower in Native American population than the existing northeast district. So if this were a final plan, Congressional District 5 would have to be addressed as well.

CHAIRPERSON MATHIS: Other questions or comments?

COMMISSIONER STERTZ: Madame Chair.

CHAIRPERSON MATHIS: Commissioner Stertz.

COMMISSIONER STERTZ: As a point of how we are tracking, one of the commitments that we made to the public was that we were going to, as adjustments were made, even in study from the grid map moving forward -- and the question that just came up was one of them, how were the lines adjusted.

How are we now, as we are moving forward from grid map moving forward, tracking these adjustments as minor or as major as they may or may
not be, taking the, quote, unquote, snapshots, screenshots that we were going to be putting on as a tracking mechanism and what are the points as we are doing this we can say, okay, take a picture of this one and move on to the next one, so on and so forth.

KEN STRASMA: We are -- it's been discussed -- saving snapshots of every change that has been made to the map. Mr. Desmond is bringing up what those files look like for this. If he scrolls to the bottom, we'll see how many snapshots there are. 65 different adjustments made to that map. Those are available to the commissioners whenever they want.

On the respecting county lines map, there were 106 different backups. So they are -- those are definitely preserved and available.

COMMISSIONER STERTZ: And how are they currently being cataloged? Right now you're tracking them. How will they -- how do you foresee them being cataloged?

KEN STRASMA: By date and the name of the map. So, for example, I have CD whole counties and yesterday's day is the what-if scenario for serving counties and two border what-ifs. Two majority Hispanic is the descriptive name for the map that's
COMMISSIONER STERTZ: And for the purpose of the analysis right now as you've described, this was solely -- Mr. Desmond, am I correct, this is solely to say -- answer the one question which is how do I have two -- or the two questions. How do I have two border districts and how do I have two majority/minority districts? No other considerations were taken into account?

WILLIE DESMOND: That's correct.

COMMISSIONER MCNULTY: I'm not sure that actually is correct. I believe my question wasn't -- didn't bear on the number of border districts.

I think my question was how to include the minority and historic populations that have lived from San Luis to Santa Cruz County in a district, in a minority/majority district. That was my question. I don't think it bore on the number of districts, just to be clear for the record. You don't need to respond to that.

I do have a question about the northeast -- the northwest corner of 3, the green and then the dark green and then the light green, do we know what those populations represent?
WILLIE DESMOND: Right here?

COMMISSIONER MCNULTY: Yes.

Does that color indicate a higher HVAP?

WILLIE DESMOND: That color is for that census tract, Hispanic voting-age population of 40 to 50 percent.

VICE CHAIR HERRERA: Mr. Desmond, in one of my what-if scenarios, and you already may be working on this, I had mentioned that the river district includes part of Yuma and ending -- I think it would makes sense ending it somewhere off of Pacific Avenue and then the rest of Yuma be included in San Luis, Gadsden, Silverton, southern part of Yuma included in what is Congressional District Number 3.

WILLIE DESMOND: Yeah, that is one of the ones that we have not had the chance to work on it yet.

COMMISSIONER MCNULTY: So you'll be working on that and be bringing that back to us over the next couple of days?

WILLIE DESMOND: Yeah. We'll be continually working on these and sharing them with the Commission on like a rolling basis as they are completed.
I think one thing we could do is work out a system or provide some training so that everyone knows exactly how to load them up and look at it and create the different shading and stuff to do their own analysis.

So, yes, we will be providing those on an ongoing basis.

VICE CHAIR HERRERA: Madame Chair.

CHAIRPERSON MATHIS: Mr. Herrera.

VICE CHAIR HERRERA: Just one quick question.

When we eventually are going to go from what-if scenarios to the real thing, how is that going to work? Are we going to have to vote on each of the changes as a group? I'm not understanding what's going to happen once we get to that point. I would like to know.

CHAIRPERSON MATHIS: That's a great question.

Do other commissioners have thoughts on how that might progress going from what-ifs to the real thing? Because we should probably talk about process for that or if legal counsel has advice, too, that would be great.

MARY O'GRADY: Madame Chair,
commissioners, just a suggest -- my suggestion would be to continue with these what-ifs for a while, but then once you've kind of played out the what-ifs and people have had an opportunity to think through what they -- the general approach that they think will work, then go back to the grid maps and get some instruction bit by bit in terms of what adjustments are made.

