

Morning Session

09/18/2020

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SECRETARY OF STATE

JOCELYN BENSON

INDEPENDENT CITIZEN'S REDISTRICTING COMMISSION VIRTUAL

MEETING

MORNING SESSION

FRIDAY, SEPTEMBER 18, 2020

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IN RE: The Recorded Remote Meeting,
Transcribed by April A. Kurtz, CSR-7347.

1 Remote meeting
2 Held on September 18, 2020
3 Morning Session

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5 COMMISSIONER LETT: Good morning, everyone.

6 As acting chair of the commission, I call this morning
7 session of the second day of this Independent
8 Redistricting Citizens Restructuring Commission.

9 Convening to for anyone watching, the Zoom
10 Webinar is being live-streamed on Facebook and YouTube.
11 For anyone watching on a different platform, than the
12 one they are currently using visit
13 Redistricting@Michigan.gov. Our live stream today
14 includes closed captioning. You might already see that
15 we have ASL interpretation available for this meeting.
16 If you are a member of the public, watching, who would
17 like easier viewing options for the ASL interpreter on
18 your screen, please email us at
19 Redistricting@Michigan.Gov and we will provide you with
20 additional viewing options.

21 Similarly, members of the public who would
22 like to access translation services during this webinar,
23 can email Redistricting@Michigan.Gov for details on how
24 to access those during this meeting. Translation
25 services are available for both Spanish and Arabic. For

1 the purpose of the public watching and the public
2 record, I will turn to the Department of State staff to
3 take the commissioners present. And I assume, Sally,
4 that's you, today.

5 MS. MARSH: Thank you, acting chair.

6 Commissioners, please unmute yourselves and
7 say present when I call your name.

8 Anthony Eid?

9 MALE: Anthony sent out a message saying he
10 was rebooting his computer.

11 MS. MARSH: Okay. Great. I'll go on to the
12 next person.

13 Brittni Kellom?

14 COMMISSIONER KELLOM: Present.

15 MS. MARSH: Cynthia Orton?

16 COMMISSIONER ORTON: Present.

17 MS. MARSH: Douglas Clark?

18 COMMISSIONER CLARK: Present.

19 MS. MARSH: Dustin Witjes?

20 COMMISSIONER WITJES: Present.

21 MS. MARSH: Erin Wagner?

22 COMMISSIONER WAGNER: Present.

23 MS. MARSH: James Decker? Sorry, Ed Decker?

24 COMMISSIONER DECKER: Present.

25 MS. MARSH: Janice Vallette?

1 COMMISSIONER VALLETTE: Present.

2 MS. MARSH: Juanita Curry?

3 COMMISSIONER CURRY: Present.

4 MS. MARSH: MC Rothhorn?

5 COMMISSIONER ROTHORN: Present.

6 MS. MARSH: Rhonda Lange?

7 COMMISSIONER LANGE: Present.

8 MS. MARSH: Richard Weiss?

9 COMMISSIONER WEISS: Present.

10 MS. MARSH: Steven Lett?

11 COMMISSIONER LETT: Present.

12 MS. MARSH: Let's see if Anthony is back with
13 us yet. It doesn't look like it quite yet.
14 12 Commissioners are present.
15 There's Anthony. Anthony, can you hear us?

16 COMMISSIONER EID: Yep. There we go. I don't
17 know what happened. It was working and it stopped
18 working.

19 MS. MARSH: All good. Will you say present
20 when I call your name?
21 Anthony Eid?

22 COMMISSIONER EID: Present.

23 MS. MARSH: All Commissioners are present.

24 COMMISSIONER LETT: Thank you. I understand
25 this morning that we do not have anybody for public

1 comment, is that correct, Sally?

2 MS. MARSH: That's correct.

3 COMMISSIONER LETT: Just a few notes about
4 public comment. For those watching on Facebook, YouTube
5 or other platforms, because this is a virtual meeting,
6 members of the public have to sign up in advance to
7 address the commission. If you want to do that, you can
8 go to the -- either through Facebook, YouTube, I
9 believe, and, of course, Redistricting.Michigan -- or
10 Redistricting@Michigan.Gov.

11 When you sign up, you will have 90 seconds to
12 present or say whatever it is you want to say, and the
13 comments will be on a first-come/first-serve basis. So
14 the -- the way you sign up, or the -- the place you sign
15 up, will be the place that you will talk.

16 To those members participating in public
17 comment, as I said, you will have 90 seconds to address
18 the commission, either in the morning or afternoon,
19 depending on when we're meeting. The -- if you want to
20 submit your thoughts to the commission or participate in
21 public comment in an upcoming session, you can email the
22 office at Redistricting. -- @Michigan.gov, and we will
23 provide your written thoughts to us, the commission.
24 Public comment sign-up links are also posted on
25 redistricting Michigan social media, such as Facebook,

1 Twitter, @redistrictingMichigan.

2 Since we do not have any public comments, we
3 thought we could take this time, I believe, to kind of
4 introduce ourselves more thoroughly to the public. We
5 did that amongst ourselves yesterday, before we started.
6 And so I will call -- I will -- I will actually start
7 and kind of introduce myself, and then I'll call on the
8 other members to give a brief introduction.

9 As I -- if you're watching on -- on Facebook
10 or YouTube, I'm assuming that you see my name. It's
11 Steve Lett. I live in the -- Interlochen, up by the
12 Traverse City area. I am an attorney, have been an
13 attorney for a long time. And primarily, I do
14 mediations and arbitrations. And now, from yesterday's
15 meeting, it looks like I will have a full-time job doing
16 redistricting for the State of Michigan.

17 With that, I would move on to Anthony. Tell
18 the audience a little bit about yourself, Anthony.

19 COMMISSIONER EID: Hey, everyone. I'm Anthony
20 Eid. I'm an aspiring orthopedic surgeon. I'm two
21 years into my medical education. Let's see. I went to
22 Wayne state University for undergrad and got a degree in
23 biology and a degree in psychology. And I did my
24 master's degree over there as well. My free time, I
25 like to volunteer, I like to read. Yeah. And that's

1 about it. I --

2 COMMISSIONER LETT: Okay. And next will be
3 Brittni.

4 COMMISSIONER KELLOM: Good morning, everybody.
5 It's a pleasure to be here again for our second day of
6 the meeting. Officially, my name is Brittni Kellom. I
7 am -- I shared yesterday, I'm a native Detroiter, very
8 passionate about my city, but also a proud Michigan
9 citizen. I love, love, love music, culture; not much of
10 a TV show, but the type that has like a few things that
11 they like to watch on networks.

12 I find myself very busy and enthralled with
13 community engagement, the work that I do with youth and
14 adults who work alongside youth in my spare time. That
15 is kind of my favorite thing to do, is to connect with
16 people and create safe spaces where folks have a voice.

17 I -- it says surprising or improbable facts.
18 So I have lived these 34 years without breaking a bone.
19 And I hope that that doesn't happen any time soon. I
20 think yesterday I -- oh, I also went to University of
21 Michigan and Pittsburgh College in California.

22 I -- yesterday was great for me, especially
23 hearing from the Arizona and California Commissioners,
24 because it really made things more salient, and because
25 I'm an -- an observer, the information gave me things to

1 kind of mull over. And I'm really excited about the
2 opportunity to create a collaborative environment and
3 one where all -- each of the Commissioners have a voice.

4 COMMISSIONER LETT: Thank you, Brittni.
5 Cynthia?

6 COMMISSIONER ORTON: Well, I live in Battle
7 Creek, Michigan right now. I am a student, studying
8 administrative assistance. And one of the prompts says
9 a favorite musical band. I don't really have a favorite
10 band, but I love '80s music, almost all '80s music. I
11 love to travel.

12 And what was my favorite part about yesterday?
13 I just have to say that this was all kind of unknown.
14 So it was a little -- I was a little anxious about it,
15 but seeing everything come together yesterday and
16 meeting each of the Commissioners, and just the support
17 team that is helping us, it was really great. And I
18 love being a part of this. I'm very excited to see what
19 we can accomplish.

20 COMMISSIONER LETT: Thank you, Cynthia.

21 This is Doug.

22 COMMISSIONER CLARK: Yes, I'm Doug Clark. And
23 I live in Rochester Hills, Michigan. And I have moved
24 to Michigan back in 1977. I moved here from Washington,
25 D.C., where I had gone to graduate school. And then

1 prior to graduate school, I was in the military for four
2 years and came out as a captain.

3 When I moved here, I hired into General Motors
4 and worked there. And I've been in the management
5 position at General Motors, electronic data systems, and
6 at Hewlett-Packard before I finally retired about 10
7 years ago.

8 So, now, I golf and travel. I generally
9 travel to Dallas, Huntington Beach, California and
10 Washington, D.C. area. I spend most of my time there
11 when I do travel.

12 Yesterday's session was good. I -- I really
13 enjoyed listening to the people from California and
14 the -- and the individual from Arizona. I got a lot out
15 of that. And hopefully, we'll be able to tap into them
16 in the future, if we need to get some advice and
17 counseling from them. So, thank you.

18 COMMISSIONER LETT: Thank you.

19 Dustin?

20 COMMISSIONER WITJES: Let's see here. So,
21 again, my name is Dustin. I'm from the Ypsilanti area.
22 I go to Eastern Michigan University right now for a
23 master's degree in mathematics.

24 As far as my favorite musical band, movie or
25 TV show, right now, I've been watching Hannibal, as well

1 as Black List, and those are by far two of my favorites
2 right now.

3 A surprising fact is I hold a private pilot's
4 license with an instrument rating. I originally went to
5 school to be a pilot, but that got a little too
6 expensive.

7 So, and then as far as yesterday goes, all of
8 the panelists showing their insights into everything
9 that they've done in the past, as well as giving advice
10 on what to expect, I've taken everything to heart, took
11 some extensive notes, and I just look forward to working
12 with all of you and getting the districts drawn in a
13 fair way.

14 COMMISSIONER LETT: Thank you, Dustin.

15 Erin?

16 COMMISSIONER WAGNER: Hello. My name is Erin
17 Wagner. I have lived in Michigan, born in Michigan. We
18 -- my husband was military, so we have lived in
19 California, South Carolina, North Carolina, Georgia.
20 Moved back to Michigan in the '90s. I am one of eight
21 children. I have six myself. I don't have a favorite
22 music band. I do enjoy all eras of music.

23 Something new that I learned yesterday, like
24 Cynthia, I was a little anxious having not done anything
25 like this ever before. But after listening to the

1 panelists yesterday and getting a little feel for what
2 they went through, I feel a little better about it.

3 Like Dustin, I took extensive notes, and I am
4 really looking forward to going on this journey with
5 everyone. Thank you.

6 COMMISSIONER LETT: Thank you.

7 James?

8 COMMISSIONER DECKER: Hi. I'm Ed Decker. I
9 work for General Motors. I'm a laboratory test
10 engineer. So I have been in Michigan my whole life;
11 born and raised here.

12 And as far as the committee -- or, I'm sorry,
13 the commission, it looks like we have a pretty good team
14 here, so I'm very encouraged by that. And, you know, I
15 welcome the opportunity to -- to try to help redistrict
16 Michigan in a more fair way to -- to help people out.

17 So I enjoy traveling. My kids are grown and
18 doing quite well for themselves, so that makes me very
19 happy. And that's pretty much me. Thank you.

20 COMMISSIONER LETT: Thank you.

21 And I will -- I will try to remember your
22 first name, Ed.

23 COMMISSIONER DECKER: Okay. Thanks, Steve.

24 COMMISSIONER LETT: Janice?

25 COMMISSIONER VALLETTE: Hi. My name is

1 Janice. I live in Highland, Michigan; have always lived
2 in Michigan. I am a big TV fan. I have Netflix and
3 Hulu and Prime. I really like being able to watch
4 programs when I want to. I married my high school
5 sweetheart. We have two children. One lives in Oscoda,
6 the other lives in Ann Arbor. I have four
7 grandchildren.

8 I, too, my favorite part was listening to the
9 people from Arizona and California. I really -- they
10 really got me going, and I'm really anxious to start
11 this process. And that's it.

12 COMMISSIONER LETT: Thank you, Janice.

13 Juanita?

14 COMMISSIONER CURRY: Hi. My name is Juanita
15 Curry. I was just thinking back on all the things I
16 didn't say yesterday. But I am a widow with two
17 children. I have a son and a daughter. Plus, I am a
18 specialized foster parent, where I adopted four
19 children, but raised about 30 children in my life. Some
20 from zero -- from the time they were born 'til now, and
21 I enjoyed that. It was making a -- made a big
22 difference on a lot of children's lives.

23 I also have eight years at Wayne State. I say
24 that because I -- I love studying and I'm looking
25 forward, one day, to maybe going back and maybe taking

1 up a couple more classes. But I spent eight years at
2 Wayne State, got my associate's at Wayne County
3 Community College.

4 I'm very -- I love home. I love being at
5 home, enjoying home and family, church, work, and just
6 about it. I'm just a regular, enjoying life person.
7 Thank you.

8 COMMISSIONER LETT: Thank you, Juanita.

9 MC?

10 COMMISSIONER ROTHORN: Morning, everyone. So
11 my -- so my name is MC. I do -- my first name is
12 legally just the letter M. I don't know if that's a
13 surprising fact, but my -- yeah, the long version of my
14 name is MC.

15 I think I -- yeah, I -- I spend a lot of time
16 in our garden. We -- I live in a neighborhood that is
17 intentional. Like my neighbors and I live here because
18 we -- we want to live here and get through all of the
19 issues, so we have a large garden together. We call it
20 a garden community. So my family and I spend a lot of
21 time in the garden. And -- and, right now, it's garden
22 season. And if you hear loud stuff, it's -- it's
23 because my office here is next to, yeah, the kitchen,
24 where we are canning and -- and doing some other cooking
25 and baking and things.

1 And so that means that we don't spend a lot of
2 time in front of the TV this -- this time of year. But
3 we -- yeah, we like to watch movies and stories. And I
4 think -- I'll say that my music -- my -- one of my
5 daughters is -- is playing violin, so we -- and
6 sometimes it's called the fiddle. So I'm learning a lot
7 of genres, like I guess not just violin, but also fiddle
8 music. So blue grass and -- and classical.

9 And then I do read a lot, too. My other
10 daughter -- my other daughter is up at Northern Michigan
11 University in the UP, Marquette, and is reading Don
12 Quixote right now, so -- so I'm reading alongside trying
13 to catch up, so when she comes back home, I can -- I can
14 read alongside it with her or talk about it with her.

15 And then, yeah, yesterday, I think the -- what
16 I learned, I suppose, is that I might -- I -- I worked
17 with MSU student housing cooperative. I'm an
18 accountant.

19 There goes the beep. Sorry.

20 I work with the MSU student housing
21 cooperative as an accountant and doing more or less
22 property management. But I -- my job is a 40-hour a
23 week job, and I have asked for a leave because I do want
24 to take -- I do think this as an incredible opportunity.
25 It looks like I'm going to take a six-month leave rather

1 than a 12-month leave, based on what we talked about
2 yesterday. So I'm excited to -- to spend, you know,
3 excited doing this full time, but I'm -- I'm sad that
4 I'll have to leave my workplace. Or not have to.
5 We'll talk about it later. And I'm talking too much
6 again. Sorry. Check.

7 COMMISSIONER LETT: Thank you, MC.
8 Rhonda?

9 COMMISSIONER LANGE: Good morning. I'm
10 Rhonda. I'm a real estate broker from Reed City, very
11 small town, as I said yesterday, born and raised. I am
12 a U.S. Navy veteran. TV shows, I don't watch TV, to be
13 honest. And when I do, it's more of the older shows,
14 Gomer Pyle, things like that.

15 Yesterday, I have to admit, I think my
16 favorite part yesterday was actually meeting my fellow
17 Commissioners, getting to know everybody a little bit
18 more and seeing the wide range of backgrounds that
19 everybody has. I really look forward to working with
20 everybody over the next year and hope we do good things.

21 COMMISSIONER LETT: Thank you.
22 Richard?

23 COMMISSIONER WEISS: Richard Weiss. I live in
24 Saginaw. I spent two years in the service. Came home,
25 worked for General Motors 30 years. Retired from there.

1 In my spare time now, I guess I call it handyman work.
2 I also make homemade wine. I enjoy watching movies.
3 Some TV shows; not too many. I have two wonderful
4 grandchildren.

5 Just yesterday, I was very interested in the
6 speakers that we had and meeting all of my Commissioners
7 and hopefully looking forward to meeting them personally
8 sometime in the future. Thank you.

9 COMMISSIONER LETT: Thank you.

10 We still have enough time, and nobody wanted
11 to say what is surprising and improbable about
12 themselves. So I'm gonna run back through the list.
13 And, again, I will start.

14 And what is improbable or surprising about
15 myself is that I played Elwood P. Dowd in Harvey at the
16 old time players up here. So I have a dramatic
17 background, so to speak.

18 Anthony, surprising?

19 COMMISSIONER EID: Thanks, Steve.

20 You know, I actually just realized I -- I
21 missed most of the prompts here, so I will just do them
22 all from the top.

23 So, as far as favorite band goes, so I'm a
24 really big fan of like, very, like, lyrical
25 introspective hip-hop music. And, you know, we don't

1 have a lot of that these days on the radio, very few
2 good artists. So most of the stuff I listen to is from
3 like the '90s and early 2000s.

4 As far as yesterday goes, I really enjoyed
5 the -- the panels from Mr. Chamberlain and Mr. Glia. I
6 think they really -- they really give us a lot of
7 insight as to things we have to worry about in the
8 future.

9 And improbable fact. Let's see. Well, I told
10 you guys yesterday, I'm kind of a nerd, and I -- I play
11 video games a lot. Back in undergrad, I -- I was pretty
12 good. I -- especially at fighting games, you know,
13 things like Street Fighter, Mortal Combat, and stuff
14 like that. So there's this huge tournament every year.
15 It's a worldwide tournament that takes place in Las
16 Vegas, called EVO. And I qualified for that and was
17 able to go to Vegas and compete. I didn't get very far,
18 but I have this one story about this -- this person.
19 And it's kind of what's great about fighting, it really
20 brings people together. But this person, one of the
21 opponents there, he -- he was completely paralyzed from
22 the neck down, and he was playing the games literally
23 with his -- with his mouth, with his cheek and with his
24 tongue. And he -- he was better than me, just using his
25 face to -- to control the characters on the screen. So

1 I thought that was pretty interesting.

2 COMMISSIONER LETT: Thank you, Anthony.

3 Brittni, something surprising, something
4 unusual about yourself.

5 COMMISSIONER KELLOM: I'm stalling a little
6 bit. I was trying to think the whole time.

7 So, oh, I don't know how surprising this is or
8 unusual, but as a -- a child, dancing and competitive
9 cheer was my love language on top of sports. I was a
10 complete Tomboy, kind of still am. So I was a part of
11 The Nutcracker at the Opera House here in Detroit. The
12 Russian Nutcracker, I danced in that. So that was
13 pretty -- that was pretty cool. It was a once in a
14 lifetime opportunity.

15 I also realized I didn't tell folks what I
16 did. So I am a trauma practitioner. I work at a
17 survivor law clinic, so I work alongside victims of
18 violent crimes. And I'm the Executive Director of a
19 non-profit.

20 So, yeah, my surprising fact is I danced in
21 The Nutcracker and I have never broken a bone.

22 COMMISSIONER LETT: Thank you.

23 Cynthia?

24 COMMISSIONER ORTON: Well, I have to say, if I
25 was in any other company, my improbable fact about me is

1 I'm a Redistricting Commissioner in Michigan. But,
2 other than that, I -- I also -- it's hard to think of
3 something that is surprising about me, but I guess maybe
4 people wouldn't guess, but I speak three languages.

5 COMMISSIONER LETT: There you go.

6 Doug?

7 COMMISSIONER CLARK: Well, what's surprising
8 about me is I collect baseball cards, and I've collected
9 them since I was five years old. And I have cards going
10 back to 1952 era, which, when my friends come over and
11 take a look at them, and every one of them tells me the
12 same thing, they used to have cards like this, but their
13 mother threw 'em out.

14 (Laughter)

15 COMMISSIONER CLARK: And I told them, you need
16 to get control over your mother. So it's a good
17 collection. I've got 28 binders. 26 are baseball,
18 one's old football cards, and some are the original
19 Topps hockey cards in their first year that they -- they
20 published them, which is 1954-55 season with Gordie-
21 Howe, Terry Sawchuck, DelVecchio and Lindsey.

22 COMMISSIONER LETT: Okay. Thank you.

23 Erin?

24 COMMISSIONER WAGNER: Hello, again. I guess
25 surprising, I'm a thyroid cancer survivor. That was not

1 fun at all. And I also have a teenager home sick, who
2 is currently watching this on YouTube, I guess. And so
3 if you see over this way, he's showing us -- showing me
4 that we're on YouTube. So I'm just surprised he was
5 actually interested in this. So, thanks again.

6 COMMISSIONER LETT: Ed?

7 COMMISSIONER DECKER: Um, I have to be that
8 guy. There's, you know, surprising is probably not an
9 adjective anybody would ever use for me. I'll have to
10 say that serving on this commission is probably the most
11 surprising thing that I could have seen myself doing.

12 I know this is probably unheard of, but, you
13 know, as an engineer, I'm sort of introverted. So this
14 is a big step out for me, and I -- you know, I'm just
15 looking forward to it. So I will leave it at that.

16 COMMISSIONER LETT: Okay. Thank you.

17 Janice?

18 COMMISSIONER VALLETTE: I, too, think that the
19 most improbable fact about me was that I also made it
20 through the process and on the commission. So, I
21 thought -- tried to think of something else, but I guess
22 I'm just pretty boring.

23 (Laughter)

24 COMMISSIONER LETT: I doubt that.

25 Juanita?

1 COMMISSIONER CURRY: Yes, hi. My favorite TV
2 show is probably The Price is Right, the game show I
3 like, and Family Feud. The most surprising or
4 improbable fact about this is the fact that I did make
5 it through the -- this job to get, and what is really
6 surprising, I think I hit the ceiling when they called
7 my name, and so that was pretty good.

8 I guess the -- what -- what was something new
9 that I learned was the fact that how gratifying the
10 speakers talk, how gratifying they thought this job was,
11 and so I'm looking forward to that. And that's about
12 it.

13 COMMISSIONER LETT: Thank you.

14 MC?

15 COMMISSIONER ROTHORN: My name is the long
16 version. My short version -- my real given name is M,
17 first name. I'll leave it at that.

18 COMMISSIONER LETT: What are you -- what are
19 you baking?

20 COMMISSIONER ROTHORN: It's a -- it's a
21 sourdough starter that -- yeah, so I guess it will be a
22 loaf of sourdough bread.

23 COMMISSIONER LETT: Okay.

24 Rhonda?

25 COMMISSIONER LANGE: I think I'm in the same

1 boat. I really can't think of anything surprising or
2 improbable about myself. I'm kind of an open book, so I
3 can't think of anything that would surprise anybody,
4 like I said. But I will tell you, and I discussed this
5 with some of the people this morning, I have a severe
6 phobia of bats.

7 (Laughter)

8 COMMISSIONER LETT: Okay.

9 Richard?

10 COMMISSIONER WEISS: I've had a lot of time to
11 think about this since the other speakers. Like Ed and
12 Cynthia, I guess the big surprise when I tell my friends
13 that I'm gonna be a little bit busy. I'm on a
14 commission. You what? You where?

15 So that's about it, I guess, other than making
16 wine on the side, which is pretty simple, pretty cheap
17 to do, actually. So that's about it, I guess.

18 COMMISSIONER LETT: You make Chardonnay?
19 Rose? Syrah?

20 COMMISSIONER WEISS: Well, we've made quite a
21 few different ones. Most of 'em is Concord grape,
22 because a gentleman has a lot of grapes. And then I
23 have some peach trees we've made wine with. We've made
24 raspberry, blueberry, apple, pear; pretty -- pretty much
25 anything you make it out of, we have made it, so...

1 COMMISSIONER LETT: Okay. Thank you for your
2 comments, everyone. It's always good to find out what
3 the -- our Co-Commissioners do and have done.

4 I think we're up to 9:30, which is the time
5 that we're going to start our first panel.

6 MS. MARSH: Acting chair, would you mind if I
7 hop in quickly to make sure the panelists technology is
8 working?

9 COMMISSIONER LETT: No, I was getting right to
10 that. Go right ahead.

11 MS. MARSH: Thank you very much.

12 So for the public watching who maybe didn't
13 join us yesterday, I want to thank you all in advance
14 for your patience and understanding as we do this live
15 and virtually at the same time. So I'm gonna talk to
16 our panelists, upcoming panelists, really briefly and
17 just make sure we can see and hear them.

18 So, Tom and Ellen and Justin, if you all
19 wouldn't mind turning on your cameras and your
20 microphone and -- and saying hello to make sure we can
21 hear you.

22 TOM IVACKO: Hello, Sally.

23 JUSTIN LEVITT: Hello, everybody.

24 ELLEN KATZ: Hi, everyone.

25 MS. MARSH: Fantastic.

1 And as a reminder to our panelists, if you
2 have trouble sharing your slides, we're able to do that
3 for you so -- so we can make that adjustment on the fly
4 if needed.

5 Thank you, acting chair. Back to you.

6 COMMISSIONER LETT: Thank you, Sally.

7 All of the panelists have checked in. They
8 have their cameras on, they look lovely, they sound
9 great, and we are anticipating a very informative and
10 educational panel discussion.

11 The moderator is Tom. And you pronounce it
12 Ivacko?

13 TOM IVACKO: Ivacko.

14 COMMISSIONER LETT: Ivacko.

15 Tom, take it away.

16 TOM IVACKO: Thank you, Steve.

17 And good morning to all and welcome to our
18 session on Redistricting 101. I'm Tom Ivacko with the
19 center for local, state at the University of Michigan.
20 And as a lifelong Michigander, it is a great honor to
21 join you today.

22 I'd like to start by expressing my sincere
23 gratitude, first to our 13 Commissioners for taking on
24 this truly great responsibility to draw Michigan's new
25 districts and help chart a new pathway for this critical

1 work. You are inspiring in a very sincere way.

2 Thanks, also, to Secretary Benson and her team
3 at the Michigan Department of State for their dedication
4 to the success of this new approach. And finally,
5 thanks to our expert panelists and to those of you
6 joining us online today.

7 So we're this morning to try to help the
8 commission begin its work with a solid foundation of
9 knowledge about a few of the key legal aspects of
10 redistricting. And so we are fortunate to have two of
11 the nation's leading experts on redistricting law
12 serving as our panelists today. And we'll turn it over
13 to them in just a few moments.

14 First, we will hear from Professor Ellen Katz,
15 University of Michigan Law School, who will provide a
16 historical perspective on how we got to where we are
17 today, why the Voting Rights Act matters, and why the
18 requirement for equal population across districts also
19 matters.

20 Following Professor Katz, we will hear from
21 Professor Justin Levitt from Loyola Law School, who will
22 describe more about the equal population mandate, talks
23 about issues of race and ethnicity, and other
24 requirements of both the federal and state levels and
25 how to consider trade-offs across those requirements.

1 Each of the panelists will speak for about 10,
2 12 minutes, or so, and then we'll just have an open
3 conversation where you Commissioners can follow up on
4 issues of particular interest or anything that -- that
5 wasn't clear. And our panelists can dig in a little
6 deeper into these key legal aspects of redistricting.

7 Commissioners, you can submit questions, as
8 you know, through the chat feature at any point
9 during the -- during the session. And when we get to
10 the Q&A portion, you can just unmute yourself and ask
11 questions interactively if you prefer. In that case,
12 please just raise your hand either through the Zoom
13 feature or through the camera, and we will call on you
14 as soon as possible.

15 We really hope that this will be just an open
16 conversation going back and forth. I won't take much
17 more time here at the start, except to say that this --
18 this is truly a historic day for Michigan. Numerous
19 studies have found that democracy is in decline in many
20 ways and for many reasons, both in the United States and
21 around the world.

22 And, of course, gerrymandering is one of those
23 reasons. It's been a flaw in the American Democratic
24 system since the very beginning, so it's a very hopeful
25 thing that the voters of Michigan overwhelmingly decided

1 it was time for change, to take a new approach to
2 redistricting that has great promise to help improve our
3 democracy in the years and decades to come. And it's a
4 great sign, too, that we had over 9,000 volunteers take
5 on this challenge. And that when your names were
6 called, each of you answered that call. And also that
7 you're still here on day two.

8 So, with that brief introduction, let's hear
9 from our expert panel. We'll start with Professor Ellen
10 Katz. Ellen is the Ralph W. Aigler, Professor of Law,
11 at University of Michigan Law School. She writes and
12 teaches about election law, civil rights and remedies,
13 and equal protection. Her work addresses questions of
14 minority representation, political equality and the role
15 of institutions in crafting and implementing anti-
16 discrimination laws.

17 Professor Katz has published numerous
18 articles, including an influential empirical study of
19 litigation under the Voting Rights Act. The rest of the
20 impressive bio statement is in your material, so I will
21 stop there, except to note how great that she's here
22 with us today.

23 Ellen, the screen is yours.

24 ELLEN KATZ: Thank you so much, Tom.

25 And just before I start, I will ask Sally, I

1 will ask you to share my slides instead of me. I know
2 how to do it, but my students keep observing that I do
3 something a little wrong each time. So, if you do that,
4 that would be terrific. And I'll join Tom --

5 MS. MARSH: No problem at all.

6 ELLEN KATZ: Great. Thank you.

7 I'll join Tom in thanking all the
8 Commissioners. I came on a little early and heard all
9 your introductions, and I did want to express my thanks
10 to you for the time and energy you are devoting to this
11 new form of governance in Michigan, so thank you for
12 that.

13 And thank you to Secretary Benson and the work
14 her team has been doing to put this together to
15 operationalize the amendment to Sally and the other
16 organizers here today. And also thank both Tom and
17 Justin. I know Justin for a long time. It is -- I
18 always learn from him and I also have come to realize
19 it's always fun to have a conversation with him. So I'm
20 looking forward to that today. And, Tom, thank you for
21 steering our ship.

22 I'm gonna talk a bit, some background about
23 the Voting Rights Act and how it came to be, what it is
24 at this point in time. Some of this may be familiar for
25 a number of reasons. So I'm gonna start a long ago with

1 the 15th amendment, ratified in 1870, which was bar
2 discrimination on the basis of race with the right to
3 vote, and yet gave -- was followed by relentless efforts
4 by jurisdictions in the south, but not -- not
5 exclusively in the south, to disenfranchise black
6 voters.

7 The constitutional conventions held in every
8 southern state, beginning in 1890, adopted a host of
9 disenfranchising techniques, the grandfather clause, the
10 literacy test, the bold tax, and also sanctioned the use
11 of fraud and violence to block people from -- to block
12 first black men, and then black citizens generally from
13 voting.

14 Sally, if you would put up the first slide, I
15 will show some numbers and the consequences of these
16 efforts a century on.

17 This is -- this is a chart that was part of
18 the record when the initial Voting Rights Act was
19 considered and then -- then adopted by Congress in 1965.
20 And it shows a breakdown in Alabama of white population
21 registration percentages in comparison to black
22 population percentages. And if you look at the
23 numbers -- I won't go through each of them -- but you
24 see many of the counties have black participation in the
25 single digits. And this is the legacy of those

1 obstacles to participation that were put up, many of --
2 many of which remained in place in the early 1960s when
3 these numbers were collected, and gave rise to an
4 observation. And the underlying spirit of the Voting
5 Rights Act, in fact, that even when litigation began in
6 earnest in the 1950s from the justice department, late
7 1950s, to go after some of these discriminatory
8 techniques, pulling one down and finding them to be
9 unconstitutional, changing little on the ground, because
10 what happened is the jurisdiction simply erected another
11 barrier or obstacle to participation.

12 So I'm -- I -- I want to click, and I asked
13 you to click for me. Sally, if you go to the next --
14 the next --

15 So these are some pictures that may be -- may
16 be some photographs that may be familiar to you.
17 They are -- this is Congressman John Lewis, long before
18 he was a Congressman, as a very young man, leading the
19 protest in Selma, Alabama across the Edmund Pettus
20 Bridge. This was after efforts to register voters and
21 Selma proved to be difficult and a concerted effort of
22 white elected officials presenting black people from
23 voting in Selma and elsewhere.

24 This protest -- the bridge is famously
25 documented in the photos that follow. You can go

1 through the next couple.

2 The protesters met white state troopers on the
3 Edmund Pettus Bridge. Sorry, I'm looking here.
4 And yeah -- and violent encounter ensued. It's being
5 televised. And the tele -- and the -- the video of this
6 streamed nationwide and shocked -- and shocked people
7 about what happened.

8 You can stop with, yeah, President Johnson
9 here.

10 And it prompted President Johnson to call a
11 joint session of Congress and call for voting rights
12 legislation, which he did. His speech is one of the
13 most famous, I think, of his presidency when he calls
14 for the legislation and famously invokes the language of
15 the Civil Rights Marchers in talking about the legacy of
16 discrimination and the need for all Americans to
17 overcome that legacy. For Johnson to be saying this
18 before a -- a -- a joint session of Congress was quite
19 remarkable.

20 And Congress followed by adopting the Voting
21 Rights Act. And it has a bunch of important provisions.

22 And, Sally, just go to the -- the next slide,
23 which is a dated slide. It's not from 1965, but it
24 highlights the original sort of coverage of the Voting
25 Rights Act.

1 One of the provisions of the Voting Rights
2 Act, and actually one that is not relevant to the
3 commission at this moment, has to do with the divi --
4 the -- the regime Congress put in place to address this
5 sort of relentless discrimination that was taking place.

