

STATE OF MICHIGAN  
IN THE SUPREME COURT

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THE DETROIT NEWS, INC.,  
DETROIT FREE PRESS, INC.  
THE CENTER FOR MICHIGAN, INC. /  
BRIDGE MICHIGAN,  
MICHIGAN PRESS ASSOCIATION,  
LISA MCGRAW,

Plaintiffs,

v.

INDEPENDENT CITIZENS  
REDISTRICTING COMMISSION,

Defendant.

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Supreme Court No.

JURISDICTION:  
Const 1963, art 4, §19

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BUTZEL LONG, P.C.  
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Robin L. Herrmann (P46880)  
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**EMERGENCY  
VERIFIED COMPLAINT**

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**EMERGENCY  
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- Exhibit 01: Proposed Meeting Minutes (Oct. 27, 2021)
- Exhibit 02: Commission Meeting Tr. (Oct. 27, 2021)
- Exhibit 03: Letter from Julie Stafford, President of the Michigan Press Association, John Bebow, President of The Center for Michigan, Inc. / Bridge Michigan, Peter Bhatia, Editor of the Detroit Free Press, and Gary Miles, Editor and Publisher of The Detroit News, to Julianne V. Pastula, General Counsel to the Commission (Nov. 30, 2021)
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- Exhibit 05: Letter from Clara Hendrickson, Reporter for the Detroit Free Press, to Julianne V. Pastula, General Counsel to the Commission (Oct. 29, 2021)
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- Exhibit 07: Letter from Michigan Press Association and The Center for Michigan, Inc. / Bridge Michigan to Sue Hammersmith, Rebecca Szetela, & M.C. Rothhorn (Nov. 5, 2021)
- Exhibit 08: Email from Julianne V. Pastula, General Counsel to the Commission to the Michigan Press Association and The Center for Michigan, Inc. / Bridge Michigan (Nov. 12, 2021)

- Exhibit 09: Letter from Julianne V. Pastula, General Counsel to the Commission, to John Bebow, President of The Center for Michigan, Inc. / Bridge Michigan, and Lisa McGraw, Public Relations Manager of the Michigan Press Association (Dec. 2, 2021)
- Exhibit 10: Email from Julianne V. Pastula, General Counsel to the Commission, to Craig Mauger, The Detroit News (Nov. 19, 2021)
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- Exhibit 14: Commission Meeting Tr. (July 9, 2021)

# EXHIBIT

# 1

# Michigan Independent Citizens Redistricting Commission

Hybrid Meeting held in-person and via Zoom Webinar due to the ongoing Covid-19 pandemic, pursuant to 2020 PA 254 (MCL 15.263 and 15.263a), and in compliance with Section 6(10) of Article 4 of Michigan's 1963 Constitution

Full agenda, presentations, transcripts, and video recordings are available at  
[www.michigan.gov/micrc](http://www.michigan.gov/micrc)

**Wednesday, October 27, 2021**

**3:17 PM – 5:26 PM**

**at**

**Michigan State University Union, Lake Huron Room**

**49 Abbot Road**

**East Lansing, MI 48824**

## **MINUTES**

### **PRESENT:**

Douglas James Clark  
Juanita Curry (attending remotely from Detroit, MI)  
Anthony Eid  
Brittni Kellom  
Rhonda Lange (attending remotely from Reed City, MI)  
Steven Terry Lett  
Cynthia Orton  
MC Rothhorn  
Rebecca Szetela  
Janice Vallette  
Erin Wagner (attending remotely from Charlotte, MI)  
Richard Weiss  
Dustin Joseph Witjes

### **ABSENT:**

N/A

**OTHERS PRESENT:** Suann Hammersmith, Executive Director

Julianne V. Pastula, General Counsel  
Edward Woods III, Communications and Outreach Director  
Michigan Department of State (“MDOS”) staff  
Bruce Adelson, Federal Compliance Consulting  
Election Data Services (“EDS”) staff

RECEIVED by MSC 12/7/2021 10:06:52 PM

## **CALL TO ORDER AND WELCOME**

Commissioner Szetela, Chair, called the meeting of the Michigan Independent Citizens Redistricting Commission (MICRC) to order at 3:17 PM.

## **ROLL CALL**

MDOS staff called roll. A quorum was met.

## **ADOPTION OF THE AGENDA**

**MOTION:** Amend the Agenda to Consider Setting a Closed Session as the Initial Item of New Business. **Motion by Commissioner Clark. Supported by Commissioner Lett. Commissioner Szetela, Chair, held a vote by show of hands. MOTION APPROVED.**

**Voting No:** Commissioners Lange and Wagner

**MOTION:** Commissioner Szetela, Chair, called for a motion to approve the agenda, as amended. **Motion by Commissioner Witjes. Supported by Commissioner Orton. Commissioner Szetela, Chair, held a vote by show of hands. MOTION UNANIMOUSLY APPROVED.**

## **PUBLIC COMMENT PERTAINING TO AGENDA TOPICS**

**MOTION:** To Suspend the Rules and Change the Public Comment Time to 30 Seconds Per Speaker for this Meeting Only. **Motion by Commissioner Witjes. Supported by Commissioner Lett. Commissioner Szetela, Chair, held a vote by roll call. MOTION APPROVED 11-2.**

**Voting Yes:** Commissioners Lett, Orton, Rothhorn, Szetela, Vallette, Weiss, Witjes, Clark, Curry, Eid, Kellom

**Voting No:** Commissioners Lange and Wagner

Commissioner Szetela, Chair, put the motion "to begin the public comment pertaining to agenda topics portion of the agenda" which was adopted. 41 individuals provided remote public comment: James Gallant, Jordan Scrimger, Abby Clark, Susan Smith, William Saxton, Mark Payne, KAREN SANTELLI, Kurtis Fernandez, Joe Sova, Wesley Watson, Chris Moultrup, Kathy Hood, Derryl Reed, Essence Wilson, Joel Arnold, Chris Andrews

A full inventory of live and written public comment is available at [www.michigan.gov/micrc](http://www.michigan.gov/micrc).

## NEW BUSINESS

- a. Consideration of Closed Session. The Commission considered entering a closed session to discuss two attorney-client privileged and confidential memoranda providing legal advice from its counsel.

**MOTION:** Motion to Adopt Resolution to Call Closed Session in accordance with MCL 15.268(h) for the purposes of discussing the privileged and confidential memoranda exempt from disclosure under MCL 15.243(1)(g) titled *Voting Rights Act* of October 14, 2021, and *The History of Discrimination in the State of Michigan and its Influence on Voting* of October 26, 2021. **Motion by Commissioner Clark. Supported by Commissioner Lett. Commissioner Szetela, Chair, held a vote by roll call. MOTION APPROVED 11-2.**

**Voting Yes:** Commissioners Lett, Orton, Rothhorn, Szetela, Vallette, Weiss, Witjes, Clark, Curry, Eid, and Kellom

**Voting No:** Commissioners Lange and Wagner

## CLOSED SESSION

At 3:49 PM, Commissioner Szetela, Chair, transitioned the Commission into a closed session in accordance with MCL 15.268(h) on the privileged and confidential memoranda exempt from disclosure under MCL 15.243(1)(g) titled "Voting Rights Act" of October 14<sup>th</sup>, 2021 and "The History of Discrimination in the State of Michigan and its Influence on Voting" of October 26<sup>th</sup>, 2021. The closed session was called into to order at 4:05 PM and was adjourned at 5:19 PM. The purpose of the discussion was a public body discussion of attorney-client privilege information under MCL 15.268(h) exempt from disclosure under MCL 15.243(1)(g).

## CALL TO ORDER

Commissioner Szetela, Chair, called the meeting of the Michigan Independent Citizens Redistricting Commission back to order at 5:23 PM.

## **ROLL CALL**

MDOS staff called roll. A quorum was met.

### **PRESENT:**

Douglas James Clark  
Anthony Eid  
Brittini Kellom  
Rhonda Lange (attending remotely from Reed City, MI)  
Steven Terry Lett  
Cynthia Orton  
MC Rothhorn  
Rebecca Szetela  
Janice Vallette  
Erin Wagner (attending remotely from Charlotte, MI)  
Richard Weiss  
Dustin Joseph Witjes

### **ABSENT:**

Juanita Curry

## **ADJOURNMENT**

Commissioner Witjes called for a motion to adjourn.

**MOTION:** Adjourn the Meeting. **Motion by Commissioner Witjes.**  
**Supported by Commissioner Lett. Commissioner Szetela, Chair, held a**  
**vote by show of hands. MOTION APPROVED.**

**Voting No:** Commissioner Lange

The meeting was adjourned at 5:26 PM.



# EXHIBIT

# 2

MICRC

10/27/21 1:00 pm Meeting

Captioned by Q&A Reporting, Inc., [www.qacaptions.com](http://www.qacaptions.com)

>> CHAIR SZETELA: Thank you. As Chair of this Commission I call the meeting of the Michigan Independent Citizens Redistricting Commission to order at 3:17 p.m.

This Zoom webinar is being  
live streamed on YouTube at

Michigan Independent Citizens Redistricting Commission YouTube channel.

For anyone in the public watching who would prefer to watch via a different platform than they are currently using, please visit our social media at Redistricting MI

Our live stream today includes closed captioning. Closed captioning, ASL interpretation, and Spanish and Arabic and Bengali translation services will be provided for effective participation in this meeting. Please E-mail us at Redistricting@Michigan.Gov for additional viewing options or details on accessing language translation services for this meeting.

People with disabilities or needing other specific accommodations should also contact Redistricting at Michigan.gov.

This meeting is also being recorded and will be available at [www.Michigan.gov/MICRC](http://www.Michigan.gov/MICRC) for viewing at a later date and this meeting also is being transcribed and those closed captioned transcriptions will be made available and posted on Michigan.gov/MICRC along with the written public comment submissions.

There is also a public comment portal that may be accessed by visiting Michigan.gov/MICRC, this portal can be utilized to post maps and comments which can be viewed by both the Commission and the public.

Members of the media who may have questions before, during or after the meeting should direct those questions to Edward Woods III, our Communications and Outreach Director for the Commission at WoodsE3@Michigan.gov or 517-331-6309.

For the purposes of the public watching and for the public record I will now turn to the Department of State staff to take note of the Commissioners present.

>> MS. SARAH REINHARDT: Good afternoon, Commissioners.  
Please say present when I call your name. If you are attending the meeting remotely, please disclose you are attending remotely and where you are physically attending from.

I will start with Doug Clark.

>> COMMISSIONER CLARK: Present.

>> MS. SARAH REINHARDT: Juanita Curry.

>> COMMISSIONER CURRY: Present; attending remotely from Detroit Michigan.

>> MS. SARAH REINHARDT: Juanita, give us one moment.

Audio test, one, two.

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Audio test.

Test one two, test one two.

Audio test one two, one two.

Check one two audio test one two.

Test one two, test one two, audio test one two, check, check, test one, two.

All right. Let's try this again. Juanita Curry?

>> COMMISSIONER CURRY: Present; attending remotely from Detroit, Michigan.

>> MS. SARAH REINHARDT: Heard loud and clear. Thank you, Commissioner Curry.

>> MS. SARAH REINHARDT: Anthony Eid?

>> COMMISSIONER EID: Present.

Brittini Kellom?

>> COMMISSIONER KELLOM: Present.

Rhonda Lange?

Rhonda? Commissioner Curry, can you hear us?

>> COMMISSIONER CURRY: I can hear plain, very good.

>> CHAIR SZETELA: Commissioner Curry, can you hear me?

>> COMMISSIONER CURRY: Yes.

>> CHAIR SZETELA: Commissioner Lange, can you hear me?

>> MS. SARAH REINHARDT: Commissioner Lange, I can see there you are present.

>> COMMISSIONER LANGE: Is there conversation going on? I can't hear a thing.

>> MS. SARAH REINHARDT: I will message you in the chat.

>> CHAIR SZETELA: Commissioner Wagner, can you hear us? Okay, so

Commissioner Wagner can hear us too.

>> MS. SARAH REINHARDT: Steve Lett?

>> COMMISSIONER LETT: Present.

>> MS. SARAH REINHARDT: Cynthia Orton?

>> COMMISSIONER ORTON: Present.

>> MS. SARAH REINHARDT: MC Rothhorn?

>> COMMISSIONER ROTHORN: Present.

>> MS. SARAH REINHARDT: Rebecca Szetela?

>> CHAIR SZETELA: Present.

>> MS. SARAH REINHARDT: Janice Vallette?

>> COMMISSIONER VALLETTE: Present.

>> MS. SARAH REINHARDT: Erin Wagner?

>> COMMISSIONER WAGNER: Present; attending remotely from Charlotte, Michigan.

>> MS. SARAH REINHARDT: Richard Weiss?

>> COMMISSIONER WEISS: Present.

>> MS. SARAH REINHARDT: Dustin Witjes?

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>> COMMISSIONER WITJES: Present.

>> MS. SARAH REINHARDT: All Commissioners are present.

>> CHAIR SZETELA: Thank you. You can view the agenda at Michigan.gov/MICRC. I would now entertain a motion to approve the meeting agenda. So moved.

Motion made by Commissioner Witjes.

>> COMMISSIONER ORTON: I'll second it.

>> CHAIR SZETELA: Seconded by Commissioner Orton.

Is there any discussion or debate on the motion?

>> COMMISSIONER CLARK: I would like to put a motion to amend the agenda to add consideration of resolution to set a closed session as the initial new business line item today.

>> COMMISSIONER LETT: Second.

>> CHAIR SZETELA: Motion made by Commissioner Clark, seconded by Commissioner Lett to amend are we adding it after public comment?

>> COMMISSIONER CLARK: Yes, after public comment.

>> CHAIR SZETELA: Adopt the motion to call a closed session pursuant to MCL 15.268H and 15.2431G.

What? Just put it on the agenda with the motion and a second or do we have to vote on it?

>> MS. JULIANNE PASTULA: Madam Chair, right now I believe Commissioner Clark has just asked that this item be placed on the agenda for discussion. And potential consideration after the public comment portion of your agenda is completed.

>> CHAIR SZETELA: Just adding it for discussion.

>> MS. JULIANNE PASTULA: As a line item.

>> CHAIR SZETELA: So we don't need to vote on it.

>> MS. JULIANNE PASTULA: Motion to add it to a line item for potential adoption.

>> CHAIR SZETELA: Resolution related to the closed session.

>> MS. SARAH REINHARDT: Madam Chair apologies for the interruption Commissioner Lange I believe can hear us now can you tell us where you are attending remotely from.

>> COMMISSIONER LANGE: Attending remotely from Reed City, Michigan.

>> MS. SARAH REINHARDT: Thank you.

>> CHAIR SZETELA: Is there any discussion or debate on the motion to amend the agenda? Yes.

All in favor please raise your hand and say aye.

Opposed raise your hand and say nay.

The ayes prevail and the motion to amend the agenda is adopted.

Now we will move on to the actual ap develop shun of agenda as amended is there any discussion on the adoption of the agenda.

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Hearing none let's vote on the agenda itself as amended all in favor raise your hand and say aye.

All opposed raise your hand and say nay.

The ayes prevail and the agenda is adopted.

Thank you, everybody.

Commissioner Witjes?

>> COMMISSIONER WITJES: I'd like to make a motion to change the public comment time from one minute to 30 seconds for today only.

>> CHAIR SZETELA: Second.

>> CHAIR SZETELA: Motion made by Commissioner Witjes to alter the public time period to 30 seconds for today only, seconded by Commissioner Lett.

Is there any discussion or debate on the motion? Commissioner Lange?

>> COMMISSIONER LANGE: I don't feel that that's fair.

People online that I've seen that have been sitting here waiting to give remote comment have been sitting here for a couple hours through no fault of their own.

And I know we've got a lot of business to do, but I think we owe them that curtesy.

>> CHAIR SZETELA: Any additional discussion or debate? Commissioner Curry?

>> COMMISSIONER CURRY: Yes, I just feel that 30 seconds is not going to by the time they tell their name and everything. It will be up and a waste of time.

>> CHAIR SZETELA: Okay, any additional discussion or debate? All right. So we have a motion made by Commissioner Witjes to suspend the rules with timeframe for public comment.

We are going to reduce it proposed to reduce it to 30 seconds.

Seconded by Commissioner Lett.

All in favor, please raise your hand. Oh, yeah, let's do a roll call vote on that if we could. 30 seconds for today only, yes, temporary suspension of the rules.

>> MS. SARAH REINHARDT: Commissioners, please indicate your support of the motion with a yes or a no.

I will call on Commissioners in alphabetical order.

Starting with Rhonda Lange?

>> COMMISSIONER LANGE: No.

>> MS. SARAH REINHARDT: Steve Lett?

>> COMMISSIONER LETT: Yes.

>> MS. SARAH REINHARDT: Cynthia Orton?

>> COMMISSIONER ORTON: Yes.

>> MS. SARAH REINHARDT: MC Rothhorn?

>> VICE CHAIR ROTHORN: Yes.

>> MS. SARAH REINHARDT: Rebecca Szetela?

>> CHAIR SZETELA: Yes.

>> MS. SARAH REINHARDT: Janice Vallette?

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- >> COMMISSIONER VALLETTE: Yes.
- >> MS. SARAH REINHARDT: Erin Wagner?
- >> COMMISSIONER WAGNER: No.
- >> MS. SARAH REINHARDT: Sorry Richard Weiss?
- >> COMMISSIONER WEISS: Yes.
- >> MS. SARAH REINHARDT: Dustin Witjes?
- >> COMMISSIONER WITJES: Yes.
- >> MS. SARAH REINHARDT: Doug Clark?
- >> COMMISSIONER CLARK: Yes.
- >> MS. SARAH REINHARDT: Juanita Curry?
- >> COMMISSIONER CURRY: I'll go with the majority, yes.
- >> MS. SARAH REINHARDT: Anthony Eid?
- >> COMMISSIONER EID: Yes.
- >> MS. SARAH REINHARDT: Brittini Kellom?
- >> CHAIR KELLOM: Yes.
- >> MS. SARAH REINHARDT: By a vote of 11 yes to two no, the motion carries.
- >> CHAIR SZETELA: Thank you, Ms. Reinhardt.

All right, without objection we will now begin the public comment pertaining to agenda topics portion of our meeting. Hearing no objection, we will now proceed with the public comment pertaining to agenda topics.

Individuals who have signed up and indicated that they would like to provide in-person public commentary to the Commission will now be allowed to do so.

Actually we are not doing in person, everyone who was here left and individuals who signed in and would like to provide live remote public commentary, I will call on your name and staff will unmute you. If you are on a computer, you will be prompted by the Zoom app to unmute and speak.

If you are on the phone a voice will say a voice would like you to speak and press star six to unmute.

I will call on you by your name.

Please note if you experience technical or audio issues or do not hear from you to 3-5 second we will move on to the next person in line and return to you after they are done speaking.

If your audio does not work e-mail [MIredistricting.gov](mailto:MIredistricting.gov) and we will help you troubleshoot to participate during a later hearing or meeting.

As a reminder to everyone online, we reduced the speaking time today to 30 seconds so you will have 30 seconds to address the Commission. So please get straight to your remarks and conclude your remarks when you hear the timer.

The first in line to provide public comment is James Gallant.

>> After discussing my concerns with the former Attorney General Bill Schuette in Gaylord, I realized that this Commission's lack of semblance of order is institutionalized

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bullying and a direct result of member Lett as the Chair pro tem allowing democrat member Vice Chair facilitator Kellom and democrat member Witjes to negotiate side bar agreements that are not in the minutes. They are in the transcripts, to the detriment to the republican party.

You Commissioners appear to agree to provide full and equal agency between yourself and the members including the Chair, which is in direct contradiction to the Constitution.

>> CHAIR SZETELA: Thank you for addressing the Commission. Next in line is Jordan S.

>> Hi all, my name is Jordan. And, first of all, I'm very sorry to hear about the threat on your safety today.

The work you are doing is incredibly important to justice and also our democracy. In the Lansing area I want to it rate I'm pleased with the Congressional and State Senate map and still I urge you to take another look at the house maps.

You can preserve communities of interest in the area while also creating another House District.

I believe that we can balance the necessity of partisan fairness and community connectedness and I thank you.

>> CHAIR SZETELA: Thank you Jordan and Thank you for addressing the Commission. Next in line is Abbey Clark.

>> Good afternoon.

I just want to echo what Jordan just told you.

Very appreciative of your hard work especially with the uncertainty of what was happening today.

And over the course of the public hearings we see that you're listening to the public and I also want to echo I think you heard from a lot of people there is still a lot of work to do on the State House map in particular.

I think you've got some really strong Congressional drafts and can tweak the State Senate drafts and work on the State House draft and thank you.

>> CHAIR SZETELA: Thank you for addressing the Commission. Susan Smith number four.

>> Good afternoon.

I'm Susan Smith vice president League of Women Voters of Michigan.

As you know the MICRC's use of Dr. Handley voting rights analysis has cause some concern about Michigan voters.

One of the prime concerns seems to be that she didn't use primary election data when she performed her racial bloc voting analysis.

The league requests the Commission to ask Dr. Handley to address the following questions: Number one, why didn't she use the primary election data?

>> CHAIR SZETELA: Thank you for addressing the Commission. William Saxton.

>> Hello, my name is Bill. I'm a resident of Grand Rapids here in Kent County.



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Thank you so much for your efforts so far.

I've been watching most of these hearings and when it comes to Congressional maps it appears that the birch map is the most popular.

In every area of the state because it performs better on numbers except for west and Southwest Michigan.

Nobody I know democrat republican things Ottawa County should be with Midland in a Congressional District for example.

There are several other collaborative Commissioner maps such as the apple map or Commissioner Eid's Congressional map.

>> CHAIR SZETELA: Thank you for addressing the Commission. Mark Payne number six.

>> All right good afternoon, Commissioners so the Commission must take the time and useful set of tools and careful review of maps submitted by the public and VRA analysis with primary data beyond the 2018 gubernatorial and will have a direct impact on critical issues like access to clean affordable water for the next decade.

You must take the necessary time over the next ten days to take in account population deviations bloc voting age population scores and partisan test results to ensure the new District accurately reflects.

>> CHAIR SZETELA: Thank you for addressing the Commission. Number 7, Karen Santelli.

>> Hi, can you hear me.

>> CHAIR SZETELA: Yes.

>> Okay thank you.

My name is Karen Santelli and what I'd like to do is just talk about West Michigan Cascade Township.

I live in Cascade Township.

Cascade Township is an urban area.

It's part of Metro Grand Rapids.

My school tax dollars all go to urban Grand Rapids school districts.

Even Cascade's address is in Grand Rapids as well as mine.

Cascade's website describes itself as a population with 90% urban.

>> CHAIR SZETELA: Thank you for addressing the Commission. Curtis Fernandez.

>> Can you hear me now.

>> CHAIR SZETELA: Yes.

>> On behalf of APIA vote Michigan I'm asking the Commission to revisit the State Senate map in Troy.

It disenfranchises the community in Troy.

Please reconsider for more of Sterling heights with a large AAPI community.

There is more work to do I thank you the Commission for its time and please stay safe.



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>> CHAIR SZETELA: Thank you for addressing the Commission. Number nine Emily.

>> MS. SARAH REINHARDT: Number nine and ten are not present.

>> CHAIR SZETELA: Number 11, Joe Sova.

>> Hi.

>> CHAIR SZETELA: We can hear you.

>> I'm not seeing, there we go.

I'll speak fast good afternoon, Commissioners. My name is Joe. I'm the Midland County drain Commissioner for the City of Midland.

We have 84 drain Commissioners in this fine state and work with under the State of Michigan drain code and many others.

So when someone states that District lines should not be drawn based on drainage districts or watersheds, I'm here to tell you in 22 in municipal Government managing water and storm water systems watersheds should be primary.

>> CHAIR SZETELA: Thank you for addressing the Commission. Wesley Watson.

>> Good afternoon, Commissioners.

I'll be brief.

Some of the takeaways from previous public comments events, I just want to reinforce original support of prop two with voters in Michigan.

To believe that the party that urns majority of votes delivers the majority of seats.

White fully the partisan fairness scoring. We are depending on you and thank you for your time.

>> CHAIR SZETELA: Thank you for addressing the Commission. Kathy Hood.

>> Hello and thank you for serving on the committee.

I'm a resident of Novi and the Pine District 110 splits Novi and our school District.

I agree the Farmington should be kept together and think that Novi should be kept together too and I'll put the rest of my comments online, thank you.

>> CHAIR SZETELA: Thank you for addressing the Commission. Number 17, essence Wilson.

>> Hello, I'm essence Wilson a Flint resident at the Flint hearing it said whole and not to put it in a single House District.

For the past ten years we did not have one but two representatives in Lansing and a much better solution than packing Flint in a single District and would risk being a partisan gerrymander and lead to wasted votes do due to the Flint voting pattern P2723 as a better example of how to resolve these concerns thank you.

>> CHAIR SZETELA: Thank you for addressing the Commission. Number 18, Joe Arnold.

>> Hi name is Joel Arnold a Flint residence don't and wanted to echo what many residents said yesterday current State House maps do not serve our City.

Rather than pack Flint in a single District I ask you have work to ensure we have one reliable District that a Flint resident can be elected in and that remains majority Black with a second seat as we have today.

Packing Flint in a single District would be its own form of a partisan gerrymander and please reference P27273 as a model to follow to be sure our community retains opportunities.

>> CHAIR SZETELA: Thank you for addressing the Commission. Last commenter is Chris Andrews.

>> MS. SARAH REINHARDT: Chris, if you can hear us, you are free to address the Commission, if you can unmute yourself. It looks like Chris may be experiencing audio issues. I recommend that we move on.

>> CHAIR SZETELA: That concludes our public comment for today. However I would like to mention that all e-mailed and mailed public comment is provided to the Commission before each meeting and Commissioners also review the public comment portal on our [www.Michigan.gov/MICRC](http://www.Michigan.gov/MICRC) website on a regular basis. We appreciate everyone who provides their public comment in whatever form they choose to do so and invite the public to share thoughts, maps and communities of interest.

At this point we don't have any unfinished business to cover today however we do have the discussion of the resolution by Commissioner Clark.

Go ahead Commissioner Clark.

>> COMMISSIONER CLARK: Yes, I would like to put a motion forward that the Commission has a closed session meeting to discuss two memorandum from legal counsel.

One of those memorandum is regarding the VRA.

And the other regarding the history of discrimination in Michigan.

No actions will be taken in the closed session and only the contents of the cited attorney/client privilege legal memoranda will be discussed.

>> CHAIR SZETELA: We have a motion by Commissioner Clark seconded by Commissioner Lett to adopt the resolution that was forwarded us in advance of the meeting.

I'll read the resolution into the record.

Resolution to call closed session we are solved in accordance with Section 8H of the open meeting act 1976PA267 MCL 15.268H a closed session of the Michigan Independent Citizens Redistricting Commission MICRC is hereby called on and then there is an opening for the day of the week the month and the date and the time. With its attorneys being General Counsel Julianne Pastula and VRA legal counsel Bruce Adelson to discuss the privileged and confidential memorandum titled Voting Rights Act of October 14, 2021, and history of discrimination in the State of Michigan and its influence on voting of October 26, 2021.

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These memorandum are both attorney/client communications prepared by legal counsel to MICRC and exempt from disclosure 13G of freedom information act MCL 243.1G. In order to pass this resolution we will need a two thirds roll call vote of the members appointed and serving as Commissioners pursuant to MCL 15.2671.

Is there any discussion or debate on the resolution? Commissioner Lange I see you have your hand up.