And this is just an idea because I don't know for sure what's going to work out best. So I think we'll have to feel our way with what's going to work out best.

But at some point I think we'll want to document from grid map to approved map why those changes were made bit by bit and do that after we've spent a fair amount of time with what-ifs.

And the Commission, depending on how it works out, we may need to make some incremental votes along the way before it gets to a whole map.

But I think we will have to kind of feel our way on those issues and spend a fair amount of time in what-ifs until you have a sense of how you want to play that -- how it's going to play out for a map as a whole.

COMMISSIONER STERTZ: Madame Chair.
CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: May we request some suggestions from Strategic Telemetry on how they have managed this in the past in other similar situations?

KEN STRASMA: So what I would suggest, as Ms. O'Grady said, continue to work through the what-ifs but adding a level -- getting back to your previous question of were we attempting to meet any of the other criteria on this two border district, two majority Hispanic district.

As we begin to meet multiple criteria, for example, the not splitting any Indian reservations, the things that we were directed that would be overriding criteria for everything that we incorporate, those are the what-ifs, and fairly soon it will become evident where the points of conflict are, when we are attempting to, you know, not split political geography to -- and be compact, as the -- it's not up there anymore, but the Congressional District 5 that preserves the two counties but at the expense of being very long and narrow.

As those conflicts begin to become evidence in grid maps I think it will then become clear where we need direction from the Commission.
that might come in forms of votes for policy rather than just what-ifs that can be explored.

COMMISSIONER STERTZ: So if I could reduce that down to sort of a process, because I think that's what we are asking about now, what is the process.

The grid map established the baseline criteria as established by the Constitution.

Our next is to make adjustments to the grid map in what I would consider to be going through a series of -- through the steps of the next would be sort of a conceptual design, if I could call it that, which is there's going to be a general criteria of design of Congressional and Legislative districts that would meet the general intent of the 1965 Voters Rights Acts.

You've just done that for this. We would not say, yes, let's vote on this today because this is -- only meets one of the very wide variety of what-ifs of analysis.

So I think what I'm hearing is that, and, Madame Chair, this is just a suggestion, that we go through sort of this free-flowing design concept of making a variety of different studies of looking at a variety of different what-ifs that meet a variety
of different scenarios. But there will come a time when we are going to have to make a decision that moving forward to the next level that would start to drill down to real specific criteria and there will be a next level where we are going to have to introduce all of the other significant components of the Constitution into -- into these tests.

So I believe that there will be -- come a natural time for votes and there will be a natural time for debate leading up to those votes.

CHAIRPERSON MATHIS: I agree.

Anybody have other thoughts on that?

COMMISSIONER McNULTY: My only other thought would be that I think we'll be introducing -- as Mr. Strasma said, we'll be looking at the other constitutional criteria as what-ifs pretty much from the beginning.

I think right now we started with the Voting Rights Act but we are going to need to be looking at those as we make adjustments to this and looking at what-if scenarios with regard to those from the outset.

CHAIRPERSON MATHIS: Any other thoughts, comments?

Did you say you had also prepared another
what-if and that's the four border district one?

KEN STRASMA: We had not.

CHAIRPERSON MATHIS: Okay.

KEN STRASMA: I had suggested when we have a working session we could work through that as a group if there is interest, either the four border district or the three border district and just to illustrate the challenges in meeting the Voting Rights Act criteria.

We do have -- the other what-if is the map that attempts to preserve as many whole counties as possible. I'll bring that up now.

CHAIRPERSON MATHIS: Yeah, please.

KEN STRASMA: So under the grid map, there were seven split counties, four that were in two districts, two that were in three districts, and one, Maricopa, that was in seven districts.

Now, obviously, it's not possible to avoid splitting Pima and Maricopa County because they each have more population than the ideal Congressional district size.

So theoretical limit is to split just those two, which is what this map illustrates.

The effect here is we have one district, it's the pink District Number 2, wholly contained in
Pima. The remainder of Pima is in District 3, which then goes up into Maricopa County to get the remaining population it needs to be zero deviation.

Every other district also includes whole counties, for every county outside of Maricopa, and a portion of Maricopa County in order to get the zero-population deviation.

So this -- it sort of illustrates the sort of trade-off that's inherent in this process. We can maximize respect for the -- to the county boundaries of every county outside of Maricopa County while having the effect of having a very large number of splits in Maricopa County because every other district has to go into Maricopa to get the necessary population to achieve zero deviation.