6 And so what -- what the statute did was set
7 forth a -- a coverage formula. And what it said was if
8 a -- if a jurisdiction had used a tester device in -- in
9 -- to register people to vote, to part -- as a
10 prerequisite to voting, and the number of people who
11 were registered or turned out in the presidential
12 election in 1964 fell below 50 percent. That
13 jurisdiction came to be covered, and that's the language
14 that the statute is going to use, and subject to
15 additional requirements. And pivotal among those
16 requirements was the requirement that before those
17 jurisdictions could change any aspect of their electoral
18 laws, they needed to demonstrate to a Federal Court or
19 to the justice department that the change was not going
20 to be discriminatory within -- with regard to race.

21 And that was crucial, because it prevented
22 this practice that had been well-documented of
23 jurisdiction simply replacing one discriminatory
24 approach with another, so it sort of froze the status
25 quo.

1 And the map that you see here is -- indicates
2 where the -- which jurisdictions ended up being covered
3 by the Voting Rights Act. The dark purple is from the
4 original -- the original statute. The lighter comes
5 from jurisdictions that came in later under amendments
6 to the Voting Rights Act. Congress amended the statute
7 in 1970, and again, in 1975, there's subsequent
8 amendments as well. But these are the two that are
9 important for the coverage formula updating the date on
10 which participation was gonna be measured. So looking
11 at the 1968 presidential election, and again the 1972
12 election.

13 The orange -- at least it appears orange on my
14 screen, shaded areas, represent jurisdictions that were
15 initially covered and managed to bail out making a
16 certain showing that demonstrated a compliance and
17 more -- more -- I'll use the word healthy political
18 participation in jurisdictions and were able to get out
19 -- bailout from the provisions of Voting Rights Act.
20 So, in this instance, this is a map that was used in
21 Shelby County litigation.

22 This whole provision -- and we can talk about
23 this in the Q&A to the extent folks are interested.
24 This is the provision, the coverage formula the Supreme
25 Court strikes down and unconstitutional in the Shelby

1 County decision. It had been carried forward after tat
2 1975 amendment, in 1982, and again in 2006, when
3 Congress amended the statute in Shelby County Supreme
4 Court deemed the coverage formula to be
5 unconstitutional. And by holding that, eliminated this
6 pre-clearance, this -- this regulatory regime that
7 required jurisdictions that had been covered to get
8 Federal approval. It didn't hold the -- the
9 pre-clearance regime unconstitutional, but made it
10 inoperative, because it no longer applied anywhere.

11 What I want to talk about is the elements of
12 the Voting Rights Act that are more relevant to the
13 Commission's work now. That's something that happens --

14 Sally, if you go to the next slide.

15 This may or may not be helpful. I have these
16 stylized diagrams there. And you can see if you -- you
17 can tell me they are not helpful, but I will use them
18 for a moment anyway.

19 By the 1970s, the Voting Rights Acts efficacy
20 was evident in that you see in judicial opinions, courts
21 noting that African-American voters register and vote
22 without hindrance, which is a remarkable statement in
23 places like Mobile, Alabama, where that -- that sentence
24 appears in a Supreme Court decision given -- given the
25 history that was not gotten long before where folks

1 reach the numbers that -- that you saw.

2 And yet, it was observed that being able to
3 register and vote was an essential element to equal
4 political participation, but not clearly a sufficient
5 one. And what happened in the series of cases first
6 brought under the just pure constitutional claims under
7 the equal protection clause, and then later under the
8 Voting Rights Act of the provision, and we will talk
9 about it in a moment, there was an observation that
10 district lines contribute to the ability or inability of
11 voters to participate effectively.

12 And so this picture is meant to represent an
13 at-large elec -- an at-large electoral scheme. The
14 square, the black line, would be the border of a city,
15 with very neat borders, and the red circle is just
16 representing a discreet minority community. And I'll
17 use the facts of Mobile, Alabama, where the Seminole
18 case came out of the Supreme Court in 1980 to sort of
19 just characterize an African-American community living
20 in a concentrated area with the (inaudible) economic
21 perspectives, and a white majority that consistently
22 out-votes the preferences of the black minority and what
23 this picture's meant to represent is a crude abstract --
24 picture of an at-large election. And that was what the
25 Mobile City Commission was using in the 1970s, and

1 actually for decades before that. Meaning, everyone
2 voted for every city commissioner. Everyone -- so -- os
3 to be elected -- no one was elected from a district.

4 And what that meant in a city like Mobile, was
5 that the black community was never able to elect a
6 preferred candidate because their preferences were
7 constantly consistently outvoted by the white majority.
8 And that system was reflected, not just this -- not just
9 the fact that you had a minority community which is
10 consistently outvoted in a majority (inaudible) system,
11 but a whole host of additional facts. The concentrated
12 racial bloc voting that was witnessed, the concentration
13 of black residents in Mobile of government service, the
14 ability of black applicants to access better jobs within
15 the city of Mobile, racial appeals in elections, a lack
16 of services to the black community, affirmative
17 discrimination on the part of city officials, and a host
18 of realms.

19 Every institution, every public institution in
20 Mobile needed to be desegregated by court order, and so
21 on and so forth. And there was a sense and an argument
22 that developed in constitutional law first that there's
23 a problem here, and part of the problem is that line, or
24 the way the at-large system is functioning under
25 particular circumstances.

1 And the thought was --

2 And I'll just ask Sally to go to the next
3 slide.

4 And, again, I apologize if this is not useful
5 to how you think about it. Draw districts, and if the
6 districts had been drawn, then that minority community
7 would be --would constitute closer or, in fact, a
8 majority within a single member district. And thereby,
9 be able to influence the election, get a seat at the
10 table, help to change the political process in a way
11 that is more inclusive.

12 In the Mobile decision, the Supreme Court --
13 there's a series of decisions before that, but in the
14 Mobile decision decided by the Supreme Court in 1980,
15 the Supreme Court held that -- that square, the
16 at-large -- the at-large border or structure, only
17 violates the U.S. Constitution if the folks who drew the
18 line decided to use the at-large structure, did so with
19 racially discriminatory intent and it's developing a
20 line of constitutionalized law that had already been
21 used in other contexts.

22 And the notion being that absent a showing of
23 discriminatory intent, the effect or impact of the
24 structure, the at-large structure in this case, but --
25 or any electoral structure, could not violate the U.S.

1 Constitution.

2 And so this is gonna bring us to the
3 amendments in 1982.

4 Sally, just two more -- three more slides.

5 The next one is just showing a more
6 contemporary problem, which is lines that doesn't
7 submerge the minority community, but fracture it by
8 splintering it among several different districts. And
9 the slide, we can go to the -- this is the decision in
10 Mobile and Ronald Reagan signing the 1982 amendments.

11 And then if you could just bring us to the
12 next one, which will give us -- its a lengthy statute.
13 The language that we end up getting from 1982
14 amendments, which not only extend the regional
15 provisions of the Voting Rights Act, but give us this
16 results-based standard for voting.

17 It's a lengthy standard. It's a lot of words.
18 It's complicated. It's not an easy standard to apply.
19 It applies -- it's a totality of circumstances test. It
20 applies nationwide to any voting standard, practice or
21 procedure.

22 And so standard practice procedure includes
23 things like voter I.D., fellow disenfranchisement
24 provisions. But for our purposes here today, district
25 lines can be a standard practice and procedure. And the

1 key language added in 1982 is the word result. Results,
2 it doesn't have to be intended. It results in a denial
3 or abridgement of the right to vote on the basis of
4 race, and that additional language that you see there
5 has to do with minority provisions protected language
6 minorities added to the Voting Rights Act by Congress in
7 earlier iterations and defined here.

8 And the standard that the minority community
9 has less opportunity, denying opportunity to participate
10 in political process and electoral process than do other
11 majority voters.

12 I can -- I can -- well, less opportunity than
13 other members of the electoral to participate in the
14 political process and to elect representatives of
15 choice. And in assessing that, we want to think about
16 extent to which the members of the community have been
17 elected to public office, but provided there is no right
18 to proportion representation.

19 Sally, I think -- I think I'm talking too
20 much. I want to just add a couple more thoughts here.
21 If you go to the next slide, too.

22 As if that standard was not complicated
23 enough, the next slide is -- reflects the -- shows the
24 factors put forth in the Senate report that accompanied
25 the 1982 amendments that instruct courts, litigants, to

1 think about line drawers, to think about other factors.

2 And here's a list -- there are a lot of them.

3 I won't read them all out loud, but other factors. It's
4 not a pure disparate impact standard, but a sense that
5 other things, when these things, some combination of
6 these factors, a history of discrimination, racially
7 polarized voting, a minority community that has a
8 distinct socioeconomic status, elections that are --
9 reflect racial appeals. I can keep going with all of
10 these factors.

11 There might be a problem. There is something
12 wrong with the electoral system, and the sense that the
13 electoral line, the way the lines are drawn, might be in
14 fact a reason. And where -- where these factors are
15 shown in some combination, no one is required, no one is
16 essential, there would be, or a sense that a court might
17 find liability under the statute when this combination
18 of factors exist.

19 The last slide is just a -- a test that comes
20 out of the Supreme Court decision called Thornburg
21 versus Gingles, where the Supreme Court attempted to
22 streamline to help courts that were adjudicating claims
23 under Section 2.

24 And so the -- the Thornburg versus Gingles'
25 decision, Justice Brennan's opinion famously distills

1 three factors, the Gingles factors, that will guide
2 line drawers, litigants, and when you think about
3 liability under the Voting Rights Act today, and that's
4 just the last slide.

5 The three factors being that the minority
6 community is sufficiently large and geographically
7 compact enough to constitute a majority in a single
8 member district. Sufficiently large, geographically
9 compact, these are words that you'll be using in your --
10 in your work generally. But, here, as a matter of
11 Federal law, if a minority community exists in those
12 terms -- and the second two factors are basically
13 polarized voting. The minority community votes
14 cohesively and the white community votes as a bloc in a
15 way to defeat the preferences of the minority community.

16 Where those conditions attach, say the Supreme
17 Court -- said the Supreme Court, we should be worried.
18 There is a sense that there might be a problem with the
19 district lines. And the jurisprudence, as it develops
20 after that, calls for additional consideration. You
21 still look at those Senate factors, there's additional
22 factors that come to bear, but it is the basis for
23 finding liability under the statute for which a remedy
24 would be required, a different district line would be
25 required to address the lack of equal opportunity that

1 the line had been found to produce.

2 I apologize. I have gone on too long. Let
3 me -- let me just close with this thought: The
4 community of interest, the communities of interest
5 criteria that the commission is going to be considering
6 quite a lot, I think finds expression. And one way you
7 can understand the obligations under the Voting Rights
8 Act, and under Section 2 of the Voting Rights Act, is to
9 understand it as a reflection of Congress's judgment
10 that the conditions that are described in the statute,
11 in the Senate factors and the Gingles' factors that
12 follow, define a community of interest, or a community
13 of interest that is entitled to a voice and
14 representation through particular district lines that,
15 as we navigate this -- this realm and figure out other
16 communities of interest, here's one that Congress has
17 sort of given a considerable amount of guidance and the
18 jurisprudence has developed by courts in the years
19 since.

20 There's tons more to say. I apologize for
21 going over, but let me stop here, give the floor to
22 Justin, and I look forward to your questions and
23 comments.

24 TOM IVACKO: Thank you very much, Ellen.
25 Quick introduction to -- to Justin.

1 Professor Levitt is a Professor of Law at
2 Loyola Law School at Loyola Marymount University. His
3 work engages the law of democracy, including
4 redistricting and election administration. He served
5 from 2015 to 2017 as a Deputy Assistant Attorney General
6 at the U.S. Department of Justice, where he helped
7 support the Civil Rights Division of work on more than
8 120 cases involving voter rights and employment
9 discrimination.

10 Professor Levitt has invited -- been invited
11 to testify before committees of U.S. Senate and House,
12 U.S. Civil Rights Commission, multiple state
13 legislatures and Federal and State Courts. And I'm
14 grateful, as a -- a non-expert on redistricting issues,
15 to note that he maintains the website, All About
16 Redistricting, which I found to be particularly helpful.

17 Finally, Justin has advised, represented and
18 sued officials of both major political parties, and
19 neither party, and those who his partisan preference he
20 does not know, which is to say that he follows the
21 facts. And we're lucky to have him here today to tell
22 us some more about those facts.

23 Justin, take it away.

24 JUSTIN LEVITT: Thanks very much, Tom. And
25 thanks to Ellen for bringing everybody up to speed on

1 the -- the really important history on some of the stuff
2 I'm going to mention as well.

3 You will hear a lot of the similar material in
4 different ways, and maybe that will help you both
5 process and apply what we are talking about.

6 I also want to start, as both Tom and Ellen
7 did, by thanking you. I'm living in California. I've
8 lived on the east coast. I'm now in a state with
9 Redistricting Commission, and I understand you heard
10 from some Commissioners yesterday. You will, no doubt,
11 hear from others as your work progresses.

12 I am also really grateful to you for engaging
13 in this work. It is incredibly important to your fellow
14 Michiganders. It's going to define the representation
15 they receive for the next 10 years, and it's a very new
16 direction for the state. And you all, as the inaugural
17 body, we owe you an enormous thanks, not only in
18 Michigan, but well beyond in -- in stepping forward with
19 this. So thank you for all of your work. I really
20 think it's incredibly important.

21 And I also had the chance to listen to some of
22 your introductions, and it's -- it's very nice to meet
23 such a wonderfully diverse group of people engaged in
24 this Enterprise. Similarly, I also want to thank the
25 secretary's office and Sally, and everybody else who has

1 been involved in helping you prepare.

2 If there's one thing I want to emphasize from
3 what Ellen said, is that you'll get more help. In fact,
4 you will hire more help, some statutes that Ellen
5 mentioned are in fact complicated, but you don't have to
6 navigate them alone. In fact, you shouldn't navigate
7 them alone, because there are people who have spent
8 years, like Ellen has, deep in the weeds of the details
9 who can help you navigate and apply these things
10 faithfully.

11 I want to take a real quick step back and
12 tackle some of the same types of information that Ellen
13 mentioned from a broader perspective about what you will
14 need practically to apply.

15 Ellen talked about the history, which is
16 incredibly important to understand the rationale for,
17 and the reasons for, the current protections of
18 incredibly important Federal statutes, like the Voting
19 Rights Act.

20 For those who are actually applying day-to-
21 day, there -- there may be other ways to understand what
22 it is you are asked to do, and I will take a stab at
23 that. But, again, this not the last time you will hear
24 any of this information. And I also want to make sure,
25 I save plenty of room for questions, just as Ellen did.

1 So I will attempt to share my screen just for
2 a moment. With any luck, you are now seeing a title
3 slide that talks about the very work that you're going
4 to do and that I'm going to discuss. There are, as you
5 know, a number of criteria that you'll be asked to apply
6 in deciding where district lines for Congress and for
7 state legislative office should fall. And that -- I'm
8 going to focus on just two of them, the Federal
9 requirements. You will hear from other presenters over
10 the course of these two-day trainings on some of the
11 state requirements, but I'm also more than happy to talk
12 about any of the criteria, some of which are the same as
13 applied in other states, some of which are very
14 different than that which are applied in other states in
15 the Q&A.

16 I want to focus first on equal population.
17 It's the reason that we redistrict at all. In the '60s,
18 a series of Supreme Court cases said that we have the
19 right to equal representation. That means that every
20 district has to be populated to about the same degree.
21 And that means that once we've done the Census, once
22 we've taken a Census of how many people live where, we
23 redraw district lines all over the country in order to
24 make sure that those lines represent where the people
25 are, that they roughly give the same population in each

1 district.

2 So this equal population requirement is a
3 constitutional requirement and the reason you're drawing
4 lines in the first place. You're called upon -- the
5 Constitution asks you to put a reasonably equal number
6 of people in each district. The mandates come from
7 different places for congressional districts and for
8 state legislative districts. For congressional
9 districts, it comes from Article 1, Section 2 of the
10 Constitution, and that gives you some permission to have
11 small differences in the size, in the total population
12 of each congressional district. But, generally, not
13 very much difference.

14 A recent case from 2012 said, more or less,
15 within one percent deviation from the largest, from the
16 most populous district to the smallest, is going to be
17 generally okay. If it's for a legitimate reason, if
18 you're trying to do other things with the district
19 lines. And that means you have relatively small
20 differences, that's gonna be okay.

21 The mandate for state legislative districts
22 comes from a different part of the Constitution. It
23 comes from the equal protection clause, and that gives
24 you more latitude to deviate from perfectly equal
25 districts, the same population in each.

1 Under the equal protection clause, courts have
2 generally said that if there's less than 10 percent
3 difference from the most populous district to the
4 smallest district, to the least populous district, that
5 the court is not really too troubled about that, as long
6 as, again, the reason for the disparity is a good
7 reason, as long as you're not trying to advantage one
8 political party, for example, by drawing the districts
9 in a -- in a differently populous way.

10 What would I like you to take from these two
11 different requirements? Understand the flexibility and
12 the discretion that you have, and don't try to tie your
13 own hand. It can be very tempting to think that the
14 right answer is to have every district exactly equally
15 populated. But that's going to cause you great problems
16 downstream. And, in fact, California, in the first
17 iteration of our Citizens Commission two decades ago,
18 ran into problems tying their own hands more tightly
19 than the law required them to.

20 Think of the equal population mandate, not as
21 a goal to have every district exactly equally populated,
22 but as a speed limit, as a line that you should try not
23 to go over this 10 percent threshold from bottom to top.
24 The fact that there's a speed limit, the fact that there
25 might be a maximum on any given road, doesn't

1 automatically mean that the minimum is preferable. The
2 fact that you can't drive over 65 on some highways,
3 doesn't mean the right speed is zero.

4 And similarly, I think it's really important
5 to remember that the Constitution contemplates that you
6 will have some flexibility in the population of each
7 district in order to achieve some of the other criteria
8 that Michigan State Constitution and the Federal law
9 asks you to achieve, so give yourself the flexibility
10 that the law gives you.

11 The other big Federal mandate that I wanna
12 talk about is race and ethnicity. And here, this is an
13 attempt to distill some of the very same rules Ellen was
14 talking about, and you'll see where the history shows
15 up, but from the perspective of somebody trying to apply
16 these laws today. And I think I can distill the basic
17 rules on race and ethnicity to three main rules.

18 First, don't set out to hurt voters based on
19 their race or ethnicity. This is both a constitutional
20 command and embedded in the part of the Voting Rights
21 Act that's still around. You heard Ellen talk about
22 this is sort of the pre-history of the Voting Rights
23 Act, that the Voting Rights Act was in response to
24 intentional attempts to hurt voters based on their race
25 and ethnicity. That's still a prohibition, don't do it.

1 There are several ways in which this can
2 happen, and Ellen mentioned some of them. Either
3 drawing district lines through a minority community in
4 order to break up their political power, or packing all
5 of the minority voters in a jurisdiction into one
6 district that is over-concentrating a minority, so that
7 they may be able to elect a representative of their
8 choice in that district, but only that district alone.
9 That is, over-concentrating the majority can also impair
10 the political power of a protected minority. If you put
11 all of the minorities in one district and there are very
12 few minority voters elsewhere, that will dilute their
13 political power elsewhere in the jurisdiction.

14 These prohibitions apply whether the lines are
15 pretty or ugly, whether they're regular or irregular, no
16 matter what the ultimate motive is. If you set out to
17 divide up a minority community, even if it's to achieve
18 something else, or if you set out to over-pack a
19 minority community, even to achieve something else,
20 that's prohibited by Federal law, both the Constitution
21 and Voting Rights Act.

22 So, number one, don't set out to hurt voters
23 based on their race or ethnicity. Number two, comply
24 with the provision of the Voting Rights Act that Ellen
25 mentioned at the very end of her presentation.

1 Under certain conditions, you may have the
2 responsibility to design electoral districts so they
3 provide equitable, meaningful, electoral opportunity
4 based on someone's -- based on a group's race or
5 language or minority status.

6 What does that mean in practice? Because, as
7 Ellen said, the statute itself was long and complicated.
8 It means you're essentially looking for three things.
9 Are there sizeable, relatively concentrated minority
10 communities? Do they have distinct electoral
11 preferences? Did they or do they face discrimination?
12 And if so, can we design districts to give minority
13 communities a fair shot at representation, a really
14 equal chance to be able to elect the representatives of
15 their choice. That's what the Voting Rights Act does in
16 a nutshell.

17 What do each of those things mean? Are there
18 sizeable relatively concentrated minority communities?
19 You're looking for fairly significant groups of minority
20 voters. This is a map of metro Detroit from 10 years
21 ago, 2010. The red or maroon dots represent Anglo
22 voters, the blue dots represent African-American voters,
23 the orange or yellow dots represent Latino or Hispanic
24 voters. And you can see, just by looking, that there's
25 a sizeable, relatively compact minority community in

1 Detroit. You probably don't need a particular map in
2 order to see that or know that about Detroit, but there
3 may be pockets elsewhere in the state that may surprise
4 you, that don't seem like they have extensive minority
5 communities, but in fact do.

6 The patterns of residential location in the
7 country are changing and have changed even over the last
8 10 years. And so one of the things that you will be
9 looking for are pockets of sizeable, relatively
10 concentrated minority communities. And you'll see them,
11 like you see them here. If you ask for data that show
12 where people live based on their race or ethnicity, and
13 that data comes from the Census and from products based
14 on the Census.

15 Second question: Do minority communities have
16 distinct -- pardon me -- electoral preferences? This
17 does not necessarily mean, do minorities favorite
18 Democrats and do other voters favor Republicans? This
19 encompasses distinct preferences within a party. So if
20 African-Americans prefer certain types of Democratic
21 candidates, but Anglo voters prefer other types of
22 Democratic candidates, that's also what the Voting
23 Rights Act means by distinct electoral preferences.

24 How do you know this? It turns out the Voting
25 Rights Act never assumes that members of different

1 minorities have distinct preferences. It requires data
2 and proof.

3 Now, we don't know how people -- how
4 individuals vote, right? I don't know how any of you
5 voted for any particular candidate. I don't know how
6 any of the other voters in Michigan voted for any
7 particular candidate, but there are statistical
8 techniques that look for patterns. And if you trace the
9 racial or ethnic background of the precinct in a
10 particular area, and you see very distinct patterns that
11 show that the more racial or ethnic minorities there are
12 in a precinct, the different preferences they may have,
13 that helps you know whether the racial minorities in an
14 area have distinct preferences or not.

15 When you see a graph like this, which
16 represents the vote shares for particular candidates --
17 this is from Los Angeles, so it's tracking Latino voters
18 in particular precincts -- every circle is a precinct --
19 and when you see the precincts line up, so the more
20 Latino the precincts, the higher the preferences for one
21 distinct candidate, that tells you this is a pretty
22 strong sign that the Latinos in this area have
23 preferences for a distinct type of candidates than the
24 Anglo voters do.

25 You won't be called on to make these

1 calculations yourself, so don't worry about producing
2 this graph, but you will be called on to hire somebody
3 who can, and it's really important to engage them early
4 in the process so that they are able to give you the
5 information you need about whether minority communities
6 that you're seeing have distinct preferences, and
7 therefore, whether you have an obligation to draw
8 districts that reflect those preferences.

9 The third big area is, do -- did under-
10 represented minorities face discrimination that is still
11 lingering or do they currently? Sadly, the case, in
12 many -- in many parts of the country, is that when there
13 are sizeable groups of minorities and when they have
14 distinct political preferences, there is usually
15 discrimination that either was or is in place that
16 helped foster those preferences.

17 This is where you consider some of the factors
18 that Ellen mentioned in the totality of the
19 circumstances, broad social context for the underlying
20 political conditions. If all of these things apply, if
21 you have sizeable groups of minorities, if they have
22 distinct political preferences, if there has been
23 discrimination in the past that still lingers or if
24 there's present discrimination, then the question is,
25 can we draw districts that respond to that population

1 and give an equitable opportunity to elect candidates of
2 choice? That's when you have to draw districts with
3 race in mind.

4 But the third rule tells you how to do that.
5 The Constitution says that race can only predominate,
6 can only be the driving force in how a district looks if
7 there's a really good reason. Compliance with the
8 Voting Rights Act has always been one of those really
9 good reasons.

10 But there's a way that you can keep yourself
11 out of trouble, and I like to -- to present this
12 analogy, just so you remember it, as driving and keeping
13 an eye on the speed limit. If you're driving and the
14 only thing you're looking at, the really predominant
15 thing you're looking at, is the speedometer, because you
16 know it's really important not to speed, you're gonna
17 crash. We all drive all of the time and keep an eye on
18 the speedometer, but we also keep an eye on a lot of
19 other things at the same time. We are looking at the
20 road conditions, we're looking at the weather, we're
21 looking at where we are going. We might have a GPS
22 telling us the directions to get there. You are looking
23 at where traffic is, you're looking at where the car
24 next to you is that's signaling to move over. You might
25 be looking at the radio or the heat or the air

1 conditioning in the car, or what your passengers are
2 doing, and also looking at the speedometer. That
3 doesn't mean that it's unimportant to keep abreast of
4 the speed limit. That doesn't mean it's unimportant to
5 understand what the speed limit is. But we are all
6 really good at considering more than one thing at a
7 time, even when we know one thing is really important.

8 So, as you draw districts to comply with the
9 Voting Rights Act or as you draw districts to
10 acknowledge racial communities of interest in other
11 ways, it's not prohibited to consider race beyond the
12 Voting Rights Act, it's perfectly permissible. In some
13 cases, it's gonna be really desirable.

14 As you consider race or ethnicity, consider
15 other stuff, too. It's really important to comply with
16 the Voting Rights Act, but there are also other things
17 that you'll be asked to do, like draw districts that are
18 relatively compact, like draw districts that have
19 relatively equal population, like draw districts that
20 respond to particular local communities of interest.
21 And if you are responding to each of those things, while
22 also keeping an eye on the racial ethnic composition of
23 the district for Voting Rights Act purposes, then you're
24 not gonna crash.

25 I wanna close, and I really do wanna close, by

1 saying, I'm happy to address these Federal requirements,
2 that's the Voting Rights Act in a nutshell, equal
3 protection in a nutshell, or any of the other state
4 requirements that you have to apply.

5 I want to give you one last thing to keep in
6 mind as you do this work. Watch out for your own human
7 tendencies. They are natural. I have them, you have
8 them, everybody has them. The only way to make sure
9 that they don't get in the way is to think about them
10 and acknowledge them and understand when you may be
11 slipping into them just naturally. Many people, most
12 people, have preconceived notions about what good likes
13 like in a lot of different circumstances.

14 Obviously, one of those areas is race or
15 ethnicity, and tests have shown that when people, all
16 kinds of people, no matter what race, no matter what
17 background, see an array like this, they immediately
18 jump to preconceived notions about whether these people
19 are good or bad, knowing nothing else about them than
20 the picture on the screen. We know that, that's
21 provable in a lot of different contexts, and we do it
22 outside of racial matters as well.

23 So this is a gentleman name Andy Ruiz. I
24 don't know if you all know who Andy Ruiz is. He looks
25 like a buddy of mine, hanging out at home, posing for a

1 camera. This is from his Instagram feed. He's just a
2 regular guy. And if you said he's going to be in a
3 heavyweight boxing match against this gentleman here on
4 the right, you might not necessarily give Andy Ruiz a
5 great chance to win. And, in fact, Anthony Joshua, the
6 gentleman on the right, was given by the voting markets,
7 a 97 percent chance of winning. That is, when people
8 were betting on Andy Joshua coming up against Andy Ruiz,
9 they were betting that Anthony Joshua, the gentleman on
10 the right, would win 97 percent of the time, because
11 they had a notion what they thought a boxer looks like,
12 and that didn't necessarily fit the actual end of the
13 contest.

14 Keep that in mind. That is also true in the
15 districting area. You may have preconceived notions
16 about which of these things are good districts. And I'm
17 here to tell you, some of these do great things, some of
18 these things do awful things, one of these is Thailand,
19 and isn't a district at all. One of them are the
20 boundaries of the city of Los Angeles. Without more
21 information, you can't know whether any of these
22 districts are good or bad under Michigan law, even if
23 you have an instinct about which of these seem like good
24 things.

25 I'll tell you, one of these was drawn to

1 comply with the Voting Rights Act -- actually, several
2 of them were drawn to comply with the Voting Rights Act,
3 are really important districts in their states. So I
4 just want to leave you with that little reminder, with
5 that one thought. I will shut up and return things to
6 Tom and also stop the radio that's going on in the
7 background in the meantime, and I will be right back
8 with you.

9 Thank you very much for the opportunity to
10 talk to you. I really look forward to questions.

11 TOM IVACKO: Thank you very much, Justin, and
12 Ellen again. Thank you, both.

13 Part of the good news is none of us will be
14 charged tuition for access to this information. We
15 really do have two of the nation's leading experts on
16 these issues. And there are a lot of people around the
17 country who would pay a good tuition to be able to talk
18 with these two, so this is our opportunity to -- to pick
19 their brains, and I really do hope we'll have just an
20 open conversation.

21 So I'll start just by checking, opening up the
22 floor, or the screen as it is, if any of the
23 Commissioners have a first question that they would like
24 to -- to put to either Justin or Ellen.

25 Doug, please unmute yourself and take it away.

1 COMMISSIONER CLARK: Yes. My question is
2 directed, I believe, toward Justin would be the
3 appropriate place.

4 I understand the -- the types of things you
5 just talked about. Is there enough data available to
6 support that to make the appropriate decisions? And if
7 there is, what are the types of data that we should be
8 collecting to make that happen?

9 JUSTIN LEVITT: That's a great question.

10 So the answer is yes. Sometimes there will be
11 populations and the data won't support a conclusion that
12 you might assume, right? So I wanna be clear. All of
13 the Voting Rights Act determinations are based on actual
14 facts, just like I closed the presentation with, watch
15 out for preconceived notions. Sometimes you may find
16 that there aren't distinct patterns of voting by race.
17 The important part and the reason for your question is,
18 it's always a good idea to check.

19 And that data come from two main sources.
20 One, the Census. So the Census Bureau will deliver data
21 on race and ethnicity on the number of people on their
22 racial or ethnic background, self-described. You'll get
23 that data -- well, I used to have more certainty about
24 when you get that data. You'll get that data at some
25 point next year, but there's still a little bit of

1 uncertainty about exactly when. There's a fight about
2 whether you'll get it in February or May, or perhaps
3 somewhat later in the summer. But, eventually, the
4 Census data will give you that information on where
5 people are and what racial ethnic background they have.

6 You'll also use local political information,
7 local electoral information. So you'll use actual
8 results of elections from precinct. And you will
9 usually be able to retain a political scientist, someone
10 who specializes in analyzing racially polarized voting,
11 to both direct that data and analyze it. This is
12 usually done with a blend of races. You don't choose
13 just one election to see whether there are distinct
14 patterns of preferences among racial or ethnic minority
15 groups, and so -- or among Anglo groups that happen to
16 be in the area.

17 So you'll ask the consultant that you hire or
18 you'll ask the political scientist that you retained to
19 go find the elections in the area that best show whether
20 or not local racial communities have distinct political
21 preferences. And they'll tell you, yes, we found it,
22 or, no, we didn't find it. But the data exists
23 regardless in order to make that determination.

24 And it exists, by the way, all over the
25 country, so not just in sort of the areas with the worst

1 history of problems that Ellen showed you before. But
2 these sorts of analyses are done all over the country,
3 in big districts and small districts.

4 There was just a case, for example, in
5 Southfield, Michigan that -- or, sorry, in Eastpointe,
6 pardon me. There was just a case in Eastpointe that the
7 Department of Justice brought at the very end of my time
8 there, that had to collect this data in very small town
9 elections for Eastpointe to see whether voting there was
10 racially polarized. And they used elections that the
11 actual community had voted on and they analyzed how
12 people had voted on by race or ethnicity, working up
13 from the voting pile, working down to Census data in
14 order to make that determination.

15 COMMISSIONER CLARK: So you're recommending
16 that we retain some company to do this for us, as far as
17 the collection of data and putting together the data,
18 and then we are the decision-makers on how do we apply
19 that to the redistricting?

20 JUSTIN LEVITT: Yes, that's exactly right.
21 You'll have -- you'll have counsel that will help guide
22 you, legal counsel to help guide you with the how. I
23 suggest that you hire an expert on racially polarized
24 voting to help you determine the what. That's, by the
25 way, a completely standard issue. There are a set of

1 people across the country who do this work repeatedly,
2 and who do it very, very well.

3 One note that I would suggest is get started
4 on that early, because although there are a set of
5 people who do that, there aren't that many of them, and
6 they tend to be retained by all of the other states
7 across the country that are also seeking to do the same
8 thing at the same time. So, to the extent you can book
9 your ticket early, that's -- that's advisable.

10 COMMISSIONER CLARK: And how do we find who
11 these companies -- where these companies are or who they
12 are?

13 JUSTIN LEVITT: So you may wanna start with
14 local university, the University of Michigan. There are
15 many political scientists there who have done this sort
16 of work. There are other universities, obviously,
17 throughout the state, where people have done this kind
18 of work. There are also -- just however you choose to
19 set up your contracting or your bidding, you can put out
20 a proposal for a voting rights consultant, for a
21 racially polarized voting analyst. And you'll see some
22 -- some names with a lot of experience apply, only
23 because there are people who have done this over the
24 course of decades in various cycles who are very
25 familiar with -- with that sort of response for a

1 request for proposal.

2 COMMISSIONER CLARK: Okay. Thank you.

3 TOM IVACKO: Thank you, Doug. Very
4 interesting question.

5 Any other Commissioners with another question
6 at this point?

7 MC, please go ahead.

8 COMMISSIONER ROTHORN: I wanna -- I think the
9 -- the -- the gist of this is about education, right?
10 One of the -- you're helping us understand our -- what
11 we need to know, and one of the tasks that we're gonna
12 need to do is help educate the public so that they are
13 getting -- giving us data, right, and -- and -- that we
14 can actually use. And so it feels like the education
15 piece -- I'm saying that because I think it's about
16 education. I'm asking you both to -- to sort of share
17 more about how you think we might actually help educate.
18 I understand there's websites and different places we
19 can go, but I'm -- I'm also recognizing that I really
20 appreciate, Ellen in particular -- excuse me, Professor
21 Katz, the -- the visualizations that you -- that you
22 were giving us, because I think visualizations are gonna
23 be huge for us.