>> COMMISSIONER LANGE: I'm against going closed session.

I don't feel it's necessary.

We all received the memos and if in Commission is working on full transparency in my opinion let's be transparent.

I know that's probably not what most want to hear but I'm just going to voice my opinion.

>> CHAIR SZETELA: Commissioner Rothhorn?

>> VICE CHAIR ROTHORN: I think we want to hear it Commissioner Lange.

What we got though is the idea that the we need all the help we can get and what we don't know we don't know but our counsel is suggesting we do this and what I also believe and in my heart right now we want to make sure these maps get approved the first time.

Not the remanded to us.

I'm afraid if we don't go into this and I don't know what I don't know.

They are suggesting it.

I trust them and feel we should go in this to try to understand why we understand this, why we need this in order to again prepare ourselves to get these maps done right the first time.

Not, yeah, later.

>> CHAIR SZETELA: Commissioner Clark?

>> COMMISSIONER CLARK: Yeah, I want to add that this is a common tool used in redistricting.

It was used significantly in Arizona.

And it is something that I believe will benefit us as we move forward.

>> CHAIR SZETELA: I would concur with Commissioners Rothhorn and Commissioner Clark.

I think that this will allow us to freely discuss attorney/client matters with our lawyers freely and openly where we can all as a group ask questions about the memorandum that we received.

All right let's go ahead with that roll call vote.

>> MS. SARAH REINHARDT: Commissioners please state your support of the motion with a yes or a no.

I will call on Commissioners in alphabetical order.

>> MS. JULIANNE PASTULA: Madam Chair.

>> CHAIR SZETELA: Yes, General Counsel.

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>> MS. JULIANNE PASTULA: I apologize to the interruption for Ms. Reinhardt did the Commission want to set a time to go in closed session or upon adopted of the resolution if it is, in fact, adopted.

>> CHAIR SZETELA: Upon adoption of the resolution we will need a time.

>> MS. JULIANNE PASTULA: Okay so the motion as the Chair read it earlier would be for 102721 upon adoption of the resolution.

Thank you for the clarification.

>> MS. SARAH REINHARDT: Commissioners please indicate your support of the motion with a yes or a no.

I will call on Commissioners in alphabetical order starting with Steve Lett?

>> COMMISSIONER LETT: Yes.

>> MS. SARAH REINHARDT: Cynthia Orton?

>> COMMISSIONER ORTON: Yes.

>> MS. SARAH REINHARDT: MC Rothhorn?

>> VICE CHAIR ROTHORN: Yes.

>> MS. SARAH REINHARDT: Rebecca Szetela?

>> CHAIR SZETELA: Yes.

>> MS. SARAH REINHARDT: Janice Vallette?

>> COMMISSIONER VALLETTE: Yes.

>> MS. SARAH REINHARDT: Erin Wagner?

>> COMMISSIONER WAGNER: No.

>> MS. SARAH REINHARDT: Richard Weiss?

>> COMMISSIONER WEISS: Yes.

>> MS. SARAH REINHARDT: Dustin Witjes.

>> COMMISSIONER WITJES: Yes.

>> MS. SARAH REINHARDT: Doug Clark?

>> COMMISSIONER CLARK: Yes.

>> MS. SARAH REINHARDT: Juanita Curry?

>> COMMISSIONER CURRY: Yes.

>> MS. SARAH REINHARDT: Anthony Eid?

>> COMMISSIONER EID: Yes.

>> MS. SARAH REINHARDT: Brittini Kellom?

>> CHAIR KELLOM: Yes.

>> MS. SARAH REINHARDT: Rhonda Lange?

>> COMMISSIONER LANGE: No.

>> MS. SARAH REINHARDT: By a vote of 11 yes to two no, the motion carries.

>> CHAIR SZETELA: Thank you Ms. Reinhardt.

All right so the resolution has been adopted.

We are going to move to closed session.

It is October 27, 2021, the time is 3:49 p.m.

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All many endings of the public are required to exit the room.

And the online streaming of the open meeting will resume at the conclusion of the closed session.

>> MS. JULIANNE PASTULA: Thank you so much Madam Chair so again the Commission will reconvene in the public meeting directly after the closed session has completed.

So again when the closed session is completed there will be the open session will continue.

[ Recess of online captions ]

>> MS. SARAH REINHARDT: Audio test one two Rhonda can you confirm you can hear me? Just nod your head.

Thank you so much.

>> CHAIR SZETELA: We are ready to go as Chair of the Commission I recall this meeting of the Michigan Independent Citizens Redistricting Commission back to order at 5:23 p.m.

Will the secretary please call the roll?

>> MS. SARAH REINHARDT: Commissioners please say present when I call your name.

If you're attending today's meeting remotely, please disclose during roll call you are attending remotely as well as your physical location.

I will start with Doug Clark.

>> COMMISSIONER CLARK: Present.

>> MS. SARAH REINHARDT: Juanita Curry.

>> MS. SARAH REINHARDT: Anthony Eid?

>> COMMISSIONER EID: Present.

Brittini Kellom?

>> CHAIR KELLOM: Present.

Rhonda Lange?

>> COMMISSIONER LANGE: Present; attending remotely from Reed City, Michigan.

>> MS. SARAH REINHARDT: Steve Lett?

>> COMMISSIONER LETT: Present.

>> MS. SARAH REINHARDT: Cynthia Orton?

>> COMMISSIONER ORTON: Present.

>> MS. SARAH REINHARDT: MC Rothhorn?

>> COMMISSIONER ROTHORN: Present.

>> MS. SARAH REINHARDT: Rebecca Szetela?

>> CHAIR SZETELA: Present.

>> MS. SARAH REINHARDT: Janice Vallette?

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>> COMMISSIONER VALLETTE: Present.

>> MS. SARAH REINHARDT: Erin Wagner?

>> MS. SARAH REINHARDT: Richard Weiss?

>> COMMISSIONER WAGNER: Present; attending remotely from Charlotte, Michigan.

>> COMMISSIONER WEISS: Present.

>> MS. SARAH REINHARDT: Dustin Witjes?

>> COMMISSIONER WITJES: Present.

>> CHAIR SZETELA: Commissioner Witjes? I was going to say you are waving at me over there.

>> MS. SARAH REINHARDT: 12 Commissioners are present. And there is a quorum.

>> CHAIR SZETELA: Do I have to say for the closed Commission.

>> MS. JULIANNE PASTULA: On the open session minutes if you could please restate the closed session occurred, the time that it was convened and adjourned and the topic, thank you.

>> CHAIR SZETELA: Thank you so just for the public record we had a closed session on the privileged and confidential memorandum entitled Voting Rights Act October 14, 2021, and history of discrimination in Michigan and influence on voting dated October 26, 2021, the closed meeting was called at 4:04 and adjourned at 5:19 a.m. and it was a public body discussion of attorney/client privilege information under MCL 15.268H.

Commissioner Witjes?

>> COMMISSIONER WITJES: I move to adjourn.

>> CHAIR SZETELA: Second.

>> CHAIR SZETELA: Motion to adjourn by Commissioner Witjes and seconded by Commissioner Lett is there any discussion or debate on the motion? All in favor please raise -- Commissioner Lange?

>> COMMISSIONER LANGE: Why would we adjourn when our meeting was set to go until 8:00 or is this for a break?

>> CHAIR SZETELA: No, this is not for a break.

This is to adjourn the meeting for the day in order to facilitate some planning for tomorrow's sessions in light of the events earlier today.

>> COMMISSIONER LANGE: But we are scheduled until 8:00 p.m. and there is work to be done.

I guess I'm out of the loop so never mind.

>> CHAIR SZETELA: All in favor say aye.

All opposed say nay.

>> COMMISSIONER LANGE: Nay.

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>> CHAIR SZETELA: By a vote of 12-1, the ayes prevail and the meeting is adjourned at 5:26 p.m.  
Thank you.

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# EXHIBIT

# 3



November 30, 2021

**Via Email**

Julianne Pastula, *General Counsel*  
State of Michigan  
Independent Citizens Redistricting Commission  
[PastulaJ1@Michigan.gov](mailto:PastulaJ1@Michigan.gov)

**Re: MICRC Transparency Issues**

Dear Ms. Pastula:

By the time the Commission meets on December 2, thirty-six days will have passed since it began a course of conduct that deprives the public of the constitutionally mandated transparency demanded by voters in 2018. Informal efforts to rectify the violations and provide the public access to support materials used to draft the redistricting plans to date have failed.

Even more disturbing, by December 2, ten days will have passed since the Attorney General opined that the memoranda provided to Commissioners with legal parameters and historical context that should be considered in the redistricting plans must be disclosed and that the Commission's discussion of the memoranda should have been held at an open meeting. Although the Commission could have called a special meeting to address these issues, it chose not to do so. The result has been a substantial delay in providing the public with constitutionally mandated and necessary information during a limited public comment period.

We urge the Commission to correct its errors by making the commitment to conduct all of its remaining business in open session and by voting on December 2 to release all remaining supporting materials considered by the Commission in developing the proposed redistricting plans, including, but not limited to: (1) the October 14, 2021 memo on the Voting Rights Act ("VRA"); and (2) the October 26, 2021 memo titled "the History of Discrimination in the State of Michigan and its Influence on Voting."<sup>1</sup>

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<sup>1</sup> In response to multiple media inquiries, Ms. Pastula provided the following list of purported Attorney-Client Privileged & Confidential Memos on November 9:

1. *Guidance on Subsection 11 of Art. IV § 6 of the Michigan Constitution – Commission Communications with the Public*, January 21, 2021
2. *MICRC Litigation Options to Address Delay of Census Data*, March 2, 2021
3. *Update on Michigan Supreme Court Petition and Next Steps*, May 25, 2021
4. *One Person, One Vote and Acceptable Population Deviations*, June 24, 2021
5. *Legal Considerations and Discussion of Justifications re: Criteria*, October 7, 2021
6. *Voting Rights Act*, October 14, 2021
7. *The History of Discrimination in the State of Michigan and its Influence on Voting*, October 26, 2021
8. *Memorandum Regarding Renumbering of Electoral Districts*, November 3, 2021
9. *Redistricting Criteria*, November 4, 2021
10. *Memorandum Concerning Subsections 9 and 14 of Art. IV, § 6*, November 7, 2021.

At least some, if not all, of the listed items on their face constitute supporting materials used to develop the redistricting plans and should likewise be released to the public.

## TRANSPARENCY IS MANDATED

In 2018 Michigan voters enacted a constitutional amendment designed to ensure transparency and public input into the redistricting process. Const 1963, art. 4, §6. As a result, among other things, the Commission is required to “conduct all of its business at open meetings.” *Id.* at art. 4, §6(10). Further, the Commission is required to “publish the proposed redistricting plans and any data ***and supporting materials used to develop the plans***”. *Id.* Art. IV, §6(9). The Commission has repeatedly acknowledged its transparency obligations. See, e.g., MICRC Code of Conduct (H): “Commissioners shall maintain transparency in process and procedure so to instill public confidence in the Commission and the redistricting process.”

The Commission has failed at transparency by meeting in closed session and refusing to release the information it considered in that closed session, depriving the public of this necessary information.

## THE DELAY IS UNREASONABLE

Shortly after the closed session on October 27, multiple requests were made for information relating to the closed session, including copies of the memos. These requests have been met with delays and/or denials.

The Center for Michigan, *Bridge Magazine*, and the Michigan Press Association sought copies of the memos from the Commission’s Communication Director, who denied the request. They then sent a request to Commission Executive Director Hammersmith and Commissioners Rothhorn and Szetela on November 5. On November 12, they received this response from the Commission’s General Counsel Ms. Pastula:

Dear Mr. Bebow and Ms. McGraw:

The Michigan Independent Citizens Redistricting Commission (MICRC) acknowledges receipt of your request for records under the Michigan Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231 *et seq.* Pursuant to section 15.235(1) of the FOIA, your request was considered received by the MICRC on November 8, 2021, the business day following the transmission of your email message.

In order to determine whether the MICRC possesses existing, nonexempt public records responsive to your request, we are extending the time for responding to your request by 10 business days (in addition to the standard 5 business days allowed for a response), as permitted by FOIA, MCL 15.235. A notice will be issued to you on or before December 2, 2021.

It is patently clear that there was no need to determine whether the Commission “possessed” such materials, much less whether they “existed.” Further, there was no need to delay a response by 10 business days.<sup>2</sup> Ms. Pastula also declined to provide the memoranda when requested to do so on November 22, after the release of the Attorney General’s opinion.

Also on November 5, *The Detroit News* sent a letter to Commission Chair Szetela asking that the Commission release the closed session documents and conduct all of its meetings in open session. It

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<sup>2</sup> The proffered response date of December 2 to the request of Mr. Bebow and Ms. McGraw exceeds 10 business days.

also made clear that given the importance of the issues, potential challenges to the Commission's violations were being contemplated. No response to that letter has been received.

The *Detroit Free Press* also submitted requests for copies of the October 14 and October 26 memoranda. The Commission denied these requests on November 23, the day after the Attorney General released her opinion, still asserting these memoranda were protected from disclosure by attorney-client privilege. Even if the requests for the memoranda were governed by FOIA (they are not) this response does not comply with FOIA. FOIA requires public bodies to separate the exempt from the non-exempt. MCL 15.244. It cannot be literally true that every word of the memoranda is protected by attorney client privilege; indeed, Ms. Pastula had already provided titles and dates for the documents.

We perceive the delays in responding to requests and providing the memoranda to be intentional.

As noted above, the Commission's own policies and procedures allow for special meetings on 18 hours notice. MICRC Rules of Proc. §6.2.4. The Commission conducted its closed session on October 27. Since then, it has held 10 other meetings. On November 12, the Commission published its proposed plans and advised that the 45-day comment period concludes Monday, December 27. Even if the Commission releases the information on December 2, the public lost **15 days** (Oct. 28–Nov. 12) to review and comment in advance of the publication of the proposed plans during the 6 meetings held by the Commission during that period. Further, the public lost an additional **19 days** (Nov. 12–Dec. 2) of the 45-day public comment period—nearly half the allotted time.

The Commission should call a halt to the delays and release the information on December 2 for the reasons outlined below.

### **THE INFORMATION SHOULD BE RELEASED**

In addition to the reasons stated in the Attorney General's opinion, the requested information should be released for the following reasons.

First, the requested information constitutes supporting materials used to develop the proposed redistricting plans. For example, during the meeting held on October 27, there was discussion about going into closed session. During that discussion, Commissioner Rothhorn noted that the information to be discussed in closed session was needed to get the maps done. Commission Meeting Trans. 10 (Oct. 27, 2021). The Commission has also discussed publicly at other meetings the legal requirements it must meet in developing its redistricting plans, including the VRA—an implicit acknowledgement that the information discussed in closed session is supporting material used to develop the plans.

Second, even assuming for the sake of argument that the requested memoranda are protected by the attorney-client privilege, the privilege is held by the Commission, not Ms. Pastula or other legal counsel, and **the Commission can waive the privilege**. *Schaibly v Vinton*, 338 Mich. 191, 196 (1953). To our knowledge, the Commission was never asked whether to waive the attorney-client privilege and produce the requested documents during any of the 10 meetings between October 27 and December 2, a delay of more than 30 days. The Commission can and should waive any attorney client privilege it possesses and produce the memoranda.

## CONCLUSION

The Commission has a decision to make. It can continue a process expressly rejected by the citizens of Michigan of secretive decision-making that affects citizens' most basic right—the right to vote—or it can ensure that citizens have all the information necessary to participate in what is supposed to be a public process. Withholding this information has already and severely compromised the public's constitutional right to participate in the redistricting process for more than 30 days. By releasing the information now, the Commission will at least ensure the public has some opportunity to exercise their rights.

We urgently ask that the Commission commit to conducting all of its remaining business in open session, and by voting on December 2 to release all remaining supporting materials used to develop the proposed redistricting plans.



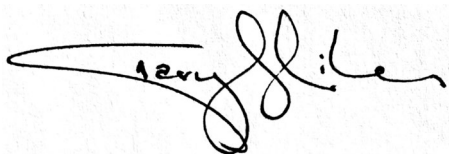
**John Bebow**  
President and CEO

The Center for Michigan/Bridge Michigan

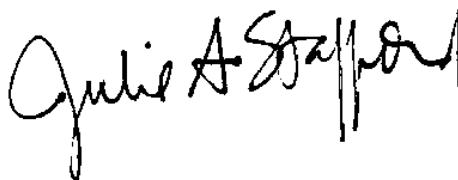


**Peter Bhatia**

Editor and Vice President, Detroit Free Press  
Michigan editor, USA TODAY Network, overseeing news operations in Lansing, Port Huron, Livingston, Battle Creek, Holland, Ionia, Sturgis, Coldwater, Hillsdale, Petoskey, Charlevoix, Gaylord, Monroe, Adrian, Cheboygan and Sault Ste. Marie.



**Gary Miles**  
Editor and Publisher, The Detroit News  
President, Michigan Associated Press  
Media Editors



**Julie Stafford**  
President, Michigan Press Association

# EXHIBIT

# 4



**ED McBROOM**

38TH DISTRICT  
CAUCUS DEAN  
P.O. BOX 30036  
LANSING, MI 48909-7536  
PHONE: (517) 373-7640  
FAX: (517) 373-3932  
senmcbroom@senate.michigan.gov

**THE SENATE  
STATE OF MICHIGAN**

**COMMITTEES:**  
CHAIR, NATURAL RESOURCES  
CHAIR, OVERSIGHT  
VICE CHAIR, ELECTIONS  
VICE CHAIR, JCAR  
ADVICE AND CONSENT  
ENVIRONMENTAL QUALITY  
TRANSPORTATION

October 28, 2021

The Honorable Dana Nessel  
Department of Attorney General  
G. Mennen Williams Building  
525 W. Ottawa Street  
P.O. Box 30212  
Lansing, MI 48909

Dear Attorney General Nessel:

As you are aware, on October 27, 2021, the Independent Citizens Redistricting Commission (the "Commission") abruptly entered a closed session. As the Commission explained, it entered a closed session with legal counsel "for the purposes of discussing the privileged and confidential memoranda titled *Voting Rights Act* of October 14, 2021 and *The History of Discrimination in the State of Michigan and its Influence on Voting* of October 26, 2021." This closed session came despite the Michigan Constitution's clear and unqualified requirement that "[t]he commission shall conduct all of its business at open meetings." Mich Const 1963, Art 4, § 6(10) (emphasis added).

Ensuring the level of transparency guaranteed by the Constitution is integral to maintaining the public's confidence in the Commission's work, which of course includes deliberations on the fundamentally important role of the Voting Rights Act in the redistricting process. Accordingly, we respectfully request that you provide your legal opinion on the following question: Did the Commission, by entering a closed session on October 27, 2021, violate Article 4, § 6 of the Michigan Constitution?

Thank you for your attention to this important matter. We are confident that you share our intent in bringing certainty to Michigan residents regarding this important legal issue.

Sincerely,

Senator Ed McBroom  
38<sup>th</sup> Senate District

Senator Jeff Irwin  
18<sup>th</sup> Senate District

cc: Mike Shirkey, Senate Majority Leader

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# EXHIBIT

# 5



# Detroit Free Press

160 W. FORT ST., DETROIT, MICHIGAN 48226

October 29, 2021

Julianne Pastula  
FOIA Coordinator  
P.O. Box 30318  
Lansing, MI 48909

Ms. Pastula,

This is a request under the Michigan Freedom of Information Act. On Oct. 27, the Michigan Independent Citizens Redistricting Commission passed discussed two memos during a closed-door meeting. On Oct. 28, Sens. Ed McBroom and Jeff Irwin requested a legal opinion from Attorney General Dana Nessel to determine whether that meeting violated the Michigan Constitution which requires the commission to "conduct all of its business at open meetings." Nessel's office is currently reviewing that request.

Under the Freedom of Information Act, the Detroit Free Press requests the following:

- Memo entitled "Voting Rights Act" (of October 14, 2021) referred to in the Oct. 27 resolution adopted by the commission to call a closed session
- Memo entitled "The History of Discrimination in the State of Michigan and its Influence on Voting" (of October 26, 2021) referred to in the Oct. 27 resolution adopted by the commission to call a closed session
- Meeting minutes taken during the closed-door session held by the MICRC on Oct. 27, 2021

The FOIA provides that if portions of a document are exempt from release, the remainder must be segregated and disclosed. I would like to examine all non-exempt portions of the records that I have requested, and I ask that you justify any deletions by reference to specific exemptions of the FOIA. I reserve the right to appeal your decision to withhold any materials.

I request the information to be compiled in an electronic format. If the data is unavailable in this format, please contact me regarding other possibilities.

As a reporter for the Detroit Free Press, I am gathering information with the intent of informing the public. For that reason, I am requesting a waiver of all fees as allowed by law.

Please notify me of the charges before you fill my request so that I may decide whether to pay the fees or appeal your denial of my request for a waiver. I agree to pay reasonable duplication costs associated with this request, however please notify me in advance of incurring costs greater than \$50. Also, to help eliminate delays in fulfilling this request, please communicate with me by telephone, rather than by mail, if you have any questions regarding this request.

Thank you for your assistance and I will look forward to receiving your reply within 5 business days as required by law. Please feel free to call me at 313-296-5743 to discuss any aspect of this request.

Sincerely,  
Clara Hendrickson



# EXHIBIT

# 6



Douglas J. Clark, Jr.  
Juanita Curry  
Anthony Eid  
Rhonda Lange

Steven T. Lett  
Brittini Kellom  
Cynthia Orton  
MC Rothhorn  
Rebecca Szetela

Janice M. Vallette  
Erin Wagner  
Richard H. Weiss  
Dustin Witjes

Sue Hammersmith  
Executive Director  
Julianne Pastula  
General Counsel  
Edward Woods III  
Communications and  
Outreach Director

MICRC  
P.O. Box 30818  
Lansing, MI 48909  
Email:  
Redistricting@Michigan.gov  
Phone:  
517-335-3333

[www.Michigan.gov/MICRC](http://www.Michigan.gov/MICRC)

November 23, 2021

VIA ELECTRONIC TRANSMISSION ONLY  
[chendrickson@freepress.com](mailto:chendrickson@freepress.com)

Clara Hendrickson  
Detroit Free Press  
160 West Fort Street  
Detroit, MI 48226

**RE: Final Disclosure Determination of Freedom of Information Act Request #2021-19**

Dear Ms. Hendrickson:

This letter serves as the Michigan Independent Citizens Redistricting Commission's (MICRC) response to the above-referenced matter. Your request was received on November 1, 2021. Thank you for your patience in this matter.

Your request seeks:

"Under the Freedom of Information Act, the Detroit Free Press requests the following:

- Memo entitled "Voting Rights Act" (of October 14, 2021) referred to in the Oct. 27 resolution adopted by the commission to call a closed session
- Memo entitled "The History of Discrimination in the State of Michigan and its Influence on Voting" (of October 26, 2021) referred to in the Oct. 27 resolution adopted by the commission to call a closed session
- Meeting minutes taken during the closed-door session held by the MICRC on Oct. 27, 2021"

Your request is denied in full pursuant to MCL 15.235(5)(a) for the following reasons:

1. The records requested (memoranda) are information or records subject to the attorney-client privilege and therefore exempt from disclosure under MCL 15.243(1)(g); and
2. Pursuant to MCL 15.243(1)(d), the records requested (meeting minutes) are records or information specifically described and exempted from disclosure by statute, being Section 15.267(2) of the Michigan Open Meetings Act (OMA), 1976 PA 267, MCL 15.261 *et seq.*, which exempts minutes of a closed session from disclosure.

You can find the summary of the MICRC Freedom of Information Act procedures and guidelines at <https://www.michigan.gov/micrc>. A copy of the *Written Public Summary of MICRC FOIA Procedures and Guidelines* is attached to this email for your convenience.

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C. Hendrickson  
Re: FOIA Request #2021-19  
November 23, 2021  
Page 2

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Please note that pursuant to Section 10 and 10a of the Act, MCL 15.240 and 15.240a, a person receiving a written denial of a request or receiving a letter to submit the labor costs may do one of the following:

- 1) Submit a written appeal to the head of the public body denying the request. Such appeal, if submitted, should specifically state the word "appeal" and identify the reason or reasons for reversal of the disclosure denial. MCL 15.240(1)(a) and MCL 15.240a(1)(a); or
- 2) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the disclosure of the public records within 180 days after the public body's denial of the request, MCL 15.240(1)(b), or 45 days after the public body's request for labor costs, MCL 15.240a(1)(b). If a court finds that the information withheld by a public body is not exempt from disclosure, or that the labor costs requested by the public body exceeds the amount permitted, the requesting party may receive the requested record and, at the discretion of the court, reasonable attorney fees, cost or disbursements. MCL 15.240(6) and (7), and MCL 15.240a(6) and (7).

Sincerely,

  
Julianne V. Pastula  
General Counsel, MICRC  
(517) 331-6318

JVP/hs  
Enclosures

# EXHIBIT

# 7



Nov. 5, 2021

Sue Hammersmith  
Rebecca Szetela  
M.C. Rothhorn

Ms. Hammersmith:

We are writing to request copies of attorney memos submitted to the Michigan Independent Citizens Redistricting Commission during a closed session on Oct. 27, 2021. The commission's communications director, Edward Woods III, has denied requests from reporters, including Sergio Martínez-Beltrán.

We appeal that decision.

As you are aware, voters formed the commission in 2018 so the crucial function of drawing decadelong legislative districts could move from dark of back rooms to the light of public meetings.

Discussing issues as vital as minority representation in private violates the spirit, if not the letter, of the law — and sullies an otherwise grand experiment in open government and democracy.

Michigan is more than 22 percent nonwhite, and will become more so over the duration of these districts. An issue as important as minority representation is not one that should be made behind closed doors and under shield of attorney-client privilege.

We are aware of the pressures you no doubt are under, and thank you, like all public officials for your sacrifice and service. We are also aware that history is watching, and that no mistake is irreversible until the maps are completed.

As such, we ask again that you reconsider your decision to deny release of the attorney memos regarding the Voting Rights Act.

Thanks for your consideration,

A handwritten signature in black ink, appearing to read "John Bebow". The signature is fluid and cursive, with the first name "John" being more prominent than the last name "Bebow".

John Bebow  
President and CEO  
The Center for Michigan  
Bridge Michigan

A handwritten signature in black ink, appearing to read "Lisa McGraw". The signature is fluid and cursive, with the first name "Lisa" being more prominent than the last name "McGraw".

Lisa McGraw  
Manager  
Michigan Press Association

Cc: Sergio Martínez-Beltrán, Capitol reporter  
Joel Kurth, managing editor, Bridge Michigan  
David Zeman, senior editor, Bridge Michigan

# EXHIBIT

# 8

**From:** ICRC-FOIA <ICRC-FOIA@michigan.gov>  
**Sent:** Friday, November 12, 2021 9:11:52 AM  
**To:** Lisa McGraw <Lisa@michiganpress.org>; jbebow@thecenterformichigan.net <jbebow@thecenterformichigan.net>  
**Cc:** ICRC-FOIA <ICRC-FOIA@michigan.gov>; Sergio Martínez-Beltrán <sergio@bridgemi.com>; jkurth@bridgemi.com <jkurth@bridgemi.com>; dzeman@bridgemi.com <dzeman@bridgemi.com>  
**Subject:** MICRC FOIA 2021-26

Dear Mr. Bebow and Ms. McGraw:

The Michigan Independent Citizens Redistricting Commission (MICRC) acknowledges receipt of your request for records under the Michigan Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231 *et seq.* Pursuant to section 15.235(1) of the FOIA, your request was considered received by the MICRC on November 8, 2021, the business day following the transmission of your email message. In order to determine whether the MICRC possesses existing, nonexempt public records responsive to your request, we are extending the time for responding to your request by 10 business days (in addition to the standard 5 business days allowed for a response), as permitted by FOIA, MCL 15.235. A notice will be issued to you on or before December 2, 2021.