This plan by itself, as with the first one, we didn't attempt to meet any of the other criteria. It has the -- District Number 7 under this map is at 49 percent non-Hispanic/African American. It would not take that much modification to make this an acceptable voting rights district.

The existing Districts 2 and 3 in Pima County are each at about 30 percent non-Hispanic/African American. So some balancing there would have to be done to make one or the other
of those, it would probably be existing District 3, become the majority Hispanic district under this scenario.

But this was just designed to illustrate the theoretical maximum for respecting county boundaries. So we would have the potential to do that at this point.

CHAIRPERSON MATHIS: Any questions on this what-if?

Where does the zero percent deviation requirement come from?

KEN STRASMA: I'll refer to legal counsel, but there's been Supreme Court rulings requiring that for Congressional but not for Legislative.

JOSEPH KANEFIELD: Madame Chair, it comes from the U.S. Constitution itself for Congressional districts and the subsequent U.S. Supreme Court decisions that have interpreted that very little variance, if any at all, for Congressional districts.

I think in our legal materials there's some references to the supporting authority for that.

CHAIRPERSON MATHIS: What is Legislative
deviation?

JOSEPH KANEFIELD: Legislative districts are judged the one-person, one-vote standard. It comes under the Equal Protection Clause and provides a little bit more flexibility. You would have to look to the court decisions.

It used to be the rule of thumb -- 10 percent -- although there's some debate about whether that still stands.

So obviously, the closer to equal population the better. And if there's a deviation, the courts are going to want to know the basis. They are going to put -- the burden is going to be on the Commission to explain the basis for the deviation. It will have been to be justified.

CHAIRPERSON MATHIS: Okay. Thank you.

Ms. McNulty.

COMMISSIONER MCNULTY: Could I ask Mr. Adelson if he has anything he would add on that, the subject of deviation on the Legislative maps?

BRUCE ADELSON: Madame Chair, members of the Commission, I certainly agree with counsel. On the constitutional imperative and the Congressional districts, and the imperative for the Legislative districts.
The Justice Department focuses, of course, on the Voting Rights Act issue, but one of the things that Justice will ask, if you have a deviation of let's say 12 percent in a Legislative district, that's very high and they would want to know why if that is impacting Voting Rights Act considerations as far as diluting minority population strength.

My -- what I like to see in the jurisdictions that I work with, the deviation is under 5 percent. That's an issue that really wasn't attacked during the last round of redistricting as far as court decision.

There is a court from Georgia, the Lariat's decision from I think eight years ago, but that decision hasn't been fully litigated, and that calls into question, as Joe was saying, the 10 percent deviation issue.

So that's why I don't like to get close to 10. I like to go from 5 down because then as Joe was mentioning, when you have to justify that, it's a lot easier to justify 3 percent than 11. I think 11 percent can be very problematic, but 3 percent is not difficult in a typical situation to justify.

Thank you.
CHAIRPERSON MATHIS: Thank you.

Other questions or comments?

And there are no other what-ifs to show right now, right?

KEN STRASMA: That's correct.

CHAIRPERSON MATHIS: Okay.

VICE CHAIR HERRERA: Madame Chair.

CHAIRPERSON MATHIS: Yes.

VICE CHAIR HERRERA: You had asked Mr. Strasma a question about what he would be doing moving forward to make sure we keep you on track, whether or not we meet this week.

Is there any other pieces of information that you need from us? Because I want to make sure -- if we are going to be going public with the map on the 24th of September for the first round -- for the second round of public hearings, I want to make sure we're doing everything we can to do as much as we can before September, this week, next week, and the following week.

KEN STRASMA: I would like to seek some direction on the Legislative map. If I may suggest, it seems to me that the overriding criteria that was suggested at the last meeting for Congressional, that we reserve the same number of minority
districts. And in this case for Legislative, I would include the Native American district, that we proceed with exploring what it would take to do that. And also the direction to attempt to avoid splitting Indian reservations, that we attempt that for Legislative as well as Congressional.

The -- we can also begin looking, as we are working through these, at minimizing splits of political subdivisions. Those are fairly clear and unambiguous criteria.

In terms of others where it will probably become more problematic and we will seek direction from the Commission is when we get to more subjective criteria such as competitiveness and communities of interest.