24 And I under -- my understanding, after reading
25 orientation materials, is that we have to -- in order to

1 make this a transparent process, we have to sort of have
2 a visualization, start with something, and then change
3 it, right? If we're going to have maps and we have to
4 do this in July or after we get the Census data, we get
5 more data, so now is the time to do the education and to
6 understand what it is, and maybe even look at some of --
7 gosh, I think there's -- there may be something -- so,
8 I'm gonna stop. But education, any -- any thoughts on
9 how we can, yeah, use metaphors, like the speeding? You
10 know, I really appreciate the metaphor. And again,
11 visualizations and other things we might use to --

12 ELLEN KATZ: So I'll just offer one thought,
13 and it's not gonna come up -- it won't come up with a
14 visual image, but I think it is important and it comes
15 out of something Justin just said as well. And that has
16 to do with notion, and I think one of the criticisms of
17 the Voting Rights Act that one hears with some
18 frequency, is that it involves these unfounded
19 assumptions that all people in this ethnic group think
20 this way and all people in this group think this way.
21 And actually, Chief Justice Roberts, back in a decision
22 in 2006, (inaudible), involving the Texas redistricting,
23 re-redistricting -- I might use the word fiasco -- in
24 the course of evaluating the Section 2 claim in that
25 case, he -- he responded to this very charge, and said

1 this is no -- no one is making any assumptions about
2 anything. There was a trial, and I believe the
3 language, it's -- it's worth looking at. In a trial,
4 assumptions give way to facts, and there were findings,
5 and out of respect to the District Court judge, and
6 again, we're not talking about a litigation here, one
7 should recognize that the -- the -- you know, the extent
8 to which these weren't unfounded assumptions, but ones
9 that were backed up based on explicit findings of fact.

10 And I think that's a lesson for the commission
11 as well. When you make your decisions, how you present
12 it is one thing, but you're not assuming, you know, in
13 the abstract, people here think this way, people here
14 think that way. No, you're gonna look at hard data and
15 you're gonna make judgments based on the law as it
16 applies, the standards you have been given, and how
17 you're gonna make those conclusions.

18 People can have an argument with you about the
19 judgments you make, but as long as you say, look, this
20 is what we looked and here's the -- the factual record
21 based on which we made these judgments. I actually
22 think, insulate yourself, I don't know -- I think
23 there's an important education function there in making
24 clear the judgments that you're making and the basis on
25 which you are doing that. Because it does -- I don't

1 wanna use the word trigger, but it does -- some of
2 these -- these -- these discussions do spark controversy
3 just by the nature when you're talking about how
4 particular groups think and act. So it's worth to be
5 mindful of exactly what your question suggests.

6 JUSTIN LEVITT: I will also say as a
7 professional educator, you know, Tom as well, we both
8 occupy that zone. You really know that you understand
9 something when you're asked to explain it to somebody
10 else. And you're absolutely right, you will be asked to
11 explain your work to the public, and to members of the
12 public, constantly throughout this period. And so it
13 really helps you know that you've got this, if you're
14 able to communicate, not only what you're doing, but how
15 you're doing it.

16 So it's -- it's a good check for yourselves as
17 well, to make sure that you understand, not only the --
18 the practicalities, not only the why, but you understand
19 how to test the people that you're going to be hiring so
20 that you're exactly, as -- as the first commissioner
21 mentioned, you're taking their information and making
22 decisions rather than just accepting their
23 recommendations as gospel.

24 So I think you'll have a -- a -- a really good
25 opportunity to teach the people of Michigan about the

1 laws that you're following in really a new way, because
2 legislatures in the past didn't always serve this role
3 and that left the districting process unfamiliar to an
4 awful lot of the public.

5 You all are standing in a different place.
6 You're doing this on their behalf and have an
7 opportunity to teach them exactly what it is you're
8 doing. I think that's magnificent.

9 At least in other states -- you probably heard
10 about this yesterday. The public has really appreciated
11 that. The public really welcomes the fact that you are
12 their representatives in this process and you're able to
13 bring them through something that's been completely
14 opaque to most people for a long time.

15 TOM IVACKO: Thank you, Justin and MC. Great
16 question.

17 Brittini has a question.

18 COMMISSIONER KELLOM: Yeah. So I guess this
19 is kind of along the lines of what MC said. It's like a
20 statement that I'm about to make and to help me kind of
21 wrap my head around it.

22 So what I got from yesterday's session with
23 California and Arizona, and then what you all are
24 thinking is this -- this kind of interesting marriage
25 between data and community engagement, because as much

1 as we are hiring folks to explore and advise, and, you
2 know, give us the perspective from the experts from my
3 background and my lived experience, it will be very
4 important to be a commission that believes that it is
5 shared learning. As much as we are learning constantly
6 now that we are also being transparent in sharing that
7 with the public, because that will help them and be
8 engaged and maybe bolster and give new angles on the
9 data that we're being exposed to.

10 As an individual, it's very hard for me to
11 look at numbers and say, okay, especially with my
12 background in psychology. You have to -- you have to be
13 in the midst and connect. And I thought a lot about
14 that after our time yesterday, especially in this
15 virtual space, on what that looks like. So I don't know
16 if you all have any insight on that, and I respect -- I
17 really liked what both of you said, Justin and -- and
18 Ellen, about the -- the history and background. My
19 wheels are just turning on how we can create safe spaces
20 for folks that typically don't get the opportunity to
21 speak in a platform like this, as well as aren't
22 necessarily represented by the facts all the time.

23 ELLEN KATZ: So, I mean -- I mean, my response
24 is simply to agree. I think those are all important
25 considerations. And I -- maybe I'll just add an

1 additional factor that the conditions of the pandemic
2 and the fact that we are all talking through this medium
3 here and not in person adds to the challenge that you're
4 -- you're talking about, and to make sure that as you
5 conduct your hearings and you're listening to people in
6 different places, the very technology and sort of oddity
7 of the way we now all speak to one another, I don't
8 quite know how one compensates for that, but maybe at a
9 minimum just simply being cognizant of the fact that
10 this is an odd way to be having a conversation, and that
11 there are particular communities and people who will
12 find it more challenging than others, and how -- when
13 the commission goes out and talks to people around the
14 state, how -- how that looks when -- I think when this
15 proposal first came up, there was a thought, how many
16 meetings should the commission have, and I, at least,
17 when I heard that, I thought caravanning around the
18 state and, you know, in -- in, you know, middle school
19 gymnasiums, and you're not doing that. So -- or -- and
20 you may not do it at all. We'll see what happens. It's
21 worth the -- I think do a lot of thinking and talking
22 about how to be inclusive about the considerations
23 you're talking about.

24 JUSTIN LEVITT: Yeah, I -- I think that's
25 exactly right. I add I also agree. I think this

1 process -- the outcomes, you're not gonna be able to
2 please everybody. That's a guarantee going in.

3 The point of this commission, I think, was not
4 to have a perfect map. I think the point of this
5 commission was to have a process that worked a lot
6 better for the people of Michigan than the processes of
7 the past. And that's all about engagement. And so, to
8 the extent that you can, again, communicate what you're
9 doing and invite the members of the public in to talk to
10 you about what their concerns are and what their desires
11 are, that helps ensure that people understand that
12 you're trying to be as fair as you can be in the process
13 you're going through; that you're listening to them,
14 even if everybody who talks to you doesn't get all of
15 their way all of the time in the final map. You're
16 never gonna be able to accomplish that, but you have an
17 amazing role to play in your ability to engage them in a
18 way that many people have never been engaged in the
19 redistricting process in the state, to not only explain
20 to them what it is, but to give them real sense of
21 empowerment in helping to speak on behalf of their
22 communities on where they would like to see
23 representation. That's something that hasn't been done
24 a lot. And you all have an immensely important role to
25 play in making sure that happens.

1 (Multiple speakers)

2 ELLEN KATZ: Yeah, I just want to add one
3 additional thing. As Justin was speaking, got me
4 thinking about when you look at sort of the litigation
5 of partisan gerrymandering and the sort of controversial
6 examples litigated, particularly in Federal Court,
7 there's a common narrative that's running through them,
8 which is that one party pushed through a map with no
9 input, no feedback, no public comment, no involvement
10 from the opposing party. And needless to say, the
11 endeavor you're all engaged in right now is, you know,
12 meant to remedy that, but I just was, as Justin was
13 speaking and Brittini was asking the question, I was
14 thinking more about that narrative and how persistent it
15 is in the litigation for decades now. And it is
16 something, this (inaudible) is repeating comments that
17 have been made, to rectify that, and that a perfect map
18 may in fact be one -- again, (inaudible) the process
19 will -- will -- will -- will influence how the map was
20 perceived, and that is important.

21 TOM IVACKO: Thank you, Ellen and Justin and
22 Brittini. Great question.

23 Any Commissioners have -- yes, Cynthia?

24 COMMISSIONER ORTON: So I don't know if this
25 question can be answered here, but we're all

1 inexperienced at this, obviously, so we will hire people
2 and engage people to bring us this data and information
3 and make sense of it. But how can we judge if what's
4 being given to us is complete information and not biased
5 in some way?

6 JUSTIN LEVITT: I think that's a great
7 question. And I think -- well, I can look to the
8 experience of other lay Commissioners in other states,
9 right, people who have not been redistricting experts
10 who have undertaken a very similar journey.

11 The best approach you can have, first of all,
12 is in your hiring, right? Evaluate rigorously as you
13 would with any hire, whether you actually trust the
14 people that you're retaining, and then ask them hard
15 questions. They should be able to answer you. They
16 should be able to give you confidence that they are
17 giving you the data, that they've looked at it in a
18 robust way, that they have evaluated it in a way that
19 makes you feel that they are telling you what's really
20 there and they're not making up stuff that's not.

21 And, most particularly, they shouldn't shy
22 away from you asking hard questions of them. That may
23 be the first flag that -- you know, in the hiring
24 process, that you're not engaging someone who is going
25 to serve you well, if somebody sort of shunts away the

1 questions you got.

2 So I think it's -- it's much the same process
3 as -- as hiring a contractor for the house or hiring,
4 for me, an auto mechanic, or hiring a -- a doctor, or
5 going to a lawyer in an area that I don't know, right?
6 Any expert has a field of expertise. And the reason
7 that I might hire them for a job is because I don't have
8 that expertise personally, but I can ask them enough
9 questions about what they are doing to get some
10 confidence that they're giving me a good answer. And I
11 don't think this role is -- is actually much different.

12 ELLEN KATZ: And I guess I will add to that.
13 I have been teaching for a long time now. And one of
14 the wonderful things about teaching, and my students in
15 particular, is they ask great questions. And I can
16 teach a case 20 times, and then a student will ask a
17 question, and I'll be like, whoa, I don't know.

18 And I think you should trust yourself. So,
19 yes, ask the hard questions, but also ask the questions
20 that maybe you think this is obvious, but turns out
21 those are deeply profound questions. And if you -- you
22 need to -- you need to understand it and you may be
23 actually asking something that the person who's speaking
24 might not have considered and needs to consider.

25 So, I mean, I would urge you to ask a lot of

1 questions and trust yourself in the process. You're
2 vested with this authority with the knowledge that
3 you're not bringing prior expertise to this -- to this
4 -- to this situation.

5 In fact, I believe you would have been
6 disqualified had you brought that expertise with you, so
7 you need to -- you need to trust yourself. And
8 certainly, do not apologize. The best questions I've
9 gotten from students were always prefaced with, you
10 know, this may be a silly question, but, so please just
11 erase that language, do not ask that and just go
12 forward, and if you have the question, you should ask
13 it.

14 And if you have no questions, you should
15 challenge yourself and say, why don't I have questions,
16 and come up with some. Because I'm sure there's --
17 there's no way you can go through this and not have
18 questions.

19 COMMISSIONER WITJES: To -- to piggy -- to
20 piggyback off of that, how do we know what questions to
21 ask?

22 JUSTIN LEVITT: So one of the ways is to -- to
23 ask people like us or ask people like commissioners in
24 other states that have been through this, they will be
25 available to you throughout your journey. So it's not

1 like you're getting a two-day training here and then
2 that's the last time you get to talk to anybody.

3 The second thing is, I think you can come back
4 to the language of the statute. The -- your statute,
5 the constitutional amendment that you've been asked to
6 apply. There are -- there are grounding points there,
7 there are anchors there, that tell you what the people
8 of Michigan are asking you to do. And to the extent you
9 don't know what any one of them means or to the extent
10 you want to understand what any one of them means,
11 that's where the questions can come from, right?

12 You're not -- you're given milestones on this
13 journey and you're given a destination on this journey,
14 and you can use those to make sure that you have
15 guidance throughout. It's not like you're given a blank
16 page of a map. You've got a couple -- a couple cities
17 you're being asked to visit along the way. And the
18 statute is written so that you can -- it's written to
19 give you some flexibility and interpretation, but should
20 also guide you, if you -- how do I know what a community
21 of interest is? The statute gives you some idea, the
22 constitutional amendment give us some idea, and then you
23 can ask others in other states how they have applied
24 similar language to come up with a definition of their
25 own.

1 TOM IVACKO: Thank you, Justin, and thank you
2 all Commissioners. This really has been a terrific
3 discussion. I'm really glad that it was an engaged back
4 and forth discussion. And I'm happy to say that our
5 panelists would be happy to answer more of your
6 questions if you'd like to follow up with them after
7 your session.

8 And as Matt Grossmann said yesterday, there
9 are many resources available to assist you, both at
10 Michigan State University and at the University of
11 Michigan. So please don't hesitate to get back in touch
12 with us if we can be of more help.

13 And to wrap it up, I'd like to just thank our
14 hosts and all of our participants, especially including
15 our new Commissioners, and Secretary Benson and her team
16 at the Department of State, our two excellent panelists,
17 thank you so much, and to those who have joined us
18 online, thank you for paying attention.

19 So, with that, I'll turn it back over to you,
20 Steve.

21 COMMISSIONER LETT: Thank you, Tom. I
22 appreciate that. And I want to, again, add my thanks to
23 Justin and Ellen for taking their time to meet with us,
24 as you have described us as new Commissioners. There
25 are several of us who have gray hair, so maybe that

1 makes us old Commissioners, but we are new in this
2 arena.

3 At any rate, we are at a time where we can
4 take a break, and we will do so. It is 10:41. We are
5 gonna take five minutes, so let's try to be back at
6 10:46. See you all in five minutes.

7 (Five-minute break)

8 MS. MARSH: For those of you who are watching
9 us via live stream, this is Sally Marsh. I am going to
10 take a moment to see if our upcoming panelists, if their
11 commuter, their video and microphone are working.

12 So, upcoming panelists, if I ask you to turn
13 on your camera and unmute your microphone and say hello
14 so we can make sure everything is working, and that
15 would be great.

16 CHRIS THOMAS: Hello. Can you hear me? This
17 is Chris.

18 MS. MARSH: Hi, Chris. That's perfect.
19 Thanks, Chris.

20 TOM IVACKO: Hi. This is Matt.

21 MS. MARSH: Hi, Matt.

22 JOHN PIRICH: This is John.

23 MS. MARSH: Hi, John. Great. All right.
24 Thanks, everybody. You look and sound very clear, so I
25 think we are good to go. Is there anything -- are there

1 any questions, panelists, before the Commissioners come
2 back?

3 TOM IVACKO: John, could you pronounce your
4 last name so I get it right?

5 JOHN PIRICH: Pirich.

6 TOM IVACKO: Thank you.

7 MS. MARSH: All right. Oh, and -- and,
8 panelists, I should note, you will see, on your screen,
9 boxes of people whose names are there but their video is
10 off, know that the audience can't see those folks
11 because that's all behind-the-scenes people doing
12 administrative work here, so when the Commissioners are
13 back, you will see all of their videos, and those are
14 the people who you are talking to, as well as public,
15 who is watching, of course.

16 COMMISSIONER LETT: There we go. I think
17 everybody is back now. Welcome back, everybody. We are
18 now set for our next panel, Redistricting Michigan, and
19 our moderator will, again, today, be Matt Grossmann, who
20 we met yesterday.

21 And, Matt, take it away.

22 MATT GROSSMANN: Thanks. So this panel is a
23 shorter opportunity to bring together some of the
24 lessons from the others on legal issues, criteria and
25 process, but from a Michigan-specific perspective. So

1 we have two leaders with long experience in the state,
2 who are still anxious to help you turn the page.

3 First, Chris Thomas. Chris served 36 years as
4 Michigan's Director of Elections, working for
5 Secretaries of State in both parties and is now helping
6 the Detroit clerk -- the Detroit clerk, as well as the
7 bipartisan policy center. Chris will tell us about the
8 challenges of prior redistrictings in Michigan and the
9 opportunity to start anew.

10 CHRIS THOMAS: Morning. So it's a -- it's a
11 great opportunity to be here. I congratulate each and
12 every one of you for randomly being selected. You have
13 a -- a very important duty to carry out over the next
14 year or so. And I'm sure, by now, you're well aware of
15 what you have stepped into. And we are moving along to
16 a new day in Michigan redistricting. And it's a -- a
17 grand experiment, and I wish you well. Of course, offer
18 any assistance that -- that I -- that I may have for you
19 as you go through this.

20 So I served as Director of Elections for a
21 number of years. So I was on the receiving end of these
22 districts in terms of how they are then implemented.
23 And that is always an issue. Now, it's not a criteria
24 for drawing the maps, but it is an effect that occurs in
25 terms of the ease of creating ballots. So I'd just like

1 to step through a little bit of history here without
2 getting too far into the weeds.

3 So you've heard from experts that have talked
4 about the legal criteria that you will -- from a Federal
5 level and what not that you will be guided by as one of
6 the first few criteria in your list. And, of course,
7 John Pirich, the renowned John Pirich, who is going to
8 be talking with you, will offer some other insights into
9 the -- to the legal end of this.

10 But, from the practical side, you know,
11 Michigan districts, during the first half of the 20th
12 century, didn't change too much, and it didn't keep up
13 with the one person, one vote. That had not been
14 enunciated yet. So, in the mid '60s, when that
15 occurred, it created a -- a new paradigm in terms of how
16 to look for political advantage. And so, the Michigan
17 Constitution, which had just been adopted and ratified,
18 1963, got its first real test under the supplemental one
19 person, one vote standards that the U.S. Supreme Court
20 announced and imposed on all of the states.

21 So, in 1972, the Michigan Supreme Court was --
22 again, had a -- had a deadlocked apportionment
23 commission. And that's one of the things that is
24 attempted to be avoided in -- in the system that you're
25 working in. And that -- when it's deadlocked, plans

1 were then submitted to the court, and the court chose.
2 And the court likes to consider themselves as
3 non-partisan when they're on the bench, but you're gonna
4 pick a partisan plan at the end of the day, and they
5 did.

6 And it was interesting that that plan did come
7 from the Democratic party. And on a legislative
8 districts, the Democratic party drew a plan that had
9 zero deviation. In other words, all of the districts
10 were equal population. And as you've likely heard
11 already, the court evolved later a doctrine that said at
12 the legislative level, there can be as much as a 10
13 percent, five up, five down, so from the zero deviation.

14 Well, in order to get zero deviation, they had
15 to draw into all kinds of cities and townships to grab
16 Census tracks and blocs to get down to zero. So one of
17 the affects of this was it really chopped up mini
18 jurisdictions. So some of the jurisdictions really
19 didn't have any one or two people representing them, but
20 found themselves dispersed across several districts, and
21 thereby, really not having what they considered true
22 representation in the legislature. So that -- that was
23 the big issue.

24 And then, in 1982, when the court finally
25 said, we're done with this, this is really a legislative

1 process, that (inaudible) standards came in, which
2 became -- back then, video games were almost
3 non-existent, but the ones that were there were like
4 Pac-Man. So the game was, break as few city -- county
5 lines, and then within counties, break as few cities or
6 township lines, and then you'll end up with a plan.

7 Well, that certainly made elections a lot
8 easier to conduct because it didn't chop up cities and
9 townships so much, while some of the larger cities, of
10 course, had multiple districts within them, most of the
11 jurisdictions in the state were wholly contained in a
12 congressional district, a State Senate district, and a
13 representative district. So that was basically the
14 community of interest that was adopted and then later
15 put in to legislation, and was used for the last four
16 decades. The community of interest was city, township
17 and county lines. Those jurisdictions, that was it,
18 other than the Federal criteria for the Voting Rights
19 Act, there was no other real consideration of ethnic,
20 racial, or other types of communities of interest.

21 So that, of course, is everybody will be
22 telling you, is, you know, where you are going to enter
23 the -- the world here with the community of interest.
24 And then, of course, they have you finishing early,
25 about November 1 of 2021, which leaves plenty of time

1 for litigation and for the -- the Secretary of State's
2 office and all the clerks to re-arrange the voter file
3 to make sure all the voters are properly coded into the
4 proper jurisdictions. So that is -- that's a critical
5 time period.

6 So the big deal is, this is open and
7 transparent, which has never been the case. The case in
8 the past has been lots of rumors, lots of talk. And
9 then, at the end of the process, the plans are
10 presented, and then -- and they are dropped on
11 everybody, and the litigation started, or didn't start.
12 And that's what people lived with.

13 You have an opportunity here to provide the
14 citizens of Michigan with a very open and transparent
15 process, that, yes, will be messy. It's -- it's always
16 a messy process. And there's gonna be a lot of interest
17 involved. But that's the way it works and people should
18 see how it's done.

19 MATT GROSSMANN: Thank you.

20 So we can do clarifying questions in chat now,
21 but we're gonna let John speak first. John Pirich is
22 the former State Assistant Attorney General who is now
23 in private practice covering election law issues, and a
24 professor at MSU's College of Law. John will tell us
25 about applying the national law and the new criteria to

1 the Michigan context.

2 JOHN PIRICH: Thank you, Matt. And members of
3 the commission, congratulations, and thank you for your
4 service. Thank you for your dedication. I got a chance
5 to listen a little bit at the beginning of the session
6 today, and I heard some of your introductions. I didn't
7 get to hear all of them, unfortunately, and I didn't get
8 to participate and listen to some of the other
9 presentations. So to the extent anything we say is
10 duplicative, I apologize in advance.

11 I do wanna say something, though, that I think
12 is important. You're going to be reading things about
13 what you're doing in either papers, if you get a paper
14 any longer, or online, or you're gonna get comments from
15 other -- other people, I think, as you go through this
16 process.

17 So, number one, make sure that you thicken up
18 your skin to the extent that people will say critical,
19 caustic or outrageous things about what you may or may
20 not do at some point. You are going to do what you need
21 to do with the charge that you have, and I think that's
22 really important that you have full confidence in what
23 you're doing at all times.

24 Number two, one of the last things that I
25 heard at the end of the other session was about the

1 statute, and I -- I -- I do want to clarify something
2 that I think is very, very important.

3 This is a constitutional amendment. It is the
4 longest section now in the Michigan constitution in
5 terms of words and in terms of detail. And one of the
6 comments that I heard earlier was about a road map or
7 guide post. Your constitutional provision in Article --
8 Article 4, Section 6 of the legislative section of the
9 Michigan Constitution is incredibly detailed, incredibly
10 specific, and it had some really important buzz words in
11 it that I really wanna focus on for just a few minutes.

12 But before we get to that, I wanna say one
13 other thing. You may hear comments about people. For
14 instance, when it says I'm a professor at Michigan
15 State, I'm an adjunct professor now, I -- I taught in
16 the school for about 10 years on a full-time basis, but
17 I've been a full-time practitioner, I -- I was
18 practicing before the State Board of Canvassers and
19 Secretary of State's office, before Mr. Thomas was the
20 State Elections Director. So that tells you how old I
21 am. And -- and I had the pleasure of working with
22 Bernie (inaudible), who Chris just referred to created
23 the (inaudible) standards in 1982. Bernie (inaudible)
24 and Chris Thomas are two of the most able, competent and
25 deserving of accolades public servants that I've ever

1 worked with.

2 And -- and the other part I think is really
3 important, and -- and Chris alluded to this, is the
4 partisanship that you're gonna be subjected to, and
5 you're gonna be subjected to, well, you didn't take this
6 into consideration or you didn't take that into
7 consideration. If you follow the precepts of -- of
8 Article 4, Section 6 going forward, you're gonna have no
9 problems with any of that.

10 As Chris said, some people aren't gonna like
11 what you're going to do, some people are gonna be very
12 critical, other people are gonna really like what you
13 do. So, in that sense, you know, just do the best job
14 you can do and -- and understand that, you know, you've
15 been given a very specific mandate going forward.

16 I do wanna make -- because, again, it is a
17 constitutional amendment. It's not a statute, but it
18 gives you some very direct standards that I just wanted
19 to focus on very, very quickly, if I could. And I don't
20 know how familiar you are in terms of your preparation
21 for your duties and service, but if you look at -- at --
22 at Section 13 of the -- of the article, it's really,
23 really critical. I want to start off, if I can --
24 because really in many regards what has happened in the
25 past is almost irrelevant to what you are doing now and

1 going to be doing.

2 So if you look at Section 13, it says: The
3 commission shall. Now, that's a term of art in the
4 legal world. Shall means it's a mandatory term. And
5 being a mandatory term, these are things that you have
6 to do. Importantly, it -- it does go on to say: You
7 shall abide by the following criteria, proposing and
8 adopting each plan in order of priority. So that
9 compared to some of the other jurisdictions, is very,
10 very important. And it gives you that road map as to
11 the order of priority of the considerations that you're
12 going to have to follow through with.

13 Number one, equal population mandated by the
14 United States Constitution. Number two, geographically
15 contiguous. That's what Mr. -- what Chris was just
16 talking about with regard to county, city, township,
17 village boundaries.

18 C, to -- the district shall reflect the
19 state's diverse populations and communities of interest.

20 Now, Chris alluded that communities of
21 interest. This is maybe the most important new
22 benchmark that's in the constitutional provision,
23 because the Constitution now says: Communities of
24 interest may, a term of art, not mandatory, but
25 permissive, may include, but shall not be limited to

1 population that -- populations that share cultural or
2 historical characteristics -- that's a standard we've
3 never had before -- or economic interest. And then it
4 goes on to say what communities of interest are not,
5 specifically, they do not include relationships with
6 political parties, incumbents or political candidates.

7 Going on: District shall not provide a
8 disproportionate advantage to any political party, and a
9 disproportionate advantage to a political party shall be
10 determined using acceptable means of a partisan fairness
11 and district shall reflect consideration -- now we're
12 down at the very end -- of what used to be the standards
13 of county, city and township boundaries.

14 So the -- the -- the ballpark has been
15 essentially changed and -- and -- and -- and the game is
16 essentially changed, and that's not a game, but the
17 process has been changed. So you got this unique
18 opportunity with going forward with regard to how you're
19 going to take in all of data, how you're gonna take in
20 all the information.

21 Again, I know you've had reference made to the
22 Voting Rights Act and Section 2 of the Voting Rights
23 Act. I'm not sure if you've heard about cracking or
24 packing yet. We can get into real technical terms, but
25 I don't wanna get lost in the weeds, as Chris said

1 earlier. If you do have questions on those issues, we
2 will try to answer them either now or subsequently,
3 and -- and we will try to give you as much framework
4 or -- or structure with regard to this system that
5 you're going to be implementing.

6 So, without further ado, and -- and again,
7 someone said to me the other day, when you're going to
8 be doing this, are you doing this as a Democrat or
9 Republican? Number one, I'm non-partisan. Number two,
10 I've represented political clients on both sides of the
11 equation, and near representation of clients does not
12 indicate any personal preference. I've represented
13 Democrats, represented Republicans, I've represented
14 governors, I've represented members of the legislature.
15 I've been a litigator for most of my career, which means
16 I take positions of clients and I advocate them. That's
17 essentially what you're going to be doing. You're going
18 to be representing constituencies that you come from. I
19 understand some of you have one leaning, some of you
20 have another leaning, some of you are non-leaning, and
21 that's a virtue of this constitutional amendment that's
22 so unique and so exciting.

23 So, with that, I think we can move on to the
24 next step now.

25 MATT GROSSMANN: Thank you.

1 It looks like MC has the first question.

2 COMMISSIONER ROTHORN: So one of the things I
3 -- so I'm -- I'm -- I'm particularly speaking to,
4 or trying to -- to understand this Section 13D, the --
5 the -- the political party shall be determined using
6 accepted measures of partisan fairness. The -- and --
7 and how we do those districts. And what I'm asking is,
8 as we, as a commission deliberate, right, one of the
9 things I heard from the California Commission, was, if I
10 understood it correctly, that they actually chose not to
11 deliberate, or not to use that sort of -- they didn't
12 talk about partisan -- parties as they were drawing the
13 maps and making that. And, yeah, and I'm not sure that
14 applies to us. I -- part of me thinks that maybe we
15 should talk about party, as -- again, I'm asking about
16 whether you have a recommendation if how we should
17 deliberate, whether we should include that criteria to
18 essentially protect ourselves against future litigation,
19 or whether we should not. Again, like, which is what, I
20 think, California said.

21 JOHN PIRICH: That's a great question.

22 Number one, the one advantage of having a
23 constitutional amendment that doesn't have definition of
24 terms, is sort of like beauty being in the eye of the
25 beholder. So some of these questions are gonna be very,

1 very imprecise in terms of the answers that you are
2 going to be able get when posed.

3 Now, what does it mean when it says a
4 disproportional advantage of a political party shall be
5 determined using accepted measures of political
6 fairness? I'm not sure that anyone -- any expert here
7 can give you a definitive answer as to what that term of
8 art means, accepted measures of political fairness.

9 The good news is, you get to decide that if
10 that's gonna be the -- one of the criteria that you will
11 use. You get to decide that, based upon expertise,
12 based upon reports, based upon analysis, based upon
13 preclusions of people. And as I think Justin said at
14 the end, you're gonna have the opportunity to interview
15 and hire people who do this as a career. Can you
16 imagine having such an exciting career? But they do do
17 this. There are people who are focused exclusively in
18 these areas. Chris, I would like your input on that,
19 too, please.

20 CHRIS THOMAS: I would say that it's -- it's
21 something you're going to be, you know, required to come
22 up with a definition at some point. And it's really
23 interesting, because if you look at the priority list,
24 right, so, see that it comes before -- certainly comes
25 before the consideration of county, city and township

1 boundaries. So you cannot -- you cannot assess
2 political fairness until you have a plan, right? I
3 mean, you've actually got to have something in front of
4 you that you would then apply some standard to, some
5 test. And that's why I look at this priority list, and
6 I go, well, I don't know that you're gonna be able to
7 stick to this entirely. You couldn't like have a plan
8 based on, you know, the population equalities, and all
9 of that, plus communities of interest. And then you
10 look at political fairness. And then, after that, you
11 look at city and township and county boundaries. I
12 mean, that doesn't make any sense at all. So I -- I --
13 I think that you've got some -- some issues there.

14 What is political fairness? Well, as John
15 said, you get the opportunity to define that. There's
16 gonna be a lot of people that are gonna try to help you
17 define that. You're gonna find the academic community
18 is gonna bring you something that -- well, you will have
19 to puzzle through. And the legal community will bring
20 you something else that you'll have to puzzle through.
21 So -- you know, and there is some evolution going on out
22 there of these -- of -- of tests for this. But I think
23 it's still somewhat in the early days.

24 Now, at the end of the day, after the first
25 election, you know, that's when people are gonna start

1 yelling, right, as to whether it's politically fair or
2 not. But I do -- do think that the list is gonna end
3 up -- even though it says these are your priorities,
4 in -- in order, it's gonna end up getting scrambled a
5 bit.

6 One thing I note, California had, on a single
7 priority line, both communities of interest and
8 jurisdictional boundaries, which means they could weigh
9 those together. And here, you have them separated in
10 a -- in a hierarchical fashion, that means you are
11 supposed to do really one and that's your higher
12 priority, and then later on, the city, township and
13 county lines. But I think John is absolutely right.
14 Beauty is in the eye of the beholder, and you are the
15 beholder, so...

16 JOHN PIRICH: I do think this is important.
17 The constitutional language is -- is specific, and it is
18 your guide post for what you are to do. I think that's
19 very unique compared to some of the other jurisdictions,
20 that you have that guide post given to you in the
21 Constitution now, and you have the exact order that you
22 will -- that, I assume, as you go through this process,
23 you'll be able to then factor step-by-step as you go
24 down. I think when you get to the end, though, it's a
25 different question. Then, when you've done all of that,

1 you got the egg all scrambled, now the question is what
2 are you gonna do with it and how are you going to apply
3 it or how are you going to present it?

4 MATT GROSSMANN: And, MC, that's the
5 difference between California versus Michigan, is you
6 have that criteria that they did not have, and you don't
7 have the prohibition on using the partisan data.

8 Other questions, raise your hand, or topics.

9 COMMISSIONER ROTHORN: There was one other
10 piece -- oh, Steve has something, sorry.

11 COMMISSIONER LETT: Just going to follow up.
12 If I'm understanding what John and Chris are saying,
13 we're gonna knock Humpty Dumpty off the wall, and then
14 at the end, we're gonna try to put him back together in
15 a way that everybody is going to dislike. And once we
16 do that, then we have done our job.

17 JOHN PIRICH: Well, can I make one caveat to
18 that comment? I think you're mostly correct, but I
19 think it's not a question that everybody's going to
20 dislike. I think the process is going to be alike. I
21 think the -- the procedures used in the process are
22 going to be alike, and your goal and your responsibility
23 is not to make anyone particularly happy, it's to abide
24 by the language that the constitution now requires that
25 you administer. And -- and you're gonna do it, I'm

1 sure, with great success.