Sincerely,

**Julianne Pastula**  
*General Counsel*  
State of Michigan  
Independent Citizens Redistricting Commission  
517.331.6318  
PastulaJ1@Michigan.gov

---

**From:** Pastula, Julianne (MICRC) <PastulaJ1@michigan.gov>  
**Sent:** Friday, November 5, 2021 4:54 PM  
**To:** ICRC-FOIA <ICRC-FOIA@michigan.gov>  
**Subject:** FW: Request for reconsideration

Forwarding to ICRC-FOIA mailbox for processing.

**Julianne Pastula**  
*General Counsel*  
State of Michigan  
Independent Citizens Redistricting Commission  
517.331.6318  
PastulaJ1@Michigan.gov



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**From:** Hammersmith, Suann (MICRC) <[HammersmithS@michigan.gov](mailto:HammersmithS@michigan.gov)>  
**Sent:** Friday, November 5, 2021 4:32 PM  
**To:** Woods, Edward (MICRC) <[WoodsE3@michigan.gov](mailto:WoodsE3@michigan.gov)>; Pastula, Julianne (MICRC) <[PastulaJ1@michigan.gov](mailto:PastulaJ1@michigan.gov)>  
**Subject:** Fwd: Request for reconsideration

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**From:** Joel Kurth <[jkurth@bridgemi.com](mailto:jkurth@bridgemi.com)>  
**Sent:** Friday, November 5, 2021 3:10 PM  
**To:** Hammersmith, Suann (MICRC)  
**Cc:** John Bebow; Lisa McGraw; David Zeman; Sergio Martínez-Beltrán  
**Subject:** Request for reconsideration

**CAUTION: This is an External email. Please send suspicious emails to [abuse@michigan.gov](mailto:abuse@michigan.gov)**

Ms. Hammersmith:

Please see attached letter from John Bebow, CEO of the Center for Michigan, and Lisa McGraw of the Michigan Press Association, requesting that release of attorney memos related to minority voting districts in the spirit of transparency and good government.

We hope that you seriously consider our request, and we thank you for your service.

Best regards,

--

**Joel Kurth**

Managing editor

[Bridge Michigan](#)

(586) 306-4708

@joeltkurth

[More about me and my work](#)

[More about Bridge and the Center for Michigan](#)

# EXHIBIT 9



December 2, 2021

VIA ELECTRONIC TRANSMISSION ONLY

jbebow@centerformichigan.org  
jbebow@thecenterformichigan.net  
lisa@michiganpress.org

John Bebow  
President and CEO  
The Center for Michigan  
Bridge Michigan

Lisa McGraw  
Manager  
Michigan Press Association

**RE: Final Disclosure Determination of Freedom of Information Act Request #2021-26**

Dear Mr. Bebow and Ms. McGraw:

This letter serves as the Michigan Independent Citizens Redistricting Commission's (MICRC) response to the above-referenced matter. Your request was received on November 8, 2021. Thank you for your patience in this matter.

Your request seeks:

"[C]opies of attorney memos submitted to the Michigan Independent Citizens Redistricting Commission during a closed session on Oct. 27, 2021."

Your request is denied in full pursuant to MCL 15.235(5)(a) for the reason that the records requested are information or records subject to the attorney-client privilege and therefore exempt from disclosure under MCL 15.243(1)(g).

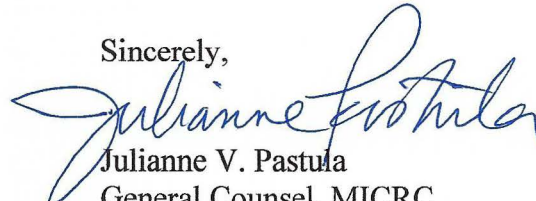
You can find the summary of the MICRC Freedom of Information Act procedures and guidelines at <https://www.michigan.gov/micrc>. A copy of the *Written Public Summary of MICRC FOIA Procedures and Guidelines* is attached to this email for your convenience.

J. Bebow & L. McGraw  
Re: FOIA Request #2021-26  
December 2, 2021  
Page 2

Please note that pursuant to Section 10 and 10a of the Act, MCL 15.240 and 15.240a, a person receiving a written denial of a request or receiving a letter to submit the labor costs may do one of the following:

- 1) Submit a written appeal to the head of the public body denying the request. Such appeal, if submitted, should specifically state the word "appeal" and identify the reason or reasons for reversal of the disclosure denial. MCL 15.240(1)(a) and MCL 15.240a(1)(a); or
- 2) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the disclosure of the public records within 180 days after the public body's denial of the request, MCL 15.240(1)(b), or 45 days after the public body's request for labor costs, MCL 15.240a(1)(b). If a court finds that the information withheld by a public body is not exempt from disclosure, or that the labor costs requested by the public body exceeds the amount permitted, the requesting party may receive the requested record and, at the discretion of the court, reasonable attorney fees, cost or disbursements. MCL 15.240(6) and (7), and MCL 15.240a(6) and (7).

Sincerely,



Julianne V. Pastula  
General Counsel, MICRC  
(517) 331-6318

JVP/hs

Enclosure

c.c. Sergio Martínez-Beltrán, Capitol reporter; [sergio@bridgemi.com](mailto:sergio@bridgemi.com)  
Joel Kurth, managing editor, Bridge Michigan; [jkurth@bridgemi.com](mailto:jkurth@bridgemi.com)  
David Zeman, senior editor, Bridge Michigan; [dzeman@bridgemi.com](mailto:dzeman@bridgemi.com)

RECEIVED by MSC 12/7/2021 10:06:52 PM

# EXHIBIT 10

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**From:** ICRC-FOIA <[ICRC-FOIA@michigan.gov](mailto:ICRC-FOIA@michigan.gov)>  
**Date:** November 19, 2021 at 4:59:32 PM EST  
**To:** "Mauger, Craig" <[CMauger@detroitnews.com](mailto:CMauger@detroitnews.com)>  
**Cc:** ICRC-FOIA <[ICRC-FOIA@michigan.gov](mailto:ICRC-FOIA@michigan.gov)>  
**Subject:** MICRC FOIA 2021-30

Dear Mr. Mauger:

The Michigan Independent Citizens Redistricting Commission (MICRC) acknowledges receipt of your request for records under the Michigan Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231 et seq. Pursuant to section 15.235(1) of the FOIA, your request was considered received by the MICRC on November 16, 2021, the business day following the transmission of your email message.

In order to determine whether the MICRC possesses existing, nonexempt public records responsive to your request, we are extending the time for responding to your request by 10 business days (in addition to the standard 5 business days allowed for a response), as permitted by FOIA, MCL 15.235. A notice will be issued to you on or before December 9, 2021.

Sincerely,

**Julianne Pastula**  
General Counsel  
State of Michigan  
Independent Citizens Redistricting Commission  
517.331.6318  
[PastulaJ1@Michigan.gov](mailto:PastulaJ1@Michigan.gov)

# EXHIBIT

# 11



[REDACTED]

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[REDACTED]

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[REDACTED]

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From: Pastula, Julianne (MICRC) <[PastulaJ1@michigan.gov](mailto:PastulaJ1@michigan.gov)>  
Sent: Tuesday, November 9, 2021, 7:50 AM  
To: Woods, Edward (MICRC) <[WoodsE3@michigan.gov](mailto:WoodsE3@michigan.gov)>  
Subject: List of P&C Memos to MICRC

Dear Edward,

During the 10:30-11 am recess yesterday, while I was being questioned (again) on the closed session topic, Beth requested a list of P&C memos provided to the Commission. Sergio, Lauren, Clara, and the new MERS gentleman were also there. Could you please provide the following list to them so they all have the same information at the same time?

List of Attorney-Client Privileged & Confidential Memos:

1. *Guidance on Subsection 11 of Art. IV § 6 of the Michigan Constitution – ICRC Communications with the Public*, January 21, 2021
2. *MICRC Litigation Options to Address Delay of Census Data*, March 2, 2021
3. *Update on Michigan Supreme Court Petition and Next Steps*, May 25, 2021
4. *One Person, One Vote and Acceptable Population Deviations*, June 24, 2021
5. *Legal Considerations and Discussion of Justifications re: Criteria*, October 7, 2021
6. *Voting Rights Act*, October 14, 2021
7. *The History of Discrimination in the State of Michigan and its Influence on Voting*, October 26, 2021
8. *Memorandum Regarding Renumbering of Electoral Districts*, November 3, 2021
9. *Redistricting Criteria*, November 4, 2021
10. *Memorandum Concerning Subsections 9 and 14 of Art. IV, § 6*, November 7, 2021

Many thanks!

**Julianne Pastula**

*General Counsel*

State of Michigan

Independent Citizens Redistricting Commission

517.331.6318

[PastulaJ1@Michigan.gov](mailto:PastulaJ1@Michigan.gov)



# **EXHIBIT**

# **12**

STATE OF MICHIGAN  
DANA NESSEL, ATTORNEY GENERAL

CONST 1963, ART 4, § 6:

The Independent Citizens  
Redistricting Commission's authority  
to go into a closed session.

INDEPENDENT CITIZENS  
REDISTRICTING COMMISSION:

Presuming that the Independent Citizens Redistricting Commission's October 27, 2021, closed session was held to discuss memoranda that provided Commission members with certain legal parameters and historical context that should be considered in developing, drafting, and adopting the redistricting plans, then the memoranda must be disclosed under Const 1963, art 4, § 6(9) and the discussion should have been held at an open meeting.

Opinion No. 7317

Date: November 22, 2021

Honorable Ed McBroom  
State Senator  
The Capitol  
Lansing, MI 48909

Honorable Jeff Irwin  
State Senator  
The Capitol  
Lansing, MI 48909

You have asked, "Did the [Independent Citizens Redistricting] Commission, by entering a closed session on October 27, 2021, violate article 4, § 6 of the Michigan Constitution?" You note that the Commission entered the closed session with legal counsel, "for the purposes of discussing the privileged and confidential memoranda titled *Voting Rights Act* of October 14, 2021, and *The History of*

*Discrimination in the State of Michigan and its Influence on Voting* of October 26, 2021.”

The Commission was created and is governed by article 4, § 6 of the Constitution, and within article 4, § 6’s many subsections, two are especially important in examining the Commission’s October 27th actions. First, § 6(10) provides, in part, that “[t]he commission shall conduct all of its business at *open meetings*.” (Emphasis added). Second, § 6(4) provides, in part, that “[t]he commission has *the sole power* to make its own rules of procedure.” (Emphasis added). Each provision will be examined in turn.

Whenever it is necessary to interpret the meaning of a particular constitutional provision, Michigan courts emphasize the “common understanding rule,” which requires courts “to interpret the constitution as the great mass of the people would interpret it.” *Frey v Dep’t of Mgt & Budget*, 429 Mich 315, 334 (1987). Where legal terms of art are used in the constitution, the “common understanding” of a phrase is its technical meaning. *Mich Dep’t of Transp v Tomkins*, 481 Mich 184, 209–210 (2008). And where it is necessary to interpret the meaning of undefined terms in the constitution, “consideration of dictionary definitions used at the time of passage for undefined terms can be appropriate.” *In re Burnett Estate*, 300 Mich App 489, 497–498 (2013), citing *Nat’l Pride At Work, Inc v Governor of Mich*, 481 Mich 56, 67, 69 (2008). Courts also consider “the purpose sought to be accomplished” when necessary to clarify meaning. *In re Proposal C*, 384 Mich 390, 405 (1971).

Article 4, Section 6(10)

Applying those principles here, the phrase “open meetings,” is undefined within the body of article 4, § 6. But as used in § 6(10), i.e., as referring to a gathering of a governmental or public body, “open meetings” is a technical, legal, term of art. For example, article 4, § 20, while not applicable to the Commission, is titled “open meetings” and requires that “[t]he doors of each house [of the Legislature] . . . be open[.]” This language was intended to be more than just literally true; it expresses a desire for the public to have access to the work being done by the Legislature on the floor of each house. Further, this technical, legal meaning of the phrase is supported by Black’s Law Dictionary, which defines “open-meeting law” to mean “[a] statute requiring a governmental department or agency to open its meetings or its records to public access.” Open-Meeting Law, *Black’s Law Dictionary* (11th ed. 2019). Accordingly, the plain language of § 6(10) requires that the Commission’s business be conducted in a manner that is open and accessible to the public.

Such an interpretation is consistent with § 6’s purpose as well. For example, § 6 requires that the Commission “hold at least at least ten *public hearings* throughout the state” before any redistricting plans are drafted “for the purpose of *informing the public* about the redistricting process,” Const 1963, art 4, § 6(8) (emphases added), and “at least five *public hearings* throughout the state for the purpose of soliciting comment from the public about [its] proposed plans,” Const 1963, art 4, § 6(9) (emphasis added). Similarly, § 6(10) requires that “[e]ach

commissioner . . . perform his or her duties in a manner that . . . reinforces public confidence in the integrity of the redistricting process.” It also requires that the Commission conduct its hearings “in a manner that invites wide public participation[.]” Given the words used in § 6, by requiring that the Commission’s business be conducted in “open meetings,” the People intended that the Commission’s work be done in a manner that is readily accessible and visible to the public and that allows the public to be a well-informed participant in the redistricting process.

Article 4, Section 6(4)

While § 6(10) requires that the Commission conduct its business in “open meetings,” § 6(4) provides the Commission with “*the sole power* to make its own rules of procedure.” (Emphasis added). Black’s Law Dictionary defines “procedure” as “[a] specific method or course of action.” Procedure, *Black’s Law Dictionary* (11th ed. 2019). And, though not directly applicable to the Commission, the Michigan Constitution contains similar language in article 6, § 5, in which the People provided the Supreme Court with the authority to “establish . . . the practice and procedure in all courts of this state.” When interpreting this provision, the Supreme Court has explained that its “constitutional rulemaking authority extends only to matters of practice and procedure” and that it “is not authorized to enact court rules that establish, abrogate, or modify the substantive law.” *People v Glass*, 464 Mich 266, 281 (2001), citing *McDougall v Schanz*, 461 Mich 15, 26 (1999).

The reason being that “matters of substantive law are left to the Legislature.”

*People v Cornell*, 466 Mich 335, 353 (2002).

Here, too, the Commission’s rulemaking power is similarly limited. The Commission’s rulemaking power “extends only to matters of practice and procedure,” and it “is not authorized to enact . . . rules that establish, abrogate, or modify” the law, see *Glass*, 464 Mich at 281, especially the provisions enacted by the People in article 4, § 6. Such limitations are consistent with the Supreme Court’s instruction in *Citizens Protecting Michigan’s Constitution v Secretary of State*, that “there is no more constitutionally significant event than when the wielders of ‘[a]ll political power’ under that document . . . choose to exercise their extraordinary authority to directly approve or disapprove of an amendment thereto.” 503 Mich 42, 59 (2018). They are also consistent with the Supreme Court’s analogous dictate that, “[i]f a particular court rule contravenes a legislatively declared principle of public policy, having as its basis something other than court administration . . . the [court] rule should yield.” *McDougall*, 461 Mich at 30–31.

Thus, if a rule of procedure adopted by the Commission contravenes the substance of § 6, that rule of procedure likewise must yield to the “extraordinary authority” of the People to command that “[t]he commission shall conduct all of its business at open meetings.” Const 1963, art 4, § 6(10). In short, the Commission has the exclusive authority to promulgate rules of procedure so long as those rules

do not contravene the substance of the constitutional provision through which it is governed.<sup>1</sup>

The Commission's Rules of Procedure and the Open Meetings Act

Recognizing that the People provided it with rulemaking authority in § 6(4), the Commission adopted, and subsequently amended, its own rules of procedure. Relevant here, the Commission adopted Rule 5.1, which mandates that it “conduct meetings under these rules in accordance with the Open Meetings Act [OMA][.]” MCL 15.261 *et seq.* To be clear, because the Constitution vests the Commission with the sole power to make its own rules of procedure, and specifically precludes the Legislature from altering the Commission's responsibilities in any manner whatsoever, the OMA, which is a creation of the Legislature, does not independently apply to the Commission. Cf. *Federated Publications, Inc v Bd of Trustees of Mich State Univ*, 460 Mich 75 (1999); *Booth Newspapers, Inc v Univ of Mich Bd of Regents*, 444 Mich 211 (1993) (discussing the application of the OMA to state universities.)

Nonetheless, at first blush, requiring through its rules of procedure that the Commission's meetings be conducted in accordance with the OMA makes sense.

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<sup>1</sup> Article 4, § 6 is self-executing and further provides that, “for purposes of interpreting this constitutional amendment the people declare that the powers granted to the commission are legislative functions not subject to the control or approval of the legislature and are exclusively reserved to the commission. The commission, and all of its responsibilities, operations, functions, contractors, consultants and employees are not subject to change, transfer, reorganization, or reassignment, and shall not be altered or abrogated in any manner whatsoever, by the legislature.” Const 1963, art 4, § 6(20), (22).

For example, the OMA requires, among other things, that “[a]ll meetings of a public body . . . be open to the public and . . . held in a place available to the general public[.]” MCL 15.263(1), that “[a]ll decisions of a public body must be made at a meeting open to the public[.]” MCL 15.263(2), that no meetings be conducted “unless public notice is given” in the manner required under the act, MCL 15.265(1), and that public bodies “shall keep minutes of each meeting showing the date, time, place, members present, members absent, [and] any decisions made at a meeting open to the public,” MCL 15.269(1). Each of these requirements is consistent with § 6(10), which, in addition to requiring that the Commission conduct its business in “open meetings,” also mandates that the Commission “provide advance public notice of its meetings and hearings[.]” “conduct its hearings in a manner that invites wide public participation throughout the state[.]” and “use technology to provide contemporaneous public observation and meaningful public participation in the redistricting process[.]”

While the above-referenced portions of the OMA are consistent with § 6(10), the OMA also allows public bodies to convene “closed sessions” in certain enumerated circumstances. See MCL 15.268(a)–(l). Similarly, the Commission, in Section 6.2.5 of its rules of procedure, gave itself the authority to “go into closed session only for certain specified exceptions as set forth in . . . MCL 15.268 (a) through (h)[.]”<sup>2</sup> And as noted above, on October 27th, the Commission did in fact

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<sup>2</sup> To go into closed session, Section 6.2.5 requires an initial “written request of a staff person, or the advice or request of General Counsel or any Commissioner” followed by a “two-thirds affirmative roll call of members serving[.]” Section 6.2.5 further requires “[t]he Chair [to] state the following



vote to go into a closed session, citing MCL 15.268(h), which permits public bodies to meet in closed session “[t]o consider material [specifically, legal memoranda prepared by its counsel] exempt from discussion or disclosure by state or federal statute.” See October 27, 2021, Proposed Minutes, p 3.<sup>3</sup>

### The Commission’s “Business”

As previously discussed, however, this rule of procedure cannot violate the openness requirement in the plain language of article 4, § 6(10). And article 4, § 6(10) requires that the Commission “conduct *all of its business* at open meetings.” (Emphasis added). Although, the term “business” is not defined, § 6(10) plainly obligates the Commission to conduct *all* its business at open meetings as opposed to *some* of its business. Accordingly, it is important to understand the meaning of the term “business” as used in § 6(10).

In the parliamentary setting, Black’s Law Dictionary defines “business” to mean “[t]he matters that come before a deliberative assembly for its consideration and action, or for its information with a view to possible action in the future.”

*Black’s Law Dictionary* (11<sup>th</sup> ed). Further, Merriam-Webster provides that an essential meaning of “business” is “work that is part of a job.” *Definition of Business*

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information for the record: the result of the roll call vote, the date and time of the closed session, the permissible purpose(s) under Section 8 of the OMA and the reason(s) for calling the closed session.” This “information [will then] be entered into the minutes of the meeting at which the vote is taken and be part of the official record.” *Id.*

<sup>3</sup> The statute the Commission referenced that it claims makes MCL 15.268(h) applicable is MCL 15.243(1)(g), which permits the nondisclosure of “[i]nformation or records subject to the attorney-client privilege.”

by *Merriam-Webster*.<sup>4</sup> The matters that come before the Commission and are part of its job are readily apparent from a review of § 6. Specifically, the People have assigned the Commission the job of “adopt[ing] a redistricting plan under this section for . . . state senate districts, state house of representative districts, and congressional districts.” Const 1963, art 4, § 6(7). From these definitions, it follows that the term “business” as applied to the Commission in § 6(10) is properly understood as matters related to the development, drafting, and adoption of a redistricting plan.

Section 6(10)’s reference to “*all* of its business” also suggests a broad application of the provision. In fact, “there is no broader classification than the word ‘all.’ In its ordinary and natural meaning, the word ‘all’ leaves no room for exceptions.” *Skotak v Vic Tanny Int’l Inc*, 203 Mich App 616, 619 (1994). And just like an administrative agency’s interpretation of a statute “is not binding on the courts” and “cannot conflict with the Legislature’s intent as expressed in the language of the statute at issue[.]” see *In re Complaint of Rovas Against SBC Michigan*, 482 Mich 90, 103 (2008), the Commission’s interpretation of § 6 as expressed in its rules of procedure is not binding and cannot conflict with the People’s intent as expressed in the plain language of the constitutional provision under which it is governed. See *Citizens Protecting Michigan’s Constitution*, 503 Mich at 59.

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<sup>4</sup> <<https://www.merriam-webster.com/dictionary/business>> (last accessed November 17, 2021)

Utilizing this broad application of the phrase “all of its business,” if matters related to the development, drafting, and adoption of a redistricting plan are being considered by the Commission, then “business” is being conducted and the Commission’s meeting must be open. On October 27th, the Commission went into closed session to discuss memoranda titled, “Voting Rights Act” and “The History of Discrimination in the State of Michigan and its Influence on Voting.” Based on the titles of these memoranda, presumably, the matters discussed provided Commission members with certain legal parameters and historical context that should be considered in developing, drafting, and adopting the redistricting plans. If this presumption is correct, then the Commission was conducting “business” that should have been done in an open meeting. This is particularly true where one express purpose for conducting open meetings is to “inform[ ] the public about the redistricting process.” Const 1963, art 4, § 6(8). Informing the public of the legal parameters, and providing the historical context, that should be considered in developing, drafting, and adopting the redistricting plans, is consistent with this purpose.

That said, the question becomes whether the fact that the information was provided to the Commission by counsel in the form of legal memoranda makes a difference. In other words, was a closed session justified by the applicability of the attorney-client privilege?

### The Attorney-Client Privilege

The attorney-client privilege has been described as “the oldest of the privileges for confidential communications known to the common law.” *Upjohn Co v United States*, 449 US 383, 389 (1981). The privilege’s “purpose is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice.” *Id.* In Michigan, “the attorney-client privilege attaches to direct communication between a client and [their] attorney,” and its scope is “narrow, attaching only to confidential communications by the client to [their] advisor that are made for the purpose of obtaining legal advice.” *Reed Dairy Farm v Consumers Power Co*, 227 Mich App 614, 618–619 (1998).

Because this privilege has its source in the common law, the Michigan Constitution sets forth the treatment it should receive for matters involving the Commission. Specifically, article 3, § 7 provides that, “[t]he common law . . . , not repugnant to this constitution, shall remain in force until [it] expire[s] by [its] own limitations, or [is] changed, amended or repealed.” In interpreting a similar predecessor provision in the 1835 Constitution, the Supreme Court explained that to the extent “the constitution and the government established by it . . . are inconsistent with, or repugnant to the common law, they supersede it.” *Stout v Keyes*, 2 Doug 184, 189 (1845). Thus, in light of article 3, § 7, the attorney-client privilege could apply to communications between the Commission and its counsel so

long as application of the common law privilege would not be “repugnant” to the Constitution.

Here, again presumably, the October 27th closed-session discussion provided Commission members with certain legal parameters and historical context that should be considered in developing, drafting, and adopting the redistricting plans. For the reasons previously discussed, it would be “repugnant” to the constitutional openness requirements of article 4 § 6 to have such a discussion in closed session, even though the discussion is with the Commission’s counsel.

As to written communications, the plain language of article 4, § 6 suggests that the attorney-client privilege is much narrower in scope as applied to the Commission. For example, § 6(9) provides that, “[a]fter developing at least one proposed redistricting plan for each type of district, the commission *shall publish* the proposed redistricting plans and *any data and supporting materials used to develop the plans.*” (Emphasis added). Notably, § 6(9)’s mandate to publish “*any* data and supporting materials used to develop the [redistricting] plans” does not appear to contain any limitation on publication of the materials used to develop the plan (whether by privilege or otherwise).

To the contrary, § 6(9)’s publication requirement is broad and suggests that the Commission must publish “all data” and “all supporting materials” to the extent it relied on those data and materials in developing the plans. See, e.g., *Definition of Any* by Merriam-Webster (noting that “any” can mean “all” and be “used to indicate

a maximum or whole”).<sup>5</sup> Thus, should a legal memorandum from counsel be considered in developing, drafting, and adopting the redistricting plans, § 6(9)’s broad publication requirement forecloses treating it as confidential. Accordingly, it would be “repugnant” to the Constitution to go into a closed session to discuss a memorandum that is not confidential and must ultimately be published.<sup>6</sup>

This is not to say that the Commission could never meet in closed session. It is beyond the scope of this opinion to determine what discussions might fall outside the “business” of the Commission and therefore outside the public’s gaze. But one could imagine, for example, a discussion between the Commission and its counsel concerning litigation, or some other matter, that has nothing to do with the actual development, drafting, or adoption of the redistricting plans and could therefore be held in a closed session. Based on the titles of the memoranda and the presumptive content of the discussion at the Commission’s October 27th closed session, however, that is not what happened here.

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<sup>5</sup> <<https://www.merriam-webster.com/dictionary/any>> (last accessed November 17, 2021)

<sup>6</sup> Stated differently, a legal memorandum prepared by the Commission’s counsel and used in developing, drafting, and adopting a redistricting plan would not be protected by the attorney-client privilege. And therefore MCL 15.268(h), as incorporated by the Commission’s rules of procedure, would not serve as a permissible purpose for a closed session as the memoranda would not be exempt from disclosure.

Conclusion

It is my opinion, therefore, that, presuming the Independent Citizens Redistricting Commission's October 27, 2021, closed session was held to discuss memoranda that provided Commission members with certain legal parameters and historical context that should be considered in developing, drafting, and adopting the redistricting plans, then the memoranda must be disclosed under Const 1963, art 4, § 6(9) and the discussion should have been held at an open meeting.



DANA NESSEL  
Attorney General

# **EXHIBIT**

# **13**



November 30, 2021

VIA ELECTRONIC TRANSMISSION ONLY

The attorney-client privilege may well be the pivotal element of the modern American lawyer's professional functions. It is considered indispensable to the lawyer's function as advocate on the theory that the advocate can adequately prepare a case only if the client is free to disclose everything, bad as well as good. Hazard, Jr., *An Historical Perspective on the Attorney-Client Privilege*, CA L Rev (1978)

Dear MICRC Members,

Your legal team strongly encourages the MICRC to preserve and protect its ability to have and retain the "pivotal element" of a lawyer's professional functions: confidential communications between lawyer and client by maintaining the confidentiality of all privileged communications to date and protecting future confidential communications. As a multi-member public body, the Commission's ability to receive and discuss legal advice, risk mitigation, and legal strategy in anticipation of and during litigation or connected to it is a critical right that should not be abrogated. The goal of this writing is to provide a fuller discussion of not only the context but the impact and consequences if the attorney-client privilege is waived or eroded by action of a majority of MICRC members.