I would suggest that between now and Thursday or now and whenever the next meeting is on Legislative, we explore preserving the same number of voting rights districts and not splitting Indian reservations and -- but that we not attempt to address competitiveness or communities of interest until we can work through that with the Commission and receive the Commission's specific direction on those issues.

CHAIRPERSON MATHIS: I would agree.
Anybody else disagree or agree?

VICE CHAIR HERRERA: Madame Chair.

CHAIRPERSON MATHIS: Mr. Herrera.

VICE CHAIR HERRERA: My only concern is
in keeping the same number of majority/minority
districts at nine without increasing the HVAP of any
of them.

So -- and if we could, possibly create
another -- if one is bordering at around 50 percent,
it's 48 percent, then hopefully maybe increasing
that one to reaching the 50 level. But I would not
want to increase the HVAP even more than they are
now.

So if -- I think on this one, the
Legislative 16, it's at 56.74. So keeping it at
that same level.

KEN STRASMA: Thank you for that
suggestion. And I do recall there were two at
49 percent.

VICE CHAIR HERRERA: Correct.

KEN STRASMA: And I think it would be a
worthwhile exercise to see if those two could be
raised above 50.

VICE CHAIR HERRERA: Sure. It's
currently 27 and 29. 27 is at 49 and 29 is at
49.81.

COMMISSIONER STERTZ: Madame Chair.

CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: These percentages currently apply to the current districts. They do not -- so following the constitutional requirement of looking at first clearing -- cleaning the slate and not doing line adjustments, these percentages that do not fall into criteria -- I'm not dismissing your thoughts. They are on a bubble now in a district that no longer exists, so it's not necessarily relevant.

What is relevant are the current number of districts as we have that prevents us from going into retrogression.

And I also have a question regarding the Native American in District 2. There has been a reduction of percentage or a reduction of population and we'll ask for -- be asking for some clarification as we move further down the road with that as well and what that means as far as that district is concerned.

KEN STRASMA: If I may respond, that is correct, the existing District 2 has lost population. We'll have to gain and we would explore
ways to do that without lowering the effective percent.

To the point about how we are not adjusting the current districts, which are what yielded the baseline percents, I view that as a first cut at what is possible.

And so that's -- it's giving us a clue that a certain number of districts meeting a certain threshold are possible. I say only a clue, not proof because some of these districts are malapportioned and by the time the population is adjusted, it may no longer be possible to create the exact same number at or above a certain threshold.

So it's a pointer and a clue, not a hard and fast rule.

COMMISSIONER STERTZ: Thank you.

CHAIRPERSON MATHIS: Were there any other what-ifs that we wanted to talk about before the Legislative maps?

You wanted to see in --

COMMISSIONER MCNULTY: Madame Chair, I think I need to see the voting rights information in the context of those Legislative district before I -- I'm sure I know the answer to that but just for my perspective.
CHAIRPERSON MATHIS: Okay.

Mr. Freeman.

COMMISSIONER FREEMAN: With respect to the exercise on the Legislative districts, do you anticipate coming back to us with one map, two, three? Because I would imagine there would be more than one way to draw the maps to create nine minority/majority districts. I might be wrong on that, but your thoughts.

KEN STRASMA: Without knowing for sure, until we go through the exercise, my guess would be there will be multiple different scenarios and we'll discover branches of different approaches as we are working through it.

CHAIRPERSON MATHIS: Any other questions or comments on this?

Okay. Well, if we're going to meet Thursday -- so you'll have some more what-ifs developed for the Congressional districts by then that Willie can present to us.

Anything else that we need to be doing or thinking about between now and Thursday?

KEN STRASMA: I don't believe so.

We appreciate the direction and we will have plenty of work to do.
CHAIRPERSON MATHIS: Great. Okay. Thank you.

Any other questions?

Okay. So that kind of covers both V and VI on the agenda.

Can someone tell me the time because I no longer have my phone.

VICE CHAIR HERRERA: It's 2:47.

CHAIRPERSON MATHIS: 2:47.

We can take that means 13 minutes of public comment because we're going to go into executive section most likely for some legal advice in a little bit. That's on our agenda, which is agenda item XI, regarding the Attorney General inquiry.

So if we could take public comment now with some folks that maybe we haven't heard from. I have quite a stack, and I don't know if all of you are still here, but maybe we'll start with people that we haven't heard from and then move through.