2 As I said earlier, I would not worry about
3 what -- what commentaries might come out. I would not
4 worry about what analysis might come out. As they say,
5 thicken your skin in that regard, because people will
6 say whatever they want to say. Your job is to be
7 faithful to the constitutional language that you've been
8 required to impose. And I know you can do it, and you
9 will do it.

10 COMMISSIONER ROTHORN: So I had -- I had one
11 more question about --

12 Actually, Anthony, go ahead.

13 COMMISSIONER EID: You can go ahead, MC. I'll
14 go after you.

15 COMMISSIONER ROTHORN: It's -- Chris, you
16 alluded to this in the history, right? The idea of
17 breaking up townships, what I'm thinking about is being
18 responsible, as a commission being responsible with the
19 tax dollars that we're using ultimately, right? And
20 what I'm imagining is the more transparent the process,
21 the less likely there's litigation and using tax
22 dollars. I'm also thinking about trying to make sure
23 that I understand what I -- what I read, which is, I
24 think, if we keep townships in tact, then the -- then we
25 keep the future elections cheaper, or it's easier to

1 administer elections? I -- I -- I know this isn't a
2 criteria, but I'm asking, because I want to understand,
3 what does make administering elections and keeping it,
4 let's say, yeah, using fewer tax dollars, so to speak,
5 and if that's something we could -- I know we can
6 consider it, but I -- yeah, just curious if you can
7 share that.

8 JOHN PIRICH: Sure. And I -- I would say
9 this, that compared to the '80s or '90s, technology has
10 leveled that out so that it doesn't have such a
11 disparate impact. So think of this: Remember the old
12 lever machines, right, that you went in and you pulled
13 the curtain closed behind you. Well, that could really
14 only have one ballot form on it. And so each time you
15 cut up a township or a city into a smaller piece, that
16 precinct would need another machine, because you
17 couldn't put two different ballot forms on there. And
18 so a ballot form is essentially a president down to
19 township supervisor, all the same candidates are on that
20 ballot form, so if that legislative district goes
21 through the middle of the township, you now have two
22 ballot forms. And if it splits in three, you have
23 three, so you needed extra machines, and those were
24 expensive. Well, today with the optical scan, one
25 tabulator can read almost an unlimited number of ballot

1 forms.

2 So the increased cost would be somewhat on
3 printing, but it's -- it's not an exorbitant increase.
4 It is more of, from up front, is the detail that's
5 needed to make sure voters are in the qualified voter
6 file, statewide voter registration system, that they are
7 coded into the correct precinct, a ballot form, and that
8 they're not, you know, somehow or another ascribed to
9 the neighboring jurisdic -- district. So those details
10 are -- but I don't -- I don't think there'd be an
11 inordinate impact, assuming you are not gonna cut one
12 little township into nine pieces, right? It should be
13 okay. Now, the County Commissioner districts might do
14 that, but that's not your problem, of course.

15 MATT GROSSMANN: Anthony?

16 COMMISSIONER EID: I have a -- just a few
17 quick thoughts.

18 First, I would like to say thank you to our --
19 our panelists here. This has been very educational.

20 I think that something we have to keep in mind
21 as a commission is, we can't let perfect be the enemy of
22 progress here. You know, we are the first people doing
23 this. You know, at least in Michigan, or the second or
24 third in the whole country. So we're gonna be laying
25 the ground work, you know, for future commissions,

1 hopefully, when we're successful. So I think as long as
2 we have a -- you know, a distinct process that we go
3 through, which we do, it's laid out here, we'll be okay.
4 We're not going to make everyone happy no matter what we
5 do anyway.

6 But, as they said yesterday, just on virtue of
7 being an independent commission, and whatever map we
8 come up with, is going to be better than the previous
9 map that we had, so I just think we should keep that in
10 mind.

11 MATT GROSSMANN: That's a good thought.

12 Other comments or questions?

13 Chris, we haven't talked a whole lot of
14 Michigan specifics yet. You know the state very well.
15 Is there -- are there areas of the state geographically
16 that it's going to be hard to meet these criteria
17 jointly? Are there experiences from -- from the past
18 that they should know about?

19 CHRIS THOMAS: Well, I think we -- you're
20 charged with all apportionments starting in the U.P. is
21 the easiest place to start, because there are not a lot
22 of people up there, and probably their community of
23 interests are more limited than elsewhere, okay?

24 So, as you -- with any of these, whether it's
25 the old city township or the new high priority community

1 of interest, the southeast Michigan is going to be your
2 biggest challenge. You've got your highest population.
3 You are gonna find likely the largest numbers of
4 communities of interest that'll be identified. And they
5 will overlap jurisdictional lines, just because of
6 the -- the population migration over the decades. So it
7 -- it's just more complicated.

8 Now, you know, city, township, was easier than
9 the community of interest, because the community of
10 interest, while they may -- you may end up defining them
11 as being obviously contiguous, they're not necessarily
12 gonna fit within a jurisdiction. These populations,
13 again, have moved.

14 So geography is -- you know, it's really
15 people that that's the issue in terms of drawing the
16 maps. And the constraints of the past were really not
17 too tough this that regard, particularly in the
18 legislative side, where you had the 10 percent
19 deviation. It gave you -- I referred to it as sort of
20 the slot factor, right? Not all districts had to be
21 equal down to the absolute number. The congressional,
22 you gotta be equal, and that then requires some surgical
23 cutting into cities and townships to grab blocks and
24 tracts, Census blocks and tracts to bring your -- your
25 population up to zero deviation.

1 So all of the areas are going to offer
2 different challenges, and clearly, I think John touched
3 on this, and likely has much more to say on it, this --
4 this idea of community of interest, this new concept, is
5 going to occupy, as I'm sure you heard from the
6 California folks, a large proportion of your activity.
7 Particularly, your beginning activity, because until you
8 have that nailed down, you really can't move forward.

9 JOHN PIRICH: Yeah, and if I could just add
10 one thing to that. Again, going back to the language of
11 Section 13 with regard to communities of interest, you
12 know, it is a -- to a degree, it is one of the defined
13 terms that you have to -- to operate with. And it --
14 and it says may include. Again, now, this is
15 permissive, so it gives you more latitude, but may
16 include, but not limited to population share cultural or
17 historical characteristics or economic interests. Now,
18 you're not limited to those three, but -- but that
19 certainly gives you a real good start in terms of what
20 you are going to define as communities of interest going
21 forward.

22 Chris and I have exchanged some law review
23 articles on communities of interest. You can -- you can
24 read thousands of pages of analysis, as to what -- and,
25 Matt, I know you can do the same thing -- as to what

1 communities of interest mean today in these context.
2 But I think the Constitution gives you three elements to
3 start with, not that you're limited to those three, but
4 those are three very important ones. Cultural or
5 historical characteristics or economic interests,
6 those -- those are big baskets that give you the outline
7 of what they are going to have to do in this particular
8 area.

9 And if I can -- and, Matt, I know I'm probably
10 jumping out of order. I would like to jump ahead to one
11 other thing in that regard. And I know that Justin
12 referred to this and Professor Katz referred to this in
13 their presentation. There are all kinds of quote,
14 unquote, experts out there that you're going to be able
15 rely upon. I think one of the key things you have to
16 do, with guidance from the staff you have available from
17 the secretary's office from the beginning, and then with
18 your selection of key people going forward, you have to
19 separate the wheat from the chaff here, and you're
20 really gonna have to find out who really are the experts
21 as opposed to who are the proponents of positions hiding
22 under the cloak of expertise, because you're going to
23 see those, too. You know, you have an incredible
24 opportunity with the authority that you have to hire
25 experts, hire consultants. You're going to be able to

1 get the kind of resources, because I think this is
2 alluded to earlier today, none of you have an expertise
3 in this area. Though, I think -- I think, Ed, I think
4 you're the engineer, if I recall correctly, that -- that
5 has that specificity of -- of detail that -- that you're
6 going to be getting into here on a regular basis.

7 But, you know, finding those people, and --
8 and working with them is going to be a real challenge,
9 and -- and that's one, I think, Chris has alluded to
10 right out of the box that you're gonna have to do
11 relatively quickly. You're gonna have to martial who
12 are the potential sources of expertise and -- and why
13 should one be chosen versus another.

14 MATT GROSSMANN: And our -- just to add our
15 willingness to help, the institute I direct oversees the
16 political leadership program that has equal numbers of
17 Democrats and Republicans. We train the newly elected
18 legislators when they arrive in December. And so we, if
19 you wanna say, here's -- we have an expert saying this,
20 who disagrees with them, we're happy to do that for you,
21 or compile panels, and Secretary of State's office would
22 help as well, as would Tom Ivacko, the moderator of the
23 last panel and his institute at the University of
24 Michigan. So there's a lot of folks willing to help you
25 compile expertise. And we can very much find people --

1 we can always find people who will disagree with
2 something you've been hearing if you wanna hear another
3 side.

4 CHRIS THOMAS: Matt, I'd add one more
5 geographic thing. I found this interesting in
6 California. There are jurisdictions that do not want to
7 be paired with other jurisdictions, and that, I think,
8 you will hear about as -- as you move through.

9 So Marin County, north of San Francisco, said
10 we do not wanna be paired with San Francisco. We wanna
11 go north to the wine country or wherever, I don't know.
12 But, that -- that'll be something that you will end up
13 hearing as these pairings are starting to be made of
14 where jurisdictions don't think they have commonality
15 with a neighboring jurisdiction.

16 MATT GROSSMANN: Are there other questions?
17 Anybody that hasn't spoken yet?

18 All right. Ed, you're next.

19 Sorry, Anthony. Anthony, you're next.

20 COMMISSIONER EID: Just kind of on that same
21 topic. I think a challenge that we might find is, you
22 know, dealing with the large Middle Eastern population
23 that we have in our state, which is the largest in the
24 country. We have Dearborn, Sterling Heights, West
25 Bloomfield. There's a big conglomerate of Middle

1 Easterners, and there's no -- there was no ethnicity
2 question for that on the Census. So figuring out
3 exactly where they live and where to divide that
4 community of interest is something we might find
5 challenging.

6 JOHN PIRICH: I think that's a great point. I
7 -- I'm not sure it's as challenging as you might think
8 initially, but it's -- it is an absolutely great and
9 valid point. This is an absolute unique and completely
10 different consideration than we've dealt with in the
11 past. Exciting opportunity to -- to -- to really change
12 the face of representation.

13 MATT GROSSMANN: Other questions?

14 Yes. Cynthia?

15 COMMISSIONER ORTON: Getting back to Anthony's
16 comment, how do we find that information? How is --
17 where is that information available?

18 JOHN PIRICH: Matt, maybe you should answer
19 that.

20 MATT GROSSMANN: It is a hard-to-reach
21 population. We actually do the Arab Chaldean survey for
22 the state health department. And they are hard to
23 reach, but not unidentifiable. But, yeah, that is the
24 kind of thing you're gonna have to deal and also how
25 they self-define. Only part of that community shares

1 religious background, obviously. And so you might hear
2 different things on that, on those grounds.

3 John, do you -- do you wanna say a little
4 about -- you know, they just heard some very specific
5 criteria for dealing with race and the Voting Rights
6 Act. How much should they be kind of using that same
7 set of data requirements and identification of groups
8 and their voting histories when it comes to these other
9 communities of interest?

10 JOHN PIRICH: Well, definitely under Section 2
11 of the Voting Rights Act, you have to. So that -- that
12 one is -- is not really hard to answer.

13 MATT GROSSMANN: For race. But I'm asking if
14 -- if we come up with another one, an economic interest,
15 or should they be trying to do all of the same things
16 they are doing for -- for race?

17 JOHN PIRICH: That's a great question. Well,
18 obviously, I -- the answer is, yes, they should be. And
19 -- and you're gonna -- you're gonna have a -- so much
20 statistical data and -- and information that -- that --
21 that can be done. But, the answer is yes, you should be
22 using race. You have to use that on the -- on the -- on
23 the congressional districts. And again, I -- I -- and I
24 apologize. I don't know. Didn't we get into cracking
25 or packing in any of the previous cere -- sessions? I

1 think you did.

2 MATT GROSSMANN: I -- I would do it a little
3 bit. Why don't you at least talk about the trade-off
4 there between say having a racial group well-represented
5 in a district and how that might impact the-the partisan
6 composition.

7 JOHN PIRICH: Well, number one, you can -- you
8 can pack a district so that you minimize the impact of a
9 racially distinct group much easier than -- than I think
10 most would people appreciate. So that means you
11 conglomerate all of the -- the -- the -- the -- the
12 members of that particular racial group so that you
13 don't have a -- a spread of their influence on other
14 groups. That's -- that's the packing concept.

15 But the cracking one, as you can take it to
16 the other extent, and you can disperse the -- the -- the
17 racial components in different districts so that they're
18 basically unrepresented in terms of their -- their
19 circle of concern or their circle of interest.

20 So, yeah, it's one that you have to do at the
21 Federal level without a doubt under Section 2 of the
22 Voting Rights Act. Number two, you're gonna -- you're
23 gonna -- that's one of the factors that you're going to
24 be using as you go throughout all of this data going
25 forward. You're going to see it everywhere, you're

1 gonna under -- you're gonna have a better understanding,
2 obviously, as you get further into it. But the reality
3 is, yeah, it's a very important factor that's gonna have
4 to be considered.

5 And then, not to jump ahead, but, you know,
6 and I think this was referenced earlier. At the end of
7 all of this, there's almost certainly going to be
8 litigation. That's not your concern right now. But
9 there's certainly gonna be litigation. And I heard the
10 words that I love earlier today about transparency. I
11 mean, that's something we've not had historically in
12 redistricting, was transparency. If anything, think of
13 redistricting is much like The Wizard of Oz. I mean,
14 you -- you have someone behind the curtain, and all of a
15 sudden, you -- you had a proclamation or a
16 determination, and that was it. Here, any -- any
17 challenges going forward, are going to replete with --
18 with data. Gonna be replete with a -- with a public
19 hearing, transcripts, repeat -- replete -- replete with
20 comments from the public, comments from the part -- the
21 partisan representation, whether it be Democrat or
22 Republican, or even -- even minor parties are going to
23 be able to have that same impact.

24 So that's gonna change the results of what you
25 do, I think, tremendously from the implementation and

1 the challenge phase of what might happen. Because I can
2 guarantee you, there's gonna be litigation. I
3 absolutely guarantee it.

4 Chris?

5 MATT GROSSMANN: So we're -- sorry. We're --
6 we're a little bit over time. And we started a little
7 bit late, though, so maybe we got one minute left. I
8 just wanna make sure we got any -- any question that
9 didn't get answered from the Commissioners or any last
10 thoughts, or else we'll let Chris have it.

11 CHRIS THOMAS: I would just -- I would just
12 say that for the purposes of African-Americans, so,
13 really, only the Detroit area is where they rose up in
14 the numbers that the Voting Rights Act would kick in.
15 So that's all off the boards now. I mean, that's there,
16 but -- so you have African-American communities all over
17 the state that will now become communities of interest
18 that will have consideration, which they did not before.

19 And the other point is, is that every
20 community of interest is likely to have some political
21 vent one way or the other, right? So you can't just
22 say, well, this group is all Democratic and this is all
23 Republican. When you put all these together, you're
24 gonna see they're gonna lean one way or the other.

25 So politics is not being taken out of this.

1 It's being managed. And I think that, you know, you
2 should not set an expectation that this is an apolitical
3 exercise. It's not. And -- and even the politics of
4 becoming a recognized community of interest is something
5 you're gonna run into. There's gonna be, you know,
6 groups really pushing to get other groups in and other
7 groups that aren't as well-organized may not make the
8 cut or may not show up. And there -- and there should
9 be outreach efforts.

10 And the last thing I'll say is that I hope the
11 legislature gives you the pleasure that you need to do
12 the job correctly, because this -- the 10 public
13 hearings, that's a drop in the bucket of the public
14 hearings that you are likely gonna need just to figure
15 out community of interest. You are gonna have many,
16 many more than 10 public hearings during your next year.

17 MATT GROSSMANN: All right. Since you have
18 your work cut out for you, we'll -- we'll make sure you
19 get your break.

20 Steve, you wanna take it away?

21 COMMISSIONER LETT: Okay. Thank you, Matt.

22 I would also thank Chris and John for their
23 enlightenment on where we're going. And I certainly
24 agree with John, that litigation is on our horizon.
25 Both California and Arizona clearly said that that's

1 gonna happen.

2 So a lot of good information here. We will
3 take a 15-minute break and then we'll have -- the panel
4 will be Transparency & Independence Workshop from the
5 Secretary of State's staff.

6 So we'll be back in, approximately, five
7 minutes to noon. That gives you a couple extra minutes.

8 See you then.

9 JOHN PIRICH: Thank you.

10 MALE SPEAKER: Thank you.

11 (15-minute break)

12 * * *

13 COMMISSIONER LETT: Let's see. Do we have
14 everybody back? I think so.

15 Okay. First off, welcome back. We now have
16 the final panel discussion for the morning, and not much
17 of that left, so you guys gotta talk fast. No, we got
18 45 minutes. We're running a little behind, but that's
19 okay.

20 This will be the staff and -- of the
21 Department of State on Transparency & Independence
22 Workshop. And I will -- I guess I'm gonna turn this
23 over to Sally.

24 MS. MARSH: Thanks. And hello, everybody.
25 For those of you just joining in the public, my name is

1 Sally Marsh and I'm the Director of Special Projects at
2 the Department of State. And my colleague, Mike Brady,
3 is also here.

4 Mike, do you wanna introduce yourself?

5 MR. BRADY: Yes. Good morning. This is Mike
6 Brady, Technical Director. Nice to -- well, I've been
7 seeing you the whole time, but we got the video to work
8 today.

9 MS. MARSH: So to -- commissioners, to round
10 out the morning of presentations, we are going to
11 briefly cover some of the legal and practical elements
12 of transparency, independence and communication. We
13 discussed some, if not all, of this yesterday. So,
14 hopefully, this can be a reminder and a refresher. And
15 really, you know, most importantly, an opportunity for
16 you to ask Mike and I any questions that you might have
17 before you go into your afternoon of a -- of your kind
18 of initial decision-making and conversations as a -- as
19 a group.

20 As a reminder to commissioners, all
21 substantive questions that you might have should be
22 asked and answered publicly, not in the Zoom chat, but,
23 you know, of course, we're happy to use the Zoom chat to
24 help you troubleshoot any technical issues you have or
25 other things like that.

1 So once we go through some initial slides and
2 overviews, like I said, Mike and I really welcome your
3 questions. And, of course, if we don't know the answers
4 to those questions, we can certainly take note and get
5 back to you if that would be helpful.

6 So, with that, I will turn it over to Mike.

7 MR. BRADY: Hello again. So I wanted to start
8 with open meetings and -- and public notice. You can
9 see some of the different topics that we're going to
10 cover, you know, as Sally laid out. And some of this,
11 again, is -- is refresher from yesterday. But I
12 wanna -- and, forgive me, not that you need a refresher
13 from yesterday on these topics, but a little bit more
14 detail and also respond to some of the questions, some
15 of the specific questions that folks had raised
16 yesterday, hopefully, have some -- cover some new ground
17 as well. And, ultimately, you know, key -- key up some
18 of the topics for possible decisions that you all may
19 wanna consider for this afternoon in your discussion
20 then.

21 So first onto the open meetings and public
22 notice. So you may wanna refer to page 18 of your
23 orientation materials to look at the specific
24 constitutional language. We talked about this
25 yesterday. And I won't, you know, read through all of

1 that again, other than, again, just to reference, you
2 know, page 18 of the materials.

3 The -- and also, you know, just to -- to say
4 it again, that this commission, in the bod -- you know,
5 as a body of the legislature and created by the
6 Constitution is actually subject to the Open Meetings
7 Act. And as you can see in the Constitution, I think
8 all the language in the Constitution certainly is
9 consistent with the Open Meetings Act. But, as I noted
10 yesterday, it certainly goes to, you know, there are
11 some requirements that go above and beyond some of the
12 standard requirements of the Open Meetings Act.

13 One of the things that I would say is
14 considerably consistent would be the importance of
15 having public notice. Some of this seems very
16 straightforward, of course, you know, you're having a
17 public meeting, you wanna hear from the public, and
18 there are rules in place to guide, you know, how you let
19 the public know about that meeting, how much time you
20 give in that notice. You can always give more time than
21 is required, but there's minimums that are laid out in
22 the law.

23 In this moment, in this day and age, just
24 given Coronavirus and the Executive Orders from the
25 governor and whatnot, there is an Executive Order that

1 was adopted, even during the duration of this, but back
2 in the spring, that allows public bodies, such as this
3 one, to have a meeting, a public meeting, as we, you
4 know, we've been doing yesterday and today, and to do it
5 virtually. And so there's distinct rules that exist now
6 and have existed for the last, you know, number of
7 months during the state of emergency that allow this
8 public body, and all the other public bodies in the
9 state to be able to meet virtually. So we can certainly
10 relay along that Executive Order.

11 Needless to say, the notice for this meeting
12 and -- and the other, you know, ways in which we've
13 organized this meeting are all consistent with that
14 Executive Order. And the Executive Order takes steps to
15 try to respect, as much as possible, the rules and --
16 and general standards of the Open Meetings Act, while
17 also complying with this moment with quarantining and
18 social distancing, and the like.

19 MS. MARSH: So, now, I just wanna briefly move
20 on, unless Mike, there was more you wanted to sort of
21 touch on in terms of the Open Meetings Act, can move on
22 to talk about gifts and lobbyists.

23 So we mentioned this briefly yesterday, but
24 thought it was worth kind of listing out the full text
25 of the constitutional amendment on this particular issue

1 for all of you. And just to note that, you know, you
2 all and the staff and attorneys and consultants and
3 experts that you hire, they -- you know, you won't be
4 able to accept gifts from anyone that's in a manner
5 which may influence the manner in which a commissioner,
6 staff, attorney, expert or consultant performs his or
7 her duties.

8 So I think that this requirement, you know,
9 you're now public servants and public, you know,
10 officers. And -- and if you have any questions about
11 that, you know, we're happy to answer any questions you
12 might have or -- or get the answer if we don't have it.

13 Next --

14 Oh, go for it, Mike.

15 MR. BRADY: Sorry. I didn't know if this was
16 gonna come up later on, and so I wanted to refer back to
17 one of the questions that I -- it may have been
18 something I heard yesterday afternoon, it may have
19 something I heard during a break along the way. But
20 there was a question raised about whether, you know,
21 there'd be an opportunity for commissioners to gather in
22 a purely social contact, which may have been prompted
23 by, you know, the discussions from California, where
24 they noted that they had a similar restriction that did
25 not allow them to talk about the work of their

1 commission outside of -- of formal public meeting of the
2 commission. And so that gave them, you know, plenty of
3 other things to talk about and, you know, build other
4 relationships and strengthen their relationships along
5 the way, at -- whether it's dinner or traveling to a
6 conference or to a public meeting, wherever that may be.

7 And so I wanted to pledge to you that the --
8 the Open Meetings Act does talk about, you know, when it
9 comes into -- you know, when it's triggered. And it's
10 triggered when there's quorums. So you're a body of 13,
11 quorum will be seven. So if seven of you are gathered
12 and talking about the work, assuming you are gathered,
13 you're allowed to talk about the work in a public
14 meeting that's appropriately noticed.

15 If -- if less than seven of you are gathered,
16 you're not actually triggering the public meeting
17 requirement, and in turn, you shouldn't be talking about
18 the work of the commission.

19 The -- there's a -- a document at the AG's
20 office has put out on the Open Meetings Act for decades,
21 and it's updated, you know, as the laws have shifted and
22 changed over the years, which, presumably, relay this
23 along to you and make sure you have it.

24 On page 8 of that document, it does refer to
25 this question. It says: May a quorum of a board gather

1 outside of an open meeting without violating the Open
2 Meetings Act?

3 And it says yes in some instances.

4 It says: In additional to a purely social
5 gathering or chance gathering that does not involve
6 discussions of public policy among members of the board,
7 a quorum may accept invitation to address specific
8 organization with concerns of a neighborhood
9 organization or observe demonstration if the board does
10 not deliberate toward or make a decision.

11 So, you know, ultimately, you all have already
12 discussed the importance of bringing on staff, legal
13 counsel, whether that's in-house, in addition to
14 specialized legal counsel to assist you with the
15 various, you know, legal matters that you've been
16 hearing about yesterday and today. So you can -- you
17 know, counsel and guidance on that from -- from them.

18 But I at least wanted to supply to you to say
19 this is not a unique question. It is a question that in
20 fact has been answered by the AG's office, you know,
21 over the course of the Open Meetings Act and Michigan's
22 history. And there may very well be an opportunity for
23 you all once social distancing and other things, you
24 know, allow to have a -- a purely social gathering.

25 So I -- I just want to flag that as a specific

1 question or as a response to one of the specific
2 questions that I heard along the way.

3 Thank you, Sally. You can go back now.

4 MS. MARSH: Thanks, Mike.

5 MR. BRADY: I didn't want to get too far away
6 from it.

7 MS. MARSH: That's perfect. That's perfect.

8 COMMISSIONER LETT: Sally, did you wanna take
9 questions as we go on this panel, being you and Mike, or
10 you want us to hold them to the end?

11 MS. MARSH: We are happy to take questions as
12 we go, so if anyone has a question, feel free to ask.

13 COMMISSIONER LETT: Well, I have one.

14 On the Open Meetings Act, there's a -- a
15 rather detailed process for providing notice. One of
16 which is to post a notice at your office. We don't have
17 an office. So where are we gonna post our notice?

18 MR. BRADY: So what we did for this meeting is
19 we posted notice at the -- in the public entrance that's
20 accessible -- again, to the public in the Richard Austin
21 Building in Lansing where the Department of State is
22 located. We also posted notice on the Michigan
23 Department of State's website. We also posted notice --
24 notice for this meeting on redistrictingmichigan.org. -- is
25 it org?

1 MS. MARSH: Yes.

2 MR. BRADY: Yeah. So you're familiar with
3 that website. That is arguably -- you know, it's yours
4 until you create something else or, you know, do
5 whatever else you wanna do with that.

6 We also sent notice of this -- forgive me --
7 sent notice of this meeting to the Secretary of the
8 Senate and maybe the Clerk of the House. Forgive me if
9 that's not the technical term, but the point is, we sent
10 it to both bodies of the legislature and asked them to
11 post it consistent with their standard practice for
12 posting notice.

13 All of that definitely satisfies the
14 requirements, and probably does more than satisfies the
15 requirements of the Open Meetings Act.

16 Anything else you wanna do beyond that, you're
17 certainly, you know, welcome to do, because the Open
18 Meetings Act, that's a floor for minimum requirements
19 that you have to do for notice. And in no
20 way (inaudible), so if you wanted to send it out on
21 Facebook, if you wanted to, you know, all sorts of other
22 ways, of course, you can send out notice.

23 COMMISSIONER LETT: Okay. MC?

24 COMMISSIONER ROTHORN: I see Rhonda had a
25 question. Let's do Rhonda first.

1 COMMISSIONER LANGE: Thank you.

2 I think I know the answer to my question, but
3 I just wanna verify going back to the gifts. I'm in a
4 line of work where sometimes clients, at the end of our
5 transaction, will give me a gift. Being now that I am a
6 commissioner, should that be something that I
7 respectfully decline at this point, even though it has
8 nothing to do with the commission itself or
9 redistricting, just to play it safe?

10 MR. BRADY: Sally, could you move the slide
11 back to the -- the language from the Constitution,
12 please?

13 MS. MARSH: Gifts and Notice. Thanks so much.
14 Sorry, Gifts and -- and Lobbyists, I think, is the title
15 of the slide.

16 There we go. Perfect.

17 MR. BRADY: So just to -- to read through
18 this, because as a -- I certainly appreciate the
19 question. I've -- you know, in my current role, and
20 more -- especially in prior roles, working in the
21 government, had people offer things just to try to be --
22 in ways that I felt were, you know, absolutely, you
23 know, coming from a good place and just like, you know,
24 some small token gift, you know, here or there.

25 That said, as a public servant, I'm certainly

1 very, very mindful of either basically any -- you know,
2 only even the perception that something could be, you
3 know, inappropriate. And so I -- I -- I absolutely
4 understand your question and -- and appreciate it.

5 That said, within -- along those lines, the
6 State of Michigan itself has guidelines and standards
7 for its employees. However, you all are not employees
8 of the State of Michigan, strictly speaking. You're
9 commissioners for this board. And -- and so the
10 relevant language is -- is this language here in the
11 Constitution.

12 Just to go back to that. Says: The
13 commission members, you, may not directly or indirectly
14 solicit or accept any gift -- blah, blah, blah -- of
15 value greater than \$20 for the benefit of any person,
16 organization, which may influence the manner in which
17 the commission staff, attorney, expert or consultant
18 performs his or his duties.

19 So a few different things that stand out here,
20 certainly applies to you as an individual. It -- it
21 does put a -- a limit on -- or it imposes a limit to say
22 not more than \$20. So, you know, there's certainly an
23 importance to exercise your judgment on this. But you
24 can say if somebody -- you know, and I don't know your
25 particular line of work, but if someone were to, you

1 know, walk in and say, you know, I -- I really
2 appreciate that thing you did for me and here's, you
3 know, a -- a -- like a, I don't know, smoothie or
4 something, or I stopped by the store or I made you some
5 cookies, or something like that, that's -- that's a real
6 nice -- nice -- a real nice gesture. And I'm implying
7 that gesture of somebody picking up some cookies and
8 dropping them off to your office. You know, I don't
9 know which cookies they are, but I would imagine that
10 would come in under \$20, and something along the lines
11 if they bought you a coffee, right, and so, you know,
12 you can imagine, and maybe there are folks who are
13 watching and can hear it and say, oh, sure, but if you
14 added all those things up, and if somebody really wanted
15 to milk the system and they got a coffee every single
16 day for them and their family for the next year, that's
17 obviously a different thing.

18 And -- and, you know, I'm trusting to you all
19 as people of integrity to do the right thing here. But
20 what I heard in your question was somebody wants to
21 reach out, you know, they appreciate the work that you
22 did, they dropped off some baked goods, they dropped off
23 a coffee, they -- something just -- you know, on a hot
24 day, if they dropped off a slushy or something, and just
25 said, you know, thank you.

1 My read of this, and I'm not your lawyer, but
2 I'll just say my read of this is that I think that fits.
3 I think that fits within this language of the
4 Constitution. And when you have your own lawyer, you
5 can certainly ask those questions.

6 I think having seen some of these things and,
7 Steve, you undoubtedly have experience with this as well
8 given your own practice of law. But when I see, you
9 know, something along those lines which may influence
10 the manner in which, and so in some situations like, you
11 know, can your -- can your family members still give you
12 a gift? Can your friend of 30 years still give you a
13 gift on your birthday? I've only ever seen the answer
14 there as yes, unless your friend of 30 years happens to
15 be the chair of one of the political parties who's now,
16 instead of giving you, you know, like tickets to the
17 movie, is buying you tickets to the Super Bowl, right?
18 Like, that would be a different thing.

19 But in terms of the relationship and the
20 history and, you know, yeah, my friend of 30 years, we
21 went to college together. We did, you know, this or
22 that, like God -- Godfather to my children, something
23 along those lines. Like, that's -- that's not what this
24 is really talking about. And I think that the language
25 that's in this part of the Constitution strikes me,

1 again, as -- as one person -- I'm not your lawyer -- as
2 -- as fitting. Does that make sense?

3 COMMISSIONER LANGE: It makes sense.

4 COMMISSIONER LETT: I think I certainly agree,
5 Mike, and the -- I think the key is that the gift has to
6 be directed to influence us or you, us individually, in
7 our duties as commissioners. If they're giving you a
8 gift as a realtor or having gotten them a great rate on
9 their mortgage, that's certainly not influencing you as
10 a commissioner.

11 COMMISSIONER LANGE: That's where I was
12 wondering, if there's a line and if I should, you know,
13 even though there's a line between the work for the
14 commission and the work I do in my personal life, if I
15 should still respectfully decline as not to throw up a
16 flag, I guess is what I'm saying, because I have had
17 clients in the past that have given me very nice gifts.

18 MR. BRADY: Good, I think that's something
19 that you're gonna have to decide on your own as to what
20 you feel comfortable with.

21 COMMISSIONER LANGE: Okay.

22 COMMISSIONER LETT: Anthony?

23 COMMISSIONER EID: All right. I have a
24 comment and a question, if that's okay.

25 To comment on what we were just talking about,

1 I also think it's -- kind of depends on -- on your field
2 a little bit. I don't know how it works, you know, in
3 real estate. But I've -- you know, I've -- remember one
4 time I had a patient who, you know, appreciated the work
5 I did for them, and they wanted to offer me tickets to a
6 Lions game, but I had to decline just because, you know,
7 in the medical field, the ethics of that are also looked
8 down upon.

9 So I think it's -- you know, it really also
10 depends on what profession you're in.

11 My -- my question is regarding the fact that,
12 you know, the Constitution goes a little above and
13 beyond just the Open Meetings Act. I've already had a
14 few members of the public reach out to me over email and
15 ask if I'd be willing to meet to, you know, discuss
16 redistricting. And I'm wondering what the best way to
17 respond to that would be.

18 MS. MARSH: Kathy, can you go to the next
19 slide?

20 Thanks.

21 And, Mike, I don't know if you have an
22 immediate response there, but I thought it might be
23 helpful to put up on the screen the -- the language that
24 you're referring to. Anthony has -- has addressed in
25 this particular portion of the Constitution, Section 11

1 of Article 4, Section 6. And let -- I can just read out
2 sort of the second part of that sentence, which is that,
3 you know, it -- it says that commission shall not
4 discuss redistricting matters with members of the public
5 outside of an open meeting of the commission, except
6 that a commissioner may communicate about redistricting
7 matters with members of the public to gain information
8 relevant to the performance of his or her duties if --
9 so this is like the caveat to that permission -- if the
10 communication occurs in writing or at a previously
11 publicly noticed quorum or town hall open to the general
12 public.