The context is clear: the MICRC is facing strong pressure from the public, advocacy groups and the media to release communications protected by the attorney-client privilege. Your legal team understands this is an uncomfortable position. The MICRC has operated in a transparent and open fashion and will continue to do so. It has held over 100 public meetings where live public participation was available and welcomed remotely or in person. It continues to hold public meetings, review and consider draft maps, written comment and feedback submitted via the public comment portal, MyDistricting, as well as electronic and traditional mail. This has resulted in the most transparent redistricting process in Michigan's history.

Privilege has been invoked intentionally and sparingly as part of our ethical obligation to represent the commission zealously and effectively. The vast majority of communications your counsel has provided either occurred in open session or in materials posted on the MICRC website. What is being asked of the MICRC now is to release confidential communications with your attorneys that discuss legal strategies such as the applicability and impact of caselaw as well as legal risks inherent in redistricting. Waiving the privilege on two of ten privileged documents will not reduce the pressure being placed on the MICRC. Indeed, to the contrary, the pressure will grow and will likely result in additional efforts to invade the confidential relationship between you and your attorneys, a relationship designed to give you the best confidential, privileged legal advice in furtherance of our obligations as your attorneys, obligations that the entire legal team takes very seriously. The MICRC has already received records requests for all of the privileged communications between the MICRC and its attorneys and it is reasonable to expect requests for

any future privileged communications if the Commission acts to release privileged information now. Making confidential, privileged materials available now also is likely to result in a future claim that this release constitutes a waiver of the Commission's attorney client privilege beyond the documents released.

These issues are first impressions of law, exacerbated by the imprecision of the constitutional amendment as drafted, inviting numerous interpretations based on alternative desired outcomes or advocacy, and ultimately thrust into the inaugural process by the census delay. Your legal team has consistently counseled that some of these issues can only be appropriately resolved by a court of law, which could provide guidance to you and to future commissions.

The Department of Attorney General (AG) has issued an advisory opinion that underscores the need for clarity from a court. Nothing that the MICRC has done is unreasonable or indefensible. The AG Opinion, which is not legally binding on the Commission is based, in part, on inferences about the content of the privileged memoranda based on document titles. That Opinion appropriately acknowledges that the documents may or may not fall under the privilege depending on content. It recognizes the appropriateness and significant nature of confidential attorney-client communications and underscores the open questions surrounding closed sessions. The ability of your attorneys to discuss privileged matters with the MICRC as a body and to represent the MICRC effectively is at stake – whether it be personnel issues, privileged information, prospective litigation risks or pending lawsuits. We strongly advise that any limitation of that privilege should come from a court of law, after proper briefing, not from self-imposed restrictions based on external pressures.

Your legal team urges each of you to consider the impact on the MICRC of releasing privileged attorney-client communications. The ability of your legal team to provide full, frank, and candid legal advice, consistent with their ethical obligations, is under direct threat. It would be unwise and detrimental to the MICRC and Commissioners to acquiesce at this juncture, with the adoption of final maps and threat of litigation so close. Numerous individuals, advocacy groups and media have expressed their intent to file litigation on a variety of issues since the MICRC was formed. This adversarial context has been present for some time and your lawyers' ability to outline litigation risk, litigation strategy and planning to address these threats will be significantly if not irreparably impaired if our privileged communications are released or your legal team is forced to operate under the severe constraint that any ostensibly privileged communication could be released. Indeed, the constitutional amendment itself was subject to a rigorous, lengthy, and ultimately unsuccessful legal challenge. Your legal team's collective goal is to defend the work of the MICRC, and the ability to provide privileged communications to freely advise our client is a critical component of our relationship with the MICRC.

These questions and issues will not go away. The pressure will only intensify for the release of additional privileged information, and the stakes will only increase, as we move closer to potential challenges to the adopted maps.



MICRC

Re: Attorney Client Privilege

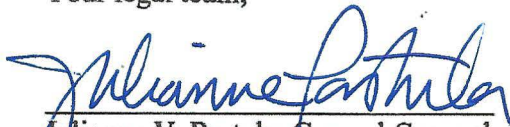
November 30, 2021

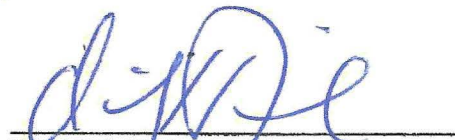
Page 3


The MICRC has worked tirelessly to bring life to the text of the constitutional amendment, respecting the hard work and dedication of those who brought Proposal 18-2 forward and the 61% of Michiganders that supported it at the polls. Requesting reciprocity of that respect and recognition that the MICRC's relationship with its legal team is consistent with the long established and customary attorney-client relationship is not unreasonable or unwarranted. The preservation of the attorney-client relationship is a key component of your lawyers' ability to fulfill our role and rigorously support and defend the work of the MICRC. As the U.S. Supreme Court opined: "The attorney client privilege is one of the oldest recognized privileges for confidential communications. The privilege is intended to encourage full and frank communication between attorneys and their clients and thereby promote broader public interest." *Swidler & Berlin v. United States*, 524 US 399; 118 S Ct 2081; 141 L Ed 2d 379 (1998) (quotation marks and citations omitted)

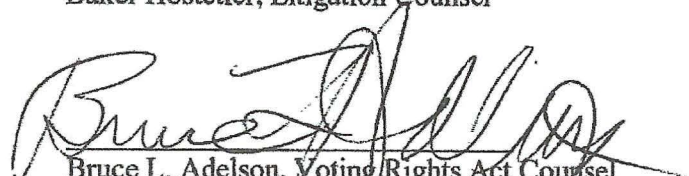
We look forward to the discussion on December 2<sup>nd</sup> and remain committed to the success of the MICRC.

Your legal team,

  
Julianne V. Pastula, General Counsel  
MICRC

  
David H. Fink, Principal  
Fink Bressack, Local Counsel

  
Katherine L. McKnight, Partner  
Baker Hostetler, Litigation Counsel

  
Bruce L. Adelson, Voting/Rights Act Counsel  
Federal Compliance Consulting

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# EXHIBIT

# 14

MICRC

07/09/21 9:00 am Meeting

Captioned by Q&A Reporting, Inc., [www.qacaptions.com](http://www.qacaptions.com)

[ Music ]

>> Good morning. As Vice Chair of the Commission I call this meeting to order at 9:01 a.m. This Zoom webinar is being live streamed on YouTube at [www.YouTube/MICRC office/videos](http://www.YouTube/MICRC%20office/videos).

For anyone in the public wanting to watch a different platform than they are currently using, please visit our social media at redistricting MI find the link for viewing on YouTube .

Our live stream today includes closed captioning. Closed captioning, ASL interpretation, and Spanish and Bengali and Arabic translation services will be provided for effective participation in this meeting. Please E-mail us at [Redistricting@Michigan.Gov](mailto:Redistricting@Michigan.Gov) for additional viewing options or details on accessing language translation services for this meeting.

People with disabilities or needing other specific accommodations should also contact Redistricting at [Michigan.gov](http://Michigan.gov).

This meeting is being recorded and will be available at [www.Michigan.gov/MICRC](http://www.Michigan.gov/MICRC) for viewing at a later date.

This meeting is also being transcribed, and those transcriptions will be made available and posted on [Michigan.gov/MICRC](http://Michigan.gov/MICRC) along with the written public comment submissions.

There is also a public comment portal that may be accessed by visiting [Michigan.gov/MICRC](http://Michigan.gov/MICRC). This portal can be utilized to post maps and comments which can be viewed by both the Commission and the public.

Members of the media who may have additional questions before, during or after tonight's meeting should direct those questions to Edward Woods III, our Communications and Outreach Director for the Commission. [WoodsE3@Michigan.gov](mailto:WoodsE3@Michigan.gov). That's that young man you see walking down the aisle that is our communication and Outreach Director he is the handy dandy expertise friend on all things media and the reason why it's going smoothly today on top of our staff.

For the purpose of the public watching and the public record, I will turn the Department state Staff to take note of the Commissioners present.

>> SARAH REINHARDT: Good morning, Commissioners.

Please say present when I call your name.

I will start with Doug Clark.

>> COMMISSIONER CLARK: Present.

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>> Juanita Curry.  
>> COMMISSIONER CURRY: Present  
>> Anthony Eid.  
>> COMMISSIONER EID: Present.  
>> Brittini Kellom.  
>> COMMISSIONER KELLOM: Present.  
>> Rhonda Lange.  
>> COMMISSIONER LANGE: Present.  
>> Steve Lett.  
>> COMMISSIONER LETT: Present.  
>> Cynthia Orton.  
>> COMMISSIONER ORTON: Present.  
>> MC Rothhorn.  
>> COMMISSIONER ROTHORN: Present  
>> Rebecca Szetela.  
>> COMMISSIONER SZETELA: Present.  
>> Janice Vallette.  
>> COMMISSIONER VALLETTE: Present.  
>> Erin Wagner.  
>> COMMISSIONER WAGNER: Present.

Ten Commissioners are present and there is a quorum.

>> VICE CHAIR SZETELA: [www.Michigan.gov/MICRC](http://www.Michigan.gov/MICRC).

I will entertain a motion to approve the meeting agenda.

>> So moved.

>> VICE CHAIR SZETELA: Motion made by Commissioner Rothhorn.

>> COMMISSIONER LETT: Second.

>> VICE CHAIR SZETELA: Meeting seconded by Commissioner Lett.

Is there any discussion or debate on the motion? Hearing none it is moved and sectioned.

>> Just a question -- I don't know if the Commissioners wanted to see the MDOS communication that we talked about or if you want to approve it and if you want to approve it, it will be needed to be added to the agenda.

>> Do you want to spend time looking at it before the agenda, I haven't had a chance to look at it --

>> VICE CHAIR SZETELA: Can we put it on a later meeting or do we need it today?

>> That's up to the Commission.

M.D.OS has submissions all the time.

Possibly connect move ahead.

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If you see anything in the communication that you feel should be amended, we can bring it up on the breaks.

>> VICE CHAIR SZETELA: Sorry.

Just to clarify, I was thinking about the proposed letter not the.

>> Updated agenda has been done and the question is that communication from M.D.OS to people to ask them to submit maps if they've already submitted Public Comment regarding a community interest but we're not sure where that may be on the map because they've not submitted a map.

>> VICE CHAIR SZETELA: Okay.

So is there any discussion with respect to whether we need to have a discussion or vote to approve this letter or are we just simply comfortable allowing Staff to submit the letter that they have without us having to discuss and approve it?

>> COMMISSIONER CLARK: This is Commissioner Clark.

I think yesterday we said we wanted to approve it during the meeting.

That we wanted to take a look and approve.

>> VICE CHAIR SZETELA: Can I get a motion on the agenda to add as an item of New Business -- proposed letter to be submitted to individuals requesting maps for Communities of Interest.

>> COMMISSIONER CLARK: I'll put that motion forward.

>> VICE CHAIR SZETELA: Motion made by Commissioner Clark and seconded by Commissioner Orton.

Is there any discussion or debate on the amendment? Hearing none, let's move ahead with our vote.

All in favor of amending the agenda to add a what will now be New Business item 7E, letter to individuals about the Communities of Interest.

All in favor please raise your hand and say Aye.

Aye.

All opposed raise your hand and say Nay.

Motion carries.

Now back to our original motion to approve the agenda as amended.

All in favor raise your hand and say Aye.

All opposed say Nay.

All right the Ayes prevail and the agenda is adopted.

We do not have any minutes for the Commission to approve at this meeting and we will move onto Public Comments.

Without objection we will move to the -- hearing no objection we will proceed with Public Comment pertaining to agenda items.

Individuals who have signed up and -- our Staff will unmute you.

If you are on a computer, you will be prompted by the Zoom app to unmute your microphone and speak.

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If you are on the phone the host would like you to speak and have you press star six to unmute.

You will have two minutes.

First in line to provide Public Comment is James Gallant.

>> JAMES GALLANT: Can you hear me Madame Chair?

>> VICE CHAIR SZETELA: Yes, I can.

You shall now invited to address the Commission.

>> JAMES GALLANT: My name is James Gallant and I'm with the Market Suicide Prevention.

I hope everybody feels better about the implicit bias training and to pay an attorney thousands of dollars and that African American people are implicitly biased against white people.

You're creating this self-contradiction in all of these documents and -- you have to do that again every time.

So that's the problem here.

And so I want to bring some civility and unit to this meeting and I would like to say in my personal opinion that I pledge allegiance to the flag of the United States of America -- those are the liberty words liberty and justice for all.

Did anybody read the Constitution.

Did you folks utter the words of your oval office out loud? It was like a crowd or a church where some are not saying the words.

Please uphold the Constitution and not the one from the Netherlands and other countries and how you folks want to change the fundamental process of the process provided to you by the people of the State of Michigan.

Your code of conduct says you have to comply with applicable law.

Parliamentary law that you voted to approve.

That's why you're not voting to approve anything.

That's why your Vice Chair here -- you don't want to verify what anybody says? Why? Because they don't want to verify what she put on her application.

Are you?

>> On.

>> SARAH REINHARDT: Your allotted two minutes has ended.

Please conclude your statement Mr. Gallant.

Thank you for addressing the Commission.

The next person signed up to commit Public Comment is Alexis Osterla, Ind.

>> That public participant is not present.

>> VICE CHAIR SZETELA: Thank you.

Individuals who signed up and would like to provide second round of Public Comments, may now do so.



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So once again, we have Mr. Gallant and you are now invited to address the Commission again.

>> JAMES GALLANT: Can you hear me Madame Chair?

>> VICE CHAIR SZETELA: Yes, I can.

>> JAMES GALLANT: Thank you.

This is James Gallant.

These are my personal opinions and you know this is what I'm saying -- everything is self-contradicting here and like your notice for this meeting today, mis-information to the public.

It said you will only be provided two minutes yet you don't explain that all you got go is -- somehow, I got on -- I've been denied several times, but there's no -- it's in the rules -- you've denied people four minutes.

I get a rebuttal and after you've all spoken all day after what I've talked about, I get a rebuttal at the end.

That's the due process and the rebuttal.

That's my due process and protection under the law.

I believe there's a concerted effort to circumvent the -- it's based on the transcripts, the actual words that you're saying in these meetings.

My main evidence is your testimony of your lawyers and your Staff and you.

If you're saying it right there in front of God and everything out loud; okay? And I think that's how the politicians got away with all of N they didn't say it out loud.

You folks are actually saying the things: That's the gist of how the politicians got away. This is the process.

That was provided to you and that's great.

Now, my evidence is going to be you and what you said and how you just don't want to make a decision and don't want to vote so you don't have to do it the same every time. The consensus is described as every next Chair gets to describe who to facilitate and who the consensus is therefore like -- said there is no law.

>> VICE CHAIR SZETELA: Please conclude your statement.

Thank you for addressing the Commission Mr. Gallant.

That concludes our Public Comment this morning.

Moving onto Unfinished Business -- there is no Unfinished Business.

We will move onto New Business.

I would like to ask Mr. Bruce Adelson to make a presentation.

Hearing no objections please proceed.

>> BRUCE ADELSON: Thank you and good morning.

So today I thought we had the benefit of a little extra time compared to what we had a month ago, to talk about some legal issues as you get closer and closer to drawing Districts and these, the issues that I want to talk about are largely from the hearings and meetings that I've been watching for the last month or so.

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So oh; okay.

I wanted to start with just laying out, Michigan Constitution and I'm going to talk about some of that specifically but I wanted to begin and address briefly now and I'll address it more as I continue, some things that came up yesterday, whether there's a right or wrong way to approach redistricting.

Redistricting is really important to stress is a legal process.

There are federal rules, state rules, court decisions.

Supreme Court rulings going back decades, all of that frames redistricting.

The right way is, of course, to comply with the applicable law.

The wrong way which I have unfortunately seen in my career is not to do so.

I think what's important too is I've heard a lot of Public Comments and discussion about Communities of Interest which I'm going to talk a little bit about later, keeping Counties and cities whole and it's really important to understand that all of these considerations must first go through the filter of your redistricting criteria, the U.S. Constitution, the Voting Rights Act.

And while it may seem attractive, it may seem logical to include a certain city in a certain district or a certain Community of Interest in a certain district, the first step is how does this affect the U.S. Constitution, the Voting Rights Act and all of the legal requirements? So it's that first step, that lens as somebody who wears glasses.

Putting on my glasses in the morning the world looks different.

Your glasses are the legal requirements.

That is the so-called right way and that's the way the law requires and I wanted to focus on, when I did you say Communities of Interest and we'll be talking being that shortly, is the part of the sentence that a notice that many of your commenters have not picked up on.

district shall reflect the state's diverse population.

The sentence has a conjunction.

It's not an either or.

It's not option a language, of course.

Diverse and Communities of Interest.

So we'll talk a little bit more about what that memberships today.

To begin, state law takes a backseat to federal law.

That's well settled with the Supreme Court and it goes all the way back to Reynolds versus Simms 1964.

The federal requirements supersede the state requirements and there may be some conflict which we're going to talk about today.

Whether it be Communities of Interest and keeping cities and Townships whole and whether districts somebody compact and that raises an interesting question.

Your seventh criteria is being reasonably compact so that clearly the Constitution states that is not as high a priority as Communities of Interest, let's say, housework as a good

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example of the Voting Rights Act, you cannot remedy a Section two violation for the creation of a noncompact district.

So if you are creating a majority, minority district, for example, that must be reasonably compact, disparity compactness being your seventh criteria.

So that's an example of how all of this goes through these glasses.

The Voting Rights Act, the U.S. Constitution, one person one vote, all of those issues. It's really important to remember as you move forward that I know you've received a lot of comments and I know these things are of tremendous interest to you as we move forward but keep that in the back of your mind.

How does this affect the VRA, one person one vote, for example.

Any questions or comments about that? Yes, Commissioner Eid?

>> COMMISSIONER EID: So how far does reasonably compact go, right? I mean, I'm looking at the current 14th Congressional District that goes from Detroit to Pontiac and I think most people would say that's not reasonably compact, but evidently it is under the law.

>> BRUCE ADELSON: That's a great question.

Not surprisingly the Supreme Court never says what that means.

You will see one thrown out by the Supreme Court and is a great example of a gerrymander.

Often compactness is evaluated by the visible test.

What does it look like? There are other considerations.

If your district is roughly a rectangle and you take from that rectangle an arm that goes north, south, whatever the direction is, to pull in, in this context, the minority population, that may suggest the lack of compactness.

These are issues we'll be talking about, but think, too, does it pass the visual test.

The great example is the district from North Carolina that we'll see later.

One of the best examples of a gerrymander.

The court has never said specifically what the exact shape should be and I always in my work I always do take as a first step, what does it look like? Are these crazy arms, is the District incredibly lengthy and narrow? Those all may suggest a lack of reasonable exactness under the Lulac standard addressing majority, minority district, for example. Anybody else? One of the things that I'm very excited about today -- we have a lot of time.

So that's why I'm going to stop at various points, and please stop me if you have a question or comment to address these issues.

And this is the start of that crazy district that the courts considered a serpentine district.

This is the lower court opinion to find this district so contorted and contrived by the legislature that it may be the least geographically compact of all the Districts -- there are a lot of gerrymander Congressional districts in the United States.

That's it.

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Yes.

So I think that we can see, this is not a reasonably exact district.

This was drawn in part to address this or attempt to accommodate a racial gerrymander and as you can see, it stretches quite -- if you're familiar with North Carolina, that's quite a bit of state geography.

There are very, very narrow aspects of this and this is a perfect example of what not to do.

This is a perfect example of what is wrong in redistricting para legally of how this district was drawn and the purpose behind it.

The Supreme Court said we struck down this district so they affirm what the lower court did.

The design of that serpentine district the court held was nothing if not race centric and cannot be justified as a reasonable attempt to comply with the voting rights act and that's a point we'll be talking about today.

Race centric, race predominating in redistricting.

That may be a consideration and something to talk about with the diverse requirement with your redistricting criteria.

Redistricting is required to not be race predominant and we'll talk more about what that means and that issue occur to see me as I heard comments and thought more about that redistricting criteria and the conjunction of or the combination of diverse and Communities of Interest.

So let's talk about Communities of Interest.

So there are -- I know this is something that you've talked about.

I know this is something that many people are struggling with because there is no one set definition that I can pull out of my pocket and put on the screen and say this is all that you have to do.

It doesn't work like that.

The Supreme Court for decades have recognized the importance of Communities of Interest in redistricting.

So this is not a new concept.

This is something that's been around for a long time.

The newness in Michigan is this is a clear constitutional criteria which is different.

I've included descriptions from court decisions to give you an idea of what Communities of Interest mean legally.

A neighborhood, community, or group of people who would benefit from benefit from being maintained in a single district because of shared interests, views, concerns, and characteristics.

Typically a large area like an entire county -- can an entire county be a Community of Interest? Considering you have a County with significant population like my County in Maryland with several million people, I think it's quite frankly a stretch.

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I don't have shared interest with the people in the northern part of our County which is rural.

We have disparate interest.

The likely possibility is that this isn't an area where everyone shares interests, views, policy concerns or characteristics.

And this is also from the Lulac decision.

A district that reaches out to grab small and isolated minority communities is not legally exact.

This can lead to a gerrymander and a violation of the U.S. Constitution.

The recognition of nonracial Communities of Interest reflects the principal that a state may not assume from a group of voter's race that they think alike and share the same -- at the poll.

The Texas legislature created a district that ran from Austin all the way down to the Rio Grande.

Has a big -- that's hundreds of miles and the court also mentioned that Hispanics who live in Austin don't necessarily have the same, share the same interest as hypothesizes who live in the Rio Grande Valley.

Makes sense?

They're different economically and there's some difference as far as origin and socioeconomic realities.

So just taking one group of Hispanics from here and combining them with another group just because of race, then you get into that racial predominant thing and you likely have a racial gerrymander and you're in a situation where you're combining people because of the color of their skin.

That's the wrong part of redistricting.

That's not going to work.

That's not going to fly.

So think about, as I was discussing in response to Commissioner Eid, think about the shape and don't make racial assumptions that everyone of one race automatically feels the same way and believes in the same issues and votes the same way and that was a big caution in the Lulac case.

In continuing we accept that in some cases with different areas -- rural and urban communities could share similar interests and can form an exact district.

We'll talk a little bit about rural and urban districts and that is often a real challenge, in part because rural districts and rural areas have lower population than urban areas.

In redistricting the thought it you have to take population from somewhere to reach the numeric thresholds that you need to come to, as close to as reasonably possible to so far redistricting requirements.

If you encounter areas of the state where there are Members of a minority community in an urban area, a suburban area who also happen to share the same interest of a

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minority, the same minority community in a rural area, that might conceivably be a good fit.

Of course, that's something along with the thousands of things that you have to evaluate.

That's something to think about.

You're not assuming that people of one race all believe the same thing.

The Court actually looked at the disparate interests of the disparate populations and discovered wait a minute, they have commonalities.

This might work.

Unlike the North Carolina Serpentine District, unlike the district from Austin to the Rio Grande valley, that there was work and research to discover the communities might be a good fit.

It's something to keep in mind going forward.

What's important generally when you look at communities of interest is the potential for discriminatory effect by including certain Communities of Interest.

including a Community of Interest that is substantially white and of a different socioeconomic relationship or background compared to the minority population, that may dilute their voting strength and that may be discriminatory.

I was asked to look at a southern state, a community that had several gated communities.

Typically, the people in these communities were relatively high income, white, high education, and tended to be older.

They were surrounded in part by communities that had either majority, minority, or plurality -- is this discriminatory if we combine the two areas? My conclusion was yes.

The groups don't share political interest and they don't support the same candidates and adding them into a district that's plurality, minority or -- in these areas the voters had significant history of electing who they choose.

Candidates of choice.

If you add this batch to that district, then that dilutes or weakens their ability to do so which raises significant issues.

Yes?

>> COMMISSIONER ROTHORN: This is MC, Commissioner Rothhorn.

Majority, minority, I think I get.

Plurality minority, can you explain that one? Please?

>> BRUCE ADELSON: Coalition districts where minority groups can be combined with the white community.

White community and the minority community tend to support the same candidates so that's not dilutive.

That's creating a coalition district where groups partner, in a sense, to elect the same candidates of choice.



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So we'll talk more about that.

The majority, minority district, we're going to talk about a little twist to that today, are areas where one minority group can concentrate a majority in a given district that the minority votes cohesively as a block.

The third criteria is in the presence of racial block voting, white voters block the -- elect candidates of choice.

I know you've heard about the Thornburg versus Gingles decision.

Today we're going to go a little further given what we've discussed what where you are about the majority, minority district and that's what I'm really referring to.

If minority voters can elect candidates of choice, they have that opportunity and have that ability now and you add into that as I looked at in the southern state, majority significantly white community who supports different candidates, then the minority's ability to elect is diluted and maybe even disappears and that's where you get into some significant legal issues.

Does that answer your question? Great.

You're welcome.

So look out for this dilutive and discriminatory effect.

Voting Rights Act and U.S. Constitution when you're deciding where, to what Communities of Interests where and whether to keep Townships whole.

I know you've talked about having the Communities of Interest overlay over the mapping software.

I would recommend that you add demographics to that because that will give you a real time idea of okay, we have this Community of Interest.

Who lives there? What's the racial breakdown? Voting age population.

If we were doing mapping right now and we can put up on the screen a particular Community of Interest and know the racial composition and voting age preponderance use relation -- well, those are the key issues with voting rights analysis.

That will give you a key answer to that.

This looks okay or that's a big community.

Racially, how does that connect with the other pieces that we're looking at.

Again, that's my recommendation so you can have that information in real time and as you're moving forward, you can see whether or not there's a dilutive effect.

Whether or not there's potential discrimination because you're seeing the racial composition of the Community of Interest you're considering.

What's the impact of including Communities of Interest? That relates to at the top of the slight, dilutive and discriminatory of course.

There's the one person one voting issues.

That's across the Board and less a one district issue unless you decide we're going to under populate this district by 20%.

That's something I would not recommend because that will throw off your overall compliance with one person one vote.

That's less of an issue by district and one going forward.

How do you handle the diverse requirement? That's not something to be answered definitively in one meeting and I'm not going to suggest a particular answer.

It's important to remember its diverse and communities of interest.

It's both.

How you define diversity is up to you.

We'll show you a definition of diversity in a few minutes.

It's important to remember that racial considerations cannot be your number one consideration.

That you go into it thinking let's create diverse district that's have a set percentage of people by race.

That would suggest that race is predominating in your redistricting calculations and that would be the wrong way of approaching it because that would raise significant legal and constitutional issues.

Any comments or questions so far? Commissioner Eid?

>> COMMISSIONER EID: I think you're going to be hearing a load locality from me today.

>> BRUCE ADELSON: [ Laughter ]

>> COMMISSIONER EID: It's almost contradictory in a way.

Let's say hypothetically we were to say you have to have a certain amount of Black people in a district, that would preclude them from being in a VRA protected district; there go, preclude them from being able to elect the candidate of their choosing.

So how do you reconcile having districts both diverse and having VRA protects Districted?

>> BRUCE ADELSON: If you kernel that Michigan has two Congressional districts that are majority minority.