VICE CHAIR HERRERA: Madame Chair.

CHAIRPERSON MATHIS: Yes, Mr. Herrera.

VICE CHAIR HERRERA: I notice that we have quite a few public comment forms and I want to make sure that we are able to squeeze everybody in.
So do you want to limit the presentation?

CHAIRPERSON MATHIS: Yeah, I think that's a good idea to get as many of these as we can.

So let's aim for a minute and a half of input, and if there are some of you who have more substantive things to present, you can always give us the information by giving it to our Executive Director, Ray Bladine, if you have anything written and he will collect that and it will get into the record as input.

But let's go ahead and get started.

I have Richard Elias, Pima County Supervisor, District 5, representing Hispanic Council for Good Government.

And if you would, our court reporter reminds me to spell your name into the microphone so that we get an accurate spelling and account.

RICHARD ELIAS: My name is Richard Elias, E-l-i-a-s. I'm the Pima County Supervisor from District 5 in Pima County. And I bring with me my friend from up north from Maricopa County.

MARY ROSE WILCOX: Thank you very much.

Richard and myself and Pete Rios, who is Pinal County Supervisor -- my name is Mary Rose Wilcox. I'm a Maricopa County Supervisor.
We come before you to present Hispanics for Good Coalition for Good Government. We do have quite a presentation. I don't think we are going to be able to finish it in a minute and a half or even the three minutes, so we'll do the best we can.

But we would ask perhaps you consider us for your Thursday agenda. I think the information we bring will be very helpful.

Let me tell you who we are briefly.

We are a group that has come together from all over the state of Arizona. Richard, myself, and Pete Rios are the cochairmen and we are Hispanics for Good Government.

When the last redistricting took place, we also formed a similar coalition and we were very helpful to the Commission.

We assisted you with the general outreach that you need for the Hispanic community, we set up many forums for you, and we got you the information from our community that many times in general meetings, people might not come out. But if we are part of the presentation or part of the outreach, we can get a lot of the Hispanic community to you.

Let me say, first of all, thank you very much for hearing us today. And we have come
together because we all love Arizona. We all know we have special needs in Arizona, special areas. We have border issues, we have rural urban issues, two big urban areas and the rest rural, we have many Indian nations. We have things that we know are special and we know our communities well very, so we think we could be a resource to you.

We want to again remind you that the last Commission, we did come together and do some very progressive work with them.

We also know that when we came together with a service of resource on the last redistricting, we had many, many meetings and what came out is a real good guide for majority/minority districts.

We felt that we hit on the items that go into consideration for redistricting all the way from equal populations to the special items that the Voter Rights Act looks at.

So we come before you as a resource. We would ask that we take this opportunity to show you a brief map that we put together just to kind of give you a guide. And with your permission, it would only take like probably half a minute. But we could kind of give you a sense of where we are
coming from.

    We took our areas, 4 and 7, which are
majority/minority districts, and we put them
together with an eye toward the issues both of
redistricting and the special voter rights criteria.

    So would you want us to do that really
fast?

    CHAIRPERSON MATHIS: I hate to say this,
but I'm wondering could you come to our meeting on
Thursday? And what we'll do is on the agenda, we'll
have a special agenda item that Ms. O'Grady
suggested earlier where public that has maps to
present in a more formalized proposal kind of thing,
they could come during that agenda item, this is
separate from public comment, and actually present
that information and you'll have much more time, and
I really apologize.

    MARY ROSE WILCOX: We would love to do
that and perhaps we could even bring more members of
our coalition.

    CHAIRPERSON MATHIS: That would be great.

    MARY ROSE WILCOX: Where will that
meeting be?

    CHAIRPERSON MATHIS: Wonderful.

    The meeting -- we are talking about Casa
Grande for the meeting on Thursday. I think that's still to be determined, so don't hold me to that, everyone, but I think Mr. Bladine is looking into that venue.

MARY ROSE WILCOX: Perhaps we could call Mr. Bladine and get a time that we could get everybody to come.

And we will use a disk. Okay? So your people with mapping can review it.

CHAIRPERSON MATHIS: Wonderful.

MARY ROSE WILCOX: We do have hard copies also of some material that we'll give you a couple of copies.

CHAIRPERSON MATHIS: That will be great. Mr. Bladine will accept that. Thank you so much, and I apologize again for the shortening.

RICHARD ELIAS: Thank you. We do appreciate the time that we have.