13 MR. BRADY: And that second caveat, so in B,
14 Sub B where it says at a previously publicly noticed
15 forum, you know, I remember when I first read that, I
16 thought, well, I thought this was an exception to having
17 this -- you know, talk about it only at a previously,
18 you know, noticed public forum. It -- well, kind of.

19 So the first one says, you know, (inaudible)
20 shall not discuss redistricting matters with members of
21 the public outside of an open meeting of the commission.
22 So not only -- so that (inaudible) that you do it at
23 this meeting, at your meeting that you call and you
24 control.

25 However, there are two exceptions. One,

1 again, is, you obviously can't do that in writing. The
2 other is that you can do it, but it has to be still at a
3 public meeting, just not your public meeting. So if you
4 went to, you know, a county commissioner meeting in your
5 county or you went and, you know, spoke to -- and maybe
6 we'll divide it up and conquer to, you know, so to
7 speak, and, you know, at some point, it makes sense, you
8 know, either in groups or pairs or committees, or just
9 individuals, and just went and said, hi, you know, I
10 wanted to let you know I'm, you know, one of your
11 commissioners, you know, for the state and we're gonna
12 be doing these things. Our next meeting is coming up at
13 such and such date, but I wanted to, you know, speak to
14 you all a little about bit or, I don't know, maybe at
15 some point later on, you got a road show, you got
16 slides, and, you know, you actually split up and -- and
17 do that, I have no idea. It's, obviously, a question
18 for you all.

19 But you'd be allowed to have a conversation
20 about redistricting at some other public meeting, again,
21 like a meeting of the legislature, a meeting at the
22 county commission, a meeting of your city council, a
23 meeting of your township board, et cetera, et cetera.

24 So, Anthony, to your question, the way that
25 I'd probably handle that would be -- and maybe, you

1 know, be helpful and you guys want us to -- perhaps
2 Sally can even take establish an initial draft, but have
3 -- you know, you're gonna be getting -- this is just the
4 very beginning of this, right? You haven't -- few other
5 commissioners have not received this question yet. You
6 will. And so I almost wonder if, you know, some sort
7 of, you know, standard response, like, thank you so much
8 for your email. You know, my thought would be, as an
9 aside, that I, you know, always wanna assume that people
10 are acting in -- in -- in good faith and the people are
11 reaching out because they -- you know, they have -- they
12 feel they can -- that you're accessible to them, each of
13 you, in a different way, accessible to somebody else.

14 And so I want to respect and -- you know,
15 their outreach and assume that it's coming from a good
16 place until, hopefully, you know, it doesn't get proven
17 otherwise. But just to be able to, you know, thank you
18 so much for reaching out. We really appreciate that.
19 You know, unfortunately, I, you know, won't be able to
20 meet you individually for coffee or other -- otherwise
21 or speak with you to talk about -- per the requirements
22 in the Constitution -- blah, blah, blah -- you don't
23 wanna make -- sound too legalese, just trying to reach
24 out to you, but also give it right to the Constitution,
25 because that's actually the language that's at -- at

1 issue here. And I would say, for your own -- frankly,
2 for your own protection, but also for the guidelines and
3 just letting folks know that there are rules of the road
4 that are a little different here, or perhaps
5 significantly different here, than other public bodies
6 or public officials.

7 And so the sooner that they know that, the
8 sooner that, you know, they'll know what the rules of
9 the road are, and they, you know, will be able to stay
10 within those as well. In fact, maybe you end with
11 something like, you know, that said, I'd love to get any
12 feedback, you know, I -- that you want in writing, and I
13 can respond to you in writing. And, of course, we'd
14 love to have you at our, you know, upcoming meetings.
15 You know, the next meeting is this date. You can find
16 it through Zoom or you can also, you know, look at
17 RedistrictingMichigan.org, where you'll find our full
18 schedule and our full calendar of events, or something
19 like that. But, you know, respecting that it's coming
20 from good place.

21 And -- and I don't know if that answers your
22 question, Anthony. Maybe you guys need to draft that in
23 a different way, but that's what I would write
24 personally.

25 COMMISSIONER EID: Well, I -- you know, I'm

1 just kind of -- thank you for that answer. That does
2 answer most of it.

3 But I still wonder like what exactly does
4 member of the public mean? For example, you know, I
5 take this to read that, you know, even if I -- let's say
6 I had a question that I wanted to ask one of our content
7 experts, I take this to read as I can't just give them a
8 call and ask them the question, you know, to help make
9 my job easier and, you know, making informed and
10 educated decisions.

11 MS. MARSH: But you certainly --

12 COMMISSIONER EID: I read it that way as well.

13 MS. MARSH: And just to add to that.

14 And, you know, Mike, please correct me if I'm
15 wrong.

16 But what you could do for those content
17 experts, and what this commission could do, is ask those
18 questions in writing and ask for written response or
19 invite those experts to come before the commission and
20 provide further context or -- or answer for their
21 questions that you all might have.

22 MR. BRADY: And individually, because it
23 allows this in writing, I mean, you can do that.

24 The one word of caution I'd have there is not
25 -- not for you individually, but just say, you know, if

1 your thought process was then, this is a really great
2 email response, let me forward this to the rest -- you
3 know, tell my new friends I'm in commission so everybody
4 can see that.

5 Well, when you do that, it runs the risk that
6 if somebody replies and says, oh, what about this? What
7 about that? At some point, there's -- there's case law
8 around the Open Meetings Act where other public bodies
9 were ultimately found by a court to be trying to get
10 around the public meeting requirement, and they were
11 basically having the meeting by email. And the email,
12 of course, was not public, because -- I mean, it just
13 was not readily public, somebody had to FOIA for it,
14 Freedom of Information Act request, F-O-I-A, FOIA
15 request.

16 And so courts just found that, you know, you
17 can have emails, but your emails are for scheduling
18 meetings. You can (inaudible) emails and more basic
19 stuff maybe, but you're not to have emails that are, you
20 know, deliberations, you're not to have emails where you
21 make a decision or where you line up everything and you
22 know what the vote is before you actually come into the
23 meeting, and -- and you officially make the decision.

24 That's not -- that -- that is, you know,
25 again, a violation of the Open Meetings Act. So for you

1 to reach out to anybody or anybody to reach out to you
2 in writing and have questions and back and forth, that's
3 exactly what -- not only, you know, is it allowed,
4 (inaudible) Constitution envisioned with that exception
5 in -- in A on the slide that we're looking at, Section
6 611 of the -- of Article 4. But, beyond that, just -- I
7 mean, we'll get to some of the other things, but just to
8 be mindful, again, you may wanna do everything public,
9 and that will be the safest way to prevent you from
10 getting, frankly, sued.

11 When I -- when I was talking about lawsuits
12 yesterday -- when most of the people yesterday and this
13 morning were talking about lawsuits, they're really
14 talking about, you know, the lawsuits challenging the
15 districts you're gonna draw.

16 I'm gonna be clear. You also wanna avoid the
17 more basic lawsuits, run-of-the-mill lawsuits, for
18 violations of the Open Meetings Act, FOIA. But, again,
19 I think that you guys, you know, will -- those are
20 easier to avoid, yeah, and they can be avoided.

21 COMMISSIONER LETT: Well, we're having a -- we
22 invite the public to submit written comments to us that
23 will be archived -- indexed and archived at some point
24 in time. I would think that one method would be -- and
25 -- excuse me -- Anthony, and I'm also -- in fact, I got

1 one this morning, we probably got the same one -- that
2 we could submit those to the public comment archive and
3 respond in public at a -- at a meeting by saying the
4 commission has received X and we're going to now
5 consider it as a whole body if -- if we think it's that
6 important. I think that would be a -- a -- a method to
7 use.

8 What do you think, Mike?

9 MR. BRADY: I think that makes a lot of sense.
10 I -- I just raised my hand. I -- your suggestion,
11 Steve, brought to mind more or less what we did, that
12 is, Sally and I and -- and Sarah, and the rest of the
13 team at the Department of State. In, you know, a year
14 ago -- over a year ago, as we were looking and unpacking
15 this amendment to the Constitution and developing the --
16 the application and all that. So we created a state
17 email address (inaudible) it's
18 Redistricting@Michigan.gov. And so if we got any public
19 comment -- you know, on our website, we said it,
20 (inaudible) public comments or any sort of feedback,
21 please send it there.

22 Sometimes people will just send it some other
23 route. And we would always forward it there, because
24 that became the depository of record for us. Because we
25 wanted to make sure -- of course, there are actually

1 record of retention laws, and we'll get to that in a
2 little bit.

3 But we also just wanted to make sure that we
4 had records of everything in the same place so that we
5 would -- we'd be able to avoid any sort of -- you know,
6 if there was ever a lawsuit or other things on that
7 specific topic, that they wouldn't have to search
8 through all of my emails and all of Sally's emails and
9 all of Sarah's emails, they could go to
10 Redistricting@Michigan.gov, and it would be the
11 authoritative source and record of these things.

12 And that -- that worked out well for us. And
13 I know other public bodies, you know, had something
14 similar.

15 So I think -- again, I think that's a fine
16 idea.

17 COMMISSIONER LETT: Okay.

18 MS. MARSH: And Commissioners, what might be
19 helpful -- you know, I know we're -- I know we're
20 running close to our scheduled end of 12:30, but we can
21 go a little bit longer. And what might be helpful is
22 Mike and I were planning on addressing kind of these
23 questions that you're starting to get to in terms of the
24 public record and record retention. So if there -- we
25 could move on to talk about those and then continue

1 answering questions as we go. I'm wondering if some of
2 the upcoming slides might -- might help further clarify
3 some of this -- this -- these questions we're having.

4 COMMISSIONER LETT: You guys are gonna be
5 around this afternoon with us, right?

6 MS. MARSH: Yes, we will be.

7 MR. BRADY: Always.

8 COMMISSIONER LETT: Why -- (laughter).

9 Why don't we do it this way, because we are,
10 obviously, going to run over, and that's okay. We got
11 nowhere to go. Go ahead through your slides. Let's
12 hold the questions 'til the end, write them down so you
13 don't forget them, and then we will -- we'll take them
14 up after lunch.

15 Anybody has an objection, raise your hand.

16 If not, Sally and Mike, go ahead.

17 MS. MARSH: All right. So moving on -- one --
18 one thing I did wanna mention before we move on from
19 this slide, is just to sort of thing to raise from a
20 practical matter, is that, you know, in addition to
21 talking about, as a group, the public record and record
22 retention elements that we're about to discuss, you all
23 might also consider determining how you want to handle
24 media requests as a group, either before or after you've
25 potentially hired staff to have that be their

1 responsibility.

2 I did wanna kind of slide that element of
3 interacting with the public, which is certainly
4 inclusive of the media. So -- so that's -- that's an
5 element to make -- to think about and perhaps talk about
6 as a group.

7 But moving on to the -- let's go to the next
8 slide after that -- to just briefly talk about public
9 records.

10 So we did -- we did touch on this yesterday,
11 but just to reiterate a couple of the pieces that you
12 see on this screen here.

13 Maintaining the public record, according to
14 Constitution, is required for all of you in the public
15 comment or map submissions or -- or other submissions
16 you might receive from the public. Those are considered
17 public records, according to the Constitution.

18 There are also -- and -- and this might be
19 helpful in clarifying some of the transparency
20 requirements upon you. The second bullet on the slide
21 is: All decisions of the commission shall be recorded,
22 and the record of its decision shall be readily
23 available to any member of the public without charge.

24 So, right, this sort of -- this level of
25 transparency that all of the decisions and your record

1 of decisions will be made available to the public. I
2 think that's, for me at least, a helpful way of thinking
3 about the requirements of the Open Meetings Act, that
4 they're publicly noticed meetings where decisions and
5 substantive conversation occur.

6 So then to move on to the next slide. Public
7 records are also required by the Constitution in
8 relationship to the maps that you all will develop,
9 which, of course, is, you know, your central charge.

10 So the Constitution does say that after
11 developing at least one proposed redistricting plan for
12 each type of district, so this is, you know, when we
13 were talking about the different rounds of mapping, you
14 shall publish a proposed redistricting plans and any
15 data and supporting materials used to develop those
16 plans. So, again, transparency and -- and doing this
17 process out in the open.

18 And then our office, the Secretary of State,
19 shall keep a record of -- a -- a public record of all of
20 the proceedings of the commission and shall public --
21 publish and distribute each plan and required
22 documentation.

23 So, again, you know, just further kind of
24 re-emphasizing the fact that your work is part -- is the
25 public record and the maps that you'll create is the

1 public -- it's part of the public record as well.

2 Mike, did you have anything to add there or do
3 you wanna talk about record retention?

4 MR. BRADY: So I was gonna talk about record
5 retention there, so I can see you're moving right into
6 it.

7 MS. MARSH: Okay.

8 MR. BRADY: The one you were talking about
9 what is record and then the actual next question is:
10 How do you keep it? The -- the only thing I might add
11 in terms of what would qualify as a record will be, as
12 noted before, you know, these meetings are being
13 transcribed. That will be -- that is a record. It
14 needs to be maintained as well. It will be maintained.
15 The -- the video recording itself is also a record. And
16 that will be maintained.

17 So, you know, there's that. And then anything
18 that -- you know, all the materials that -- that we send
19 to you in advance, the materials that we've referenced,
20 those are all, of course, records. Those are all -- I
21 think they're actually on our website already, or on
22 your website already.

23 And, you know, specific -- I think, you know,
24 beyond that, frankly, any of the emails that have come
25 are also records. Actually, this is one of the

1 questions -- forgive me, someone asked yesterday. I
2 think it might be Doug. I don't know. But, anyway,
3 someone asked a great question yesterday about emails,
4 or maybe I just got this other one and maybe mentioned
5 it to Sally and she relayed it to me, just asking about
6 discovery and, you know, other documents and whether,
7 you know, those can be -- come through. (Inaudible).
8 And, you know, I spoke about this briefly -- briefly
9 yesterday in the context of that question mentioned in
10 discovery. This commission is also a public body, by
11 the definition of public body Michigan Freedom of
12 Information Act, which means that folks from the public
13 can file requests for information there as well.

14 I think the -- you know, both Freedom of
15 Information Act and Open Meetings Act are referred to,
16 you know, around the country as being what's known as
17 the Sunshine Laws, with this idea that you pull back
18 the -- you know, you open the door, you get the sunshine
19 in, let everybody see what's going on. And, you know,
20 we've have just a fundamental belief in that from the
21 courts and the legislature that only good things come
22 from the people knowing what their government is doing.

23 I would say the easiest way to administer
24 FOIA, as an aside, is just to put everything public.
25 And so you guys are already required to have some many

1 things done publicly anyway, you're not supposed to be
2 (inaudible) individual communications with folks, per
3 the exception that we talked about earlier, and that's
4 in the Constitution.

5 But, you know, keeping a record of that and
6 sending it on to the central place. And, at some point,
7 maybe, you know, presumably, I think, what we'd wanna
8 build to would be on the website, you know, just anyone
9 can go and see the public record there.

10 So then when somebody submits a FOIA request,
11 I wanna see all your, you know, comments you've
12 received, it's actually on our website already. That
13 makes it real easy to respond to that from an
14 administrative perspective.

15 It also, I think, shows this commission as
16 being an absolute leader in the state in terms of public
17 transparency, which is putting everything out there. So
18 all the materials we gave you are already on the
19 website. It's obvious on the website. People can look
20 on the website. Right now, they get to switch off and
21 look at what you guys did yesterday, and they'll be able
22 to do that this weekend as well on their own time. So
23 all of that, you know, looks very well, but just to feel
24 that's another component to all of this.

25 So with record retention, especially

1 (inaudible) go to the next slide.

2 Oh, so where I was gonna go with that is to
3 say, you know, just a question about discovery, about
4 FOIA, about record retention. The -- if I were you, I
5 just wouldn't delete anything, I just would not, you
6 know, much of a good reason to. If there's -- and I'm
7 referring to think the course related to the work of
8 this, often times, having been a lawyer in the public
9 sector, if there's a question that came up about: Why
10 did somebody delete the email? You look at it, and it's
11 like, well, you know, at least for the people I've
12 worked with, there hasn't really been any, you know,
13 (inaudible) or something else. It's just easier to not
14 even, you know, be able to have a question.

15 Again, it's not -- it's either impropriety or
16 the question of the appearance of impropriety. And, you
17 know, so many folks, you know, may jump to a conclusion.
18 And I personally find it easier, and I advise my clients
19 accordingly, just to say, you know, why even bother with
20 the question? You can set it up accordingly.

21 I think along those lines, you know, as
22 citizens in our state, who stepped up to serve, assume
23 any of -- you know, you're, of course, all, at this
24 point, using your personal email. One of the things
25 that I -- I would highly recommend to you would be that

1 we find a way for, you know, to get you a government
2 email account.

3 Government email has, generally speaking,
4 better security. There's a lot of security the state
5 goes into and the government, as I understand it. And
6 the state can't be hacked, but it tends to be, you know,
7 much stronger, as I understand that. And so that would
8 be just a, generally speaking, good idea.

9 As transparent as you all are, and are going
10 to be, you know, maybe the hacking concern isn't, you
11 know, the top concern. But, at the very least, having a
12 separate email account provides a bright line for you
13 all about what is -- what work is public and what work
14 is private, and what work is for the commission and what
15 work is everything else.

16 And so one thing that I think you're gonna
17 wanna have is, is, at the very least, a separate email
18 so that if, and rather when, there's a lawsuit and
19 whether that's you know, more run-of-the-mill FOIA or
20 Open Meetings Act lawsuit, or if it is, you know, the
21 inevitable lawsuit that will come down the road
22 challenging the work of this commission and the actual
23 maps that you create, in discovery or it could be
24 through FOIA, someone says, well, I wanna get in your
25 email address. Once they get in there, you know, this

1 email's right next to your other email, even though it's
2 with your family, talking about health issues with, you
3 know, relatives talking about, you know, their health,
4 whatever else, your kids talking about all those other
5 things that are not actually public record and don't
6 have any, you know, right to be.

7 And so, to be clear, those, you know, are
8 private records. But the easiest way to just not even
9 have to get into that is just to have a separate email
10 account, and so that is absolutely no question the best
11 practice. It's -- you know, there's also various things
12 in Michigan law that advise -- advise -- advise folks
13 with -- with, you know, use government accounts for
14 government work and -- which means on the -- on the one
15 hand, don't do government work on your personal email,
16 which you guys don't have an option yet. And also,
17 don't do personal stuff on your government account.
18 It's okay. It cuts both ways. And if you follow those
19 -- those guidelines, I think, you know, you're really
20 gonna be fine when it comes to record retention.

21 Because, among other things, with government
22 email accounts, they can just be set so that nothing can
23 actually be deleted. And so, as a lawyer at the
24 Department of State, with all the lawsuits I'm involved
25 in, if I even try to delete my email, like it's not

1 actually been deleted. And so I don't even have to
2 worry about it. I don't try. I don't whatever else.
3 But just to say, I know that that's all that's built in
4 as a protection, and it's built in just for the larger
5 system. And then you all -- you approach your work
6 accordingly and you just won't even have to worry about
7 any of your personal emails, anything else, you just
8 keep it, you know, fully separate.

9 So that's something that -- yeah, I think that
10 would actually go a longer way to the question of record
11 retention, but what records are required and how you
12 actually maintain those records than anything else.

13 One piece to kind of tie it back to some prior
14 conversations, some things that came up yesterday. We
15 -- you all are a body of the legislature. We exist to
16 -- to serve you at your direction, at your request. If
17 you'd like us to work with the legislature to -- to find
18 a way to set up government emails accounts for you, we'd
19 be happy to do that. I don't want to make it too
20 informal, but just to say like I -- Sally and I are
21 gonna need that direction from you this afternoon at
22 some point.

23 And so once you authorize us to do that as --
24 as one of your decisions, again, if you authorize us to
25 do that, then -- then we'd be able to take that and act

1 with the folks at the legislature. We've already had
2 some conversations there, that they know and actually
3 respect your independence, as -- as do we.

4 So we're just trying to thread the needle,
5 being -- you know, anticipating some issues, providing
6 some basic ideas of how you might resolve those. But,
7 at the same time, respecting your autonomy and
8 independence, and just making all of that clear.

9 MS. MARSH: And just to kind of build on that
10 and -- and close up this session, because I know we're
11 running over time. Mike and I are happy to answer your
12 questions after the break.

13 And certainly, you know, as we've stated, we
14 wanna be as helpful as we can, you know, under your
15 direction, insofar as you find us to be helpful, and a
16 helpful resource moving forward.

17 One note before we take a break that I did
18 wanna mention. As we've been talking about, the
19 afternoon session has time set aside for you all to make
20 some initial decisions. And I wanted to flag a couple
21 of pages in your orientation materials that might be
22 helpful in going into that meeting in case you wanted to
23 look at them again before -- before you all resume.

24 So on commission structure, the orientation
25 materials, pages 39 to 40, provide a summary of the

1 California report. I believe that's also included in
2 the printed binder. A link to it is included in the
3 orientation materials, as well as a Commissioner's Guide
4 to Redistricting in Michigan, pages 19 to 20, has
5 information or, you know, suggestions on structure.

6 Next step to hiring staff, there's a mention
7 of this in your orientation materials on page 14 to 15.

8 And then future meetings, there is mention of
9 -- of future meetings on pages 12 to 13.

10 So just to mention those to you before your
11 next session.

12 And with that, thank you very much for -- for
13 your time, as I know we're running over, so I'll turn it
14 back over to you, Acting Chair.

15 COMMISSIONER LETT: Thank you, Sally and Mike.
16 We appreciate your comments and your direction. And I
17 take it, Sally, that those were the comments that you
18 wanted me to give you time for. You don't have anymore?

19 Okay. Though I -- I don't know that we need
20 a -- a motion to adjourn for lunch, but will -- since
21 Sally put it on my script, I'm gonna take it anyway.
22 Somebody move that we adjourn for lunch and somebody
23 second it.

24 COMMISSIONER ROTHORN: So moved.

25 COMMISSIONER ORTON: I second it.

1 COMMISSIONER LETT: Second.

2 All right. It's been moved and seconded.

3 All in favor, say let's eat.

4 (Chorus of let's eat)

5 COMMISSIONER LETT: All opposed, say I'm
6 cooking for everybody.

7 Not hearing that, we're done. See you back
8 here at 2:00.

9 MS. MARSH: We'll see you all back on at 1:45,
10 Commissioner.

11 COMMISSIONER LETT: Oh, okay. 1:45.

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Morning Session

09/18/2020

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\$20 122:15,22 123:10

-

--would 37:7

1

1 47:9 83:25
10 9:6 26:1 44:15 48:2,23
51:20 52:8 82:12 86:16
100:18 110:12,16
101 24:18
10:41 78:4
10:46 78:6
11 126:25
12 4:14 26:2 147:9
12-month 15:1
120 43:8
12:30 135:20
13 24:23 87:22 88:2 101:11
117:10 147:9
13D 91:4
14 147:7
15 147:7
15-minute 111:3,11
15th 29:1
18 2:2 113:22 114:2
1870 29:1
1890 29:8
19 147:4
1950s 30:6,7
1952 19:10
1954-55 19:20
1960s 30:2

1963 81:18
1964 32:12
1965 29:19 31:23
1968 33:11
1970 33:7
1970s 34:19 35:25
1972 33:11 81:21
1975 33:7 34:2
1977 8:24
1980 35:18 37:14
1982 34:2 38:3,10,13 39:1,25
82:24 86:23
1:45 148:9,11

2

2 40:23 42:8 47:9 65:24 89:22
106:10 107:21
20 74:16 147:4
2000s 17:3
2006 34:2 65:22
2010 51:21
2012 47:14
2015 43:5
2017 43:5
2020 2:2
2021 83:25
20th 81:11
26 19:17
28 19:17
2:00 148:8

3

30 12:19 15:25 124:12,14,20
34 7:18
36 80:3

39 146:25

4

4 86:8 87:8 127:1 133:6
40 146:25
40-hour 14:22
45 111:18

5

50 32:12

6

6 86:8 87:8 127:1
60s 46:17 81:14
611 133:6
65 49:2

8

8 117:24
80s 8:10 97:9

9

9,000 27:4
90 5:11,17
90s 10:20 17:3 97:9
97 58:7,10
9:30 23:4

@

@michigan.gov 5:22
@redistrictingmichigan 6:1

A

abide 88:7 95:23

ability 35:10 36:14 71:17
abreast 56:3
abridgement 39:3
absent 37:22
absolute 100:21 105:9 141:16
absolutely 67:10 94:13 105:8
 109:3 121:22 122:3 144:10
abstract 35:23 66:13
academic 93:17
accept 116:4 118:7 122:14
acceptable 89:10
accepted 91:6 92:5,8
accepting 67:22
access 2:22,24 36:14 59:14
accessible 119:20 129:12,13
accolades 86:25
accompanied 39:24
accomplish 8:19 71:16
account 143:2,12 144:10,17
accountant 14:18,21
accounts 144:13,22 145:18
achieve 49:7,9 50:17,19
acknowledge 56:10 57:10
act 25:17 27:19 28:23 29:18
 30:5 31:21,25 32:2 33:3,6,19
 34:12 35:8 38:15 39:6 41:3
 42:8 45:19 49:21,23 50:21,24
 51:15 52:23,25 55:8 56:9,12,
 16,23 57:2 59:1,2 60:13 65:17
 67:4 83:19 89:22,23 106:6,11
 107:22 109:14 114:7,9,12
 115:16,21 117:8,20 118:2,21
 119:14 120:15,18 126:13
 132:8,14,25 133:18 138:3
 140:12,15 143:20 145:25
acting 2:6 3:5 23:6 24:5
 129:10 147:14
activity 101:6,7

Acts 34:19
actual 58:12 60:13 61:7 62:11
 139:9 143:22
add 39:20 69:25 70:25 72:2
 74:12 77:22 101:9 103:14
 104:4 131:13 139:2,10
added 39:1,6 123:14
addition 118:13 136:20
additional 2:20 32:15 36:11
 39:4 41:20,21 70:1 72:3 118:4
address 5:7,17 32:4 41:25
 57:1 118:7 134:17 143:25
addressed 126:24
addresses 27:13
addressing 135:22
adds 70:3
adjective 20:9
adjourn 147:20,22
adjudicating 40:22
adjunct 86:15
adjustment 24:3
administer 95:25 97:1 140:23
administering 97:3
administration 43:4
administrative 8:8 79:12
 141:14
admit 15:15
ado 90:6
adopted 12:18 29:8,19 81:17
 83:14 115:1
adopting 31:20 88:8
adults 7:14
advance 5:6 23:13 85:10
 139:19
advantage 48:7 81:16 89:8,9
 91:22 92:4
advice 9:16 10:9

advisable 63:9
advise 69:1 142:18 144:12
advised 43:17
advocate 90:16
affects 82:17
affirmative 36:16
African-american 34:21 35:19
 51:22 109:16
African-americans 52:20
 109:12
afternoon 5:18 112:17 113:19
 116:18 136:5 145:21 146:19
AG's 117:19 118:20
age 114:23
agree 69:24 70:25 110:24
 125:4
ahead 23:10 64:7 96:12,13
 102:10 108:5 136:11,16
Aigler 27:10
air 55:25
Alabama 29:20 30:19 34:23
 35:17
alike 95:20,22
allowed 117:13 128:19 133:3
alluded 87:3 88:20 96:16
 103:2,9
alongside 7:14 14:12,14 18:17
amazing 71:17
amended 33:6 34:3
amendment 28:15 29:1 34:2
 76:5,22 86:3 87:17 90:21
 91:23 115:25 134:15
amendments 33:5,8 38:3,10,
 14 39:25
American 26:23
Americans 31:16
amount 42:17

**Morning Session
09/18/2020**

3

analogy 55:12
analyses 62:2
analysis 92:12 96:4 101:24
analyst 63:21
analyze 61:11
analyzed 62:11
analyzing 61:10
anchors 76:7
Andy 57:23,24 58:4,8
anew 80:9
Angeles 53:17 58:20
angles 69:8
Anglo 51:21 52:21 53:24
61:15
Ann 12:6
announced 81:20
answering 136:1
answers 92:1 113:3 130:21
Anthony 3:8,9 4:12,15,21
6:17,18,19 16:18 18:2 58:5,9
96:12 98:15 104:19 125:22
126:24 128:24 130:22 133:25
Anthony's 105:15
anti- 27:15
anticipating 24:9 146:5
anxious 8:14 10:24 12:10 80:2
anymore 147:18
apolitical 110:2
apologize 37:4 42:2,20 75:8
85:10 106:24
appeals 36:15 40:9
appearance 142:16
appears 33:13 34:24
apple 22:24
applicants 36:14
application 134:16

applied 34:10 46:13,14 76:23
applies 38:19,20 66:16 91:14
122:20
apply 38:18 44:5 45:9,14 46:5
49:15 50:14 54:20 57:4 62:18
63:22 76:6 93:4 95:2
applying 45:20 84:25
apportionment 81:22
apportionments 99:20
appreciated 68:10 126:4
approach 25:4 27:1 32:24
73:11 145:5
appropriately 117:14
approval 34:8
approximately 111:6
Arab 105:21
Arabic 2:25
arbitrations 6:14
Arbor 12:6
archive 134:2
archived 133:23
area 6:12 9:10,21 35:20 53:10,
14,22 54:9 58:15 61:16,19
74:5 102:8 103:3 109:13
areas 33:14 57:14 61:25 92:18
99:15 101:1
arena 78:2
arguably 120:3
argument 36:21 66:18
Arizona 7:23 9:14 12:9 68:23
110:25
array 57:17
arrive 103:18
art 88:3,24 92:8
article 47:9 86:7,8 87:8,22
127:1 133:6
articles 27:18 101:23

artists 17:2
ascribed 98:8
asks 47:5 49:9
ASL 2:15,17
aspect 32:17
aspects 25:9 26:6
aspiring 6:20
assess 93:1
assessing 39:15
assist 77:9 118:14
assistance 8:8 80:18
Assistant 43:5 84:22
associate's 13:2
assume 3:3 60:12 94:22
129:9,15 142:22
assumes 52:25
assuming 6:10 66:12 98:11
117:12
assumptions 65:19 66:1,4,8
at-large 35:13,24 36:24 37:16,
18,24
attach 41:16
attempt 46:1 49:13
attempted 40:21 81:24
attempts 49:24
attention 77:18
attorney 6:12,13 43:5 84:22
116:6 122:17
attorneys 116:2
audience 6:18 79:10
Austin 119:20
authoritative 135:11
authority 75:2 102:24
authorize 145:23,24
auto 74:4

Morning Session

09/18/2020

automatically 49:1
autonomy 146:7
avoid 133:16,20 135:5
avoided 81:24 133:20
aware 80:14
awful 58:18 68:4

B

back 4:12 8:24 10:20 12:15,25
14:13 16:12 17:11 19:10 24:5
26:16 45:11 59:7 65:21 76:3
77:3,11,19 78:5 79:2,13,17
83:2 95:14 101:10 105:15
111:6,14,15 113:5 115:1
116:16 119:3 121:3,11 122:12
133:2 140:17 145:13 147:14
148:7,9
backed 66:9
background 16:17 28:22 53:9
57:17 59:7 60:22 61:5 69:3,
12,18 106:1
backgrounds 15:18
bad 57:19 58:22
bail 33:15
bailout 33:19
baked 123:22
baking 13:25 21:19
ballot 97:14,17,18,20,22,25
98:7
ballots 80:25
ballpark 89:14
band 8:9,10 9:24 10:22 16:23
bar 29:1
barrier 30:11
baseball 19:8,17
based 15:1 49:18,24 50:23
51:4 52:12,13 60:13 66:9,15,
21 92:11,12 93:8

basic 49:16 132:18 133:17
146:6
basically 41:12 83:13 107:18
122:1 132:11
basis 5:13 29:2 39:3 41:22
66:24 86:16 103:6
baskets 102:6
bats 22:6
Battle 8:6
Beach 9:9
bear 41:22
beauty 91:24 94:14
beep 14:19
began 30:5
begin 25:8
beginning 26:24 29:8 85:5
101:7 102:17 129:4
behalf 68:6 71:21
behind-the-scenes 79:11
beholder 91:25 94:14,15
belief 140:20
believes 69:4
bench 82:3
benchmark 88:22
benefit 122:15
Benson 25:2 28:13 77:15
Bernie 86:22,23
betting 58:8,9
biased 73:4
bidding 63:19
big 12:2,21 16:24 20:14 22:12
49:11 54:9 62:3 82:23 84:6
102:6 104:25
biggest 100:2
binder 147:2
binders 19:17

bio 27:20
biology 6:23
bipartisan 80:7
birthday 124:13
bit 6:18 15:17 18:6 22:13
28:22 60:25 81:1 85:5 94:5
107:3 109:6,7 113:13 126:2
128:14 135:2,21
black 10:1 29:5,12,21,24
30:22 35:14,22 36:5,13,14,16
blah 122:14 129:22
blank 76:15
blend 61:12
bloc 36:12 41:14
block 29:11
blocks 100:23,24
blocs 82:16
Bloomfield 104:25
blue 14:8 51:22
blueberry 22:24
board 86:18 117:25 118:6,9
122:9 128:23
boarders 35:15
boards 109:15
boat 22:1
bod 114:4
bodies 115:2,8 120:10 130:5
132:8 135:13
body 44:17 114:5 115:8
117:10 134:5 140:10,11
145:15
bold 29:10
bolster 69:8
bone 7:18 18:21
book 22:2 63:8
border 35:14 37:16

boring 20:22
born 10:17 11:11 12:20 15:11
bother 142:19
bottom 48:23
bought 123:11
boundaries 58:20 88:17 89:13
 93:1,11 94:8
Bowl 124:17
box 103:10
boxer 58:11
boxes 79:9
boxing 58:3
Brady 112:2,5,6 113:7 116:15
 119:5,18 120:2 121:10,17
 125:18 127:13 131:22 134:9
 136:7 139:4,8
brains 59:19
bread 21:22
break 50:4 78:4,7 83:4,5
 110:19 111:3,11 116:19
 146:12,17
breakdown 29:20
breaking 7:18 96:17
Brennan's 40:25
bridge 30:20,24 31:3
briefly 23:16 112:11 115:19,23
 137:8 140:8
bright 143:12
bring 38:2,11 68:13 73:2
 79:23 93:18,19 100:24
bringing 43:25 75:3 118:12
brings 17:20
Brittni 3:13 7:3,6 8:4 18:3
 68:17 72:13,22
broad 54:19
broader 45:13
broken 18:21

broker 15:10
brought 35:6 62:7 75:6 134:11
bucket 110:13
buddy 57:25
build 117:3 141:8 146:9
Building 119:21
built 145:3,4
bullet 137:20
bunch 31:21
Bureau 60:20
busy 7:12 22:13
buying 124:17
buzz 86:10