Whether they remain that way and what the population is, we're not going to know that until the census data come out.

But one of the first considerations is in looking at since you have two now, can you create two with the new data? Is the population large number? Can you create districts that are reasonably exact? That consideration won't play out throughout the state.

Won't play auto in all the legislative districts or the Congressional districts.

Consider looking at that as an issue is reflective of your trying to comply with the Voting Rights act.

I view that as being different than saying we're going to create diverse districts throughout the state and we're going to start by saying each one has to be 45% of the minority race.



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That would be an example of racial predomination but looking at, realizing we have two majority, minority districts, let's see if we can maintain them.

Let see if the issue with compliant with Section two still applies.

So that's how I look at the difference.

A lot of the cases we've talked about like the Alabama case for example where the redistrict said let's create re-districts, 70% minority -- whether or not they need them to comply with the law, whether or not the minority population needs that level of percent to elect candidates of choice, they don't look at that.

Let's just do it.

The Supreme Court is quite wise to that.

Very early on we talked about how the unanimous sis and data drives everything.

To say flat out, that's what we're doing, that's an automatic danger, danger, red flag, because that's racial predomination.

That's the distinction.

Does that make sense? Great.

Anybody else? Okay.

Okay.

So here's the definition I pulled from the Oxford dictionary.

The statement of being diverse, variety, the practice or quality of including or involving people from a range of different social and ethnic backgrounds and different genders and sexual orientations, et cetera.

Michigan address a wide variety of people from different cultures and different areas and speak different languages.

Are those issues that you look at when determining diverse district? Possibly.

I was struck at the hearings in Detroit how so many talked about keeping voting districts diverse but don't gerrymander them to fracture minority communities.

I picked up the sense that people who were commenting thought that various populations had been cracked and broken up and put in disparate districts.

I thought it was interesting and I'm not going to give you an opinion about that because I haven't looked closely at all the current districts to know.

Some of the comments were quite compelling and people felt strongly this was going to happen.

It's something to consider as you move forward.

I learned the minority population in Michigan has changed in the last ten years and I don't mean necessarily by number; it's by location.

Having a larger minority population on the West Coast, for example.

Hearing from people in the Dearborn areas and listening to people from Banglatown and it was interesting.

Thinking the minority population may have increased in the last ten years and it may be more diverse and you may have more people from more places than you did ten or

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twenty years ago and that raises additional issues when it comes to what is diversity? There is, of course, no one step legal definition that I can pop on the screen and you can write down and know that that's what you have to do.

It doesn't work like that.

But as the court's use dictionary definition to see inform their decisions, you can certainly use dictionary definitions to help inform what is diversity, if you choose to. This is an example of Communities of Interest according to Kansas' redistricting guideline inside 2002.

Communities of Interest are social, cultural, racial, and ethnic, and economic interests in common to the population of the area which are probable suspects of legislation.

That type of definition is something you've seen.

That we've talked about and others have talked about and it's quite in the mainstream of what is a Community of Interest.

So I thought that that was just an interesting approach that the redistricting folks in Kansas took with the 2001 census cycle.

Now what's interesting here too and hearing comments about retaining cities and keeping Counties whole and keeping Townships whole -- the requirement to follow County boundaries may be based on an assumption that everybody who lives in a County share some or all of the same interests relative to representation.

I know in my County I don't share interest with any number of people of legislation at the state, federal, or even county level and I don't think that's unusual in a relatively large county.

In a smaller county I can see that might be different.

Exactness requirement may be based on a similar assumption that people living close to each other in a neighborhood or small town have shared legislative ends.

That may or may not be true.

Each of these proxies may be imperfect.

When he with moved to Montgomery County, I could care less what the county looked like and what our unincorporated city looks like and what our neighborhood looks like.

Those were not considerations for us in deciding where to live.

Or so-called strict political lines in considering where we wanted to live.

That was not a consideration for us.

Our primary consideration was the public school district.

That was one of the major if not the major thing we looked at in both Maryland and Virginia to evaluate where we move.

Considering Communities of Interest helps us move beyond the proxy -- choose cities and towns and Townships necessarily because of an assumption that we agree that everybody feels the same way we do.

I'm sure there are some people who do but not everything.

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Looking more broadly at the Kansas definition of Communities of Interest and looking more broadly at terminology rather than assuming that everybody who lives within a given area looks the same, feels the same, votes the same, and has the same interests. Questions? Comments? Okay.

Now let's talk a little bit more about racial predomination.

I don't know if you remember the Alabama case.

Really big deal case from 2015 that I expect will play out a lot in the current redistricting cycle.

When Alabama made a decision of let's create majority Black districts of 60%, 70% and just flat out, this is the number.

We're not analyzing anything or determining what the level of population is necessary for the minority population to elect candidates of choice, we're just pulling outnumbers.

The 14th amendment forbids -- no mechanical numbers and no assumptions that we must have this percentage across the state or southeast Michigan or the West coast in the Flint, Saginaw -- those are flat looked at dis-favorably.

You can see that Alabama adopted a policy of prioritizing mechanical racial targeting and relied heavily upon a mechanical numerical view.

Don't do that.

That's a great example of something that's wrong.

That's a loser.

It's interesting when you look at some of these case to see how many times jurisdictions do that when you would think that whatever political partisan issues may be at play, you have to know that this is so obviously a racial gerrymander and a problem.

Why would you go down that path? I'll leave that for you to ponder and think about, as I'm sure you will over the weekend when you're having morning coffee on Sunday.

But this is something that I've always wondered about.

Why do people make these decisions that are so obviously problematic.

And of course this doesn't mean as you know that race can't be considered.

Race must be considered.

It is a part of redistricting.

And the thought being that you have to have a really good reason for when you're looking at -- as I was saying to Commissioner Eid -- when you have two majority, minority Congressional districts -- one of the evaluations is do you retain that? Can you retain that? Is the population large enough to retain that? We'll know that after the data come out and with some analysis but as you know, compelling legally acceptable reasons for using race -- the Voting Rights Act are -- that's something the Supreme Court said and reiterated in the 2016 Harris redistricting case and I expect that case to place out more in this cycle, if you have a compelling reason with Compliance with the Constitution and the VRA, the Court won't look a stance with that and say they get it.

>> COMMISSIONER CLARK: This is Commissioner Clark.

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Question, you indicated to keep the majority, minority districts.

But one of the things we're hearing in Public Comments is we want to start from scratch. So there's a conflict right there.

>> BRUCE ADELSON: I see your point.

But I look at it a little differently.

Under the Voting Rights Act you have to determine whether you can create a majority, minority district.

Whether you have them now or not, that's part of your process, to evaluate when the data come out, can we do this? The answer may be yes or no or wow maybe we can create another district or we have to create another district.

I get your point and logically that makes sense, but part of your redistricting requirement the right way is the unanimous way and make the determination.

>> COMMISSIONER CLARK: So should that be something we start with or something we evolve to?

>> BRUCE ADELSON: My suggestion generally is that you take as you discussion, as we've talked about, and as I've seen in the meetings -- you take a flexible approach generally, that you're open to going in whatever direction that appeals to you and seems that it's a good fit for you once you begin.

Because once you begin, we can sketch this out and rehearse and have trainings, but it's just like anything.

Once you again, once it's your first day at work, once you're running a race, whatever you're looking to do, whatever you're doing, you and I know the dynamics can change. So if you take as you've discussed, a flexible broad based approach and see how things look to you.

See what the numbers look like and if you decide wow this population has increased in this part of the state and we hadn't anticipated that, maybe we should start there.

That's, of course, up to you.

>> COMMISSIONER CLARK: So the VRA requires majority, minority districts if we can create them.

>> BRUCE ADELSON: -- the other factors are in play if the other factors prove out. But you don't just create majority, minority districts for whatever policy reason if these criteria can't, don't work and you're not creating the Serpentine district like they did in North Carolina.

Reasonably exact and if the three criteria I mentioned earlier -- if the answers to all of them are yes.

Single minority group can constitute a majority in a district.

They vote cohesively in a block to support the same candidates.

In the presence of racial block voting, the white population blocks the ability for the minority community to elect a candidate of choice.

If the answers to though are yes then you create a majority, minority district.

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>> COMMISSIONER CLARK: Thank you.

>> BRUCE ADELSON: You're welcome.

>> COMMISSIONER ROTHORN: We're talking about it --

>> BRUCE ADELSON: We're talking about all the districts.

>> COMMISSIONER ROTHORN: So also the State districts?

>> BRUCE ADELSON: The Voting Rights Act applies to every corner of the state.

How it applies is different depending on where you are but it applies across the Board and also apply to see state legislative.

>> COMMISSIONER ROTHORN: Creating a majority my majority Senate district and State and House district is important to recognize.

>> BRUCE ADELSON: I would say going beyond that, it's the right way, it's the compliant way.

It is an evaluation that you'll be making.

Excuse me.

And that's something that you know I picked up from some of your people who came to the hearings.

There was a lot of strong opinions about various populations being divided up and whether or not that's legally correct, I couldn't tell you.

But that came out very powerfully to me and made me wonder and look at minority populations in areas of the state that I hadn't really considered before.

Like the West Coast, for example.

So whether or not the population is there and all the factors can apply, that's something that the data and the analysis will show.

You're welcome.

Commissioner Eid?

>> COMMISSIONER EID: Let's say a state wanted to do this but they just didn't come out and say they were using race as a predominant factor.

There are many other factors adjacent to race that would, in fact, lead to race being used.

Has that happened? I can think of, looking at Detroit, using average income level and average income level for minorities in Detroit often times is different than the adjacent suburbs.

You're not saying it's because of race but that's race.

>> BRUCE ADELSON: I think one of the things that Courts do is -- just as you will be looking at a lot of data, they look at a lot of information too and sometimes they look at whether it's discussions on the record about doing this or doing that.

They make inferences from what the final product is, from perhaps what Public Comments you get.

So it is interesting that there are times that re-districters will attempt to conceal, let's say, their primary motivation in doing whatever they're doing.

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That's something that the Courts typically tease out from the arguments from the lawyers and the legal documents and the record.

Remember we talked about initially that Arizona was nuts about creating a record, about everything.

So what was interesting in the lower Court and the Supreme Court, the judges, the justices, all talked about oh, that's on page 1,000,035.

You're saying that the Commission did X, Y, and Z, but there's nothing in the report that supports that.

Having a good clean record and we're going to talk a little bit more about that at the end -- is really important too.

But you're right.

There are a lot of proxies that folks use to conceal or obfuscate what they're doing.

A lot of times the courts pick that up.

This is a very interesting case about the Voting Rights Act.

The minority group has to be a majority.

Vote cohesively as a block and racial block voting prevents the groups from electing a candidate of choice.

All has to fit.

North Carolina.

The Court says interest has to be a strong basis or good reason to take districts into account and the state right side given breathing room to adopt reasonable Compliance with that issue.

The state has this good reason to think the three criteria are all met and that the answers are all yes.

Then it also has a good reason to believe that Section two requires drawing a majority, minority indictment that's what the law says.

That's what thorn berg versus jingles says.

You meet the criteria, you draw the majority, minority district.

Let's look at what actually happened in this case.

In this case there was a coalition district.

Let's say 45% African American.

There was enough African American population to create a majority African American district.

Okay.

But what's happening here? As a coalition district, African American voters had a strong voters of electing their candidates of choice in a coalition district, working with, collaborating with, forming coalition busy other voters.

So as you can see, the BVAP, the Black voting age population was about 46%, 48%, not a majority.

But these voter in a coalition can elect their candidates of choice.



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Remember.

Racial block voting prevents minority voters from electing who they want.

Well, if minority voters are all right electing whom they want, do you think you need to create a majority, minority district? No.

Because the third factor is not met.

Even if there is racial block voting, it's not impacting the minority population's ability to elect.

So why would you create a majority, minority district.

Well, North Carolina felt they had to.

And it's related a little bit to what Commissioner Eid was talking about that when do you know you have to do this or why do you do it? Well, here, ask yourself if a coalition district is, would be, and has been working for twenty years, then why would you create a majority, minority district and is that not using race as a predominant racial consideration? Yes.

If it's working, you don't need to do that.

In fact, if you go it, that's the wrong way.

It's unconstitutional and here it's quite hearsay, it's working and why do you think you need to create a district that's officially majority, minority that's not needed.

Imagine the number of white members joined a cohesive Black community to elect that group's candidate.

Election year in and out as a cross over district.

In which members of the majority helped a large enough minority to elect its candidates of choice.

So here the court found that the North Carolina redistricting was unconstitutional and violating the 14th amendment and was a racial gerrymander.

That third criteria has to be met.

It wasn't met.

The folks in North Carolina assumed they had to do this.

In fact, they were quite insistent they had to create a majority, minority district and the Court essentially said why? Here you have two yeses and one no.

You have a no, then you don't have to create a majority, minority district.

Yes?

>> COMMISSIONER CLARK: This is Commissioner Clark.

So you mentioned that this district was working.

>> BRUCE ADELSON: Yes.

>> COMMISSIONER CLARK: So don't make it a majority, minority district.

So you utilize historical data to make the determination.

>> BRUCE ADELSON: Those are the election returns.

We talked before about doing an ere analysis.



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Part of that is seeing as was done here, is the minority population electing? Is this a functional district as the court said here in that the minority community can elect candidates of choice.

That's what analyzing elects and part of what the answer is.

The answer is yes, historically with the election results.

North Carolina blew past the third factor and said we have to create majority, minority districts.

Remember I said earlier I often wonder why people do things and who was suggesting this.

This is a strong belief that this was needed and as the Court said here, this was a mistake of law.

It clearly is a legal error that a majority, minority district is needed when the district is already functioning and enables minority voter to elect candidates of choice.

Yes?

>> COMMISSIONER LETT: This is Commissioner Lett.

Was there any analysis of what happened when they made that a majority, minority district regarding the surrounding districts?

>> BRUCE ADELSON: That's a great point.

It's not something that I saw.

I think frankly they did that because they made a legal mistake.

They assumed that they must have a majority, minority district.

Even though the thorn burg versus jingles case can be complex, you need three factors. If any are no, you move on.

They misread what the Supreme Court had said and misunderstood the whole issue of racial predominance and redistricting.

So whether this was an impact on surrounding districts, that's a great point.

I don't know that.

Now I'm curious about it and I want to check it out.

But the larger motivation was we have to have a 50% plus majority, minority district.

And as you can see here this is a rather eloquent description by the Supreme Court.

Strong basis and evidence to conclude Section two demands majority, minority district.

The State must -- establish the three conditions including white wall voting and in due district creating out these measures.

We see nothing in the legislative record that fits that description and the court says that the district one is a successful cross the over district.

A majority minority basis was on pure error of law and making incorrect assumptions.

Let's say that.

I think it is a very interesting case and flushes out what majority and minority mean and that you don't mechanically create them.

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You look at how the district functions and have the minority being able to elect or not?  
After twenty years of election results; okay.

Leave it be and move on to another district.

So looking at the whole idea of racial domination and racial predominance and avoiding that -- what does that actually mean? And thinking about it really is not difficult that there are lots of factors that you're going to be looking at and I think that unlike North Carolina, unlike Alabama, unlike some of the other situations we've been in -- we've looked at, you look at the diversity of factors.

You don't just come in in the Cooper case and say we have to do this and create 50% majority, minority districts.

There are many consideration to see decide whether to draw the district line.

Groups of voters and common interest, COI.

Location of physical boundaries and physical geographic feature or the desire to keep the district relatively close together and race is one of them.

Not number one.

Not something that you go in making assumptions about.

It is one of many factors.

When you do that, race is not predominating.

So that's a good, I think that is a good description of looking at it as one of many.

Not one above all.

One of many.

It only works until the one above all where the engines wills factors, the answers are yes, yes, yes, yes.

Okay, then we do it.

But if the answers are not that way as they were in the Cooper case, then you move on.

Think about it as a mix.

It's one of many.

Yes?

>> COMMISSIONER CLARK: Commissioner Clark again.

So this really goes back to our premise of documenting our major changes and making sure we have that so we can support it in we get into the litigation aspect.

>> BRUCE ADELSON: That's a great question.

Let's look at it this way, hypothetically.

Let's say you have decided to create a 48% plurality voting district.

You don't have the data yet.

Let's say they come back and they reveal that you have the answer to see all three jingle factors of yes and you go back to the district and say we're going to have to look at this again.

Great example, hypothetically of major change -- that's something we did in Arizona.

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There were districts we thought we had to strengthen from the minority standpoint to get the approval from the Justice Department and we documented that in detail.

That is a great point and a reflection of an area of if you encounter that, to have vigorous documentation of why you're doing what you're doing.

Great point.

I wanted to talk about this and this is also an issue that I've heard a lot and heard some in comments and in the meeting -- that's in the LA County times.

Are Arabs and Iranians white and the census says yes.

Some disagree.

Here is a quote from a woman of how she feels marginalized about how the census determines race.

It talk busy how there are 3 million people of southwest Asian or north African decent in the US and here are some of the numbers.

You can see Wayne County is number three.

This is data from two to three years ago.

Over 100,000 of Middle Eastern decent people in Wayne County.

It is correct that Middle Eastern ancestry being Persian or Arab is not considered a racial category under the census.

Okay.

Well, guess what? The Voting Rights Act -- I don't want to say it doesn't care about that, but it looks at things differently.

This is the United States of America versus the City of -- in 2000.

In this case this involved the election of 1999 the United States alleged over 40 dark skinned or Arab American citizens required to take an oath as a condition of voting.

A lot of people who were asked these questions.

Because the Attorney General of the United States find that's this race based prerequisite which site violates federal law, the United States sued and there was eventually a settlement where the city essentially admitted that that's what had happened.

Whether or not a population is considered a race under the census may be different end the Voting Rights Act and this is a great example.

So people of Arab ancestry, that's not considered a racial group in the census but it is a protected group in the U.S. Constitution and the Voting Rights Act.

So you will encounter situations like that as you consider redistricting.

Whether or not the census considers a race is not dispositive because the Voting Rights Act and the Constitution which say differently.

Having been the designated DOJ Chair and a census group that dealt with race language and minority group outreach, that doesn't surprise me.

I can't tell you more about that.

I can smile about it and you can infer from my smile why I'm smiling.

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I included this and I did demographic research on my one in Banglatown, for example. 98% of the people in Bangladesh are Bengali.

You know one of the languages that you offer for interpretation services for is Bengali -- why? Because of the Voting Rights Act.

People speaking Arabic and Persian and -- have contributed to the ethnic areas of the region.

Bengali is the official language of Bangladesh.

Again, talking about Communities of Interest and diversity and majority, minority populations, coalition districts.

This is a population to be aware of and look at.

That's why where the American community survey comes in.

Even though it's an extrapolation -- I encourage you to get information from the American community survey and get a full sum information from Kim Brace and get a real sense from that from the ACS about what the population is at multiple levels beyond whether people are white, Black, Hispanic, Native American, or Alaska native. As I said, the ACS can be used to identify areas with changing populations and it can be a helpful tool in defining Communities of Interest, given the level of racial ethnic social and economic detail that it provides.

Using the ACS, I certainly agree with this.

It may make a smoother redistricting process that uses fair maps once census data is available.

It's additional information beyond the census count to give you a for idea of the population here and who they are, where they come from, and whether they constitute their own communities.

Questions? Comments? I wanted to reiterate briefly what we talked about the last time. Definitions of these districts.

Minority coalition district is similar to what we saw in that Cooper case.

African American district was about 40%.

Not a district that's majority minority but a district made up of a coalition of people who effectively support the same candidate.

So a minority coalition district is typically defined as a district that is made up of two or more minority groups and the numbers here are many and they don't have significance.

The Supreme Court has never said you have to do this to satisfy Section two.

Now, that doesn't mean, of course, that they may say that in the future.

But they have not said that up until now.

>> COMMISSIONER CLARK: This is Commissioner Clark.

Even though it's a majority, minority coalition district, it's still defines as my majority, minority district?

>> BRUCE ADELSON: Not really.

Jingles is majority of one minority group.

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That's the law in this area and most of the United States.

One minority group has to make up the majority.

The Supreme Court has never said that the Voting Rights Act requires you to do this.

It's a policy issue for the most part.

There may be issue busy tracking minority population and diluting minority population that we can look at going forward.

But it's not the same as what the jingles case says that you must create a majority, minority district if you get three yeses.

The Supreme Court has never said that with the coalition district.

>> COMMISSIONER CLARK: We may have that because we have so many different types of minority groups in our state.

>> BRUCE ADELSON: That's true.

>> COMMISSIONER CLARK: We may be confronted with that.

>> BRUCE ADELSON: Remember if you look at this, look at the election analysis and do the groups vote cohesively.

Cross over district -- not a majority but can still control the outcome of the election with some nonminority voters, so-called cross over voters.

As the Court said in the Cooper case.

One large minority group that one two or three smaller groups.

48% and they had cross over support from the majority white population.

So the Supreme Court in 2000 held that the Voting Rights Act does not require you to create a district like that.

But remember that difference in Cooper.

That was a cross over district.

It was working; don't mess with it.

If it's working, move on the something else and don't think oh boy, we're in danger unless we create a majority, minority district.

Not true.

That's why the election analysis is so important and you look and examine it and it gives you a lot of information.

These results tell strong stories about who supports whom, coalition or not.

Is there racial block voting.

Election analysis is it.

It tells a lot of the story, a very important part of what you'll need going forward.

Influence districts -- again, not something required by the Voting Rights Act.

Large number of minority voters but fewer than would allow the minority group to control the election.

The number or proportion necessary to allow the minority group to influence or shape the election is determined by looking at Michigan election results if that's something you choose to do.

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But I think what's important here is don't get hung up on the names of influence, cross over coalition.

Because they can be confusing.

Really, think more organically in the sense, are the Gingles factors all yeses? If they are, when we go to majority and minority districts and see what we can do.

If the answers are not all yes, we can decide if we want to create districts with several minority groups forming to create a majority.

Do you want to create a district where the white majority works with minority to elect candidates of choice.

Without the three yeses, you don't mechanically create a minority majority district.

You don't need to create a majority, minority district.

I know I talked about this the last time and Julianne and I have smiled about this.

I think this is a great way to just think about this, beyond all these terms, cases, and legalities.

You think about driving a car.

And staying at the speed limit.

If you obsess about the speed and you just look at the speedometer, you're going to get into an accident.

You'll run a stop sign.

Something will happen.

But if you look at the road, the surrounding traffic, the directions to your destination, you signal when you change lanes or turn, you look at the temperature gauge, the amount of gas you've got, then guess what? Speed is not predominating.

It's one of many things you're looking at.

Same with redistricting.

One of many things.

So I find this is very useful.

I also like core analogies.

That's part of the reason that I'm using this.

But think about one of many.

You're doing one of many things.

Or looking at one of many things challenge in rural districts is the population is low.

You have to get population from some place.

The urban population of the United States, 49 million people.

Rural areas the population is about 5 million.

There's a big difference not surprisingly in numbers, comparing urban to rural populations.

This is just information from 2010 census to show you how the census classifies or talks about urban areas.



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Look at the low number, 2500 people to be so-called urban cluster under the census and this is really just to illustrate how urban populations predominate because the difference is so great between urban areas and rural areas so this is just give you a sense of the census definitions reflecting the reality of urban areas having greater population.

So this is one of the realities with redistricting.

Many rural districts will turn out to have fewer residents than whatever the target population is.

Where do you go to reach the target? They will need to expand in geographic size and take in enough people to reach the target.

One of the things that -- I'll hold that thought for a moment.

This is an interesting Article I read from an Indiana lawyer showing differences between -- the author perceives -- between rural and urban voters concerning the environment and pollution.

Just showing how in her study, they have different orientations and concerns about pollution.

This is a very illustrative map of Pennsylvania Congressional districts.

All the big districts are rural areas.

The large urban centers are Pittsburgh, Philadelphia, Harrisburg, Scranton, Bethlehem area.

State College in central Pennsylvania.

Otherwise, the district that's don't have large urban centers are enormous because they need population.

One of the things that I heard in the hearings and meetings and I don't recall the specifics, was that sometimes, you know, with a rural district, you need to take population from a city.

I would be cautious about that because are you cracking minority population, for example? Are there areas that you can say that may be similar Communities of Interest with the rural community? I'm pretty confident that the answer is yes.

But please be careful about not taking minority population to combine with an overwhelmingly white rural district because that raises red flags about potential discrimination and cracking minority populations and that's something to keep aware of as you move forward and through the lens of the Voting Rights Act and the US con at this constitution.

Yes?

>> COMMISSIONER CLARK: This is Commissioner Clark again.

I think that map really supports what Kent told us to start drawing your districts from the low population areas so you don't paint yourself into the corner and run out of population to be able to meet the requirement.



>> BRUCE ADELSON: And I think, you know, again, I think that that's certainly a way, if you choose to go in that direction.

But I don't think there's an absolute that you must do it this way.

Once you begin, you may decide, you know what? I know we were thinking of doing this X way but look at this map and where the population is.

Maybe we should do Y.

If you look at it flex burglary as an organic process, ear going to make changes; there will be things that come up that change your mind.

All kinds of things.

If you just look at flexibility.

As the old add animal -- nothing is written in stone and that is until the end when everything is done, then I think that's a good approach.

Thinking about what may work.

Thinking about that now, just singly, thinking about when you meet and talk about it.

Being flexible and knowing that yeah maybe preconceptions that you had may change.

Orientations may change once you see everything.

That's a pretty common issue with redistricting.

I want to talk briefly about partisan fairness.

I know Lisa Handley is going to talk with you about this more.

The Court decisions I'm going to highlight involve whether or not the partisan considerations were unconstitutional.

And the Supreme Court as you know a couple of years ago said they are not.

There is no claim under the U.S. Constitution that excessive partisanship is unconstitutional.

In looking at various evaluations of partisan fairness, whether the efficiency gap or others, the courts are looking in a way that you won't.

They're looking at can we support a constitutional challenge, 14th amendment challenge to redistricting based on partisanship.

There were issues raised by the Supreme Court in examining these various tools and looking at whether they're too speculative or whether they can form the basis of a constitutional challenge, but that's not your brief.

Your brief is this.

Districts shall not provide a disproportionate advantage to any political parties.

That is not an issue that that is a claim under state law.

If you decide to favor one party over the other, that would be cognizable and a legal claim people could raise under the Michigan Constitution, not the U.S. Constitution.

The Court decisions that I'm highlighting on this are looking at, are these standards and tests reliable enough to support a U.S. Constitutional challenge.

In this example, the Court mentions the origins of some of the tests and Lisa will be talking about this much more authoritatively.

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In Arizona the Commission had to rate electoral competitiveness.

What the Commission did and this is something that I would also recommend inquiring about -- the Commission had the map drawer include partisanship evaluations in given districts so that using whatever tests the map maker and the Commission decided upon. They were all right up on the screen.

Let's say the ABC test, for example, would be a scoring of whether or not particular test was competitive.

Worked out really well.

The result in Arizona was that In addition to complying with the federal criteria that there were additional federal districts in the state, using in part this calculation.

You know whether or not a plan is competitive from a partisan standpoint is across the Board.

It's not really well, this district is and this district is not.

It's looking at the full combination of the districts to be able to make that call.

This is describing the efficiency gap.

I know you've talked about that.

And you've discussed it.

The efficiency gap captures in a single number all the district plans, cracking and people of people by political affiliation.

That number is calculated by subtracting the concept of wasted votes you can see where there are votes for a candidate in a district where that candidate had already been essentially elected.

So I will -- there are areas to discuss and with your mapper and with Lisa.