I'll make this as brief as possible.

I think the maps that we have put together really represent a baseline for meeting the Justice Department's requirements. We're making sure that the Latino population here in Arizona is not further disenfranchised.

I would note that those two Hispanic
majority districts include areas that encapsulate the two border cities, rural areas that share a common link with the Hispanic neighborhoods in both the major metropolitan population areas here in the state of Arizona.

The other thing I think that's important to know is that polarization of voters continues to happen. And the most recent elections are the greatest example of that. Therefore, we think it's critical that that be taken into serious consideration when taking a look at these maps and using our group as -- like Mary Rose said, a resource for all of you to be able to reach the Justice Department criteria for passage. Okay?

CHAIRPERSON MATHIS: Thank you very much.

RICHARD ELIAS: Thank you very much for all you do.

CHAIRPERSON MATHIS: Represent Steve Farley from District 28 in Tucson.

STEVE FARLEY: Thank you very much for having me here. Thank you very much the work you are all doing. I have seen the heat. You have felt the heat, and you have done an incredible job at standing up to do what you are charged with with great responsibility; to make our districts a place
that is deserving of the people of Arizona.

And unfortunately, I believe the districts right now, and since I serve in the Legislature I have some basis to see that, does not represent the people of Arizona. I don't believe that they are fair.

I'm encouraged to see that you have hired great people at every step of the way to be able to look carefully at the mapping and the data, because the mapping and the data, I believe, will show you that you will be able to meet DOJ requirements for majority/minority districts and at the same time be able to create more competitive districts.

And part of why I would argue that competitive districts are crucial in Arizona right now and part of the promise of the Independent Redistricting Commission is because right now, there are colleagues that I have heard say that it is their belief that they do not represent everyone in their district. They simply represent the people who voted for them in their primary.

And that's what happens when you have a district that is quote, unquote, safe in which there is such a majority of people from your own party that you do not have to listen to anyone else you
don't agree with already. And that's not our
democracy. That's not the way our democracy ought
to be.

So I would encourage you to look at
competitiveness as a way of making elected officials
like me work for the vote of our constituents
instead of taking it for granted. And that's
really, really important, especially when I saw last
week a Gallup poll came out and said that
self-identification in Arizona, 42 percent of people
identify themselves Republicans, 40 percent as
Democrats. That's a lot closer than a two-thirds
majority in both houses would say.

Thank you again for the work you're
doing. I have great admiration for every one of
you. This is something that goes well beyond party
and goes to the heart of our democracy.

Thank you so much.

CHAIRPERSON MATHIS: Thank you.

VICE CHAIR HERRERA: Thank you.

CHAIRPERSON MATHIS: Kenneth Bertschy,
representing self from Tucson, if he's here.

Ronald Silk from Pima County,
representing self.

Jose de Jesus Rivera.
JOSE DE JESUS RIVERTA: Thank you, commissioner. Jose de Jesus Rivera. As always happens with my wife, Mary Rose has spoken all of the words that I wanted to speak.

CHAIRPERSON MATHIS: Oh, great. Thank you.

We have Jim March from Pima County Libertarian Party.

JAMES MARCH: Thank you.

Folks, everybody in this room is going to have a different agenda, we all understand that. If those agenda are public, then we have a pretty good chance of meeting somewhere in the middle with something we can all live with.

Linda, you mentioned the potential problem with lobbyists, and that's what I'm here to talk about.

Fair Trust has been representing themselves as some group with people coming here paid for that purpose. And not only are they talking to your -- you and your people off-line -- as long as they are just coming up to this microphone, nothing we can do about it. But they were talking to people on the side and you are not the only Legislative branch people in the room.
There's also Mr. John Mills over here, is a Legislative staffer of some sort. I don't know exactly what.

My belief is that Fair Trust has crossed over the lobbying limits rules pretty seriously. I used to be a lobbyist in California for a nonprofit. I know what lobbying rules are generally all about.

And today I'll be filing this complaint with the Secretary of State's Office and I offer you a copy as well.

And, folks, if you want to read it at the end of the paper document, it tells you exactly where to get it online. Go to tinyurl.com, that's t-i-n-y-u-r-l, .com, forward slash unfairtrust.

Tinyurl.com/unfairtrust.

I'm going to leave a copy of this with you. You can extract the data online and put it on your site. And I think you need to think about whether the lobbying rules are being followed in this room. It's very important that they are.