C

calculations 54:1
calendar 130:18
California 7:21,23 9:9,13
 10:19 12:9 44:7 48:16 68:23
 91:9,20 94:6 95:5 101:6 104:6
 110:25 116:23 147:1
call 2:6 3:7 4:20 6:6,7 13:19
 16:1 26:13 27:6 31:10,11
 127:23 131:8
called 14:6 17:16 21:6 27:6
 40:20 47:4 53:25 54:2
calls 31:13 41:20
camera 26:13 58:1 78:13
cameras 23:19 24:8
cancer 19:25
candidate 36:6 53:5,7,21
candidates 52:21,22 53:16,23
 55:1 89:6 97:19
canning 13:24
Canvassers 86:18
captain 9:2

captioning 2:14
car 55:23 56:1
caravanning 70:17
cards 19:8,9,12,18,19
career 90:15 92:15,16
Carolina 10:19
carried 34:1
carry 80:13
case 26:11 35:18 37:24 47:14
 54:11 62:4,6 65:25 74:16 84:7
 132:7 146:22
cases 35:5 43:8 46:18 56:13
catch 14:13
caustic 85:19
caution 131:24
caveat 95:17 127:9,13
ceiling 21:6
Census 46:21,22 52:13,14
 60:20 61:4 62:13 65:4 82:16
 100:24 105:2
center 24:19 80:7
central 138:9 141:6
century 29:16 81:12
cere 106:25
certainty 60:23
cetera 128:23
chaff 102:19
chair 2:6 3:5 23:6 24:5 124:15
 147:14
Chaldean 105:21
challenge 27:5 70:3 75:15
 100:2 103:8 104:21 109:1
challenges 80:8 101:2 108:17
challenging 70:12 105:5,7
 133:14 143:22
Chamberlain 17:5

Morning Session

09/18/2020

6

chance 44:21 51:14 58:5,7
85:4 118:5

change 27:1 32:17,19 37:10
65:2 81:12 105:11 108:24

changed 52:7 89:15,16,17
117:22

changing 30:9 52:7

characteristics 89:2 101:17
102:5

characterize 35:19

characters 17:25

Chardonnay 22:18

charge 65:25 85:21 137:23
138:9

charged 59:14 99:20

chart 24:25 29:17

chat 26:8 84:20 112:22,23

cheap 22:16

cheaper 96:25

check 15:6 60:18 67:16

checked 24:7

checking 59:21

cheek 17:23

cheer 18:9

Chief 65:21

child 18:8

children 10:21 12:5,17,19
124:22

children's 12:22

choice 39:15 50:8 51:15 55:2

choose 61:12 63:18

chop 83:8

chopped 82:17

chorus 148:4

chose 82:1 91:10

chosen 103:13

Chris 78:16,17,18,19 80:3,7,
10 86:22,24 87:3,10 88:15,20
89:25 92:18,20 95:12 96:15
99:13,19 101:22 103:9 104:4
109:4,10,11 110:22

church 13:5

circle 35:15 53:18 107:19

circumstances 36:25 38:19
54:19 57:13

cities 76:16 82:15 83:5,8,9
100:23

citizen 7:9

citizens 2:8 29:12 48:17 84:14
142:22

city 6:12 7:8 15:10 35:14,25
36:2,4,15,17 58:20 83:4,16
88:16 89:13 92:25 93:11
94:12 97:15 99:25 100:8
128:22

civil 27:12 31:15 43:7,12

claim 65:24

claims 35:6 40:22

clarify 86:1 136:2

clarifying 84:20 137:19

Clark 3:17,18 8:22 19:7,15
60:1 62:15 63:10 64:2

classes 13:1

classical 14:8

clause 29:9 35:7 47:23 48:1

clear 26:5 60:12 66:24 78:24
133:16 144:7 146:8

clerk 80:6 120:8

clerks 84:2

click 30:12,13

clients 90:10,11,16 121:4
125:17 142:18

clinic 18:17

cloak 102:22

close 42:3 56:25 135:20
146:10

closed 2:14 60:14 97:13

closer 37:7

Co-commissioners 23:3

coast 44:8

coded 84:3 98:7

coffee 123:11,15,23 129:20

cognizant 70:9

cohesively 41:14

collaborative 8:2

colleague 112:2

collect 19:8 62:8

collected 19:8 30:3

collecting 60:8

collection 19:17 62:17

college 7:21 13:3 84:24
124:21

Combat 17:13

combination 40:5,15,17

comfortable 125:20

command 49:20

comment 5:1,4,17,21,24 72:9
95:18 105:16 125:24,25
134:2,19 137:15

commentaries 96:3

comments 5:13 6:2 23:2
42:23 72:16 85:14 86:6,13
99:12 108:20 133:22 134:20
141:11 147:16,17

commission 2:6,8 5:7,18,20,
23 11:13 20:10,20 22:14 25:8
32:3 35:25 42:5 43:12 44:9
48:17 66:10 69:4 70:13,16
71:3,5 81:23 85:3 88:3 91:8,9
96:18 98:21 99:7 114:4 117:1,
2,18 121:8 122:13,17 125:14
127:3,5,21 128:22 131:17,19
132:3 134:4 137:21 138:20

Morning Session

09/18/2020

7

140:10 141:15 143:14,22
146:24

Commission's 34:13

commissioner 2:5 3:14,16,18,
20,22,24 4:1,3,5,7,9,11,16,22,
24 5:3 6:19 7:2,4 8:4,6,20,22
9:18,20 10:14,16 11:6,8,20,
23,24,25 12:12,14 13:8,10
15:7,9,21,23 16:9,19 18:2,5,
22,24 19:1,5,7,15,22,24 20:6,
7,16,18,24 21:1,13,15,18,20,
23,25 22:8,10,18,20 23:1,9
24:6,14 36:2 60:1 62:15 63:10
64:2,8 67:20 68:18 72:24
75:19 77:21 79:16 91:2 95:9,
11 96:10,13,15 98:13,16
104:20 105:15 110:21 111:13
116:5 119:8,13 120:23,24
121:1,6 125:3,4,10,11,21,22,
23 127:6 128:4 130:25 131:12
133:21 135:17 136:4,8
147:15,24,25 148:1,5,10,11

Commissioner's 147:3

commissioners 3:3,6 4:14,23
7:23 8:3,16 15:17 16:6 24:23
26:3,7 28:8 44:10 59:23 64:5
72:23 73:8 75:23 77:2,15,24
78:1 79:1,12 109:9 112:9,20
116:21 122:9 125:7 128:11
129:5 135:18

commissions 98:25

committee 11:12

committees 43:11 128:8

common 72:7

commonality 104:14

communicate 67:14 71:8
127:6

communication 112:12
127:10

communications 141:2

communities 42:4,16 51:10,
13,18 52:5,10,15 54:5 56:10,
20 61:20 70:11 71:22 83:20
88:19,20,23 89:4 93:9 94:7

100:4 101:11,20,23 102:1
106:9 109:16,17

community 7:13 13:3,20
35:16,19 36:5,9,16 37:6 38:7
39:8,16 40:7 41:6,11,13,14,15
42:4,12 50:3,17,19 51:25
62:11 68:25 76:20 83:14,16,
23 93:17,19 99:22,25 100:9
101:4 105:4,25 109:20 110:4,
15

commuter 78:11

compact 41:7,9 51:25 56:18

companies 63:11

company 18:25 62:16

compared 88:9 94:19 97:9

comparison 29:21

compensates 70:8

compete 17:17

competent 86:24

competitive 18:8

compile 103:21,25

complete 18:10 73:4

completely 17:21 62:25 68:13
105:9

compliance 33:16 55:7

complicated 38:18 39:22 45:5
51:7 100:7

comply 50:23 56:8,15 59:1,2

complying 115:17

component 141:24

components 107:17

composition 56:22 107:6

computer 3:10

concentrated 35:20 36:11
51:9,18 52:10

concentration 36:12

concept 101:4 107:14

concern 107:19 108:8 143:10,
11

concerns 71:10 118:8

concerted 30:21

conclusion 60:11 142:17

conclusions 66:17

Concord 22:21

conditioning 56:1

conditions 41:16 42:10 51:1
54:20 55:20 70:1

conduct 70:5 83:8

conference 117:6

confidence 73:16 74:10 85:22

conglomerate 104:25 107:11

congratulate 80:11

congratulations 85:3

Congress 29:19 31:11,18,20
32:4 33:6 34:3 39:6 42:16
46:6

Congress's 42:9

congressional 47:7,8,12
83:12 100:21 106:23

Congressman 30:17,18

connect 7:15 69:13

conquer 128:6

consequences 29:15

considerable 42:17

considerably 114:14

consideration 41:20 83:19
87:6,7 89:11 92:25 105:10
109:18

considerations 69:25 70:22
88:11

considered 29:19 74:24 82:21
108:4 137:16

consistent 114:9,14 115:13
120:11

consistently 35:21 36:7,10
constantly 36:7 67:12 69:5
constituencies 90:18
constitute 37:7 41:7
constitution 37:17 38:1 47:5, 10,22 49:5,8 50:20 55:5 81:17 86:4,9 88:14,23 94:21 95:24 102:2 114:6,7,8 121:11 122:11 124:4,25 126:12,25 129:22,24 133:4 134:15 137:14,17 138:7,10 141:4
constitutional 29:7 35:6 36:22 47:3 49:19 76:5,22 86:3,7 87:17 88:22 90:21 91:23 94:17 96:7 113:24 115:25
constitutionalized 37:20
constraints 100:16
consultant 61:17 63:20 116:6 122:17
consultants 102:25 116:2
contact 116:22
contained 83:11
contemplates 49:5
contemporary 38:6
content 131:6,16
contest 58:13
context 54:19 85:1 102:1 131:20 140:9
contexts 37:21 57:21
contiguous 88:15 100:11
continue 135:25
contracting 63:19
contractor 74:3
contribute 35:10
control 17:25 19:16 127:24
controversial 72:5
controversy 67:2

Convening 2:9
conventions 29:7
conversation 26:3,16 28:19 59:20 70:10 128:19 138:5
conversations 112:18 145:14 146:2
cookies 123:5,7,9
cooking 13:24 148:6
cool 18:13
cooperative 14:17,21
Coronavirus 114:24
correct 5:1,2 95:18 98:7 131:14
correctly 91:10 103:4 110:12
cost 98:2
council 128:22
counsel 62:21,22 118:13,14, 17
counseling 9:17
counties 29:24 83:5
country 46:23 52:7 54:12 59:17 61:25 62:2 63:1,7 98:24 104:11,24 140:16
county 13:2 33:21 34:1,3 83:4, 17 88:16 89:13 92:25 93:11 94:13 98:13 104:9 128:4,5,22
couple 13:1 31:1 39:20 76:16 111:7 137:11 146:20
court 32:18 33:25 34:4,24 35:18 36:20 37:12,14,15 40:16,20,21 41:17 46:18 48:5 66:5 72:6 81:19,21 82:1,2,11, 24 132:9
courts 34:20 39:25 40:22 42:18 43:13 48:1 132:16 140:21
cover 112:11 113:10,16
coverage 31:24 32:7 33:9,24 34:4

covered 32:13 33:2,15 34:7
covering 84:23
cracking 89:23 106:24 107:15
crafting 27:15
crash 55:17 56:24
create 7:16 8:2 69:19 120:4 138:25 143:23
created 81:15 86:22 114:5 134:16
creating 80:25
Creek 8:7
crimes 18:18
criteria 42:5 46:5,12 49:7 79:24 80:23 81:4,6 83:18 84:25 88:7 91:17 92:10 95:6 97:2 99:16 106:5
critical 24:25 84:4 85:18 87:12,23
criticisms 65:16
crucial 32:21
crude 35:23
cultural 89:1 101:16 102:4
culture 7:9
curious 97:6
current 45:17 121:19
Curry 4:2,3 12:14,15 21:1
curtain 97:13 108:14
cut 97:15 98:11 110:8,18
cuts 144:18
cutting 100:23
cycles 63:24
Cynthia 3:15 8:5,20 10:24 18:23 22:12 72:23 105:14

D

D.C. 8:25 9:10

Morning Session

09/18/2020

9

Dallas 9:9
danced 18:12,20
dancing 18:8
dark 33:3
data 9:5 52:11,13 53:1 60:5,7, 11,19,20,23,24 61:4,11,22 62:8,13,17 64:13 65:4,5 66:14 68:25 69:9 73:2,17 89:19 95:7 106:7,20 107:24 108:18 138:15
date 33:9 128:13 130:15
dated 31:23
daughter 12:17 14:10
daughters 14:5
day 2:7 7:5 12:25 26:18 27:7 45:21 80:16 82:4 90:7 93:24 114:23 123:16,24
day-to- 45:20
days 17:1 93:23
deadlocked 81:22,25
deal 84:6 105:24
dealing 104:22 106:5
dealt 105:10
Dearborn 104:24
decades 27:3 36:1 48:17 63:24 72:15 83:16 100:6 117:20
December 103:18
decide 92:9,11 125:19
decided 26:25 37:14,18
deciding 46:6
decision 34:1,24 37:12,14 38:9 40:20,25 65:21 118:10 132:21,23 137:22
decision-makers 62:18
decision-making 112:18
decisions 37:13 60:6 66:11 67:22 113:18 131:10 137:21,

25 138:1,4 145:24 146:20
Decker 3:23,24 11:8,23 20:7
decline 26:19 121:7 125:15 126:6
dedication 25:3 85:4
deemed 34:4
deep 45:8
deeper 26:6
deeply 74:21
defeat 41:15
define 42:12 44:14 93:15,17 101:20
defined 39:7 101:12
defining 100:10
definition 76:24 91:23 92:22 140:11
definitive 92:7
degree 6:22,23,24 9:23 46:20 101:12
delete 142:5,10 144:25
deleted 144:23 145:1
deliberate 91:8,11,17 118:10
deliberations 132:20
deliver 60:20
Delvecchio 19:21
democracy 26:19 27:3 43:3
Democrat 90:8 108:21
Democratic 26:23 52:20,22 82:7,8 109:22
Democrats 52:18 90:13 103:17
demonstrate 32:18
demonstrated 33:16
demonstration 118:9
denial 39:2
denying 39:9

department 3:2 25:3 30:6 32:19 43:6 62:7 77:16 105:22 111:21 112:2 119:21,23 134:13 144:24
depending 5:19
depends 126:1,10
depository 134:24
Deputy 43:5
describe 25:22
desegregated 36:20
deserving 86:25
design 51:2,12
desirable 56:13
desires 71:10
destination 76:13
detail 86:5 98:4 103:5 113:14
detailed 86:9 119:15
details 2:23 45:8 98:9
determination 61:23 62:14 108:16
determinations 60:13
determine 62:24
determined 89:10 91:5 92:5
determining 136:23
Detroit 18:11 51:20 52:1,2 80:6 109:13
Detroiter 7:7
develop 138:8,15
developed 36:22 42:18
developing 37:19 134:15 138:11
develops 41:19
deviate 47:24
deviation 47:15 82:9,13,14 100:19,25
device 32:8

devoting 28:10
 diagrams 34:16
 difference 12:22 47:13 48:3
 95:5
 differences 47:11,20
 differently 48:9
 difficult 30:21
 dig 26:5
 digits 29:25
 dilute 50:12
 dinner 117:5
 direct 61:11 87:18 103:15
 directed 60:2 125:6
 direction 44:16 145:16,21
 146:15 147:16
 directions 55:22
 directly 122:13
 Director 18:18 80:4,20 86:20
 112:1,6
 disagree 104:1
 disagrees 103:20
 discovery 140:6,10 142:3
 143:23
 discreet 35:16
 discretion 48:12
 discrimination 27:16 29:2
 31:16 32:5 36:17 40:6 43:9
 51:11 54:10,15,23,24
 discriminatory 30:7 32:20,23
 37:19,23
 discuss 46:4 126:15 127:4,20
 136:22
 discussed 22:4 112:13 118:12
 discussion 24:10 77:3,4
 111:16 113:19
 discussions 67:2 116:23
 118:6

disenfranchise 29:5
 disenfranchisement 38:23
 disenfranchising 29:9
 dislike 95:15,20
 disparate 40:4 97:11
 disparity 48:6
 disperse 107:16
 dispersed 82:20
 disproportional 92:4
 disproportionate 89:8,9
 disqualified 75:6
 distancing 115:18 118:23
 distill 49:13,16
 distills 40:25
 distinct 40:8 51:10 52:16,19,
 23 53:1,10,14,21,23 54:6,14,
 22 60:16 61:13,20 99:2 107:9
 115:5
 distribute 138:21
 district 35:10 36:3 37:8 38:24
 41:8,19,24 42:14 46:6,20,23
 47:1,6,12,16,18 48:3,4,14,21
 49:7 50:3,6,8,11 55:6 56:23
 58:19 66:5 83:12,13 88:18
 89:7,11 97:20 98:9 107:5,8
 138:12
 districting 58:15 68:3
 districts 10:12 24:25 25:18
 37:5,6 38:8 47:7,8,9,21,25
 48:8 51:2,12 54:8,25 55:2
 56:8,9,17,18,19 58:16,22 59:3
 62:3 80:22 81:11 82:8,9,20
 83:10 91:7 98:13 100:20
 106:23 107:17 133:15
 diverse 44:23 88:19
 divi 32:3
 divide 50:17 105:3 128:6
 Division 43:7
 doctor 74:4

doctrine 82:11
 document 117:19,24
 documentation 138:22
 documented 30:25
 documents 140:6
 dollars 96:19,22 97:4
 Don 14:11
 door 140:18
 dots 51:21,22,23
 doubt 20:24 44:10 107:21
 Doug 8:21,22 19:6 59:25 64:3
 140:2
 Douglas 3:17
 Dowd 16:15
 downstream 48:16
 draft 129:2 130:22
 dramatic 16:16
 draw 24:24 37:5 54:7,25 55:2
 56:8,9,17,18,19 82:15 133:15
 drawers 40:1 41:2
 drawing 47:3 48:8 50:3 80:24
 91:12 100:15
 drawn 10:12 37:6 40:13 58:25
 59:2
 drew 37:17 82:8
 drive 49:2 55:17
 driving 55:6,12,13
 drop 110:13
 dropped 84:10 123:22,24
 dropping 123:8
 Dumpty 95:13
 duplicative 85:10
 duration 115:1
 Dustin 3:19 9:19,21 10:14
 11:3
 duties 87:21 116:7 122:18

125:7 127:8
duty 80:13

E

earlier 39:7 86:6 90:1 96:2
 103:2 108:6,10 141:3
early 17:3 28:8 30:2 54:3 63:4,
 9 83:24 93:23
earnest 30:6
ease 80:25
easier 2:17 83:8 96:25 100:8
 107:9 131:9 133:20 142:13,18
easiest 99:21 140:23 144:8
east 44:8
Eastern 9:22 104:22
Easterners 105:1
Eastpointe 62:5,6,9
easy 38:18 141:13
eat 148:3,4
economic 35:20 89:3 101:17
 102:5 106:14
Ed 3:23 11:8,22 20:6 22:11
 103:3 104:18
Edmund 30:19 31:3
educate 64:12,17
educated 131:10
education 6:21 64:9,14,16
 65:5,8 66:23
educational 24:10 98:19
educator 67:7
effect 37:23 80:24
effectively 35:11
efficacy 34:19
effort 30:21
efforts 29:3,16 30:20 110:9
egg 95:1

Eid 3:8 4:16,21,22 6:19,20
 16:19 96:13 98:16 104:20
 125:23 130:25 131:12
elec 35:13
elect 36:5 39:14 50:7 51:14
 55:1
elected 30:22 36:3 39:17
 103:17
election 27:12 32:12 33:11,12
 35:24 37:9 43:4 61:13 84:23
 93:25
elections 36:15 40:8 61:8,19
 62:9,10 80:4,20 83:7 86:20
 96:25 97:1,3
electoral 32:17 35:13 37:25
 39:10,13 40:12,13 51:2,3,10
 52:16,23 61:7
electronic 9:5
element 35:3 137:2,5
elements 34:11 102:2 112:11
 136:22
eliminated 34:5
Ellen 23:18,24 25:14 27:9,10,
 23,24 28:6 42:24 43:25 44:6
 45:3,4,8,12,15,25 49:13,21
 50:2,24 51:7 54:18 59:12,24
 62:1 64:20 65:12 69:18,23
 72:2,21 74:12 77:23
Elwood 16:15
em 19:13 22:21
email 2:18,23 5:21 126:14
 129:8 132:2,11 134:17
 142:10,24 143:2,3,12,17,25
 144:1,9,15,22,25
email's 144:1
emails 132:17,18,19,20 135:8,
 9 139:24 140:3 145:7,18
embedded 49:20
emergency 115:7
emphasize 45:2

empirical 27:18
employees 122:7
employment 43:8
empowerment 71:21
encompasses 52:19
encounter 31:4
encouraged 11:14
end 38:13 50:25 58:12 62:7
 80:21 81:9 82:4 83:6 84:9
 85:25 89:12 92:14 93:24 94:2,
 4,24 95:14 100:10 104:12
 108:6 119:10 121:4 130:10
 135:20 136:12
endeavor 72:11
ended 33:2
enemy 98:21
energy 28:10
engage 54:3 71:17 73:2
engaged 44:23 69:8 71:18
 72:11 77:3
engagement 7:13 68:25 71:7
engages 43:3
engaging 44:12 73:24
engineer 11:10 20:13 103:4
enjoy 10:22 11:17 16:2
enjoyed 9:13 12:21 17:4
enjoying 13:5,6
enlightenment 110:23
enormous 44:17
ensued 31:4
ensure 71:11
enter 83:22
Enterprise 44:24
enthralled 7:12
entitled 42:13
entrance 119:19

enunciated 81:14
 environment 8:2
 envisioned 133:4
 equal 25:18,22 27:13 35:3,7
 41:25 46:16,19 47:2,5,23,24
 48:1,20 51:14 56:19 57:2
 82:10 88:13 100:21,22 103:16
 equalities 93:8
 equality 27:14
 equally 48:14,21
 equation 90:11
 equitable 51:3 55:1
 era 19:10
 eras 10:22
 erase 75:11
 erected 30:10
 Erin 3:21 10:15,16 19:23
 essential 35:3 40:16
 essentially 51:8 89:15,16
 90:17 91:18 97:18
 establish 129:2
 estate 15:10 126:3
 ethics 126:7
 ethnic 53:9,11 56:22 60:22
 61:5,14 65:19 83:19
 ethnicity 25:23 49:12,17,19,25
 50:23 52:12 56:14 57:15
 60:21 62:12 105:1
 Evaluate 73:12
 evaluated 73:18
 evaluating 65:24
 events 130:18
 eventually 61:3
 everybody's 95:19
 evident 34:20
 EVO 17:16

evolution 93:21
 evolved 82:11
 exact 94:21
 examples 72:6
 excellent 77:16
 exception 127:16 133:4 141:3
 exceptions 127:25
 exchanged 101:22
 excited 8:1,18 15:2,3
 exciting 90:22 92:16 105:11
 exclusively 29:5 92:17
 excuse 64:20 133:25
 Executive 18:18 114:24,25
 115:10,14
 exercise 110:3 122:23
 exist 40:18 115:5 145:15
 existed 115:6
 exists 41:11 61:22,24
 exorbitant 98:3
 expect 10:10
 expectation 110:2
 expensive 10:6 97:24
 experience 63:22 69:3 73:8
 80:1 124:7
 experiences 99:17
 experiment 80:17
 expert 25:5 27:9 62:23 74:6
 92:6 103:19 116:6 122:17
 expertise 74:6,8 75:3,6 92:11
 102:22 103:2,12,25
 experts 25:11 59:15 69:2 73:9
 81:3 102:14,20,25 116:3
 131:7,17,19
 explain 67:9,11 71:19
 explicit 66:9
 explore 69:1

exposed 69:9
 express 28:9
 expressing 24:22
 expression 42:6
 extend 38:14
 extensive 10:11 11:3 52:4
 extent 33:23 39:16 63:8 66:7
 71:8 76:8,9 85:9,18 107:16
 extra 97:23 111:7
 eye 55:13,17,18 56:22 91:24
 94:14

F

F-O-I-A 132:14
 face 17:25 51:11 54:10 105:12
 Facebook 2:10 5:4,8,25 6:9
 120:21
 fact 10:3 13:13 17:9 18:20,25
 20:19 21:4,9 30:5 36:9 37:7
 40:14 45:3,5,6 48:16,24 49:2
 52:5 58:5 66:9 68:11 70:2,9
 72:18 75:5 118:20 126:11
 130:10 133:25 138:24
 factor 70:1 94:23 100:20
 108:3
 factors 39:24 40:1,3,6,10,14,
 18 41:1,5,12,21,22 42:11
 54:17 107:23
 facts 7:17 35:17 36:11 43:21,
 22 60:14 66:4 69:22
 factual 66:20
 fair 10:13 11:16 51:13 71:12
 94:1
 fairly 51:19
 fairness 89:10 91:6 92:6,8
 93:2,10,14
 faith 129:10
 faithful 96:7

faithfully 45:10
 fall 46:7
 familiar 28:24 30:16 63:25
 87:20 120:2
 family 13:5,20 21:3 123:16
 124:11 144:2
 famous 31:13
 famously 30:24 31:14 40:25
 fan 12:2 16:24
 Fantastic 23:25
 fashion 94:10
 fast 111:17
 favor 52:18 148:3
 favorite 7:15 8:9,12 9:24
 10:21 12:8 15:16 16:23 21:1
 52:17
 favorites 10:1
 feature 26:8,13
 February 61:2
 federal 25:24 32:18 34:8 41:11
 43:13 45:18 46:8 49:8,11
 50:20 57:1 72:6 81:4 83:18
 107:21
 feed 58:1
 feedback 72:9 130:12 134:20
 feel 11:1,2 73:19 119:12
 125:20 129:12 141:23
 feels 64:14
 fell 32:12
 fellow 15:16 38:23 44:13
 felt 121:22
 Feud 21:3
 fewer 97:4
 fiasco 65:23
 fiddle 14:6,7
 field 74:6 126:1,7

fight 61:1
 Fighter 17:13
 fighting 17:12,19
 figure 42:15 110:14
 figuring 105:2
 file 84:2 98:6 140:13
 final 71:15 111:16
 finally 9:6 25:4 43:17 82:24
 find 7:12 23:2 40:17 60:15
 61:19,22 63:10 70:12 93:17
 100:3 102:20 103:25 104:1,21
 105:4,16 130:15,17 142:18
 143:1 145:17 146:15
 finding 30:8 41:23 103:7
 findings 66:4,9
 finds 42:6
 fine 135:15 144:20
 finishing 83:24
 first-come/first-serve 5:13
 fit 58:12 100:12
 fits 124:2,3
 fitting 125:2
 five-minute 78:7
 flag 73:23 118:25 125:16
 146:20
 flaw 26:23
 flexibility 48:11 49:6,9 76:19
 floor 42:21 59:22 120:18
 fly 24:3
 focus 46:8,16 86:11 87:19
 focused 92:17
 FOIA 132:13,14 133:18 140:24
 141:10 142:4 143:19,24
 folks 7:16 18:15 33:23 34:25
 37:17 69:1,20 79:10 101:6
 103:24 113:15 123:12 130:3
 140:12 141:2 142:17 144:12

146:1
 follow 26:3 30:25 42:12 77:6
 87:7 88:12 95:11 144:18
 football 19:18
 force 55:6
 forget 136:13
 forgive 113:12 120:6,8 140:1
 form 28:11 97:14,18,20 98:7
 formal 117:1
 forms 97:17,22 98:1
 formula 32:7 33:9,24 34:4
 fortunate 25:10
 forum 127:15,18
 forward 10:11 11:4 12:25
 15:19 16:7 20:15 21:11 28:20
 34:1 42:22 44:18 59:10 75:12
 87:8,15 89:18 101:8,21
 102:18 107:25 108:17 132:2
 134:23 146:16
 foster 12:18 54:16
 found 26:19 42:1 43:16 61:21
 82:20 104:5 132:9,16
 foundation 25:8
 fracture 38:7
 framework 90:3
 Francisco 104:9,10
 frankly 130:1 133:10 139:24
 fraud 29:11
 free 6:24 119:12
 Freedom 132:14 140:11,14
 frequency 65:18
 friend 124:12,14,20
 friends 19:10 22:12 132:3
 front 14:2 93:3 98:4
 froze 32:24
 full 15:3 85:22 115:24 130:17,
 18

full-time 6:15 86:16,17

fully 145:8

fun 20:1 28:19

function 66:23

functioning 36:24

fundamental 140:20

future 9:16 16:8 17:8 91:18
96:25 98:25 147:8,9

G

gain 127:7

game 21:2 83:4 89:15,16
126:6

games 17:11,12,22 83:2

garden 13:16,19,20,21

gather 116:21 117:25

gathered 117:11,12,15

gathering 118:5,24

gave 7:25 29:3 30:3 100:19
117:2 141:18

general 9:3,5 11:9 15:25 43:5
84:22 115:16 127:11

generally 9:8 29:12 41:10
47:12,17 48:2 143:3,8

genres 14:7

gentleman 22:22 57:23 58:3,
6,9

geographic 104:5

geographically 41:6,8 88:14
99:15

geography 100:14

Georgia 10:19

gerrymandering 26:22 72:5

gesture 123:6,7

get all 71:14

gift 121:5,24 122:14 124:12,13
125:5,8

gifts 115:22 116:4 121:3,13,14
125:17

Gingles 40:21 41:1

Gingles' 40:24 42:11

gist 64:9

give 6:8 17:6 38:12,15 42:21
46:25 49:9 51:12 54:4 55:1
57:5 58:4 61:4 66:4 69:2,8
71:20 73:16 76:19,22 90:3
92:7 102:6 114:20 121:5
124:11,12 129:24 131:7
147:18

giving 10:9 64:13,22 73:17
74:10 124:16 125:7

glad 77:3

Glia 17:5

goal 48:21 95:22

God 124:22

Godfather 124:22

golf 9:8

Gomer 15:14

good 2:5 4:19 7:4 9:12 11:13
15:9,20 17:2,12 19:16 21:7
23:2 24:17 48:6 55:7,9 56:6
57:12,19 58:16,22,23 59:13,
17 60:18 67:16,24 74:10
78:25 92:9 99:11 101:19
111:2 112:5 121:23 125:18
129:10,15 130:20 140:21
142:6 143:8

goods 123:22

Gordie- 19:20

gosh 65:7

gospel 67:23

gotta 100:22 111:17

governance 28:11

government 36:13 121:21
140:22 143:1,3,5 144:13,14,
15,17,21 145:18

governor 114:25

governors 90:14

GPS 55:21

grab 82:15 100:23

graduate 8:25 9:1

grand 80:17

grandchildren 12:7 16:4

grandfather 29:9

grape 22:21

grapes 22:22

graph 53:15 54:2

grass 14:8

grateful 43:14 44:12

gratifying 21:9,10

gratitude 24:23

gray 77:25

great 3:11 7:22 8:17 17:19
24:9,20,24 27:2,4,21 28:6
48:15 58:5,17 60:9 68:15
72:22 73:6 74:15 78:15,23
80:11 91:21 96:1 105:6,8
106:17 125:8 132:1 140:3

greater 122:15

Grossmann 77:8 79:19,22
84:19 90:25 95:4 98:15 99:11
103:14 104:16 105:13,20
106:13 107:2 109:5 110:17

ground 30:9 98:25 113:16

grounding 76:6

grounds 106:2

group 44:23 65:19,20 107:4,9,
12 109:22 112:19 136:21,24
137:6

group's 51:4

groups 51:19 54:13,21 61:15
67:4 106:7 107:14 110:6,7
128:8

grown 11:17

guarantee 71:2 109:2,3

guess 14:7 16:1 19:3,4,24
20:2,21 21:8,21 22:12,15,17
68:18 74:12 111:22 125:16

guidance 42:17 76:15 102:16
118:17

guide 41:1 62:21,22 76:20
86:7 94:18,20 114:18 147:3

guided 81:5

guidelines 122:6 130:2 144:19

guy 20:8 58:2

guys 17:10 111:17 129:1
130:22 133:19 136:4 140:25
141:21 144:16

gymnasiums 70:19

H

hacked 143:6

hacking 143:10

hair 77:25

half 81:11

hall 127:11

hand 26:12 48:13 95:8 134:10
136:15 144:15

handle 128:25 136:23

hands 48:18

handyman 16:1

hanging 57:25

Hannibal 9:25

happen 7:19 50:2 60:8 61:15
109:1 111:1

happened 4:17 30:10 31:7
35:5 87:24

happy 11:19 46:11 57:1 77:4,5
95:23 99:4 103:20 112:23
116:11 119:11 145:19 146:11

hard 19:2 66:14 69:10 73:14,
22 74:19 99:16 105:22 106:12

hard-to-reach 105:20

Harvey 16:15

hat 68:7

head 68:21

health 105:22 144:2,3

healthy 33:17

hear 4:15 13:22 23:17,21
25:14,20 27:8 44:3,11 45:23
46:9 78:16 85:7 86:13 104:2,8
106:1 114:17 123:13

heard 28:8 44:9 49:21 68:9
70:17 81:3 82:10 85:6,25 86:6
89:23 91:9 101:5 106:4 108:9
116:18,19 119:2 123:20

hearing 7:23 104:2,13 108:19
118:16 148:7

hearings 70:5 110:13,14,16

hears 65:17

heart 10:10

heat 55:25

heavyweight 58:3

Heights 104:24

held 2:2 29:7 37:15

helped 43:6 54:16

helpful 34:15,17 43:16 113:5
126:23 129:1 135:19,21
137:19 138:2 146:14,15,16,22

helping 8:17 45:1 64:10 71:21
80:5

helps 53:13 67:13 71:11

hesitate 77:11

Hewlett-packard 9:6

Hey 6:19

hiding 102:21

hierarchical 94:10

high 12:4 99:25

higher 53:20 94:11

highest 100:2

Highland 12:1

highlights 31:24

highly 142:25

highways 49:2

Hills 8:23

hindrance 34:22

hip-hop 16:25

hire 45:4 54:2 61:17 62:23
73:1,13 74:7 92:15 102:24,25
116:3

hired 9:3 136:25

hiring 67:19 69:1 73:12,23
74:3,4 147:6

Hispanic 51:23

historic 26:18

historical 25:16 89:2 101:17
102:5

historically 108:11

histories 106:8

history 34:25 40:6 44:1 45:15
49:14 62:1 69:18 81:1 96:16
118:22 124:20

hit 21:6

hockey 19:19

hold 10:3 34:8 119:10 136:12

holding 34:5

home 13:4,5 14:13 15:24 20:1
57:25

homemade 16:2

honest 15:13

honor 24:20

hop 23:7

hope 7:19 15:20 26:15 59:19
110:10

hopeful 26:24

horizon 110:24

host 29:8 36:11,17
 hosts 77:14
 hot 123:23
 house 18:11 43:11 74:3 120:8
 housing 14:17,20
 Howe 19:21
 huge 17:14 64:23
 Hulu 12:3
 human 57:6
 Humpty 95:13
 Huntington 9:9
 hurt 49:18,24 50:22
 husband 10:18