But the competitiveness scoring in general to me is not that complicated.

There are lots of ways to evaluate this.

It's not like the jingles factor.

One case, three factors.

It's not the same thing and there's more flexibility in that and I'll certainly refer to Lisa with that.

This is something to discuss -- evaluation and this is a trial case in the McGill case in Wisconsin.

S-curve swing analysis.

I'm not a statistician and I'm going to refer to Lisa more.

But I wanted to introduce it to you so you know there's not one absolute way of doing this and the Federal Court has looked at it to see whether the method is reliable enough to create a Federal standard.

What factors you want to use and what tests you find reliable is what you're going to use.

The last Section.

Loose lips sink ships.

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We're not going to talk about redistricting specifically.

I'm going to talk to you about the importance of what you say, do, and write.

And how that becomes part of the greater record.

I'm using an Americans with disabilities case that I did a couple of years ago.

Deaf parents brought their children to a hospital for nonemergent care.

Parents are Deaf and children are not.

Parents claim the hospital did not provide them with effective communication.

Under the ADA, that means typically using a sign language interpreter.

Perhaps using braille to communicate in writing.

There are other methods of communication, too.

There are other aspects to it.

But in this case, the issue was using a sign language interpreter.

Both parents spoke sign language and understood sign language and that was their primary method of communication.

So the parents testified at deposition about their concern about their children.

The health care situation was not emergent but the parents as parents were concerned about the health of their children.

We subpoenaed the parents' texts and emails.

They made allegations that they were overwhelmingly concerned and that drove all their decisions and reactions.

The parents claimed the hospital was acting intentionally to discriminate against them.

The hospital was a bad act and acted out of ill will.

We found a lot of interesting stuff during the texts and emails.

During one medical examination the parents texted back and forth about how much money they could win in a lawsuit and they were going to sue and file.

This was during a medical examination and do you remember care and they were texting in real time about which lawyer should we hire.

One parent said I saw something on CNN where there was a lawyer who deals with these cases.

We should contact her and this should be good.

This was scheduled for jury trial and we were going to use the emails and texts to rebut the parents' claims that they were overwhelmingly focused on the welfare of the children and they were affected by the intent of the hospital.

That was relevant to our claims that there was no ill will and intent but let's look at what the parents were doing.

We never got to use them.

We were very excited about that.

We were all ready to go.

We had a big screen like this and we were going to lay out all the texts.

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But we won the case on so many judgments before trial and that's one of the cautionary tales.

Being really mindful, and I have to stress, very mindful of what you say, write, text, post on social media, email.

You are public figures in the sense that people are paying a lot of attention, as you know, to what you're doing.

I know that there are a lot of media interviews and quotations.

Be careful.

And I'm not suggesting that I've heard or know something that I'm concerned about.

But as a lawyer, and certainly lawyer who is also a litigator, I know what happens when there are the loose lips, sink ships when people are saying likes parents.

Let's Sue.

John is being examined.

Who cares, let Sue.

Be careful.

All of that comes back.

All of it.

It's all on the public record.

Whether it's your record of what you do or record out in internet land, social media.

When you text, email, it's all discoverable.

It's not privileged.

So be really careful because the fun hasn't started yet.

When it does, the attention is going to be more intense.

As you know, it's intense now.

There have been lawsuits to prevent the Commission from forming and proceeding.

There will be more.

There will be more.

So I strongly recommend that you not have an uh oh moment, that you really think very carefully about what you say, write, and do.

The Department of Justice -- I'm going to talk about this quickly and talk a little bit about Washington in general.

As you know, the Department of Justice sued the state of Georgia recently claiming that the new Georgia election legislation was violating Section two and they're claiming that the legislation is intentionally discriminatory.

They may also be claiming and I don't recall this offhand, a 14th or 15th amendment violation.

I mention the Department of Justice and together with DOJ congress a little bit.

The Attorney General said in a press conference -- excuse me -- a couple of weeks ago that they're going to double the number of attorneys in the voting section.

That's one of the places I worked in.

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That's a big jump.

They don't have two lawyers.

They have a lot of lawyers.

That's something to be conscious of.

How closely will DOJ be monitoring redistricting? It's always an issue for DOJ but it's something to keep in the back of your mind.

I'm not saying that DOJ is coming to Michigan tomorrow or they've announced concerned or people have told me things.

I just like to be proactively inform clients.

They are increasing number of attorneys and they have sued Georgia and I don't think that will be the last of the litigations they file.

You know congress is considering a revised Voting Rights Act and a larger election reform package.

The odds are that congress will not pass either one.

However, I do think that now, compared to February, there is a greater chance of congress passing at least a Voting Rights Act reform legislation which would bring back the Section five preclearance requirements.

Do you remember a little bit about that? That under the former requirements, DOJ or the Federal Court in DC had to approve voting changes which include redistricting.

I still think the odds are against congress doing it.

But I think there's a greater chance that they could now compared to February.

I'm certainly not predicting they are going to.

But, again, it's something to keep in the back of your minds.

I don't expect if they did pass that that Michigan would come under from a statewide bays the new Section five statewide preclearance requirements.

Michigan doesn't really fit there.

Again, it's just an FYI.

If it happens, it's not happening knit soon.

If it does happen, the new section five would have likely prospective affect.

It wouldn't require retroactivity that oh you passed this law in 2015, we have to preclear it.

Or you did a decade redistricting and we have to preclear that.

No.

It will be prospective.

And again this is an FYI.

I have always been very careful about predicting what a court is going to do or what congress is going to do.

I still won't predict it.

I will say it is likelier than it was in February and we'll see how it plays out for the rest of the year.

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You've seen this picture before and I think it's a great example of what will be happening as you put your districts up on the big screen and you're making decisions and you or people attending the meeting will have questions that will be explained and people will say why don't you include this area? What about that Community of Interest? Why are you splitting this town? That's essentially what this picture says.

This is one of the few pictures I found, if not the only one.

And I spent more time searching and I really couldn't find one that shows a redistricting Commission drawing a map with public involvement.

So it's just a picture that I think is very evocative and a reminder of where you're going and what you're going to be doing.

So that's basically what I wanted to talk about today.

Do you have any questions or comments?

>> COMMISSIONER LETT: Commissioner Lett.

If congress passes something to bring back Section five or something of that ilk, what would they change since the Supreme Court basically says we're no longer discriminatory?

>> BRUCE ADELSON: What they would be changing is the previous Section five coverage formula, deciding which states or as in Michigan, your two Townships, covered by Section five relied on the state of various electoral realities from the 1960s into the 70s.

The number of Black people who registered to vote, for example.

The Supreme Court struck that down saying that it's outdated and by it being so outdated, it is unconstitutional.

The new coverage formula doesn't use date triggers or the formulas that I've seen. Instead, it relies on, for example, have there been Court decisions finding the existence of discrimination in voting.

There are several states that have had many court decisions or consent agreements or settlements where that reality is part of the decision and part of the settlement.

It's more in the coverage formulas that I've seen, it's more an enumeration of voting discrimination court related decisions.

Let's say there's a threshold number of ten.

Have there been that many in this period of time? And the period of time that I've seen doesn't go back to the 60s, 70s, 80s.

They're more recent.

The discussions in congress or what the advocacy groups are using is have you been Sued and found in discrimination of voting rather than that was the registration rate of Black voter inside 1964 or 1965.

>> COMMISSIONER LETT: There are a number of cases that the Supreme Court have come down with historically that -- Scott -- prime example, horrible case had to be changed.



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Do you say that as having any impact here, with Texas and Georgia and Michigan, and everybody else starting to change their voting requirements after this discussion? Oops we made a bad discussion and we need to go back and do something about it.

>> BRUCE ADELSON: Depending on whether congress acts, that certainly could be a factor long-term.

There are states that have a different history than Michigan does and states that had Jim Crow restrictions and significant problems that lead to the creation of the Voting Rights Act.

Michigan is not the same as Texas, for example, or South Carolina.

The histories, depending on what Congress does, sure, they can come into play.

But you historically are in a different situation than those states.

You do not have the same pattern and practice of discrimination and Jim Crow restriction.

It depends on what Congress does if Congress does act.

Anything else? As my last point, please remember, there is a right way and a wrong way to redistricting and I've seen it both ways so this is a legal process, legal requirements and legal mile posts that are nonnegotiable.

So please keep that in mind.

Just like for your glasses and look through the filter as you proceed with redistricting.

Thank you very much.

>> SARAH REINHARDT: Thank you very much Mr. Adelson.

>> MS JULIANNE PASTULA: Madame Chair? I wanted to note for the benefit of the public we've received the order from the Michigan Supreme Court at the start of our meeting today.

The Supreme Court has denied relief.

The majority of the court found that they did not opine on the merits of the case or how they would address questions on similar issues but at this point they held the anticipatory relief was unwarranted.

I sent an email to the Commissioners -- the order attached.

We will post the order on our website for the benefit of the public.

>> VICE CHAIR SZETELA: Thank you very much.

Any comments or concerns from the Commissioners? All right.

I also wanted to before I forget and we get too far into the meeting, one again, today I'm going to have to depart early and I am once again going to be designating Anthony Eid to be designated Chair in my absence when I'm unable to be here.

All right at this time we're going to take a 15 minute recess.

It is currently 10:47 so actually let's say an 18 minute recess.

Let's come back at 11:05.

Let's take a recess and come back at 11:05.

Thank you.



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[ Music ]

[Break]

>> VICE CHAIR SZETELA: Welcome back to the meeting of the MICRC.  
For the purposes of the public I will turn to the Department of State Staff to take note of the Commissioner's presence.

>> SARAH REINHARDT: In -- thank you.  
I'll start with Doug Clark.

>> Present.  
>> SARAH REINHARDT: Juanita Curry.  
Anthony Eid.

>> Present.  
>> Steve Lett.  
>> Present.  
>> Cynthia Orton.  
>> Present.  
>> Rothhorn, Szetela.  
>> Present.  
>> Dustin Witjes.

Present.  
>> SARAH REINHARDT: Nine Commissioners are present and there is a quorum.  
>> VICE CHAIR SZETELA: Thank you Ms. Reinhardt.

We're a little bit ahead of schedule at this point and Mr. Handley is supposed to be presenting at 11:25 and we're going to go a little out of order and to have to New Business item.

I would entertain a motion to adopt this proposed schedule.  
Motion made by Commissioner Clark.

>> Sect.  
>> VICE CHAIR SZETELA: Seconded by Commissioner Lett.  
Is there any discussion or debate about the proposed schedule? No one else? Erin, I see you have your hand raised?

>> Yes, I was looking at the schedule.  
>> COMMISSIONER WAGNER: And I know that Rhonda had scheduled some outreach to the fairs on Friday.  
And I was wondering if that has been taken into account with this new schedule or not.

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>> VICE CHAIR SZETELA: Executive Director Hammersmith, do you want to address that, if you know.

>> MS SUE HAMMERSMITH: We did ask at the last meeting for anybody to give us suggestions or days that they could not attend and the schedule was based on the feedback that was received from Commissioners.

>> VICE CHAIR SZETELA: Commissioner Wagner, do you know what days she has on schedule Fridays? It looks like August we have three Friday meetings. Do you know if any of those conflict to your knowledge?

>> COMMISSIONER WAGNER: She mentioned the Fridays conflict with her fair outreach because she's already got those scheduled. I believe she may have sent the schedule to Edward but I'm not positive.

>> VICE CHAIR SZETELA: Executive Director Woods, do you know what Rhonda's schedule is?

>> Outreach Director and I'm looking it up and she did provide it. Let me see if it's either here or on a text message but the bottom line is we will have the equipment to mail out to Commissioner Lange for the fair schedule, the banner schedule to come in tomorrow and she'll have everything she needs in time for the fair.

>> VICE CHAIR SZETELA: Do you know approximately how long she'll be there at the meetings? All day or an hour or two?

>> Let me comment, I would like to note for the public record that Commissioner MC Rothhorn that joined the meeting.

>> While Communication Director Woods is looking for that information, I would like to add that this schedule is a proposed schedule and if you would like to amend it, that is something you are able to do.

The feedback from myself and the Executive Director Hammersmith received results that Wednesdays were not workable for several Members of the Commission. Therefore, if the Commission did seek to adjust this proposed schedule my suggestion would be for Monday and Tuesday meetings.

>> VICE CHAIR SZETELA: I have a suggestion as well. So the September hearings on Tuesdays, they start at 9:00 o'clock and I notice they city of Lansing or Detroit.

I have two elementary schoolchildren who I need to get on the bus in the mornings at 8:10 so to get to Detroit at 9:00 o'clock would not be a problem.

But Lansing at 9:00 o'clock, I would be late.

My request is that the Tuesday meetings be started at 9:30 to allow me to get there on time or the alternative would be to have them in Detroit, but I think we would need the Monday and Tuesday meetings in Detroit for that to make sense.

>> Madame Chair? The three weeks is July 12th through 31, but I don't know dates and times but those are the three weeks.

>> VICE CHAIR SZETELA: So it's just July, those two meetings?

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>> Yes, three weeks confirmed.

>> VICE CHAIR SZETELA: Okay.

Yes, Commissioner Clark.

>> COMMISSIONER CLARK: This is Commissioner Clark.

You know, other than what Rebecca just mentioned on the time change on Tuesdays being consistent, you know, there's going to be inertances when all of us are going to miss a meeting.

It's just life.

Doctors' appointments or childcare or whatever.

So I would suggest that we reconsider the motion and adjust the motion maybe to start at 10:00 o'clock on Tuesdays.

10:00 a.m. on every Tuesday even being in Lansing or Detroit.

And then adopt this knowing that we're not going to have all 13 Commissioners at every one of those meetings.

I would like to move to adjust the motion to change Tuesdays to 10:00 o'clock start time.

>> VICE CHAIR SZETELA: So if I'm understanding you correctly, you're moving to amend the schedule to start at 10:00 a.m. on Tuesday inside September.

Can I get a second on that.

>> Second.

>> So we have Commissioner Clark moved to amend the schedule to allow Tuesday to start at 10:00 a.m. in September and second by Commissioner Orton.

Any objection or debate?

>> This is Sarah Reinhardt from the Department of State.

I want to make the Commissioner aware that the recommended hours from EDS during this time period would be 24 to 30 hours per week.

The hours currently listed add up to 24-hours so the start at 10:00 a.m. would put the hours at 23 hours and I want to make the Commission aware of that.

>> VICE CHAIR SZETELA: Go ahead Commissioner Witjes.

>> COMMISSIONER WITJES: If that's the case then why don't we just move it up and make a motion and start it -- Tuesday meetings, then, if that's the case, if you want to keep it -- just looking at it, why don't we make it starting at 10:00 a.m. to 8:00 p.m. so we adjust both the front and back end by one hour.

>> VICE CHAIR SZETELA: Mrs. Reinhardt does that work with Department of State Staff.

>> SARAH REINHARDT: That would work for us.

I see Commissioner Orton has her hand up as well.

>> VICE CHAIR SZETELA: Commissioner Orton.

>> COMMISSIONER ORTON: Or could we start the Monday start time to include that hour.

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>> SARAH REINHARDT: To accommodate the set up for AV contractors, the requested start time for the first day of the consecutive meetings is no earlier than noon.

>> VICE CHAIR SZETELA: Go ahead Commissioner Rothhorn regularity this is Commissioner Rothhorn.

For Lansing and Detroit is it important for either or in terms of Staff or would it be helpful to make a motion and make it concrete?

>> SARAH REINHARDT: Excellent question Commissioner Rothhorn.

I think that at least my thoughts and the thoughts of your Staff were that they would make the determination on the location based on where the Thursday scheduled travel meeting was.

For example, there's a meeting in -- if there is a meeting on the west side of the state it might be more convenient for the Commissioners to meet that Monday and Tuesday in Lansing as opposed to Detroit and vice certifies you but certainly if the Commission has a request it meet in a specific area more convenient to them, that is something we will consider as well.

>> VICE CHAIR SZETELA: Commissioner Wagner?

>> COMMISSIONER WAGNER: I did check with Rhonda just now and her meetings are all day long and given that that is coming into the time that we are going to be extremely busy, is there a reason why we're not doing it Monday and Tuesday? I would just hate for her to miss all these meetings because she's doing outreach for the Commission.

>> VICE CHAIR SZETELA: Is she, um, is this only in July or is this in August as well?

>> COMMISSIONER WAGNER: I believe it goes to the first week in August.

>> VICE CHAIR SZETELA: Any further discussion on that from anyone?

>> KIM BRACE: Commissioner, this is Kim Brace if I can interject a comment on this one.

>> VICE CHAIR SZETELA: Go ahead, Mr. Brace.

>> KIM BRACE: Sorry about that.

I know Sarah had mentioned us in terms of 24 hours' time.

We're flexible in terms of that, so I wouldn't get hung up on 23 versus 24.

You're really talking about sufficient time to have some time for people to sit down and go over map drawing and that sort of thing.

And that could be over, you know, two days or even three days, depending upon what your schedules are.

Mondays and Tuesdays would probably be fine from our side, too, in that regard.

I would note that the 19th and the 20th of July I am out of the area at that time.

And our deadline for getting our database is set for the 18th of July.

I would like to be able to use some of that week of the 19th to just double-check and make sure that the database can be incorporated properly into the system.

That's part of what we'll be testing.

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So the potential of not having something that week might be something.

Because I don't get back until the 22nd from my meetings in Utah so I'm already missing one of your days on that side.

So schedule wise, just wanted to add to your intelligence in terms of this information.

>> SARAH REINHARDT: This is Mr. Brace this is Sarah Reinhardt with the Michigan Department of State.

I just wanted to add that we were aware of Mr. Brace's schedule when plotting out this calendar and it was determined between us and your Staff that those dates could still be used for other purposes than mapping for the Commission to discuss its business.

>> VICE CHAIR SZETELA: Thank you Mrs. Reinhardt.

So we're not getting ahead of ourselves, it seems like we have a motion on the floor to amend Tuesdays to the 10:00 a.m.

I think there isn't anything open on that issue.

We don't we vote on that issue to get it out of the way and then move to the Fridays.

Unless there's additional discussion on that point which I don't see any.

All in favor of amending the proposed schedule to change the Tuesdays in September to a start time of 10:00 a.m., please indicate by raising your hand and saying aye.  
Aye.

All opposed please raise your hand and say No.

We have amended the schedule in September to now be 10:00 a.m.

Is there a desire to move those Friday meetings -- well, actually we would have to move the Thursday and Friday meetings to Monday and Tuesday in July and August.

Any thoughts or comments on that? MC Rothhorn.

>> COMMISSIONER ROTHORN: This is Commissioner Rothhorn.

I want to make sure the motion was restated.

>> VICE CHAIR SZETELA: The motion was 10:00 a.m. and not a -- strike that.  
motion for that.

So any discussion about moving the dates to for the August and July 2021 moving from Thursday Friday to potentially moving them to Mondays and Tuesdays -- any thoughts? Discussions? A motion? Okay.

So seeing no motions and no discussion on the topic further, I think we're just going to go ahead and -- Erin? Sorry.

You didn't do the virtual hand this time so I didn't see it.

>> COMMISSIONER WAGNER: I'll motion that we move the meetings from Thursday Friday to Monday and Tuesday.

>> VICE CHAIR SZETELA: So we have a motion by Commissioner Wagner to move the July and August 2021 Thursday Friday meetings to Monday, Tuesday.

Can I get a second?

>> I'll second it.

>> VICE CHAIR SZETELA: Seconded by Commissioner Orton.

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Is there any discussion or debate on the motion? Go ahead Commissioner Vallette.

>> COMMISSIONER VALLETTE: I just want to clarify, we are not counting the 15th, right? That's not one we're going to change?

>> VICE CHAIR SZETELA: No.

I'm just talking about the ones that are highlighted in yellow.

So that would be the July 22nd and 23rd, July 29th and 30th, August 5th, 6th, 12th, 13th, 19th, 20th.

Just those meetings.

>> MS SUE HAMMERSMITH: I think Mr. Brace stated that had but we were going to begin mapping July 19th and he's not available any day that week except the 23rd. That week and I've already got a presentation schedules on that Thursday. So I'm not sure what other business we would have to conduct that week if we do not do mapping.

>> VICE CHAIR SZETELA: Okay.

Any additional discussion? Go ahead Commissioner Orton.

>> COMMISSIONER ORTON: I just wonder from Secretary of State's office and Director Hammersmith, if moving both meetings from Thursday Friday to Monday Tuesday, will we be losing other Commissioners?

>> SARAH REINHARDT: Not to my knowledge, but I'll refer to Director Hammersmith.

>> MS SUE HAMMERSMITH: I'm not aware that we'll be losing any others.

>> VICE CHAIR SZETELA: Any other comments? All right.

Why don't we go ahead and vote on this adoption of this schedule -- I'm sorry, not adoption of the schedule but adoption of the motion to amend the schedule in July and August to Mondays and Tuesdays all in favor raise your hand and say Aye.

Department of State can we do a roll call vote?

>> Certainly Madame Chair, I would like to request General Counsel to restate the motion for madam Chair.

>> MS JULIANNE PASTULA: I'm sorry Ms. Reinhardt I did not hear your statement.

>> VICE CHAIR SZETELA: She wants you to restate the motion.

>> MS JULIANNE PASTULA: I have the motion to amend on the table to move the July and August dates that are highlighted on the agenda that were read off by the Vice Chair, being July 22nd, 23rd, 29th, and 30th; August 5th and 6th, 12th, and 13th, the 19th, and 20th of August -- from the Thursdays and Fridays of those weeks to the Mondays and Tuesdays of those weeks -- is the motion on the table.

>> SARAH REINHARDT: Thank you General Counsel Pastula.

Please indicate with yes or no.

Steve Lett?

>> COMMISSIONER LETT: No.

>> SARAH REINHARDT: Cynthia Orton.



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- >> COMMISSIONER ORTON: Yes.
- >> SARAH REINHARDT: MC Rothhorn.
- >> COMMISSIONER ROTHORN: Yes.
- >> SARAH REINHARDT: Rebecca Szetela.
- >> VICE CHAIR SZETELA: Yet.
- >> SARAH REINHARDT: Erin Wagner.
- >> COLIN WALDECK: Yes.
- >> SARAH REINHARDT: Janice Vallette.
- >> COMMISSIONER VALLETTE: Yes.
- >> SARAH REINHARDT: Richard Weiss.
- >> COMMISSIONER WEISS: Yes.
- >> SARAH REINHARDT: Dustin Witjes.
- >> COMMISSIONER WITJES: No.
- >> SARAH REINHARDT: Doug Clark.
- >> COMMISSIONER CLARK: No.
- >> SARAH REINHARDT: Anthony Eid.
- >> COMMISSIONER EID: Yes.

By vote of seven to three, the motion carries.

- >> VICE CHAIR SZETELA: Thank you very much Ms. Reinhardt.

We are now going to be moving the afore mentioned meetings from Monday to Tuesday.

At this point I think we have a motion on the table to adopt the schedule as amended. Any further discussion on that point? MC Rothhorn.

- >> COMMISSIONER ROTHORN: This is Commissioner Rothhorn.

Only with the change I did hear the 18th and 19th I did hear we did not have business so I would hate to meet for the sake of meeting and I'm asking the Staff to help me -- help me, particularly, help me make a motion and decision -- because I don't want to adopt this agenda and -- this is like next week I'm trying to make sure that we don't have a meeting when we don't actually have business.

Two meetings, potentially.

On the 18th and 19th in particular.

Can you help?

- >> MS SUE HAMMERSMITH: I was waiting for an answer on Mr. Brace if someone on his team can help us.

Until I get that answer I can't be definitive.

I guess I would suggest that we add those dates and by next week we're going to have to decide if we keep those dates or cancel them.

- >> COMMISSIONER ROTHORN: Thank you.
- >> VICE CHAIR SZETELA: Any further comments or discussion?
- >> KIM BRACE: This is Kim Brace again.



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Sorry.

>> VICE CHAIR SZETELA: It's okay.

>> KIM BRACE: I can tell you it would be my preference as well as a number of the Staff that I be there at the beginning to help facilitate that.

So that's why I added that comment.

I'm sorry, um -- yep.

>> VICE CHAIR SZETELA: Thank you Mr. Brace.

Go ahead, Commissioner Wagner.

>> COMMISSIONER WAGNER: I was wondering if we can possibly move Dr. Petery's presentation to accommodate with Kim not being able to make it, Suann.

>> MS SUE HAMMERSMITH: I tentatively have him scheduled for the 22nd. I would have to see his availability -- scheduled.

>> VICE CHAIR SZETELA: Any additional questions? Let's go ahead and vote on adopting this proposed schedule.

All in favor as amended -- so the proposed schedule as amended all in favor please raise your hand and say aye.

Aye.

All opposed say Nay.

>> Nay.

>> VICE CHAIR SZETELA: The motion carries and amended as adopted.

We're going to move onto agenda item E.

This is an action item.

So we were submitted a copy of a template letter for to be sent out to people who have submitted Public Comment that they commit maps.

Everybody has had a chance to review the letter.

Any comments or concerns about the letter and why don't we entertain a motion to adopt.

>> I just want to clarify that this would be an email template and this was in response to the Commission's pons yesterday for.

>> SARAH REINHARDT: Our Staff and MGGG to draft this so both of us worked together last night drafting this for your review.

>> VICE CHAIR SZETELA: Thank you.

Commissioner Clark?

>> COMMISSIONER CLARK: Commissioner Clark.

I was a comment on the third paragraph.

It says if your submission was of this kind, the Commission kindly requests that you draw and submit a map of your Community of Interest.

We've already asked that of them in those terms and I think the intent was to get more detailed submission of the maps.

East, west, north, south, relies on those Communities of Interest.

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So I would suggest maybe we can discuss changing that verbiage to get a little more specific to what we're looking for.

>> VICE CHAIR SZETELA: To what, specifically? How do you want it to read in I'm just trying to understand what you're asking to be changed?

>> COMMISSIONER CLARK: I'm sorry.

I couldn't hear you.

>> VICE CHAIR SZETELA: What specifically do you want changed in paragraph three?

>> COMMISSIONER CLARK: Give me a minute to think about the verbiage.

MC may have a good comment on that, wait this is Commissioner Rothhorn.

I appreciate the word Smithing, that may help.

I get the feeling of what we may benefit from -- we're talking about outreach and we're trying to get more specific detail.

I think it may be the act of reaching out and creating some sort of a relationship where we're basically saying we want your input.

You've given us something.

Thank you for trying to follow the instructions.

We're going to give you a second opportunity.

I don't know that the words may make as much difference as the act of reaching out again.

And I guess I'm thinking about how many times -- I appreciate the idea that we may want a word Smith but I don't know that that will actually elicit the quality of feedback that we want.

There's marketing that requires seven hits before we get the I'm a victim of that and I need ten times.

I'm offering it may not be the word Smithing, but how many times we're going to do this and helping the Staff create a relationship so the citizens feel like we want their input. Check.

>> VICE CHAIR SZETELA: Commissioner Witjes.

>> COMMISSIONER WITJES: This is Commissioner Witjes.

I make a motion we accept this email template as is.

>> VICE CHAIR SZETELA: Thank you Commissioner Witjes.

>> COMMISSIONER EID: I'll second that DUI Commissioner Eid has seconded the motion to accept the letter as drafted.

Department of State, do you have a comment?

>> SARAH REINHARDT: I just wanted to clarify the intent of this specific email in regards to Commissioner Clark's comment.

So this email would be sent to individuals who have not get submitted a map but have instead submitted written Public Comment describing their Community of Interest.