Thank you.

CHAIRPERSON MATHIS: Thank you.

Tim Sultan, vice president SAB Negotiation Group, representing self.

Okay. Harvey Akeson, representing self.
Vince Leach, representing self.

Betty Bengtson, representing self.

BETTY BENGTSON: No comment today except keep up the good work.

CHAIRPERSON MATHIS: All right. Thank you.

And Frank Bergen from Tucson, Pima County, representing self.

FRANK BERGEN: Very quickly, it's B-e-r-g-e-n.

At the end of the August 7th meeting, Commissioner Stertz used a sports metaphor, which I guess opens us up to using sports metaphors.

I still don't understand his. It had something to do with the fact that the Green Bay Packers could be successful in the national football league, meaning that anyone in any party could be competitive in any Legislative district in Arizona, and I don't think that's correct.

I am a voter in Legislative District 30 where -- and I'm also a Yankee fan. Derric Jeeter could only get elected in District 30 if he ran as a Republican.

In District 28, which is Commissioner Stertz's district, the only way that Vince Lombardi,
if he came back to life, could be elected is if he ran as a Democrat.

And with that, I'll save other things for later since you're short on time.

Thank you very much.

CHAIRPERSON MATHIS: Thank you.

I can take one more. Roy Goodman, representing self.

ROY GOODMAN: Hello. My name is Roy Goodman. That's R-o-y, G-o-o-d-m-a-n. I'm a resident of Tucson, Pima County. I am a registered Green Party member.

I am here to thank you, yes, to thank you. In these past few months I have come to an even greater appreciation of the challenging task you have taken on.

I ask that you maintain the highest level of transparency and that you be true to your expectations of yourselves.

I look forward to more competitive districts than we currently have around our state.

Thank you.

CHAIRPERSON MATHIS: Thank you.

Well, I apologize ya'll, it's 3:02 p.m. and we have this matter to deal with our legal
counsel, so we'll have to post -- the rest of the public comment will have to postpone until our next meeting.

I hope that those of you who didn't get to speak and would like to today can come to our meeting on Thursday, which -- keep -- stay tuned to our website and you'll see the venue and time for that because that hasn't been set.

And with that, we'll go ahead and move on to the next agenda item.

And I thank the public all for coming and participating today. We really appreciate it.

This is agenda item XI, report legal advice and direction to counsel regarding Attorney General inquiry. The Commission may vote to go into executive session which will not be open to the public for purpose of obtaining legal advice and providing direction to counsel.

Any comments from legal counsel first, beforehand or anything? Anybody --

MARY O'GRADY: Nothing for legal.

CHAIRPERSON MATHIS: Just -- any comments from legal counsel on advice with regard to agenda item XI, any update you wanted to provide?

JOSEPH KANEFIELD: Madame Chair, we do
have some advice that we would prefer to do in executive session, if that is the wish of the Commission.

CHAIRPERSON MATHIS: Okay. Is there a motion to go into executive session to obtain legal advice and provide direction to our legal counsel regarding the Attorney General inquiry?

COMMISSIONER MCNULTY: So moved.

VICE CHAIR HERRERA: I'll second that.

CHAIRPERSON MATHIS: Okay.

All in favor?

("Aye.")

CHAIRPERSON MATHIS: Any opposed?

COMMISSIONER MCNULTY: Aye.

CHAIRPERSON MATHIS: You were for, right?

COMMISSIONER MCNULTY: Yes.

CHAIRPERSON MATHIS: So it's five "ayes," just for the record, and we'll go into executive session.

We'll end public section right now. It's 3:04 p.m.

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

* * * * *
(Whereupon the public session resumes.)

VICE CHAIR FREEMAN: All right. It's 3:57. We're back on the record in public session.

We just concluded our executive session and our chair needed to leave to make an appointment, so we're back on the record and we have concluded with our agenda items for today, and so next item on the agenda is adjournment, so the meeting is adjourned at 3:57 p.m.

(The meeting concluded at 3:57 p.m.)
I, MICHELLE D. ELAM, Certified Reporter No. 50637 for the State of Arizona, do hereby certify that the foregoing 264 printed pages constitute a full, true, and accurate transcript of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

WITNESS my hand this 4th day of September, 2011.

MICHELLE D. ELAM
Certified Reporter
Certificate No. 50637