I

I.D. 38:23
 idea 60:18 76:21,22 96:16
 101:4 128:17 135:16 140:17
 143:8
 ideas 146:6
 identification 106:7
 identified 100:4
 image 65:14
 imagine 92:16 123:9,12
 imagining 96:20
 immediately 57:17
 immensely 71:24
 impact 37:23 40:4 97:11 98:11
 107:5,8 108:23
 impair 50:9
 implementation 108:25
 implemented 80:22
 implementing 27:15 90:5
 implying 123:6
 importance 114:14 118:12

122:23
 important 31:21 33:9 44:1,13,
 20 45:16,18 49:4 54:3 55:16
 56:7,15 59:3 60:17 65:14
 66:23 69:4,24 71:24 72:20
 80:13 85:12,22 86:2,10 87:3
 88:10,21 94:16 102:4 108:3
 134:6
 importantly 88:6 112:15
 impose 96:8
 imposed 81:20
 imposes 122:21
 imprecise 92:1
 impressive 27:20
 improbable 7:17 16:11,14
 17:9 18:25 20:19 21:4 22:2
 impropriety 142:15,16
 improve 27:2
 in-house 118:13
 inability 35:10
 inappropriate 122:3
 inaudible 35:20 36:10 65:22
 72:16,18 83:1 86:22,23
 120:20 127:19,22 132:18
 133:4 134:17,20 140:7 141:2
 142:1,13
 inaugural 44:16
 include 88:25 89:5 91:17
 101:14,16
 included 147:1,2
 includes 2:14 38:22
 including 27:18 43:3 77:14
 inclusive 37:11 70:22 137:4
 increase 98:3
 increased 98:2
 incredible 14:24 102:23
 incredibly 44:13,20 45:16,18
 86:9

incumbents 89:6
 independence 111:4,21
 112:12 146:3,8
 independent 2:7 99:7
 indexed 133:23
 indirectly 122:13
 individual 9:14 69:10 122:20
 141:2
 individually 125:6 129:20
 131:22,25
 individuals 53:4 128:9
 inevitable 143:21
 inexperienced 73:1
 influence 37:9 72:19 107:13
 116:5 122:16 124:9 125:6
 influencing 125:9
 influential 27:18
 informal 145:20
 information 7:25 45:12,24
 54:5 58:21 59:14 61:4,6,7
 67:21 73:2,4 89:20 105:16,17
 106:20 111:2 127:7 132:14
 140:12,13,15 147:5
 informative 24:9
 informed 131:9
 initial 29:18 112:18 113:1
 129:2 146:20
 initially 33:15 105:8
 inoperative 34:10
 inordinate 98:11
 input 72:9 92:18
 insight 17:7 69:16
 insights 10:8 81:8
 inspiring 25:1
 Instagram 58:1
 instance 33:20 86:14
 instances 118:3

instinct 58:23
institute 103:15,23
institution 36:19
institutions 27:15
instruct 39:25
instrument 10:4
insulate 66:22
integrity 123:19
intended 39:2
intent 37:19,23
intentional 13:17 49:24
interacting 137:3
interactively 26:11
interest 26:4 42:4,12,13,16
56:10,20 76:21 83:14,16,20,
23 84:16 88:19,21,24 89:3,4
93:9 94:7 100:1,4,9,10 101:4,
11,20,23 102:1 105:4 106:9,
14 107:19 109:17,20 110:4,15
interested 16:5 20:5 33:23
interesting 18:1 64:4 68:24
82:6 92:23 104:5
interests 99:23 101:17 102:5
Interlochen 6:11
interpretation 2:15 76:19
interpreter 2:17
interview 92:14
introduce 6:4,7 112:4
introduction 6:8 27:8 42:25
introductions 28:9 44:22 85:6
introspective 16:25
introverted 20:13
invitation 118:7
invite 71:9 131:19 133:22
invited 43:10
invokes 31:14

involve 118:5
involved 45:1 84:17 144:24
involvement 72:9
involves 65:18
involving 43:8 65:22
irregular 50:15
irrelevant 87:25
issue 62:25 80:23 82:23
100:15 115:25 130:1
issues 13:19 25:23 26:4 43:14
59:16 79:24 84:23 90:1 93:13
112:24 144:2 146:5
iteration 48:17
iterations 39:7
lvacko 23:22 24:12,13,14,16,
18 42:24 59:11 64:3 68:15
72:21 77:1 78:20 79:3,6
103:22

J

James 3:23 11:7
Janice 3:25 11:24 12:1,12
20:17
job 6:15 14:22,23 21:5,10 74:7
87:13 95:16 96:6 110:12
131:9
jobs 36:14
John 30:17 78:22,23 79:3,5
81:7 84:21,24 85:2 91:21
93:14 94:13,16 95:12,17 97:8
101:2,9 105:6,18 106:3,10,17
107:7 110:22,24 111:9
Johnson 31:8,10,17
join 23:13 24:21 28:4,7
joined 77:17
joining 25:6 111:25
joint 31:11,18
jointly 99:17

Joshua 58:5,8,9
journey 11:4 73:10 75:25
76:13
Juanita 4:2 12:13,14 13:8
20:25
judge 66:5 73:3
judgment 42:9 122:23
judgments 66:15,19,21,24
judicial 34:20
July 65:4
jump 57:18 102:10 108:5
142:17
jumping 102:10
jurisidic 98:9
jurisdiction 30:10 32:8,13,23
50:5,13 100:12 104:15
jurisdictional 94:8 100:5
jurisdictions 29:4 32:17 33:2,
5,14,18 34:7 82:18 83:11,17
84:4 88:9 94:19 104:6,7,14
jurisprudence 41:19 42:18
justice 30:6 32:19 40:25 43:6
62:7 65:21
Justin 23:18,23 25:21 28:17
42:22,25 43:17,23,24 59:11,
24 60:2,9 62:20 63:13 65:15
67:6 68:15 69:17 70:24 72:3,
12,21 73:6 75:22 77:1,23
92:13 102:11

K

Kathy 126:18
Katz 23:24 25:14,20 27:10,17,
24 28:6 64:21 65:12 69:23
72:2 74:12 102:12
keeping 55:12 56:22 97:3
141:5
Kellom 3:13,14 7:4,6 18:5
68:18

key 25:9 26:6 39:1 102:15,18
113:17 125:5

kick 109:14

kids 11:17 144:4

kind 6:3,7 7:15 8:1,13 17:10,
19 18:10 22:2 63:17 68:19,20,
24 103:1 104:20 105:24 106:6
112:17 115:24 126:1 127:18
131:1 135:22 137:2 138:23
145:13 146:9

kinds 57:16 82:15 102:13

kitchen 13:23

knock 95:13

knowing 57:19 140:22

knowledge 25:9 75:2

L

laboratory 11:9

lack 36:15 41:25

laid 99:3 113:10 114:21

Lange 4:6,7 15:9 21:25 121:1
125:3,11,21

language 18:9 31:14 32:13
38:13 39:1,4,5 51:5 66:3
75:11 76:4,24 94:17 95:24
96:7 101:10 113:24 114:8
121:11 122:10 124:3,24
126:23 129:25

languages 19:4

Lansing 119:21

large 13:19 41:6,8 101:6
104:22

larger 83:9 145:4

largest 47:15 100:3 104:23

Las 17:15

late 30:6 109:7

Latino 51:23 53:17,20

Latinos 53:22

latitude 47:24 101:15

laughter 19:14 20:23 22:7
136:8

law 18:17 25:11,15,21 27:10,
11,12 36:22 37:20 41:11 43:1,
2,3 48:19 49:8,10 50:20 58:22
66:15 84:23,24,25 101:22
114:22 124:8 132:7 144:12

laws 27:16 32:18 49:16 68:1
117:21 135:1 140:17

lawsuit 135:6 143:18,20,21

lawsuits 133:11,13,14,17
144:24

lawyer 74:5 124:1,4 125:1
142:8 144:23

lay 73:8

laying 98:24

leader 141:16

leaders 80:1

leadership 103:16

leading 25:11 30:18 59:15

lean 109:24

leaning 90:19,20

learn 28:18

learned 10:23 14:16 21:9

learning 14:6 69:5

leave 14:23,25 15:1,4 20:15
21:17 59:4

leaves 83:25

left 68:3 109:7 111:17

legacy 29:25 31:15,17

legal 25:9 26:6 62:22 79:24
81:4,9 88:4 93:19 112:11
118:12,14,15

legalese 129:23

legally 13:12

legislation 31:12,14 83:15

legislative 46:7 47:8,21 82:7,
12,25 86:8 97:20 100:18

legislators 103:18

legislature 82:22 90:14
110:11 114:5 120:10 128:21
140:21 145:15,17 146:1

legislatures 43:13 68:2

legitimate 47:17

lengthy 38:12,17

lesson 66:10

lessons 79:24

Lett 2:5 4:10,11,24 5:3 6:11
7:2 8:4,20 9:18 10:14 11:6,20,
24 12:12 13:8 15:7,21 16:9
18:2,22 19:5,22 20:6,16,24
21:13,18,23 22:8,18 23:1,9
24:6,14 77:21 79:16 95:11
110:21 111:13 119:8,13
120:23 125:4,22 133:21
135:17 136:4,8 147:15 148:1,
5,11

letter 13:12

letting 130:3

level 81:5 82:12 107:21
137:24

leveled 97:10

levels 25:24

lever 97:12

Levitt 23:23 25:21 43:1,10,24
60:9 62:20 63:13 67:6 70:24
73:6 75:22

Lewis 30:17

liability 40:17 41:3,23

license 10:4

life 11:10 12:19 13:6 125:14

lifelong 24:20

lifetime 18:14

lighter 33:4

likes 57:12 82:2

Morning Session

09/18/2020

limit 48:22,24 55:13 56:4,5
122:21
limited 88:25 99:23 101:16,18
102:3
Lindsey 19:21
lines 35:10 38:6,25 40:13
41:19 42:14 46:6,23,24 47:4,
19 50:3,14 68:19 83:5,6,17
94:13 100:5 122:5 123:10
124:9,23 142:21
lingering 54:11
lingers 54:23
link 147:2
links 5:24
Lions 126:6
list 10:1 16:12 40:2 81:6 92:23
93:5 94:2
listen 17:2 44:21 85:5,8
listening 9:13 10:25 12:8 70:5
71:13
listing 115:24
literacy 29:10
literally 17:22
litigants 39:25 41:2
litigated 72:6
litigation 27:19 30:5 33:21
66:6 72:4,15 84:1,11 91:18
96:21 108:8,9 109:2 110:24
litigator 90:15
live 2:13 6:11 8:6,23 12:1
13:16,17,18 15:23 23:14
46:22 52:12 78:9 105:3
live-streamed 2:10
lived 7:18 10:17,18 12:1 44:8
69:3 84:12
lives 12:5,6,22
living 35:19 44:7
loaf 21:22

lobbyists 115:22 121:14
local 24:19 56:20 61:6,7,20
63:14
located 119:22
location 52:6
long 6:13 13:13 21:15 28:17,
25 30:17 34:25 42:2 48:5,7
51:7 66:19 68:14 74:13 80:1
99:1
longer 34:10 85:14 135:21
145:10
longest 86:4
looked 66:20 73:17 126:7
Los 53:17 58:20
lost 89:25
lot 9:14 12:22 13:15,20 14:1,6,
9 17:1,6,11 22:10,22 38:17
40:2 42:6 44:3 55:18 57:13,21
59:16 63:22 68:4 69:13 70:21
71:5,24 74:25 83:7 84:16
93:16 99:13,21 103:24 111:2
134:9 143:4
lots 84:8
loud 13:22 40:3
love 7:9 8:10,11,18 12:24 13:4
18:9 108:10 130:11,14
lovely 24:8
Loyola 25:21 43:2
luck 46:2
lucky 43:21
lunch 136:14 147:20,22
lyrical 16:24

M

machine 97:16
machines 97:12,23
made 7:24 12:21 20:19 22:20,
23,25 34:9 66:21 72:17 83:7
89:21 104:13 123:4 138:1

magnificent 68:8
main 49:17 60:19
maintain 145:12
maintained 139:14,16
Maintaining 137:13
maintains 43:15
major 43:18
majority 35:21 36:7,10 37:8
39:11 41:7 50:9
make 16:2 21:4 22:18,25 23:7,
17,20 24:3 45:24 46:24 53:25
57:8 60:6,8 61:23 62:14 65:1
66:11,15,17,19 67:17 68:20
70:4 73:3 76:14 78:14 84:3
85:17 87:16 93:12 95:17,23
96:22 97:3 98:5 99:4 109:8
110:7,18 117:23 118:10 125:2
129:23 131:8 132:21,23
134:25 135:3 137:5 145:19
146:19
makes 11:18 73:19 78:1 125:3
128:7 134:9 141:13
making 12:21 22:15 33:15
66:1,23,24 67:21 71:25 73:20
91:13 131:9 146:8
MALE 3:9 111:10
man 30:18
managed 33:15 110:1
management 9:4 14:22
mandate 25:22 47:21 48:20
49:11 87:15
mandated 88:13
mandates 47:6
mandatory 88:4,5,24
manner 116:4,5 122:16
124:10
map 33:1,20 51:20 52:1 71:4,
15 72:8,17,19 76:16 86:6
88:10 99:7,9 137:15
mapping 138:13

maps 65:3 80:24 91:13 100:16
138:8,25 143:23

Marchers 31:15

Marin 104:9

markets 58:6

maroon 51:21

Marquette 14:11

marriage 68:24

married 12:4

Marsh 3:5,11,15,17,19,21,23,
25 4:2,4,6,8,10,12,19,23 5:2
23:6,11,25 28:5 78:8,9,18,21,
23 79:7 111:24 112:1,9
115:19 119:4,7,11 120:1
121:13 126:18 131:11,13
135:18 136:6,17 139:7 146:9
148:9

martial 103:11

Marymount 43:2

master's 6:24 9:23

match 58:3

material 27:20 44:3

materials 64:25 113:23 114:2
138:15 139:18,19 141:18
146:21,25 147:3,7

mathematics 9:23

Matt 77:8 78:20,21 79:19,21,
22 84:19 85:2 90:25 95:4
98:15 99:11 101:25 102:9
103:14 104:4,16 105:13,18,20
106:13 107:2 109:5 110:17,21

matter 41:10 50:16 57:16 99:4
136:20

matters 25:17,19 57:22
118:15 127:4,7,20

maximum 48:25

MC 4:4 13:9,11,14 15:7 21:14
64:7 68:15,19 91:1 95:4 96:13
120:23

Meaning 36:1

meaningful 51:3

means 14:1 46:19,21 47:19
51:8 52:23 76:9,10 88:4 89:10
90:15 92:8 94:8,10 107:10
140:12 144:14

meant 35:12,23 36:4 72:12

meantime 59:7

measured 33:10

measures 91:6 92:5,8

mechanic 74:4

media 5:25 136:24 137:4

mediations 6:14

medical 6:21 126:7

medium 70:2

meet 44:22 77:23 99:16 115:9
126:15 129:20

meeting 2:1,15,24 5:5,19 6:15
7:6 8:16 15:16 16:6,7 114:17,
19 115:3,11,13 117:1,6,14,16
118:1 119:18,24 120:7 127:5,
21,23 128:3,4,12,20,21,22,23
130:15 132:10,11,23 134:3
146:22

meetings 70:16 113:8,21
114:6,9,12 115:16,21 117:8,
20 118:2,21 119:14 120:15,18
126:13 130:14 132:8,18,25
133:18 138:3,4 139:12 140:15
143:20 147:8,9

member 2:16 37:8 41:8 131:4
137:23

members 2:21 5:6,16 6:8
39:13,16 52:25 67:11 71:9
85:2 90:14 107:12 118:6
122:13 124:11 126:14 127:4,
7,20

men 29:12

mention 44:2 136:18 146:18
147:6,8,10

mentioned 45:5,13 50:2,25
54:18 67:21 115:23 140:4,9

message 3:9

messy 84:15,16

met 31:2 79:20

metaphor 65:10

metaphors 65:9

method 133:24 134:6

metro 51:20

Michigan 5:25 6:16 7:8,21 8:7,
23,24 9:22 10:17,20 11:10,16
12:1,2 14:10 19:1 24:19 25:3,
15 26:18,25 27:11 28:11
44:18 49:8 53:6 58:22 62:5
63:14 67:25 71:6 76:8 77:10,
11 79:18 80:8,16 81:11,16,21
84:14 85:1 86:4,9,14 95:5
98:23 99:14 100:1 103:24
119:22 122:6,8 140:11 144:12
147:4

Michigan's 24:24 80:4 118:21

Michigan-specific 79:25

Michigander 24:20

Michiganders 44:14

microphone 23:20 78:11,13

mid 81:14

middle 70:18 97:21 104:22,25

midst 69:13

migration 100:6

Mike 112:2,4,5,16 113:2,6
115:20 116:14 119:4,9 125:5
126:21 131:14 134:8 135:22
136:16 139:2 146:11 147:15

milestones 76:12

military 9:1 10:18

milk 123:15

mind 23:6,19 55:3 57:6 58:14
98:20 99:10 134:11

mindful 67:5 122:1 133:8

mine 57:25

mini 82:17
 minimize 107:8
 minimum 49:1 70:9 120:18
 minimums 114:21
 minor 108:22
 minorities 39:6 50:11 52:17
 53:1,11,13 54:10,13,21
 minority 27:14 35:16,22 36:9
 37:6 38:7 39:5,8 40:7 41:5,11,
 13,15 50:3,5,6,10,12,17,19
 51:5,9,12,18,19,25 52:4,10,15
 54:5 61:14
 minute 109:7
 minutes 26:2 78:5,6 86:11
 111:7,18
 missed 16:21
Mobile 34:23 35:17,25 36:4,
 13,15,20 37:12,14 38:10
 moderator 24:11 79:19 103:22
 moment 32:3 34:18 35:9 46:2
 78:10 114:23 115:17
 moments 25:13
 months 115:7
 morning 2:3,5,6 4:25 5:18 7:4
 13:10 15:9 22:5 24:17 25:7
 80:10 111:16 112:5,10 133:13
 134:1
Mortal 17:13
 mortgage 125:9
 mother 19:13,16
 motion 147:20
 motive 50:16
Motors 9:3,5 11:9 15:25
 mouth 17:23
 move 6:17 55:24 90:23 101:8
 104:8 115:19,21 121:10
 135:25 136:18 138:6 147:22
 moved 8:23,24 9:3 10:20
 100:13 147:24 148:2

movie 9:24 124:17
 movies 14:3 16:2
 moving 80:15 136:17 137:7
 139:5 146:16
MSU 14:17,20
MSU's 84:24
 mull 8:1
 multiple 43:12 72:1 83:10
 music 7:9 8:10 10:22 14:4,8
 16:25
 musical 8:9 9:24

N

nailed 101:8
 names 27:5 63:22 79:9
 narrative 72:7,14
 nation's 25:11 59:15
 national 84:25
 nationwide 31:6 38:20
 native 7:7
 natural 57:7
 naturally 57:11
 nature 67:3
 navigate 42:15 45:6,9
Navy 15:12
 neat 35:15
 necessarily 52:17 58:4,12
 69:22 100:11
 neck 17:22
 needed 24:4 32:18 36:20
 97:23 98:5
 needle 146:4
 needless 72:10 115:11
 neighborhood 13:16 118:8
 neighboring 98:9 104:15

neighbors 13:17
 nerd 17:10
Netflix 12:2
 networks 7:11
 newly 103:17
 news 59:13 92:9
 nice 44:22 112:6 123:6 125:17
 non-existent 83:3
 non-expert 43:14
 non-leaning 90:20
 non-partisan 82:3 90:9
 non-profit 18:19
 noon 111:7
 north 10:19 104:9,11
Northern 14:10
 note 27:21 43:15 63:3 79:8
 94:6 113:4 116:1 146:17
 noted 114:9 116:24 139:12
 notes 5:3 10:11 11:3
 notice 113:8,22 114:15,20
 115:11 119:15,16,17,19,22,
 23,24 120:6,7,12,19,22
 121:13
 noticed 117:14 127:11,14,18
 138:4
 noting 34:21
 notion 37:22 58:11 65:16
 notions 57:12,18 58:15 60:15
November 83:25
 number 28:25 32:10 46:5 47:5
 50:22,23 60:21 80:21 85:17,
 24 88:13,14 90:9 91:22 97:25
 100:21 107:7,22 115:6
 numbers 29:15,23 30:3 35:1
 69:11 100:3 103:16 109:14
 numerous 26:18 27:17
Nutcracker 18:11,12,21

Morning Session

09/18/2020

22

nutshell 51:16 57:2,3

O

objection 136:15

obligation 54:7

obligations 42:7

observation 30:4 35:9

observe 118:9

observed 35:2

observer 7:25

observing 28:2

obstacle 30:11

obstacles 30:1

obvious 74:20 141:19

occupy 67:8 101:5

occur 138:5

occurred 81:15

occurs 80:24 127:10

odd 70:10

oddity 70:6

offer 65:12 80:17 81:8 101:1
121:21 126:5

office 5:22 13:23 39:17 44:25
46:7 84:2 86:19 102:17
103:21 117:20 118:20 119:16,
17 123:8 138:18

officers 116:10

officially 7:6 132:23

officials 30:22 36:17 43:18
130:6

older 15:13

one's 19:18

online 25:6 77:18 85:14

opaque 68:14

open 22:2 26:2,15 59:20 84:6,
14 113:8,21 114:6,9,12

115:16,21 117:8,20 118:1,21
119:14 120:15,17 126:13
127:5,11,21 132:8,25 133:18
138:3,17 140:15,18 143:20

opening 59:21

Opera 18:11

operate 101:13

operationalize 28:15

opinion 40:25

opinions 34:20

opponents 17:21

opportunity 8:2 11:15 14:24
18:14 39:9,12 41:25 51:3 55:1
59:9,18 67:25 68:7 69:20
79:23 80:9,11 84:13 89:18
92:14 93:15 102:24 105:11
112:15 116:21 118:22

opposed 102:21 148:5

opposing 72:10

optical 97:24

option 144:16

options 2:17,20

orange 33:13 51:23

order 36:20 46:23 49:7 50:4
52:2 61:23 62:14 64:25 82:14
88:8,11 94:4,21 102:10
114:25 115:10,14

Orders 114:24

org 119:25

organization 118:8,9 122:16

organized 115:13

organizers 28:16

orientation 64:25 113:23
146:21,24 147:3,7

original 19:18 31:24 33:4

originally 10:4

orthopedic 6:20

Orton 3:15,16 8:6 18:24 72:24

105:15 147:25

os 36:2

Oscoda 12:5

out-votes 35:22

outcomes 71:1

outline 102:6

outrageous 85:19

outreach 110:9 129:15

outvoted 36:7,10

over-concentrating 50:6,9

over-pack 50:18

overcome 31:17

overlap 100:5

oversees 103:15

overviews 113:2

overwhelmingly 26:25

owe 44:17

Oz 108:13

P

Pac-man 83:4

pack 107:8

packing 50:4 89:24 106:25
107:14

pages 101:24 146:21,25
147:4,9

paired 104:7,10

pairings 104:13

pairs 128:8

pandemic 70:1

panel 23:5 24:10 27:9 79:18,
22 103:23 111:3,16 119:9

panelists 10:8 11:1 23:7,16
24:1,7 25:5,12 26:1,5 77:5,16
78:10,12 79:1,8 98:19

panels 17:5 103:21

paper 85:13
papers 85:13
paradigm 81:15
paralyzed 17:21
pardon 52:16 62:6
parent 12:18
part 8:12,18 12:8 15:16 18:10
29:17 32:9 36:17,23 47:22
49:20 59:13 60:17 87:2 91:14
105:25 108:20 124:25 127:2
138:24 139:1
participants 77:14
participate 5:20 35:11 39:9,13
85:8
participating 5:16
participation 29:24 30:1,11
33:10,18 35:4
parties 43:18 80:5 89:6 91:12
108:22 124:15
partisan 43:19 72:5 82:4
89:10 91:6,12 95:7 107:5
108:21
partisanship 87:4
parts 54:12
party 43:19 48:8 52:19 72:8,10
82:7,8 89:8,9 91:5,15 92:4
passengers 56:1
passionate 7:8
past 10:9 54:23 68:2 71:7 84:8
87:25 99:17 100:16 105:11
125:17
pathway 24:25
patience 23:14
patient 126:4
patterns 52:6 53:8,10 60:16
61:14
pay 59:17
paying 77:18

peach 22:23
pear 22:24
people 7:16 9:13 11:16 12:9
17:20 19:4 22:5 29:11 30:22
31:6 32:9,10 44:23 45:7
46:22,24 47:6 52:12 53:3
57:11,12,15,16,18 58:7 59:16
60:21 61:5 62:12 63:1,5,17,23
65:19,20 66:13,18 67:19,25
68:14 70:5,11,13 71:6,11,18
73:1,2,9,14 75:23 76:7 79:9,
11,14 82:19 84:12,17 85:15,
18 86:13 87:10,11,12 92:13,
15,17 93:16,25 96:5 98:22
99:22 100:15 102:18 103:7,25
104:1 107:10 121:21 123:19
129:9,10 133:12 134:22
140:22 141:19 142:11
perceived 72:20
percent 32:12 47:15 48:2,23
58:7,10 82:13 100:18
percentages 29:21,22
perception 122:2
perfect 71:4 72:17 78:18
98:21 119:7 121:16
perfectly 47:24 56:12
performance 127:8
performs 116:6 122:18
period 67:12 84:5
permissible 56:12
permission 47:10 127:9
permissive 88:25 101:15
persistent 72:14
person 3:12 13:6 17:18,20
70:3 74:23 81:13,19 122:15
125:1
personal 90:12 125:14 142:24
144:15,17 145:7
personally 16:7 74:8 130:24
142:18
perspective 25:16 45:13

49:15 69:2 79:25 141:14
perspectives 35:21
Pettus 30:19 31:3
phase 109:1
phobia 22:6
photographs 30:16
photos 30:25
pick 59:18 82:4
picking 123:7
picture 35:12,24 57:20
picture's 35:23
pictures 30:15
piece 64:15 95:10 97:15
145:13
pieces 98:12 137:11
piggy 75:19
piggyback 75:20
pile 62:13
pilot 10:5
pilot's 10:3
Pirich 78:22 79:5 81:7 84:21
85:2 91:21 94:16 95:17 97:8
101:9 105:6,18 106:10,17
107:7 111:9
Pittsburgh 7:21
pivotal 32:15
place 5:14,15 17:15 30:2 32:4,
5 47:4 54:15 60:3 68:5 99:21
114:18 121:23 129:16 130:20
135:4 141:6
places 34:23 47:7 64:18 70:6
plan 82:4,6,8 83:6 88:8 93:2,7
138:11,21
planning 135:22
plans 81:25 84:9 138:14,16
platform 2:11 69:21

Morning Session

09/18/2020

24

platforms 5:5
play 17:10 71:17,25 121:9
played 16:15
players 16:16
playing 14:5 17:22
pleasure 7:5 86:21 110:11
pledge 117:7
plenty 45:25 83:25 117:2
pockets 52:3,9
point 26:8 28:24 60:25 64:6
71:3,4 85:20 92:22 105:6,9
109:19 120:9 121:7 128:7,15
132:7 133:23 141:6 142:24
145:22
points 76:6
polarized 40:7 41:13 61:10
62:10,23 63:21
policy 80:7 118:6
political 27:14 33:17 35:4
37:10 39:10,14 43:18 48:8
50:4,10,13 54:14,20,22 61:6,
9,18,20 63:15 81:16 89:6,8,9
90:10 91:5 92:4,5,8 93:2,10,
14 103:16 109:20 124:15
politically 94:1
politics 109:25 110:3
populated 46:20 48:15,21
population 25:18,22 29:20,22
46:16,25 47:2,11,25 48:20
49:6 54:25 56:19 82:10 88:13
89:1 93:8 100:2,6,25 101:16
104:22 105:21
populations 60:11 88:19 89:1
100:12
populous 47:16 48:3,4,9
portion 26:10 126:25
posed 92:2
posing 57:25
position 9:5

positions 90:16 102:21
post 86:7 94:18,20 119:16,17
120:11
posted 5:24 119:19,22,23
posting 120:12
potential 103:12
potentially 136:25
power 50:4,10,13
practical 81:10 112:11 136:20
practicalities 67:18
practically 45:14
practice 32:22 38:20,22,25
51:6 84:23 120:11 124:8
144:11
practicing 86:18
practitioner 18:16 86:17
pre-clearance 34:6,9
pre-history 49:22
precepts 87:7
precinct 53:9,12,18 61:8
97:16 98:7
precincts 53:18,19,20
preclusions 92:13
preconceived 57:12,18 58:15
60:15
predominant 55:14
predominate 55:5
prefaced 75:9
prefer 26:11 52:20,21
preferable 49:1
preference 43:19 90:12
preferences 35:22 36:6 41:15
51:11 52:16,19,23 53:1,12,14,
20,23 54:6,8,14,16,22 61:14,
21
preferred 36:6

preparation 87:20
prepare 45:1
prerequisite 32:10
present 3:3,7,14,16,18,20,22,
24 4:1,3,5,7,9,11,14,19,22,23
5:12 54:24 55:11 66:11 95:3
presentation 50:25 60:14
102:13
presentations 85:9 112:10
presented 84:10
presenters 46:9
presenting 30:22
presidency 31:13
president 31:8,10 97:18
presidential 32:11 33:11
pretty 11:13,19 17:11 18:1,13
20:22 21:7 22:16,24 50:15
53:21
prevent 133:9
prevented 32:21
previous 99:8 106:25
previously 127:10,14,17
Price 21:2
primarily 6:13
Prime 12:3
printed 147:2
printing 98:3
prior 9:1 75:3 80:8 121:20
145:13
priorities 94:3
priority 88:8,11 92:23 93:5
94:7,12 99:25
private 10:3 84:23 143:14
144:8
problem 28:5 36:23 38:6
40:11 41:18 98:14
problems 48:15,18 62:1 87:9

procedure 38:21,22,25
procedures 95:21
proceedings 138:20
process 12:11 20:20 37:10
 39:10,14 44:5 54:4 65:1 68:3,
 12 71:1,5,12,19 72:18 73:24
 74:2 75:1 79:25 83:1 84:9,15,
 16 85:16 89:17 94:22 95:20,
 21 96:20 99:2 119:15 132:1
 138:17
processes 71:6
proclamation 108:15
produce 42:1
producing 54:1
products 52:13
profession 126:10
professional 67:7
professor 25:14,20,21 27:9,
 10,17 43:1,10 64:20 84:24
 86:14,15 102:12
profound 74:21
program 103:16
programs 12:4
progress 98:22
progresses 44:11
prohibited 50:20 56:11
prohibition 49:25 95:7
prohibitions 50:14
Projects 112:1
promise 27:2
prompted 31:10 116:22
prompts 8:8 16:21
pronounce 24:11 79:3
proof 53:2
proper 84:4
properly 84:3

property 14:22
proponents 102:21
proportion 39:18 101:6
proposal 63:20 64:1 70:15
proposed 138:11,14
proposing 88:7
protect 91:18
protected 39:5 50:10
protection 27:13 35:7 47:23
 48:1 57:3 130:2 145:4
protections 45:17
protest 30:19,24
protesters 31:2
proud 7:8
provable 57:21
proved 30:21
proven 129:16
provide 2:19 5:23 25:15 51:3
 84:13 89:7 131:20 146:25
provided 39:17
providing 119:15 146:5
provision 33:22,24 35:8 50:24
 86:7 88:22
provisions 31:21 32:1 33:19
 38:15,24 39:5
psychology 6:23 69:12
public 2:16,21 3:1 4:25 5:4,6,
 16,21,24 6:2,4 23:12 36:19
 39:17 64:12 67:11,12 68:4,10,
 11 69:7 71:9 72:9 79:14 86:25
 108:18,20 110:12,13,16
 111:25 113:8,21 114:15,17,19
 115:2,3,8 116:9 117:1,6,13,16
 118:6 119:19,20 121:25
 126:14 127:4,7,12,18,21
 128:3,20 130:5,6 131:4 132:8,
 10,12,13 133:8,22 134:2,3,18,
 20 135:13,24 136:21 137:3,8,
 13,14,16,17,23 138:1,6,19,20,
 25 139:1 140:10,11,12,24