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If Members of the public or Commissioners go to the Commissioner's Public Comment portal you can look up the number of mapped Communities of Interest versus the number of written Public Comments.

While there are hundreds of written Public Comments that describe Communities of Interest ranging from vaguely described to totally detailed described in terms of geography -- there are 87 mapped.

The thought of this email is to reach out to the individuals who have described their community in writing and encourage In addition to their written striction to provide actual map boundaries that will be of use to the Commission whenever you begin the map line drawing process.

>> VICE CHAIR SZETELA: Thank you Mrs. Reinhardt.  
Commissioner Clark?

>> COMMISSIONER CLARK: I think that's an excellent explanation.  
It's the map boundaries that I'm concerned about.

But as long as that's included in the intent, that's great.

>> VICE CHAIR SZETELA: Do we have in the amendments to this or are we ready to go ahead and vote.

Commissioner Clark do you want to amend something?

>> COMMISSIONER CLARK: I do not.

>> VICE CHAIR SZETELA: All in favor of adopting the letter submitted by the Department of State with respect to persons submitting written Public Commented via the Public Comment port alae indicate by raising your hand in support of the motion and say Aye.

Aye.

All opposed raise your hand and say Nay.

The motion carries and the template email is adopted.

Thank you very much, everybody.

All right.

We are now going to move onto New Business agenda item 7B, Presentation on Measures of Partisan Fairness by Dr. Lisa Handley.

Without objection, I would like to ask Dr. Lisa Handley to make a presentation to the Commission.

Hearing no objection, please proceed Dr. Handley.

>> LISA HANDLEY: Let me see if I can figure this out.

Okay.

Okay.

Here I am.

I am happy to be here again.

But I want to begin by explaining why I'm here.

Why a voting rights expert is talking to you about partisan fairness.

You may remember this from my last presentation.

I constructed the redistricting criteria priority pyramid.

I went through and assured myself that you had just about everything covered.

For example, the redistricting software was going to help you with equal population, contiguity, compactness -- you're going to have more than enough information on Communities of Interest thanks to your Public Hearings and your public outreach through the portal.

Between Bruce and I you've got the Voting Rights Act covered.

But then I hit a snag and I wondered what you were doing about the item 13D of Michigan state Constitution, Article four, Section six, 13D.

District shall not provide a disproportionate advantage to any political party.

Shall be determined using accepted measures of partisan fairness.

I talked to Kim and to the Fred who developed the software that you're using.

And it seems that there aren't currently reports included in the software.

I also briefly spoke to your planning subcommittee about what you might be doing and I wasn't assured that you had a direction here.

So what I wanted to do today was just talk about some simple measures.

But, let me start by asking, perhaps you already have a way forward that I just don't know about and this would be a wasted half an hour of your life if this is so.

So can I request you if you have a way to tackle this at this point?

>> VICE CHAIR SZETELA: I would say -- it's Commissioner Szetela and I would say it's a firm no on that.

>> LISA HANDLEY: Okay.

Then let me go forward.

The next thing I want to mention is something that Bruce said that's important.

The measures that I'm going to talk about have been introduced in the courts, but they've been introduced for two reasons.

The political parties have been treated differently by the maps and the second part was to show that the difference was statistically significant.

It couldn't have happened by chance alone and this went to intent.

Did the party controlling the party intend for this disproportionate advantage? In my mind, I think that the measures that we should look at are measures that make sure that there is not a disproportionate advantage but because this is a bipartisan or nonpartisan Commission, I can't really think that we're worried about showing intent.

Bruce may disagree with me but what I want to do when we talk about this measure is measure how the political parties are treated differently by the map and not whether the difference is statistically significant and pointing towards intent.

But we can certainly add statistical significance if we think that's relevant.

The third thing I want to say is I have chosen three objective mathematical measures and the way that I chose this was very straightforward.

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I chose the simplest measures.

I chose measures that I could calculate in an excel sheet.

And the advantage to that is -- and Bruce mentioned this -- you can, because it's very simple, you can calculate it yourself or we can easily get a redistricting software to include reports like this.

It would be pretty straightforward and I hope you'll consider this.

I talked to Fred briefly about this yesterday and he said he would consider it and we might want to talk about this in a bit.

I chose simple measures.

I chose measures that can be calculated in excel and therefore I was assured that they would easily be incorporated into the redistricting software.

And finally, each of the measures has a single score that's easily interpreted in terms both the direction and the magnitude.

Okay.

Let me start unless somebody has a question or anything.

Okay.

Let's start with this.

Here is a hypothetical election.

We have ten Districts.

We have equal population in the Districts.

I have to look over here because if I want to see you, I can only see half of my screen. 500 persons per district.

As you can see from the total that's cast.

So here's our hypothetical election.

Let's see what happens with this election.

Party A, 50.7% of the vote and party B gets 49.3% of the vote.

So what happens is this -- party A with 50.7% of the vote only wins three seats.

And party B with 49.3% of the vote carries seven seats.

Now on the face this doesn't look very fair in our single Member District system, we assume we won't have perfect proportionality, but we do the party that wins the majority wins more than a majority of the seats.

So on its face, this looks unfair.

How is this managed? Well, two ways.

You've already seen these diagrams.

I showed them when I was telling you how redistricting plans can dilute minority votes.

Well, the same two practices can dilute party votes and those are cracking and packing.

Cracking you're going to spread party's supporters across many districts relatively fairly and they're casting votes for losing candidates.

Packing where one party wins overwhelmingly in a few number of districts and loses all of the other districts.

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These are the same processes that you see with minority vote dilution but in this case, of course, the political parties are larger and Michigan, as in a lot of states, actually about comparable across the state.

So we're not talking about a small group of voters.

Here I have charted out the vote Chair from party A from the table that I first showed you.

I want you to see that there is a pattern here.

First, you can see that party A is losing votes by about 45% to a little less than 50% pretty consistently and then party A is winning districts by nearly 70% of the vote.

So this suggests that we have a situation of packing in the districts that are circled here.

And we have some cracking going on here.

So what I want to do is just give you an idea of using three tests on how we're going to determine what it looks like is happening and we're going to determine if in fact it is happening.

The first test is called the lop sided margins test and we're just going to look to see if party A is winning by a great deal more than 50% in the districts it's winning and this is not true of party B.

So we want to compare the winning percentages of party A and party B.

We all right have a pretty good idea that the winning percentages are much higher for party A.

So all I'm doing is I am taking the average of the wins of party A and I'm comparing it to the wins of party B.

And I can see that the afternoon for A is 63 had the 6 and the average for B is 54-point #.

So party A is winning higher percentages than party B.

This means that party A is packed more than party B is.

In the redistricting plan you might have instances where both parties are packed in some areas that are heavily concentrated with Democrats.

But you would expect packed districts are Republicans where they predominate.

You would think there would be a mix.

You would expect one party to win overwhelming law and expect it to happen in both parties and that's not happening in this case.

Party B is treated favor burglary here but it's not.

Party A is concentrating voter inside a few Districts.

You can do the test to see if the difference is statistically significant.

This has been done in court and when it's found for statistically significant, the consensus is since this couldn't happen by charge it is the consensus that the party controlling the process is in fact party A.

Partisan gerrymandering has been around for a long time.



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Just not every single -- politicians handled the process and they gerrymandered and this was expected.

Most if not all democracies in developed countries have moved away from the process of letting politicians draw its contradicts.

You have Great Britain and all of its former colonies with the exception of the United States.

All adopting a Commission like Michigan is putting the Commission in place.

Nonpartisan or bipartisan Commission and the assumption is, if there is partisan bias in a plan, at least it's unconstitutional.

Your Constitution has said not only are we going to ensure that we don't have intentional gerrymandering, but that if it's unintentional, we're going to do away with it because we want you to use measures of partisan fairness to ensure that parties are treated equally.

Here we have a difference and we might choose a plan that has less of a difference. I'm going to go to another test unless someone has a question they're dying to ask about this test.

Somebody has to tell me if somebody has their hand up.

Just interpret me.

>> VICE CHAIR SZETELA: I do not have any hands up.

This is Rebecca Szetela for the interpreters.

>> LISA HANDLEY: Thank you.

So the second test I'm going to talk about is the mean median difference test.

Now, a common measure of a District skewed is a mean median difference.

So if a data said is perfectly proportional, the mean and the median will be the same.

If the mean and the median are different, it means that your distribution is skewed.

We're going to score the Districts by set win and choose the meet I can't know.

Fourth and fifth have the same percentage.

So our median is 46.5% and we're going to compare it to the statewide afternoon and the statewide average for party A was 50.7% and we had a mean difference of 4.2.

That means party A has to win 54 about the 2% of the votes to get 50% of the seats.

Favored toward party D.

B.

You can get the significance of these scores and you can built that into the system if you want.

I'm not worried that we have intent but this can be built in.

This is simple too and it's easy to interpret and if there aren't any questions, I'll go to the next one.

Okay.

>> VICE CHAIR SZETELA: I'm looking around.

Give me one second.



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I do not see any questions so please proceed.

>> LISA HANDLEY: Here, so, actually, I should have been paying attention. So here is an idea about what 4.2 means in terms of the mean median difference. Now, we don't have the same thing for the lop sided margins but there is a website plans for that have considered all of the plans for, ethics the last 50 years. All of the Congressional and state legislative plans and give us an idea of how they score. This is the distribution of scores croon all of the plans, you can see that 4.2 is not egregious. You can see there are some plans coming in plus 12 in favor of Republicans and -- in favor of Democrats. So 4.2 is not so horrendous. Efficiency gap measures the difference in the wasted votes of the two parties much you've heard about this but simple to calculate. Every vote that is wasted is a vote you have cast for a losing candidate or a candidate who wins with more than 50% of the vote. And the efficiency gap is just looking at the difference between the wasted votes for one party and the wasted votes for the other party and divided it by the total number statewide. So here I've calculated it for my example. So you can see the last votes, every vote that was cast for a losing candidate is showing up here as a lost vote. Then everything above half of what's needed -- these are the three Districts that party B lost. Over theory, what we're doing is we only need 50% of the vote to win. So this is half of 279. This is the minimum you need to win. 200. Ivan 279, divide by two and how many votes over 200 which we're going to call surplus votes that each of the parties got. So here I'm taking the 279, subtracting 200, and we've got 79 surplus votes. Here I have the volt number of lost votes for A and total number of surplus votes for A and lost votes for B and surplus votes for B and here's the total number of wasted votes for both parties and I simply take the difference, divide it by the total number of votes which is over here and I get 21.3%. Efficiency gap in the map that we've been looking at is 21.3%. This is the percentage of seats that we want over what would be expected in a politically neutral map and this is where our map scores very, very poorly. You can see it when all over the map are examined that 20.3% is on the extreme end. We have a plan that favors party B on a large amount.

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Most plans do not come close to this percentage.

Okay.

So each of the measures that I've given you, I calculated myself in the excel.

They all have their advantages and disadvantages and using one measure is not the greatest idea.

I would certainly use more than one measure.

There are many, many more measures than what I've described to you.

Again, I just chose three very simple ones, three that have been introduced into the courts.

More having introduced into the courts as well but I chose them on the basis of being easy to calculate.

Now, when I talked to Fred yesterday, I also told him about another measure and I think you've heard of this.

Declination measure.

I cannot calculate this in excel but he said this was not beyond what he could do in the software if this particular measure interested you.

What I am doing here is looking at the angle, what you would expect to happen given this pattern of losses when you look at the wins.

This point is the average by which party A lost and I've just put this in the middle at 45.1.

This is the average by which they won.

This goes here.

This is the won't at which you're transforming from a loss to win and we're looking at the angle and the larger the angle, the more bias the plan.

And, again, I can only calculate this in excel.

I can't calculate the angle but it is a possibility in terms of including it in a report function.

Okay.

Now, not all mathematical measures of partisan fairness are universally accepted.

And they don't, you know, is 20% too much or too little? Not everybody is going to agree on that but this does -- on top of that, sometimes a measure will point to one party and as being disfavored and another measure will point it another party but overall, this introduces a bit of mathematical precision to the process.

And my reading of the Michigan state Constitution is that you are, in fact, required to adopt some of these measures.

And so here are some that I would recommend.

If you wanted a more expansive set of options, I'm -- I think that you would probably have to go outside of the redistricting software package that you were looking at and probably look at hiring an expert in partisan gerrymandering who could run all of your plans for you.

But these particular measures could be included within the redistricting package if that is of interest to you.

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So that's all I wanted to say because I was just a little bit worried that the clock is ticking hear and you -- the Constitution is obliging you to come up with measures and figure out how you're going to do this so here's my idea.

>> VICE CHAIR SZETELA: Thank you very much Dr. Handley.

I believe Commissioner Rothhorn has a question for Dr. Handley, this is Commissioner Rothhorn and I thank you.

I really appreciate the person and I do need to give that appreciation and I want to ask a question and I mostly also want to appreciate that you have asked for these -- I'm a little concerned that the software city gate and right that the team doesn't have this sort of partisan fairness built into the software, so I appreciate you advocated for that and I really want to see it.

So thank you for that advocacy and please, I would like to see that tomorrow if possible. So the last piece is coming to what you said, how do we as a Commission make the decision?

You know, we have recommendations from you and I think we have with our General Counsel and I think we have three excellent lawyers who all have some understanding of how we might come to this understanding as a Commission and so I'm just wondering if -- yeah, General Counsel, and Mr. Adelson and you, the three of you might recommend something for us.

And I think there was a recommendation from our subcommittee to have some sort of brief or understanding, right? So when you do or if you do, if you are able to create that, let's say recommendation for us, that you also help us make sure we're making an informed decision with some sort of memo that does summarize it and helps us because that will be the fourth or fifth time for me and I guess I just really appreciate that again.

I don't know if that's a motion yet but I'm looking for some help.

Thanks.

>> VICE CHAIR SZETELA: General Counsel Pastula, do you want to follow up?

>> MS JULIANNE PASTULA: Thank you so much Madame Chair.

Julianne Pastula, General Counsel, because I believe I have not been stating my name for the benefit of translators as well.

The response is yes, I think the documentation would be critical in this regard and I would ask that we circle back on the issue because I know I would like to speak to the Executive Director on a few issues regarding partisan fairness.

>> COMMISSIONER ROTHORN: Thank you.

>> VICE CHAIR SZETELA: Any additional comments or questions for Dr. Handley? Commissioner Orton?

>> COMMISSIONER ORTON: I disagree with what Commissioner Rothhorn said. I appreciate the fore sight you have shared with us, first of all.

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And I think we should use as many measures that we can with the software that we have to ensure partisan fairness.

>> VICE CHAIR SZETELA: Thank you Commissioner Orton.

Commissioner Wagner?

>> COMMISSIONER WAGNER: My question is, is this something that has to be built into the software? I think I heard you say that or is it already built in the three measures that you have given us to consider?

>> KIM BRACE: If I can answer that first.

On that side, this is Kim Brace.

Lisa and I did talk with Fred last night about these.

He said that he was actually working on these kind of things and was very interested in getting Lisa's ideas.

She sent him some of the information that she's collected and I think he's looking at putting that sort of thing into the software.

He recognizes there's a lot of difference, different ones out there and so he's looking at adding that to the software in time to be of use on that side.

The second thing I would mention is we have played with the efficiency gap and the one thing that you do need to be cognizant of on the efficiency gap is that it's mainly built for the purposes of looking at when you have relatively competitive contests.

If you have a whole bunch of contests that don't have any contests -- you have primaries where you have nobody opposing or even, for example, in the state of Rhode Island where I do a lot of work, they don't have in the general election very many contests where republicans challenge the seat and that skews the efficiency gap and you need to just take that into account when you examine the results here.

Lisa?

>> LISA HANDLEY: Actually, what you'll be doing is using recompiled election results.

You will not be using actually Rex results because state legislative elections have not occurred.

If you were to go back and compare in time and use actual state legislative that would be the case but you're going to use recompiled election results.

We're not going to be using Congressional elections.

We're going to be using statewide elections because that's how you look at draft plans.

That's not something that we may have to worry about now.

It might be something you might have to worry about four years from now.

If you were sued on gerrymandering, then you would have to think about what you would do about noncompetitive but here you look at the elections other than the Congressional elections.

>> KIM BRACE: That is a good solution for that particular problem.

I have no problem with what Lisa is recommending in that regard.

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Just be cognizant that when you're looking at the results, you are looking at the different steps, then, in that steppingstone pyramid that I showed you yesterday, again, and we've talked about all this time.

When you're looking at those statewide contests you tend to have potentially a different make-up of the electorate than in the local contests.

It's not good or bad but just recognizing that that's a fact there in Politics.

>> VICE CHAIR SZETELA: Thank you Mr. Brace and Dr. Handley.

Any additional comments or questions from the Commissioners? All right.

I don't see any more comments for you.

Dr. Handley, thank you very much for that presentation.

It was very helpful and I feel like partisan fairness is something I've personally been struggling with on how we're going to manage and accommodate with this redistricting.

Thank you very much.

>> LISA HANDLEY: You're welcome.

>> VICE CHAIR SZETELA: At this time we are a little ahead of schedule, again.

We seem to have having a good day.

So without objection, if we do not have any objections, I think at this time we can take a recess and enjoy our lunch.

Any objections? All right.

At this time we will take a recess and reconvene back at say 1:10 so everybody, enjoy your lunch break.

Thank you very much.

[ Break ]

>> For purposes of the public watching and the public record I will turn to the Department of State Staff to take note of the Commissioners present.

>> SARAH REINHARDT: Hello Commissioners.

Please say present when I call your name.

If you are attending remotely, please announce during Roll Call and announce from where you're attending unless your absence is due to military duty.

Doug Clark.

>> COMMISSIONER CLARK: Present.

>> Juanita Curry.

>> COMMISSIONER CURRY: Present

Anthony Eid

>> Speaker: Present.

>> Brittini Kellom.

>> COMMISSIONER KELLOM: Present.

>> Rhonda Lange.

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>> COMMISSIONER LANGE: Present.  
>> Steve Lett.  
>> COMMISSIONER LETT: Present.  
>> Cynthia Orton.  
>> COMMISSIONER ORTON: Present.  
>> Mc Rothhorn.  
>> COMMISSIONER ROTHORN: Present.  
>> Rebecca Szetela.  
>> COMMISSIONER SZETELA: Present.  
>> Janice Vallette  
>> COMMISSIONER VALLETTE: Present.  
>> Richard Weiss.  
>> COMMISSIONER WEISS: Present.  
>> Dustin Witjes.  
>> COMMISSIONER WITJES: Present.  
>> Nine Commissioners are present and we have a quorum.  
>> Without objection we will have an open forum to allow the opportunity for Commissioners to ask questions of Mr. Brace, Mr. Adelson and Dr. Handley.  
Hearing no objections, I'll open the floor for Commissioners to ask questions at this time.

>> KIM BRACE: Commissioners, this is Kim Brace.  
If I could, I would like to show you a couple of things, some of the things that Bruce was talking about this morning, to add a little bit more context to the issue.  
And if I could, I would like to start off with that.

>> COMMISSIONER EID: For purposes of public record I would like to state that we reconvened at 1:25 p.m.  
And yes, you can go ahead.

>> KIM BRACE: Okay.  
Thank you there.  
I'm going to share my screen, but I'm not going to show this one.  
I'm going to show over here.  
Can everybody see this screen now?

>> Yes, we can see it.  
>> KIM BRACE: Thank you there.  
I just went and Googled North Carolina Redistricting Commission or I'm sorry redistricting districts and looking at the shapes of the North Carolina Districts and found this site that ends up showing a real interesting depiction of this, what has been called in many redistricting circles the I85 District.  
This is a history of how that District was created, starting back in 1993 and what it reflected was an attempt to connect minority communities in Greens borrow and



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Raleigh up here in the upper right-hand side all the way down to the minority community in Charlottesville.

And it made use of in some instances the median strip of I85.

The common thought had been down in North Carolina that you could use median strips.

That's when conscientious us bureau was reflecting those as pieces of geography and the legislature utilized those to connect the different minority groups together.

This was following the Thornburg versus Gingles case where some of the interpretations of that is that any way that you can create a minority seat, you have to. That was the interpretation of that case early on and so this was a creation to reflect that and to create a minority seat.

That has changed over time but it's still showing the overall shape of generally that I85 corridor as we go through time.

It has changed now in when the legislature changed hands from being Republican to Democratic controlled legislature so that it's a little bit different now under the Democratic plan and it does not reflect as much the core doors in that case and it's been adopted now.

Republican -- these sets of maps are interesting and I wanted to bring up one other map that is famously referred to in saying gerrymandering is actually a district that I drew.

This is the C district in Chicago.

And it is a Hispanic seat that has since been blessed by the courts.

There's a story behind this seat and what it is that if you look at the Hispanic community in Chicago, the north side is basically Puerto Rican community. The South side, however, is mostly Mexican community.

They're both Hispanics.

But in fact if you were to create two separate Districts to try to create two Hispanic seats, you couldn't.

It wouldn't support a Hispanic candidate.

If you were to create the northern Puerto Rican one and go out that way in Chicago, it would probably not elect a Hispanic.

Same way in the southern one.

Even more so in the southern one because of the citizenship you shall.

North side is Puerto Rican and citizens already and south side, you have a large noncitizen community. The reason it stretches all the way around here is this in the middle is African American community and the only way to properly reflect both communities by creating an African American seat and a Hispanic seat is to create this C type of a District.

We ended up having to go as a C type.



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The first time I drew it is actually taking these two groups and coming down this way through the loop.

But what that did is it cut off the African American community and in 1990 and 2000 the population loss of the African American community meant to that we had to take that Congressional District around and come down this way to pick up needed population.

To reflect an African American seat.

And so that caused us to go in this direction with the C.

It is thin.

It's actually a median strip along here.

Census block wide. But that's the only way that we could connect these two.

This is all within the City of Chicago.

I'm sorry.

Cooke County.

It goes out to the Cooke County border here but it is all within the Cooke County in order to create that District.

Yes, I agree, it's a strange looking District.

But many times strange looking districts have stories behind them.

And that's part of what may be a factor that you need to take a look at in analyzing these.

Particularly when it relate to see compactness scores.

Yes, this does not look good on a compactness score.

But in this instance, there's a legitimate reason that has now been sanctioned by the courts and that shaped district is basically as it has continued for the last 23:00 decades.

So yes, compactness has a myriad of bad looking districts.

Everybody likes to point them out.

Everything loves to point out my C district but this one more than anything else reflects exactly what the courts have said we need to have and we need to draw.

So I wanted to bring you up to speed in terms of that.

I know Bruce had talked about one configuration of the 185.

I just wanted to let you know of the history of why that was on that side.

So just wanted to update a little bit of what Bruce said and you guys, Bruce or Lisa, you might have additional comment outside that side.

And we're all ready to take questions from you too.

>> COMMISSIONER EID: Are there any questions for our vendors? Commissioner Weiss?

>> COMMISSIONER WEISS: Yeah, this question has been bothering me for quite a while.

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In all the talks that we've had from you and Dr. Moon, stating that we have to draw our districts to accommodate, why isn't that considered gerrymandering, then? I looked it up a definition and it says to help a particular party or group.

Okay if we do use Warren and Sterling heights and draw a District to accommodate the individuals, haven't that gerrymandering, the same as what we're supposed to not be doing? I'm having a hard time understanding that one.

>> BRUCE ADELSON: There are many layers to some of these terms and factors so that gerrymandering as a term has been used more frequently by the courts as referred to political gerrymandering of course we know about Michigan and racial gerrymandering which is unconstitutional.

But gerrymandering as an entity dated to the 18th century that beyond redistricting Districts, the courts have uniformly recognized that Politics is part of redistricting.

That's typically when the legislature is drawing the lines and you don't have entities like yourself, so I like to add to that term racial gerrymandering, partisan gerrymandering.

Now, parking lot San gerrymandering that we talked about this morning is federally not a claim you can make under the Constitution but stay law is different.

I try to add to the term to include political gerrymandering or partisan gerrymandering to give it a flavor.

But gerrymandering has been part of the United States shortly after the republic came into existence with the articles of confederation and the institution.

There are so many ways to look at the terms and decisions and I try to simplify things in the sense of going to the basics and that's why I use the two words to give it further slaver.

>> Thank you.

>> KIM BRACE: I would say you are correct and I agree with Bruce in terms of this. But I would also say that really gerrymandering is many times in the eyes of the beholder and it's something that one person's gerrymandering is another person's contribution to modern art, is what it's called.

But there are many instances where if you don't like it, then you can call it a gerrymander.

Is it a gerrymander? That's open to interpretation.

But it is something that you kind of recognize as part of the linguist that people deal with in this overall subject area of redistricting.

Lisa, I know on your side certainly looking at some of the test and calculations and vote is important on your cytoside.

So if you want to contribute.

>> LISA HANDLEY: I would say that there might be a difference and I think Bruce can elaborate on this better than I.

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But there's a difference between a partisan gerrymander and the intent involved in a partisan gerrymander and using these measures of political fairness, I don't think that they're assuming that the bias is going to be intentional.

I think the whole point of having a Commission like yourselves is that you're going to take that politicization of the process -- you're going to take that way but, again, the partisan fairness could be unintentional but still there.

So these measures have been used in the Court to calculate partisan gerrymandering and I try to differentiate between using the statistical significance and just using the measure to determine if the two parties are treated differently.

So I don't think that these measures of partisan fairness necessarily mean that there's a partisan gerrymander.

I think it means that you have produced a plan that's unfair to one party and chances are you're going to want to change it.

That's it.

>> Let me jump in briefly to tag on what Lisa was saying.

>> BRUCE ADELSON: There are districts that can be created that hypothetically caused a disadvantage.

This is not 100% guaranteed and this analysis means this and it's 100% certain.

What I look at, certainly as a learn, is that intent can be shown in a lot of different ways and there's a lot of certainly jurisdictions redistricting that want to disadvantage one party or the other but they don't have the state law that you do.

After the Supreme Court decided that the U.S. Constitution does not support partisan gerrymander claims as being unconstitutional, what did some people decide to do?

Let's make partisan gerrymanders if that's something we decide to do in another state where we're not barred by state law from doing that.

The US Supreme Court said federally, you can do that if that's what you want to do.

And they do intentionally design district to give one side or another an advantage.

You're unique and you have a State Constitution that says no.

Most states don't have that.

There are many states out there that make no bones about it.

Yeah, we want to advantage one party over the other.

They do it in different ways.

>> COMMISSIONER EID: Commissioner Rothhorn?

>> COMMISSIONER ROTHORN: This is Commissioner Rothhorn.

When you said intent and I was thinking and I really appreciate this question that Commissioner Weiss has put up.

Because we're -- the process seems very different.

The idea of daylight, the idea of transparency and the idea of documenting it feels like intent and so it feels different to me and I guess I'm -- I'm also recognizing that we've been accused of gerrymandering and we'll have to defend ourselves and like you says

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it's in the eye of the beholder and we are proving our intent as having it as a transparent process.

And I don't know if this is a question but it just feels like, yeah.

I just appreciate the question and I'm just reflecting.

Thank you.

>> BRUCE ADELSON: I think that's a great point.

My work as a lawyer, when I look at intent, it's invidious intent, nefarious intent.

Remember the Americans with Disabilities Act? Bad act or intent, you are intending in your process and showing transparency and Compliance with state law and federal law: That's Compliance in a positive way.

That's positive intent.

But I'm thinking about District things I've been involved with or read about or investigated at justice where people make no bones about their insidious intent, that we want to disadvantage this group, this entity, this party and that's why this endeavor what you're doing is different.