141:9,16 142:8 143:13 144:5
publicly 112:22 127:11,14
 138:4 141:1
publish 138:14,21
published 19:20 27:17
pull 140:17
pulled 97:12
pulling 30:8
pure 35:6 40:4
purely 116:22 118:4,24
purple 33:3
purpose 3:1
purposes 38:24 56:23 109:12
pushed 72:8
pushing 110:6
put 28:14 29:14 30:1 32:4
 39:24 47:5 50:10 59:24 63:19
 83:15 95:14 97:17 109:23
 117:20 122:21 126:23 140:24
 147:21
putting 62:17 141:17
puzzle 93:19,20
Pyle 15:14

Q

Q&a 26:10 33:23 46:15
qualified 17:16 98:5
qualify 139:11
quarantining 115:17
question 52:15 54:24 59:23
 60:1,9,17 64:4,5 67:5 68:16,
 17 72:13,22,25 73:7 74:17
 75:10,12 91:1,21 94:25 95:1,
 19 96:11 105:2 106:17 109:8
 116:20 117:25 118:19 119:1,
 12 120:25 121:2,19 122:4
 123:20 125:24 126:11 128:17,
 24 129:5 130:22 131:6,8
 139:9 140:3,9 142:3,9,14,16,

20 144:10 145:10
questions 26:7,11 27:13
 42:22 45:25 59:10 73:15,22
 74:1,9,15,19,21 75:1,8,14,15,
 18,20 76:11 77:6 79:1 84:20
 90:1 91:25 95:8 99:12 104:16
 105:13 112:16,21 113:3,4,14,
 15 116:10,11,17 119:2,9,11
 124:5 131:18,21 133:2 135:23
 136:1,3,12 140:1 146:12
quick 42:25 45:11 98:17
quickly 23:7 87:19 103:11
Quixote 14:12
quo 32:25
quorum 117:11,25 118:7
 127:11
quorums 117:10
quote 102:13

R

race 25:23 29:2 32:20 39:4
 49:12,17,19,24 50:23 51:4
 52:12 55:3,5 56:11,14 57:14,
 16 60:16,21 62:12 106:5,13,
 16,22
races 61:12
racial 36:12,15 40:9 53:9,11,
 13 56:10,22 57:22 60:22 61:5,
 14,20 83:20 107:4,12,17
racially 37:19 40:6 61:10
 62:10,23 63:21 107:9
radio 17:1 55:25 59:6
raise 26:12 95:8 136:15,19
raised 11:11 12:19 15:11
 113:15 116:20 134:10
Ralph 27:10
ran 48:18
randomly 80:12
range 15:18

raspberry 22:24
rate 78:3 125:8
ratified 29:1 81:17
rating 10:4
rationale 45:16
re-arrange 84:2
re-emphasizing 138:24
re-redistricting 65:23
reach 35:1 105:23 123:21
 126:14 129:23 133:1
reaching 129:11,18
read 6:25 14:9,14 40:3 96:23
 97:25 101:24 113:25 121:17
 124:1,2 127:1,15 131:5,7,12
readily 132:13 137:22
reading 14:11,12 64:24 85:12
Reagan 38:10
real 15:10 21:16 45:11 71:20
 81:18 83:19 89:24 101:19
 103:8 123:5,6 126:3 141:13
reality 108:2
realize 28:18
realized 16:20 18:15
realm 42:15
realms 36:18
realtor 125:8
reason 40:14 46:17 47:3,17
 48:6,7 55:7 60:17 74:6 142:6
reasons 26:20,23 28:25 45:17
 55:9
rebooting 3:10
recall 103:4
receive 44:15 137:16
received 129:5 134:4 141:12
receiving 80:21
recent 47:14

recognize 66:7
recognized 110:4
recognizing 64:19
recommend 142:25
recommendation 91:16
recommendations 67:23
recommending 62:15
record 3:2 29:18 66:20 134:24
 135:1,11,24 136:21 137:13,
 22,25 138:19,25 139:1,3,4,9,
 11,13,15 141:5,9,25 142:4
 144:5,20 145:10
recorded 137:21
recording 139:15
records 135:4 137:9,17 138:7
 139:20,25 144:8 145:11,12
rectify 72:17
red 35:15 51:21
redistrict 11:15 46:17
redistricting 2:8 5:22,25 6:16
 19:1 24:18 25:10,11 26:6 27:2
 43:4,14,16 44:9 62:19 65:22
 71:19 73:9 79:18 80:16
 108:12,13 121:9 126:16
 127:4,6,20 128:20 138:11,14
 147:4
Redistricting.michigan 5:9
Redistricting@michigan.gov
 2:19,23 135:10
Redistricting@michigan.gov.
 2:13 5:10 134:18
redistrictingmichigan 119:24
Redistrictingmichigan.org
 130:17
redistrictings 80:8
redraw 46:23
Reed 15:10
refer 113:22 116:16 117:24

Morning Session

09/18/2020

27

reference 89:21 114:1
referenced 108:6 139:19
referred 86:22 100:19 102:12
140:15
referring 126:24 142:7
reflect 40:9 54:8 88:18 89:11
reflected 36:8
reflection 42:9
reflects 39:23
refresher 112:14 113:11,12
regard 32:20 88:16 89:18 90:4
96:5 100:17 101:11 102:11
regime 32:4 34:6,9
regional 38:14
register 30:20 32:9 34:21 35:3
registered 32:11
registration 29:21 98:6
regular 13:6 50:15 58:2 103:6
regulatory 34:6
reiterate 137:11
related 142:7
relationship 124:19 138:8
relationships 89:5 117:4
relatives 144:3
relay 115:10 117:22
relayed 140:5
relentless 29:3 32:5
relevant 32:2 34:12 122:10
127:8
religious 106:1
rely 102:15
remained 30:2
remarkable 31:19 34:22
remedies 27:12
remedy 41:23 72:12

remember 11:21 49:5 55:12
97:11 126:3 127:15
reminder 24:1 59:4 112:14,20
Remote 2:1
renowned 81:7
repeat 108:19
repeatedly 63:1
repeating 72:16
replacing 32:23
replete 108:17,18,19
replies 132:6
report 39:24 147:1
reports 92:12
represent 33:14 35:12,23
46:24 51:21,22,23
representation 27:14 39:18
42:14 44:14 46:19 51:13
71:23 82:22 90:11 105:12
108:21
representative 50:7 83:13
representatives 39:14 51:14
68:12
represented 43:17 54:10
69:22 90:10,12,13,14
representing 35:16 82:19
90:18
represents 53:16
Republican 90:9 108:22
109:23
Republicans 52:18 90:13
103:17
request 64:1 132:14,15
141:10 145:16
requests 136:24 140:13
required 34:7 40:15 41:24,25
48:19 92:21 96:8 114:21
137:14 138:7,21 140:25
145:11

requirement 25:18 32:16 47:2,
3 116:8 117:17 132:10
requirements 25:24,25 32:15,
16 46:9,11 48:11 57:1,4 106:7
114:11,12 120:14,15,18
129:21 137:20 138:3
requires 53:1 95:24 100:22
residential 52:6
residents 36:13
resolve 146:6
resource 146:16
resources 77:9 103:1
respect 66:5 69:16 115:15
129:14 146:3
respectfully 121:7 125:15
respecting 130:19 146:7
respond 54:25 56:20 113:14
126:17 130:13 134:3 141:13
responded 65:25
responding 56:21
response 49:23 63:25 69:23
119:1 126:22 129:7 131:18
132:2
responsibility 24:24 51:2
95:22 137:1
responsible 96:18
rest 27:19 132:2 134:12
restriction 116:24
Restructuring 2:8
result 39:1
results 39:1,2 61:8 108:24
results-based 38:16
resume 146:23
retain 61:9 62:16
retained 61:18 63:6
retaining 73:14
retention 135:1,24 136:22

Morning Session

09/18/2020

28

139:3,5 141:25 142:4 144:20
145:11
retired 9:6 15:25
return 59:5
review 101:22
Rhonda 4:6 15:8,10 21:24
120:24,25
Richard 4:8 15:22,23 22:9
119:20
rights 25:17 27:12,19 28:23
29:18 30:5 31:11,15,21,25
32:1 33:3,6,19 34:12,19 35:8
38:15 39:6 41:3 42:7,8 43:7,8,
12 45:19 49:20,22,23 50:21,
24 51:15 52:23,25 55:8 56:9,
12,16,23 57:2 59:1,2 60:13
63:20 65:17 83:18 89:22
106:5,11 107:22 109:14
rigorously 73:12
rise 30:3
risk 132:5
road 48:25 55:20 86:6 88:10
128:15 130:3,9 143:21
Roberts 65:21
robust 73:18
Rochester 8:23
role 27:14 68:2 71:17,24 74:11
121:19
roles 121:20
Ronald 38:10
room 45:25
rose 22:19 109:13
Rothorn 4:4,5 13:10 21:15,
20 64:8 91:2 95:9 96:10,15
120:24 147:24
roughly 46:25
round 112:9
rounds 138:13
route 134:23

Ruiz 57:23,24 58:4,8
rule 55:4
rules 49:13,17 114:18 115:5,
15 130:3,8
rumors 84:8
run 16:12 110:5 136:10
run-of-the-mill 133:17 143:19
running 72:7 111:18 135:20
146:11 147:13
runs 132:5
Russian 18:12

S

sad 15:3
Sadly 54:11
safe 7:16 69:19 121:9
safest 133:9
Saginaw 15:24
salient 7:24
Sally 3:3 5:1 23:22 24:6 27:25
28:15 29:14 30:13 31:22
34:14 37:2 38:4 39:19 44:25
78:9 111:23 112:1 113:10
119:3,8 121:10 129:2 134:12
136:16 140:5 145:20 147:15,
17,21
Sally's 135:8
San 104:9,10
sanctioned 29:10
Sarah 134:12
Sarah's 135:9
satisfies 120:13,14
save 45:25
Sawchuck 19:21
scan 97:24
schedule 130:18

scheduled 135:20
scheduling 132:17
scheme 35:13
school 8:25 9:1 10:5 12:4
25:15,21 27:11 43:2 70:18
86:16
scientist 61:9,18
scientists 63:15
scrambled 94:4 95:1
screen 2:18 17:25 27:23 33:14
46:1 57:20 59:22 79:8 126:23
137:12
script 147:21
search 135:7
season 13:22 19:20
seat 37:9
seconded 148:2
seconds 5:11,17
Secretaries 80:5
Secretary 25:2 28:13 77:15
84:1 86:19 103:21 111:5
120:7 138:18
secretary's 44:25 102:17
section 40:23 42:8 47:9 65:24
86:4,8 87:8,22 88:2 89:22
91:4 101:11 106:10 107:21
126:25 127:1 133:5
sector 142:9
security 143:4
seeking 63:7
selected 80:12
selection 102:18
self-define 105:25
self-described 60:22
Selma 30:19,21,23
Seminole 35:17
Senate 39:24 41:21 42:11

43:11 83:12 120:8
send 120:20,22 134:21,22
 139:18
sending 141:6
sense 36:21 40:4,12,16 41:18
 71:20 73:3 87:13 93:12 125:2,
 3 128:7 134:9
sentence 34:23 127:2
separate 102:19 143:12,17
 144:9 145:8
separated 94:9
September 2:2
series 35:5 37:13 46:18
servant 121:25
servants 86:25 116:9
serve 68:2 73:25 142:22
 145:16
served 43:4 80:3,20
service 15:24 36:13 85:4
 87:21
services 2:22,25 36:16
serving 20:10 25:12
session 2:3,7 5:21 9:12 24:18
 26:9 31:11,18 68:22 77:7
 85:5,25 146:10,19 147:11
sessions 106:25
set 32:6 49:18 50:16,18,22
 62:25 63:4,19 79:18 106:7
 110:2 142:20 144:22 145:18
 146:19
severe 22:5
shaded 33:14
share 28:1 46:1 64:16 89:1
 97:7 101:16
shared 7:7 69:5
shares 53:16 105:25
sharing 24:2 69:6
Shelby 33:21,25 34:3

shifted 117:21
ship 28:21
shocked 31:6
short 21:16
shorter 79:23
shot 51:13
show 7:10 9:25 21:2 29:15
 52:11 53:11 61:19 110:8
 128:15
showed 62:1
showing 10:8 20:3 33:16
 37:22 38:5
shown 40:15 57:15
shows 15:12,13 16:3 29:20
 39:23 49:14 141:15
shunts 73:25
shut 59:5
shy 73:21
sick 20:1
side 22:16 81:10 100:18 104:3
sides 90:10
sign 5:6,11,14 27:4 53:22
sign-up 5:24
signaling 55:24
significant 51:19
significantly 130:5
signing 38:10
silly 75:10
similar 44:3 73:10 76:24
 116:24 135:14
similarly 2:21 44:24 49:4
simple 22:16
simply 30:10 32:23 69:24 70:9
sincere 24:22 25:1
single 29:25 37:8 41:7 94:6
 123:15

situation 75:4
situations 124:10
six-month 14:25
size 47:11
sizeable 51:9,18,25 52:9
 54:13,21
skin 85:18 96:5
slide 29:14 31:22,23 34:14
 37:3 38:9 39:21,23 40:19 41:4
 46:3 121:10,15 126:19 133:5
 136:19 137:2,8,20 138:6
 142:1
slides 24:2 28:1 38:4 113:1
 128:16 136:2,11
slipping 57:11
slot 100:20
slushy 123:24
small 15:11 47:11,19 62:3,8
 121:24
smaller 97:15
smallest 47:16 48:4
smoothie 123:3
social 5:25 54:19 115:18
 116:22 118:4,23,24
socioeconomic 40:8
solicit 122:14
solid 25:8
someone's 51:4
son 12:17
sooner 130:7,8
sort 20:13 31:24 32:5,24 35:18
 42:17 49:22 61:25 63:15,25
 64:16 65:1 70:6 72:4,5 73:25
 91:11,24 100:19 115:20 127:2
 129:6 134:20 135:5 136:19
 137:24
sorts 62:2 120:21
sound 24:8 78:24 129:23

source 135:11
sources 60:19 103:12
sourdough 21:21,22
south 10:19 29:4,5
southeast 100:1
southern 29:8
Southfield 62:5
space 69:15
spaces 7:16 69:19
Spanish 2:25
spare 7:14 16:1
spark 67:2
speak 16:17 19:4 26:1 69:21
70:7 71:21 84:21 97:4 128:7,
13 129:21
SPEAKER 111:10
speakers 16:6 21:10 22:11
72:1
speaking 72:3,13 74:23 91:3
122:8 143:3,8
Special 112:1
specialized 12:18 118:14
specializes 61:10
specific 86:10 87:15 94:17
106:4 113:15,23 118:7,25
119:1 135:7 139:23
specifically 89:5
specificity 103:5
specifics 99:14
speech 31:12
speed 43:25 48:22,24 49:3
55:13,16 56:4,5
speeding 65:9
speedometer 55:15,18 56:2
spend 9:10 13:15,20 14:1 15:2
spent 13:1 15:24 45:7

spirit 30:4
splintering 38:8
split 128:16
splits 97:22
spoke 128:5 140:8
spoken 104:17
sports 18:9
spread 107:13
spring 115:2
square 35:14 37:15
stab 45:22
staff 3:2 102:16 111:5,20
116:2,6 118:12 122:17 136:25
147:6
stalling 18:5
stand 122:19
standard 38:16,17,18,20,22,
25 39:8,22 40:4 62:25 89:2
93:4 114:12 120:11 129:7
standards 66:16 81:19 83:1
86:23 87:18 89:12 115:16
122:6
standing 68:5
start 6:6 12:10 16:13 23:5
24:22 26:17 27:9,25 28:25
44:6 59:21 63:13 65:2 80:9
84:11 87:23 93:25 99:21
101:19 102:3 113:7
started 6:5 63:3 84:11 109:6
starter 21:21
starting 99:20 104:13 135:23
state 3:2 6:16,22 12:23 13:2
24:19 25:3,24 29:8 31:2
43:12,13 44:8,16 46:7,11
47:8,21 49:8 52:3 57:3 63:17
70:14,18 71:19 77:10,16 80:1,
5 83:11,12 84:22 86:15,18,20
99:14,15 104:23 105:22
109:17 111:21 112:2 115:7,9
119:21 122:6,8 128:11

134:13,16 138:18 141:16
142:22 143:4,6 144:24
state's 84:1 86:19 88:19
103:21 111:5 119:23
stated 146:13
statement 27:20 34:22 68:20
states 26:20 46:13,14 59:3
63:6 68:9 73:8 75:24 76:23
81:20 88:14
statewide 98:6
statistical 53:7 106:20
status 32:24 40:8 51:5
statute 32:6,14 33:4,6 34:3
38:12 40:17 41:23 42:10 51:7
76:4,18,21 86:1 87:17
statutes 45:4,18
stay 130:9
steering 28:21
step 20:14 45:11 81:1 90:24
147:6
step-by-step 94:23
stepped 80:15 142:22
stepping 44:18
steps 115:14
Sterling 104:24
Steve 6:11 11:23 16:19 24:16
77:20 95:10 110:20 124:7
134:11
Steven 4:10
stick 93:7
stop 27:21 31:8 42:21 59:6
65:8
stopped 4:17 123:4
store 123:4
stories 14:3
story 17:18
straightforward 114:16

stream 2:13 78:9
 streamed 31:6
 streamline 40:22
 Street 17:13
 strengthen 117:4
 strictly 122:8
 strikes 33:25 124:25
 strong 53:22
 stronger 143:7
 structure 37:16,18,24,25 90:4
 146:24 147:5
 student 8:7 14:17,20 74:16
 students 28:2 74:14 75:9
 studies 26:19
 study 27:18
 studying 8:7 12:24
 stuff 13:22 17:2,13 44:1 56:15
 73:20 132:19 144:17
 stylized 34:16
 subject 32:14 114:6
 subjected 87:4,5
 submerge 38:7
 submissions 137:15
 submit 5:20 26:7 133:22 134:2
 submits 141:10
 submitted 82:1
 subsequent 33:7
 subsequently 90:2
 substantive 112:21 138:5
 success 25:4 96:1
 successful 99:1
 sudden 108:15
 sued 43:18 133:10
 sufficient 35:4
 sufficiently 41:6,8

suggest 62:23 63:3
 suggestion 134:10
 suggestions 147:5
 suggests 67:5
 summary 146:25
 summer 61:3
 sunshine 140:17,18
 Super 124:17
 supervisor 97:19
 supplemental 81:18
 supply 118:18
 support 8:16 43:7 60:6,11
 supporting 138:15
 suppose 14:16
 supposed 94:11 141:1
 Supreme 33:24 34:3,24 35:18
 37:12,14,15 40:20,21 41:16,
 17 46:18 81:19,21
 surgeon 6:20
 surgical 100:22
 surprise 22:3,12 52:3
 surprised 20:4
 surprising 7:17 10:3 13:13
 16:11,14,18 18:3,7,20 19:3,7,
 25 20:8,11 21:3,6 22:1
 survey 105:21
 survivor 18:17 19:25
 sweetheart 12:5
 switch 141:20
 Syrah 22:19
 system 26:24 36:8,10,24
 40:12 81:24 90:4 98:6 123:15
 145:5
 systems 9:5

T

table 37:10
 tabulator 97:25
 tackle 45:12
 tact 96:24
 takes 17:15 115:14
 taking 12:25 24:23 32:5 67:21
 77:23
 talk 5:15 14:14 15:5 21:10
 23:15 28:22 33:22 34:11 35:8
 46:11 49:12,21 59:10,17 71:9
 76:2 84:8 91:12,15 107:3
 111:17 115:22 116:25 117:3,
 8,13 127:17 129:21 135:25
 137:5,8 139:3,4
 talked 15:1 45:15 60:5 81:3
 99:13 113:24 141:3
 talking 15:5 31:15 39:19 44:5
 49:14 66:6 67:3 70:2,4,21,23
 79:14 81:8 88:16 117:12,17
 124:24 125:25 133:11,13,14
 136:21 138:13 139:8 144:2,3,
 4 146:18
 talks 25:22 46:3 70:13 71:14
 tap 9:15
 tasks 64:11
 tat 34:1
 taught 86:15
 tax 29:10 96:19,21 97:4
 teach 67:25 68:7 74:16
 teaches 27:12
 teaching 74:13,14
 team 8:17 11:13 25:2 28:14
 77:15 134:13
 technical 89:24 112:6,24
 120:9
 techniques 29:9 30:8 53:8
 technology 23:7 70:6 97:9

Morning Session
09/18/2020

32

teenager 20:1
tele 31:5
televised 31:5
telling 55:22 73:19 83:22
tells 19:11 53:21 55:4 86:20
tempting 48:13
tend 63:6
tendencies 57:7
term 88:3,4,5,24 92:7 120:9
terms 41:12 80:22,25 81:15
86:5 87:20 89:24 91:24 92:1
100:15 101:13,19 107:18
115:21 124:19 135:23 139:11
141:16
terrific 28:4 77:2
Terry 19:21
test 11:9 29:10 38:19 40:19
67:19 81:18 93:5
tester 32:8
testify 43:11
tests 57:15 93:22
Texas 65:22
text 115:24
Thailand 58:18
thanking 28:7 44:7
that'll 100:4 104:12
the-the 107:5
there'd 98:10 116:21
thicken 85:17 96:5
thing 7:15 19:12 20:11 26:25
45:2 55:14,15 56:6,7 57:5
63:8 66:12 72:3 76:3 86:13
94:6 101:10,25 102:11 104:5
105:24 110:10 123:2,17,19
124:18 136:18,19 139:10
143:16
things 7:10,24,25 12:15 13:25
15:14,20 17:7,13 38:23 40:5

45:9 47:18 51:8,17 52:8 54:20
55:19 56:16,21 58:16,17,18,
24 59:5 60:4 65:11 74:14
81:23 85:12,19,24 88:5 91:2,9
102:15 106:2,15 112:25
114:13 117:3 118:23 121:21
122:19 123:14 124:6 128:12
133:7 135:6,11 140:21 141:1
142:24 144:5,11,21 145:14
thinking 12:15 68:24 70:21
72:4,14 96:17,22 138:2
thinks 91:14
Thomas 78:16 80:3,10 86:19,
24 92:20 99:19 104:4 109:11
Thornburg 40:20,24
thought 6:3 18:1 20:21 21:10
37:1 42:3 58:11 59:5 65:12
69:13 70:15,17 99:11 115:24
126:22 127:16 129:8 132:1
thoughts 5:20,23 39:20 65:8
98:17 109:10
thousands 101:24
thread 146:4
threshold 48:23
threw 19:13
throw 125:15
thyroid 19:25
ticket 63:9
tickets 124:16,17 126:5
tie 48:12 145:13
tightly 48:18
til 12:20 136:12
time 6:3,13,24 7:14,19 9:10
12:20 13:15,21 14:2 15:3
16:1,10,16 18:6 22:10 23:4,15
26:17 27:1 28:3,10,17,24
45:23 55:17,19 56:7 58:10
62:7 63:8 65:5 68:14 69:14,22
71:15 74:13 76:2 77:23 78:3
83:25 84:5 97:14 109:6 112:7
114:19,20 126:4 133:24
141:22 146:7,11,19 147:13,18

times 74:16 85:23 142:8
title 46:2 121:14
today 2:13 3:4 24:21 25:6,12,
17 27:22 28:16,20 38:24 41:3
43:21 49:16 79:19 85:6 97:24
102:1 103:2 108:10 112:8
115:4 118:16
token 121:24
told 17:9 19:15
Tom 23:18,22 24:11,13,15,16,
18 27:24 28:4,7,16,20 42:24
43:24 44:6 59:6,11 64:3 67:7
68:15 72:21 77:1,21 78:20
79:3,6 103:22
Tomboy 18:10
tongue 17:24
tons 42:20
top 16:22 18:9 48:23 143:11
topic 104:21 135:7
topics 95:8 113:9,13,18
Topps 19:19
total 47:11
totality 38:19 54:18
touch 77:11 115:21 137:10
touched 101:2
tough 100:17
tournament 17:14,15
town 15:11 62:8 127:11
township 83:6,16 88:16 89:13
92:25 93:11 94:12 97:15,19,
21 98:12 99:25 100:8 128:23
townships 82:15 83:9 96:17,
24 100:23
trace 53:8
tracking 53:17
tracks 82:16
tracts 100:24

trade-off 107:3
 trade-offs 25:25
 traffic 55:23
 train 103:17
 training 76:1
 trainings 46:10
 transaction 121:5
 transcribed 139:13
 transcripts 108:19
 translation 2:22,24
 transparency 108:10,12
 111:4,21 112:12 137:19,25
 138:16 141:17
 transparent 65:1 69:6 84:7,14
 96:20 143:9
 trauma 18:16
 travel 8:11 9:8,9,11
 traveling 11:17 117:5
 Traverse 6:12
 trees 22:23
 tremendously 108:25
 trial 66:2,3
 trigger 67:1
 triggered 117:9,10
 triggering 117:16
 troopers 31:2
 trouble 24:2 55:11
 troubled 48:5
 troubleshoot 112:24
 true 58:14 82:21
 trust 73:13 74:18 75:1,7
 trusting 123:18
 tuition 59:14,17
 turn 3:2 25:12 77:19 78:12
 80:2 111:22 113:6 117:17
 147:13

turned 32:11
 turning 23:19 69:19
 turns 52:24 74:20
 TV 7:10 9:25 12:2 14:2 15:12
 16:3 21:1
 Twitter 6:1
 two-day 46:10 76:1
 tying 48:18
 type 7:10 53:23 138:12
 types 45:12 52:20,21 60:4,7
 83:20
 typically 69:20

U

U.P. 99:20
 U.S. 15:12 37:17,25 43:6,11,
 12 81:19
 ugly 50:15
 ultimate 50:16
 ultimately 96:19 113:17
 118:11 132:9
 uncertainty 61:1
 unconstitutional 30:9 33:25
 34:5,9
 under- 54:9
 undergrad 6:22 17:11
 underlying 30:4 54:19
 understand 4:24 42:7,9 44:9
 45:16,21 48:11 56:5 57:10
 60:4 64:10,18 65:6 67:8,17,18
 71:11 74:22 76:10 87:14
 90:19 91:4 96:23 97:2 122:4
 143:5,7
 understanding 23:14 64:24
 95:12 108:1
 understood 91:10
 undertaken 73:10

undoubtedly 124:7
 unfamiliar 68:3
 unfounded 65:18 66:8
 unheard 20:12
 unidentifiable 105:23
 unimportant 56:3,4
 unique 89:17 90:22 94:19
 105:9 118:19
 United 26:20 88:14
 universities 63:16
 university 6:22 7:20 9:22
 14:11 24:19 25:15 27:11 43:2
 63:14 77:10 103:23

unknown 8:13
 unlimited 97:25
 unmute 3:6 26:10 59:25 78:13
 unpacking 134:14
 unquote 102:14
 unrepresented 107:18
 unusual 18:4,8
 upcoming 5:21 23:16 78:10,
 12 130:14 136:2
 updated 117:21
 updating 33:9
 urge 74:25

V

valid 105:9
 Vallette 3:25 4:1 11:25 20:18
 Vegas 17:16,17
 vent 109:21
 verify 121:3
 version 13:13 21:16
 versus 40:21,24 95:5 103:13
 vested 75:2

**Morning Session
09/18/2020**

veteran 15:12
victims 18:17
video 17:11 31:5 78:11 79:9
83:2 112:7 139:15
videos 79:13
viewing 2:17,20
village 88:17
violate 37:25
violates 37:17
violating 118:1
violation 132:25
violations 133:18
violence 29:11
violent 18:18 31:4
violin 14:5,7
virtual 5:5 69:15
virtually 23:15 115:5,9
virtue 90:21 99:6
visit 2:12 76:17
visual 65:14
visualization 65:2
visualizations 64:21,22 65:11
voice 7:16 8:3 42:13
volunteer 6:25
volunteers 27:4
vote 29:3 32:9 34:21 35:3 39:3
53:4,16 81:13,19 132:22
voted 36:2 53:5,6 62:11,12
voter 38:23 43:8 84:2 98:5,6
voters 26:25 29:6 30:20 34:21
35:11 39:11 49:18,24 50:5,12,
22 51:20,22,24 52:18,21 53:6,
17,24 84:3 98:5
votes 41:13,14
voting 25:17 27:19 28:23
29:13,18 30:4,23 31:11,20,24

32:1,10 33:3,6,19 34:12,19
35:8 36:12 38:15,16,20 39:6
40:7 41:3,13 42:7,8 45:18
49:20,22,23 50:21,24 51:15
52:22,24 55:8 56:9,12,16,23
57:2 58:6 59:1,2 60:13,16
61:10 62:9,13,24 63:20,21
65:17 83:18 89:22 106:5,8,11
107:22 109:14

W

Wagner 3:21,22 10:16,17
19:24
walk 123:1
wall 95:13
wanna 49:11 56:25 60:12
63:13 64:8 67:1 85:11 86:11,
12 87:16 89:25 103:19 104:2,
10 106:3 109:8 110:20 112:4
113:12,19,22 114:17 115:19
119:8 120:5,16 121:3 129:9,
23 133:8,16 136:18 137:2
139:3 141:7,11 143:17,24
146:14,18
wanted 16:10 87:18 113:7
115:20 116:16 117:7 118:18
120:20,21 123:14 126:5
128:10,13 131:6 134:25 135:3
146:20,22 147:18
Washington 8:24 9:10
watch 7:11 12:3 14:3 15:12
57:6 60:14
watching 2:9,11,16 3:1 5:4 6:9
9:25 16:2 20:2 23:12 78:8
79:15 123:13
Wayne 6:22 12:23 13:2
ways 26:20 44:4 45:21 50:1
56:11 75:22 115:12 120:22
121:22 144:18
weather 55:20
webinar 2:10,22
website 43:15 119:23 120:3
134:19 139:21,22 141:8,12,

19,20
websites 64:18
weeds 45:8 81:2 89:25
week 14:23
weekend 141:22
weigh 94:8
Weiss 4:8,9 15:23 22:10,20
welcomes 68:11
well-documented 32:22
well-organized 110:7
well-represented 107:4
West 104:24
whatnot 114:25
wheat 102:19
wheels 69:19
white 29:20 30:22 31:2 35:21
36:7 41:14
whoa 74:17
wholly 83:11
wide 15:18
widow 12:16
willingness 103:15
win 58:5,10
wine 16:2 22:16,23 104:11
winning 58:7
Witjes 3:19,20 9:20 75:19
witnessed 36:12
Wizard 108:13
wonderful 16:3 74:14
wonderfully 44:23
wondering 125:12 126:16
136:1
word 33:17 39:1 65:23 67:1
131:24
words 38:17 41:9 82:9 86:5,10

Morning Session

09/18/2020

108:10
work 7:13,14 11:9 13:5 14:20
16:1 18:16,17 25:1,8 27:13
28:13 34:13 41:10 43:3,7
44:11,13,19 46:3 57:6 63:1,
16,18 67:11 79:12 98:25
110:18 112:7 116:25 117:12,
13,18 121:4 122:25 123:21
125:13,14 126:4 138:24 142:7
143:13,14,15,22 144:14,15
145:5,17
worked 9:4 14:16 15:25 71:5
87:1 135:12 142:12
working 4:17,18 10:11 15:19
23:8 62:12,13 78:11,14 80:4
81:25 86:21 103:8 121:20
workplace 15:4
works 84:17 126:2
Workshop 111:4,22
world 26:21 83:23 88:4
worldwide 17:15
worried 41:17
worry 17:7 54:1 96:2,4 145:2,6
worst 61:25
worth 66:3 67:4 70:21 115:24
wrap 68:21 77:13
write 130:23 136:12
writes 27:11
writing 127:10 128:1 130:12,
13 131:18,23 133:2
written 5:23 76:18 131:18
133:22
wrong 28:3 40:12 131:15

Y

year 14:2 15:20 17:14 19:19
60:25 80:14 110:16 123:16
134:13,14
years 6:21 7:18 9:2,7 12:23
13:1 15:24,25 19:9 27:3 42:18

44:15 45:8 51:20 52:8 80:3,21
86:16 117:22 124:12,14,20

yelling 94:1
yellow 51:23
yesterday 6:5 7:7,20,22 8:12,
15 10:7,23 11:1 12:16 14:15
15:2,11,15,16 16:5 17:4,10
23:13 44:10 68:10 69:14 77:8
79:20 99:6 112:13 113:11,13,
16,25 114:10 115:4,23 116:18
118:16 133:12 137:10 140:1,
3,9 141:21 145:14
yesterday's 6:14 9:12 68:22
young 30:18
youth 7:13,14
Youtube 2:10 5:4,8 6:10 20:2,
4
Ypsilanti 9:21

Z

zone 67:8
Zoom 2:9 26:12 112:22,23
130:16