Because you have clear, a clear road map and you have expressed repeatedly your desire to document, reiterating the major changes.

So that's positive intent, I guess, that I would describe.

That's somewhat different than how I look at it in my narrow, lawyer, myopic way, intent in all the things I'm involved with typically in litigation and otherwise is insidious and intended to discriminate and deprive someone or an enter of rights and it's the rare moment what we did in Arizona ten years ago is showing our intent, just as you are, to be transparent, to document that this is our goal as to why we have the Voting Rights Act.

So they did what you're doing so I guess my own myopia that I'll apologize for as a lawyer is looking at the negative side because that's what I encounter in most of my work and practice is that insidiousness that's not operative here.

>> COMMISSIONER EID: Commissioner Wagner?

>> COMMISSIONER WAGNER: Thank you.

I don't know who to address this to.

It either goes to Mr. Brace or Mr. Adelson, but everything has been saying to use the American community survey as a start and I notice it's not due out until the 23rd of September which only leaves conceive burglary a week between that and final rate for the census and my question is, a, is it historically, do we in the history, do we only get it a week ahead of the census data and how much can we conceivably do using the ACS data before we get the census data?

>> KIM BRACE: Okay.

Let me take a shot at this since I'm the data guy in that regard.

What you have is the ACS data set is really a data set that is released every year.

So it's not just holding back until the census is taking place.

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But instead it's a data set that comes out each year.

Now in order to get it at the lowest geographic level so that we can use it for redistricting, you have to take these five year groupings of the results of the survey in order to get that.

So the most recent one from the Census Bureau is the one from 2015 to 2019.

We have that data.

And we have incorporated that into the data set so that you will have that.

We don't have to wait for the census data in that regard.

But we've also ended up purchasing census data or demographic data from ESRI.

That gives us another clue because there is and as we've looked at ACS data, there's in fudginess there depending on where it is.

So we like, in having both data sets to play with and then using those so that when the PL file comes out -- which is going to start on August 16ths is we now have three pieces of data to be able to help in the drawing process.

But our intent is with these two pieces, the ACS and the ESRI, we can start now.

And that's what we're doing in terms of putting together the database so that it is something that you'll be able to use even before we get the PL file.

Now, we will see how good is the PL file.

Nobody knows that yet but that's some additional analysis that we would be doing and we're doing it all across the country to just get a feel for what did you say the PL file show.

Because, if you remember in some of my discussions with you, the PL file is going to have a disclosure in this and that's going to be an added complication to this thing.

So we're all going to end up experimenting with new things and new concepts.

But we'll be able to at least start seeing and seeing how we want to ultimately you will want to create districts with Lisa's guidance in terms of her analysis and looking at the election data and racial block voting and all of that.

All of those components come together so that we can give you as much information as much data, and guidance and all of that kind of stuff, with Bruce back there saying no, don't go this way or yes, go this way or whatever.

That's fine.

And Lisa doing the same thing.

But that's what we're trying to do is give all of you the best intelligence and best information that is possible to help you, then make your decisions on how you want it drawn, the districts.

I see Steve has a question.

>> COMMISSIONER EID: Commissioner Lett.

>> COMMISSIONER LETT: Commissioner Lett speaking.

Is the PL file issued on mass or series only --

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>> KIM BRACE: The PL file as your lawyer has mentioned to you -- the PL file is coming out in two -- Rhonda used the word flavors -- but in two layouts.

The PL file that's coming out on August 16th is in the legacy format.

That is the same format that the Census Bureau released data in 2010 as well as actually 2000.

So it is something that's known.

But what it's an access database that people have to work with and manipulate in order to pull the data out of it, out of that access database.

So we have programs to do that.

Fred has programs to do that to pull it out and put it into what we call shape files that are the core of what the redistricting software works off of.

So we're looking as we've told Sue and everything else is that we're looking at the August 16th as a first cut.

We will be pulling the data out and merging it together with everything else so that by -- we're hoping by the end of that week we've got some data that can go into in essence a new version of the database.

You're going to have a version on July 18th that has the ACS and the ESRI data so that you can start playing with and understanding the software but after August 16th, we'll have version two or version three of the database that will have the PL file.

Now, the Census Bureau will also be releasing by September 30th another cut of the PL file.

In essence, the heart of that September 30th is a CD that actually has the exact same access database that we've already worked with from August 16th.

It is also on the September 30th.

But that September 30th release has a lot of other summary tables that they have put together over that month time period so that it's a little bit easier to utilize.

What we will be doing is kind of mimicking what some of those things that come out on September 30th -- with what we are doing to pull out the data on September 16th.

So we will be feeding to you on an ongoing basis during that first week after August 16th, some first cut data tables.

I want to get you the data tables that says this is the populations of the existing Districts. And the racial composition of the existing Districts.

These are the Districts that were created in 2010 -- 2011.

Yes, you're going to make change to see them but part of the starting point of redistricting is to at least see where things are.

And as Lisa has said to you, you want to see in terms of, all right.

You've got these District from before that were minority seats and so you need to go cognizant of that and not to basically cut them all apart or whatever the case may be.

But you've got a benchmark that is looked upon.



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Now I know everybody doesn't think that benchmark in Michigan is something that we should be looking at.

Okay.

That's fine.

Certainly in terms of the strange looking District, but it is a benchmark.

It is a set of data that says this is what the new census data says on these old districts. And so, that's what we'll be creating in that first week of this is what the existing districts look like as we've processed and processing the data.

I'm also going to feed you additional tables like what I've already given to you of County by County information so that you've got a master set of; okay, this is what Michigan looks like in 2020.

It would have the racial data along with it.

So you can start seeing where there's concentrations.

We'll start looking at creating maps of that.

And then we'll go down to the Township level and do the same thing.

We probably won't give you a big thick stack of Township level paper reports but we'll use the Township data to create maps of that demographic data.

That's all the process that we're looking at, trying to make sure that we're feeding you all the information that we can possibly think of and being able to answer questions and certainly Lisa may have ideas that we need to -- okay, we'll create another map this way or that way.

Bruce may have the same concepts or ideas that he wanted to have depicted.

So we'll be reacting to their desires as well as your own.

If you've got ideas -- hey, we ought to look at X or Y or whatever -- feed that to us so that we can start looking at that and then as we get that data set in and we get it in so that we can start looking at what it is and showing on the screen how it looks on the maps and all of that sort of thing, that's what the process will go through.

So.

>> This is a follow-up.

Is your program capable of going through with the new census figures -- going through the state and assigning districts itself and then generating the map and telling us what the make-up of that District is, if you understand what I'm saying?

>> KIM BRACE: I do.

That's called automated redistricting.

Turning it over to a computer and drawing.

That's certainly a possibility.

We actually in 1980, the first redistricting program I developed was an automated redistricting program and we used it on Michigan at that point in time.

What we ended up finding is it was a great way of creating snakes all over the place. Now things have improved in the automated process.



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But certainly that is one thing that is possible and I think Suann is having somebody come and he has some of that capability.

So seeing what he can end up generating for you -- that could be another way of looking at it.

Um, so if he can create a bunch of different scenarios, that's one possibility.

We would -- I'm assuming that he would be able to create shape files of those will not possibilities.

And then we could use those as an overlay in what you're drawing or we can bring in those shapes and embed plan 64, what he generated, so that you could see that also in the software.

Other questions?

>> COMMISSIONER EID: Commissioner Eid here.

Earlier today we heard about a few different measures of partisan fairness.

We heard about efficiency gap, mean median difference and lop sided margin tests.

How can we get these three data measures into the actual mapping software we're going to be using so we can reference it while drawing? I think getting at least some of those measures is going to be important to this procedure.

>> KIM BRACE: I agree with you and that is why Lisa and I sat for a while with Fred last night and he's certainly wants to create those.

So I think they will be there.

I can't tell you they're going to be there tomorrow.

You know, but I think by the time we start drawing, um, we should have some first cuts of that.

So easy working with some of Lisa's ideas.

She's fed those up to him so that he can create and generate some reports.

There are lots of different reports already in the system.

But these are certainly some additional reports that he sees as needing to be created and utilized.

So that is the intent so we'll end up seeing those.

Whether or not he's able to create the angle test that Lisa had shown and that sort of thing, well, we'll have to wait and see, you know.

But he's taking all of those ideas back to see what's possible.

Lisa?

>> LISA HANDLEY: It is certainly the case since all of his reporting functions are related to excel that the first three measures that I described would be possible to put into the redistricting software and it won't be a complicated process and it can probably happen pretty quickly.

He also said he can probably do the declaration measure as well.

So I'm confident that this will satisfy the Constitutional -- the state constitutional requirement about partisan measures.

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But you might want to talk to Bruce and your other attorney about whether this is sufficient or whether you have to explore other measures.

I chose those measures because I was very confident that they could be included in the redistricting software.

But, again, there are other measures out there.

>> KIM BRACE: Other questions?

>> COMMISSIONER EID: Commissioner Orton?

>> COMMISSIONER ORTON: Mr. Adelson I would like to hear your thoughts on that, what we were just talking about.

>> BRUCE ADELSON: I think as Lisa mentioned, there are a lot of partisan measures.

Some of them may conflict with each other.

Some of them may give differing answers and I think one of the things we have not explored -- certainly General Counsel and I have not discussed specifically what will be legally dispositive in Michigan in determining which tools if we need additional tools other than the three that Lisa is mentioning, that's something where we haven't gotten there yet.

I'm agreeing of having this installed in the software and I agree with Lisa they're easy to manipulate and understand and at the very least, they give you a starting point to understand this measure and it's brand-new and it's never been used -- or at least not used publicly.

I'm a big advocate for that and as the process moves forward, we'll have the conversations and we'll come together on a legal opinion that will help inform exactly what you're asking of the.

>> COMMISSIONER ORTON: Thank you.

>> COMMISSIONER EID: Commissioner Rothhorn?

>> COMMISSIONER ROTHORN: Commissioner Rothhorn here.

I think this is a question about the benefits that Michigan -- so the data that we were exposed to really early on is that Michigan has a nonpartisan Michigan enhanced redistricting access data program.

I'm curious, what are the advantages? I'm curious -- if there are -- because Michigan has this, are there things we can do now in addition to the ACS? Are there things that may be possible in this state that aren't possible in the other state? Because of this warehouse of information that's nonpartisan that's been collected for so long?

>> KIM BRACE: Certainly we're interested in seeing what else there might be in terms of that data set.

That is something that can be explored further.

And we'd look forward to talk with more people up there in terms of that.

Certainly that might provide some interesting statistics to work with.

They have to be -- remember geographically related.

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So knowing where they are is important.

That's what's key in terms of redistricting.

Redistricting, you know, location and numbers, as I said yesterday.

Those are the two keep things.

Keep in mind of we need to have both of those in order to do redistricting.

>> COMMISSIONER EID: Commissioner Clark?

>> COMMISSIONER CLARK: This is Commissioner Clark.

This is directed to Kim.

You indicated that you were going to integrate those three items into the software.

Is that the desktop and the web version?

>> KIM BRACE: Which three items are you talking about?

>> COMMISSIONER CLARK: We're talking about, I believe it was the three that Lisa generated.

>> KIM BRACE: We'll explore how much can be in the web based one.

Remember, as Fred mentioned yesterday, the web based one is really kind of a dumbed down version to be able to be utilized over the speed of the internet on that side.

It does have a couple of reports in it.

It does not have as many as what the desktop version has.

So we'll have to experiment and see what could be potentially run.

Remember what Fred had said yesterday that that web based one is really designed so that the general public can utilize.

These reports that Lisa has outlined and talked about are more -- a little bit more sophisticated and so whether or not they are conducive to be up on the web as an ongoing thing is something that we'll have to explore and think about but I know that they will be certainly embedded within the desktop version and certainly when it's in the desktop version that's not to say that the general public won't have access to it.

We'll be able to generate these and put them up on the screen, put them up on your website.

Put them up, you know, wherever is necessary to make sure that, you know, the public has access to all of this information.

We may not be able to push a button to generate it right then and there.

But certainly we'll take in input and comments to make sure that some of this stuff gets out there on the web too.

>> COMMISSIONER CLARK: I didn't want to infer that I wanted it on the web.

I just was asking for knowledge purposes.

>> KIM BRACE: That's fine.

That's a good question.

>> COMMISSIONER CLARK: I was assuming it was going to the desktop version for sure.

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>> KIM BRACE: That's what we were mainly focusing on.

>> COMMISSIONER CLARK: Okay.

I appreciate that.

>> KIM BRACE: I know Erin has a question.

Commissioner Wagner?

>> COMMISSIONER WAGNER: Thanks Kim.

I didn't think I would have to go that route.

I am curious, Dr. Handley, do you want you'll have enough time given the hour that you had this morning to convey everything that you needed to convey to us or do you need more time?

>> LISA HANDLEY: Please call me Lisa.

You don't have to call me Dr. Handley.

I am not an expert on these measures and if you wanted to explore these at great lengths, you might want to hire an expert to do this.

I feel like I spent the time that I needed to, but I'm happy to answer any questions.

I think if you want to explore additional measures that I can't sit and calculate in an excel spread sheet or run an R program, it's the statistical program that I work in.

You would also want to hire somebody else to help you.

This is not something I could do a day's workshop on and I don't think that you want a day's workshop.

But if you did, you would want to go elsewhere.

>> COMMISSIONER EID: Commissioner Rothhorn?

>> COMMISSIONER ROTHORN: Thanks this is Commissioner Rothhorn.

This is a question not just for the three of you on the screen but also for our Staff.

It has to do with the idea that as we're drawing maps that we have this public input and I think Mr. Brace, you've said very eloquently I think, right, that we have to be legally minded, right? And the Commission is going to propose things and we have this, right, because we're the citizens -- independent citizens Redistricting Commission and we have citizens giving us real research proposals.

The question I think that's in this is it feels like a legal stage to me.

Like, it feels like it's documentation, right? And it's a way to sort of begin, if you will.

And because it, you know, we haven't talked about it directly yet -- and I do believe this may have to do with the integration of the public utility and the Public Comment tool with the software.

So I understand that that may not be ready and that's why this may be a question for the Staff.

But I guess the question really is, maybe is this a legal strategy? Should it be considered? Should we look at the raw maps that the citizens have given us? That the people have given us and try to evaluate them and run analyses on them? I guess that's my question.

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Does that feel reasonable? As a legal strategy?

>> BRUCE ADELSON: If I may -- excuse me.

When you mention a legal strategy, do you mean as part of your how the Commission is approaching redistricting, that you analyze and evaluate all of the plans that are submitted by the public.

>> COMMISSIONER ROTHORN: You're right.

I'm not even sure what I mean when I say that yet.

When I say that it's this idea that somehow we've substantiated it.

It's not that Commissioner Rothorn said this.

This is not my map.

It's from the people who submitted it online.

These folks.

Yeah, that kind of --

>> BRUCE ADELSON: Okay.

Let me answer that by how we approached this in Arizona.

They had the same thing.

We had all kinds of maps online.

The online mapping submission technology wasn't as good then as it is now but we received a lot of maps on paper, on discs, online.

And the Commission, the Commissioners reviewed virtually every map or someone else reviewed, as far as I can recall, every map.

Was every map given the same level of in depth analysis? No.

But there were some maps that presented ideas to the Commission that they thought they want to explore further.

So if map A has a certain approach to a Community of Interest and the interested the Commissions, then ten years they would say go to the mapping consultant and let's analyze this a little bit.

We would like you to look at it this way or that way.

Was that done with every publicly submitted map? No.

That was up to the Commission too, in looking at which maps brought up ideas of interest to them and then they would proceed accordingly.

I suspect that you're getting more submissions now than what we received in Arizona ten years ago just because of the technology.

Now, I don't know that.

I'm just surmising but I think having a public process as a strategy, as a sign of transparency, I certainly agree with that.

And looking at what is being submitted and I know you do in the public economist that the read and the maps you look at -- that's already happening.

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Where you want to go next, that's up to you and up to whatever state, legal constraints there may be about how to -- viewing and analyzing what is submitted publicly which is not my expertise and I would refer to Julianne about that.

But I think that in the main, it's a great example of how you're approaching the process generally.

Because you're obviously not ignoring what's submitted.

You're not trashing what's submitting.

You're actually looking at what people sent.

I think that's great.

It's a very important piece of what you've talked about already.

The recordkeeping and creating a record to review and show exactly what you're doing.

>> MS JULIANNE PASTULA: Mr. Share --

>> KIM BRACE: From a technical standpoint what you need to be cognizant of is how can we do that part of what we're exploring with Moon is what kind of files are we going to get from her and what will they look like? Are we going to get shape files of the plans out of her system? Are we get to get shape files of the Communities of Interest? Keep in mind Moon's system is set up on 2010 geography.

Not 2020 geography.

There may be some degree that we'll have to massage it to get it into 2020 geography.

Some of those circumstances may cause it not to be a click here's the file and it's showing up on your computer.

Certainly our intent would be to try to get as much as possible so that those are one more layers of what you can see in your system.

They may be additional plans that come in and would appear in your system so that you can look at them, analyze them, zoom into them, do all the kinds of things that you can do with the software to get a feel for what those show.

Certainly that's what I would do.

If I was the Commissioner, I would -- that's what I would feel obligated to do and that's what we're trying to provide for you.

>> COMMISSIONER EID: General Counsel Pastula.

>> MS JULIANNE PASTULA: Thank you Mr. Chair.

I was going to highlight that one of the things woven throughout the Constitutional amendment is the human element of the Commission.

13 randomly selected residents of the State of Michigan adhering to the process of including public participation throughout and that can't be supplanted by technology or computers because each of you brings your human experience to the table as do the public that is engaging in this process.

So I think the art form in it is all of those things coming together as it's going to, as this process unfolds.

Of course, adhering to the legal requirements and all of that too.



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I just wanted to highlight briefly that humanness and it was deliberate and a deliberate part of the Constitution that we're operating under.

Thank you, Mr. Chair.

>> COMMISSIONER EID: Thank you General Counsel.

Any more questions? Commissioner Clark?

>> COMMISSIONER CLARK: This is not a question but it's more of how I -- my vision of how this whole thing works.

I look at it as our deliverable is to be quality maps.

And so I define quality in my mind as it conforms to requirements.

Our requirements come from the public.

They come from federal law, such as the Voting Rights Act.

And they come from state law.

And then we have a series of tools that we use.

Bruce has his tools.

Kim has his tools.

Lisa has her tool that's we used to do that and as mentioned a number of times by all three of you, there's so many different ways of doing this but we have to use those tools, given the input we get from the public and the state and Federal Governments and come up with it, those quality products.

So that's kind of my vision on what we're looking for as we move forward.

So I just wanted to share that.

Thank you.

>> KIM BRACE: I would agree with Commissioner Clark on that side.

I would say what you need to keep in mind is you want to experiment to your heart's content.

That is what redistricting is all about.

You may create all sorts of different plans and different ideas because what you'll find in redistricting, there are an enormous number of way to skin the cat.

It is not just one map.

It's a variety of different kinds of maps and doing different things so that you can see how they appear, how they look from your standpoint.

How they react to their different tests and reports.

All of those sorts of things.

But you can't really get to that unless you really experiment.

And draw lots of different things.

As I said, I think early on you may want to do ones where you start in one corner of the state and move that way and start in another corner of the state and move this way.

You'll find that by doing that, you'll start seeing that there's a lot of variation that suddenly happens in the middle or wherever you've started or that sort of thing.

That kind of information is good for you to be cognizant of and to learn from.



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And hey, if I draw these kind of Districts in the Lansing area, that forces me not to be able to do those kind of Districts over here or whatever the case may be.

But you only gain that experience by trying it out.

So that's what I would encourage and what we're going to try to help you do.

>> COMMISSIONER EID: Wonderful.

Well, if there are no more questions, I would like to thank Mr. Brace, Mr. Adelson and Dr. Handley for doing this question and answer session with us.

I thought it was very informative and I feel a heck of a lot better about the team dynamic we have going on.

So this was great.

At this time we will move forward to -- do we have one more.

Commissioner Orton.

>> COMMISSIONER ORTON: This is not a question to them but I would like to put forth a motion to amend our calendar.

>> Second.

>> COMMISSIONER EID: What do you want to amend.

>> COMMISSIONER ORTON: Did you hear the second? So we just changed several of our week inside July and August from Thursday-Friday to Monday-Tuesday. I think we have three weeks where there is an issue.

The first one is the week of July 19th.

I wanted to get Mr. Brace's input on this.

We changed those to the 19th and 20th but the 23rd is the first day that he is able to do mapping with us, I thought I understood.

>> KIM BRACE: Yes, that's correct.

>> COMMISSIONER ORTON: And then on the 22nd was the day that Sue had tentatively had someone coming so I believe that week we should perhaps move back to the Thursday Friday and then moving forward, um, on Tuesday, August 3rd, is an election and so we would not be able to have Secretary of State Staff support on that Tuesday.

So that Monday, Tuesday is not possible for us.

So I believe that week we need to move back to Thursday and Friday.

And the week of August 16th I believe that Kim Brace was just explaining at the end of that week is when we would have the first census data available to work with so I thought maybe we should discuss whether we want to put that off.

It wouldn't be available on the 16th and 17th.

It would be available later in the week.

So do we want to not use that opportunity later in the week? I just thought we should discuss that.

>> KIM BRACE: If I could add to that.

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Certainly, in terms of the first and the 20th of August, I would think at that point in time while we don't have the data in the database for the purposes of drawing, per se, we would have some of these first cut tables and reports and that sort of thing.

So I think that would be a great use of that time.

You're not going to be drawing but we can start exploring with you, this is some of the stuff we're seeing in this new data that the Census Bureau just reported to us.

So that's where I would see that circumstance on the 19th and 20th being of most use for you.

>> MS JULIANNE PASTULA: Mr. Chair?

>> COMMISSIONER EID: Yes, General Counsel.

>> MS JULIANNE PASTULA: I just want to make sure I had Commissioner Orton's motion correctly.

The motion that has been moved is to amend the calendar for the weeks of July 19th, August 2nd, and the week of August 16th, moving the dates from Monday, Tuesday, to reflect Thursday and Friday meeting dates.

Is that correct, Commissioner Orton?

>> COMMISSIONER ORTON: Yes.

>> MS JULIANNE PASTULA: Again, Mr. Chair it has been moved and not supported yet.

>> COMMISSIONER WITJES: I seconded that.

I'm sorry.

I didn't say it very loud Aye [in unison] okay we will now open the floor for discussion.

Is there any discussion on the motion? Commissioner Clark?

>> COMMISSIONER CLARK: This is Commissioner Clark.

I think these are excellent recommendations based on facts that we didn't have when we made the changes.

I looked at what you did, and of the five weeks, we're moving three of them back.

So that's three fifths of it so I'm questioning why we moved them in the first place.

Maybe we should stay consistent and move them back to Thursdays and Fridays as they were originally proposed.

So I would like to put that outside table, not as a motion or amend but for discussion.

>> COMMISSIONER EID: Commissioner Witjes.

>> COMMISSIONER WITJES: I would like to add if we do that, we're going to have a week where we work Thursday-Friday and have Saturday-Sunday off and then have to cork Monday-Tuesday again.

I would like to amend the motion and just return everything to Thursday and Friday.

Worth I'll second.

>> COMMISSIONER CLARK: I'll second.

>> COMMISSIONER EID: We have a motion from Commissioner Witjes to amend the previous motion and move the dates back to Thursday Friday as presented to us and seconded by Commissioner Weiss.

Is there any discussion on the main motion?

>> MS JULIANNE PASTULA: Mr. Chair, the motion to amend actually sub-sues the main motion.

I don't know Commission Orton -- I don't know if the will is to withdraw the original -- the reason for the change initially in the earlier part of today's meeting was to accommodate some Commissioners schedules that had conflicts.

The motion to amend as I understand it is to return the full schedule back to as it was originally proposed for Tuesday -- Mondays and Tuesdays -- excuse me, to Thursdays and Fridays subsume the original motion and I would like to highlight for the Commission that as we're crafting the action that wants to be taken to again note the earlier change of the start time inside September of Tuesdays of 10:00 a.m. was a part of those original changes and I wanted to draw that to the Commission's attention, if that was part of the intent to undue that revision as well or solely move the days from Monday and Tuesday back to Thursday and Friday.

>> MS JULIANNE PASTLA: Mr. Chair.

If Cynthia withdraws hers, it makes a motion for reconsideration.

I was not in favor so I cannot make that motion.

>> COMMISSIONER ORTON: I will withdraw my motion.

>> COMMISSIONER EID: Okay.

So Commissioner Orton had withdrawn her motion.

I will now entertain a motion to reconsider.

>> MS JULIANNE PASTULA: Again, just for clarity purposes, certainly that would be in order of action and I would like to remind the Commission that that would be inclusive of the shifting of the days back to Thursday and Friday and also the September meeting times going back to 9:00 a.m. if it was a motion to reconsider.

>> COMMISSIONER EID: Commissioner Wagner.

>> COMMISSIONER WAGNER: I motion we table it because I have to leave to pick up my son.

>> MS JULIANNE PASTULA: So Mr. Chair?

>> COMMISSIONER EID: General Counsel?

>> MS JULIANNE PASTULA: Thank you so much.

So we have nine Commissioners present for our quorum right now.

If we will lose that quorum, we will not be able to conduct any substantive business which the motion and the subsequent vote would qualify so if the Commission chooses to postpone this action or make a motion to amend the earlier action to save the 10:00 a.m. start time or to take a motion to reconsider on the full action, then I would draw your attention that M.D.OS is also requesting acknowledgment.

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>> COMMISSIONER EID: Ms. Reinhardt?

>> SARAH REINHARDT: Thank you, Mr. Chair.

I just wanted to allow the Commission to consider that should the motion be tabled, the scheduling as I've mentioned before.

The essentials and reservation and lining up logistics for this meeting takes time and the next meeting is next Thursday on the 15th.

So were the Commission to adjust the schedule at that time, it would put a bit of pressure on Staff to be able to turn around and make adjustments to the schedule at that time.

So I just wanted you all to consider that.

>> COMMISSIONER EID: Commissioner Wagner made a motion, but I can't hear a second.

If there's no second, we can continue this motion.

>> COMMISSIONER WAGNER: Excuse me.

Chair?

>> COMMISSIONER EID: Yes, Commissioner Wagner.

>> COMMISSIONER WAGNER: How can you continue the discussion if I have to leave?

>> COMMISSIONER EID: I suppose we can't.

That's why I'm trying to do this quickly.

>> COMMISSIONER WAGNER: I'm two minutes late already for this.

>> COMMISSIONER CLARK: I would like to put the motion forward that we have the September Tuesday time beginning at 10:00 a.m. and that we move the July and August times back to Thursday and Friday.

>> Seconded.

>> MS JULIANNE PASTULA: Okay Mr. Chair you've lost your quorum.

For the meeting.

>> COMMISSIONER EID: Okay.

Well, we have now lost quorum.

So I believe that means we have to Adjourn.

>> MS JULIANNE PASTULA: That's correct and a motion to adjourn can be in order. I'd I will entertain a motion to Adjourn? Is there a second?

>> Second.

>> Any discussion on a motion?

>> MS JULIANNE PASTULA: Excuse me was that Commissioner Clark for the second? I have a motion made by Commissioner Lett and the second made by Commissioner Weiss.

>> COMMISSIONER EID: Correct.

Any discussion on the motion.

All those in favor please raise your hand and say aye.

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We are Adjourned.

The Adjourned time is 2:33 p.m.

[ Music ]

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