

STATE OF CALIFORNIA
CITIZENS REDISTRICTING COMMISSION (CRC)

In the matter of:

CRC BUSINESS MEETING

TUESDAY, SEPTEMBER 1, 2020

9:30 a.m.

Transcription by:

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APPEARANCESCOMMISSIONERS

Trena Turner, Chair
Isra Ahmad, Vice-Chair
Linda Akutagawa, Commissioner
Alicia Fernandez, Commissioner
Neal Fornaciari, Commissioner
J. Kennedy, Commissioner
Antonio Le Mons, Commissioner
Sara Sadhwani, Commissioner
Patricia Sinay, Commissioner
Derric Taylor, Commissioner
Pedro Toledo, Commissioner
Angela Vazquez, Commissioner
Russell Yee, Commissioner

STAFF

Marian Johnston, Interim CRC Staff Counsel
Raul Villanueva, Interim Administrator

TECHNICAL CONTRACTORS

Kristian Manoff, AV Technical Director

PRESENTERS

Prof. Justin Levitt

Also PresentPUBLIC COMMENT

Julie Marks, Asian Americans Advancing Justice
Lori Shellenberger, California Common Cause
Jacqueline Coto, NALEO Educational Fund
Helen Hutchison, League of Women Voters of California
Mark Fisher
Peter Orsaluk
Sean Dugar, California Common Cause

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P R O C E E D I N G S

September 1, 2020

9:30 a.m.

CHAIR TURNER: Good morning and welcome back to our Commission meeting on today. We're reconvening on Tuesday, September 2nd. And I'd like to begin with the roll call through.

MS. JOHNSTON: Commissioner Ahmad?

COMMISSIONER AHMAD: Here.

MS. JOHNSTON: Commissioner Akutagawa?

COMMISSIONER AKUTAGAWA: Here.

MS. JOHNSTON: Commissioner Andersen?

COMMISSIONER ANDERSEN: Here.

MS. JOHNSTON: Commissioner Fernandez?

COMMISSIONER FERNANDEZ: Here.

MS. JOHNSTON: Commissioner Fornaciari?

COMMISSIONER FORNACIARI: Here.

MS. JOHNSTON: Commissioner Kennedy?

COMMISSIONER KENNEDY: Here.

MS. JOHNSTON: Commissioner Le Mons?

COMMISSIONER LE MONS: Here.

MS. JOHNSTON: Commissioner Sadhwani?

I thought I saw her.

Commissioner Sadhwani?

CHAIR TURNER: She's logged in, but we'll see.

MS. JOHNSTON: Yeah.



1 Commissioner Sinay?

2 COMMISSIONER SINAY: Here.

3 MS. JOHNSTON: Commissioner Taylor?

4 COMMISSIONER TAYLOR: Present.

5 MS. JOHNSTON: Commissioner Toledo?

6 COMMISSIONER TOLEDO: Here.

7 MS. JOHNSTON: Commissioner Turner?

8 CHAIR TURNER: Here.

9 MS. JOHNSTON: Commissioner Vazquez?

10 COMMISSIONER VAZQUEZ: Here.

11 MS. JOHNSTON: Commissioner Yee?

12 COMMISSIONER YEE: Here.

13 MS. JOHNSTON: Thank you.

14 CHAIR TURNER: Okay. Having established a quorum,
15 we'll proceed with the meeting.

16 Wanting to announce on today's agenda at 10 a.m.,
17 and I see present now, we have Prof. Justin Levitt that
18 will address us on agenda item 17, which is redistricting
19 101 and the legal concepts that apply to redistricting in
20 California. And at 1:30, we have a speaker -- let's
21 see -- the Karin MacDonald from the Statewide Database.
22 And this will be training on census data and the process
23 of map drawing. And we'll start our morning with public
24 comment.

25 So is it Justin (ph.) today? AT&T Operator?



1 If we could have the --

2 INTERIM ADMINISTRATOR VILLANUEVA: Colin (ph.) is
3 our operator today.

4 MS. JOHNSTON: Did you read the directions?

5 CHAIR TURNER: Yeah.

6 What was the name, Holland?

7 INTERIM ADMINISTRATOR VILLANUEVA: Colin, yes.

8 CHAIR TURNER: Oh, Colin. Okay. But yes, if we
9 would --

10 MS. JOHNSTON: Let's read the directions.

11 CHAIR TURNER: Thank you.

12 INTERIM ADMINISTRATOR VILLANUEVA: So the
13 instructions for making public comment by phone. In
14 order to maximize transparency and public participation
15 in our process, the commissioners will be taking public
16 comment during their meeting by phone. There will be
17 opportunities to address the commissioners regarding the
18 items on the agenda and the process in general.

19 In addition, for each agenda item that requires a
20 vote, the public may provide comment on that particular
21 item. Each time that the commissioners bring up an
22 action item, the viewing audience will be informed when
23 it is time to call in if they wish to make a public
24 comment. The commissioners will then allow at least two
25 to three minutes for those who wish to comment to join



1 the public comment queue.

2 To make a public comment, please dial 877-226-8163.
3 After dialing the number, you will speak to an operator.
4 You will be asked to provide either the access code for
5 the meeting, which is 5185236, or the name of the
6 meeting, which is the CRC first commission meeting.

7 After providing this information, the operator will
8 ask you to provide your name. Please note you're not
9 required to provide your actual name if you do not wish
10 to. You may provide either your own name or a name other
11 than your own.

12 When it is your turn to make a public comment, the
13 moderator will introduce you by the name you provided to
14 the operator. So providing a name helps AT&T, which is
15 hosting this public comment process to ensure that
16 everyone holding for public comment has a chance to
17 submit their comments.

18 Please be assured that the Commission is not
19 maintaining any list of callers by name and is only
20 asking for a name so that the call moderator can manage
21 multiple calls simultaneously and can let you know when
22 it's your turn to speak.

23 After providing a name and speaking with the
24 operator, you will be placed in the listening room, which
25 is a virtual waiting room where you will wait until it is



1 your turn to speak. You will be able to listen to the
2 live audio of the meeting. Please mute your computer
3 live stream audio because the online video and audio will
4 be approximately sixty seconds behind the live audio that
5 you are hearing on your telephone.

6 Now, if you fail to mute your computer or live
7 stream audio, it will be extremely difficult for you to
8 follow the meeting and difficult for anyone to hear your
9 comment due to feedback issues. Therefore, once you are
10 waiting in the queue, be alert for when you may be called
11 upon to speak. And please turn down livestream volume.

12 From listening room, listening to the meeting and
13 the call -- you can listen to the meeting and the call
14 moderator. When you decide that you want to make a
15 comment about the agenda item currently being discussed,
16 press 10 and you will be placed in the queue to make a
17 public comment.

18 When joining the queue to make a public comment, you
19 should hear an automatic recording informing you that you
20 have been placed in the queue. You will not receive any
21 further instruction until the moderator brings you in to
22 make your public comment.

23 The moderator will open your line and introduce you
24 by the name that you provided to the operator. So once
25 again, make sure that you have muted any background noise



1 from your computer and please do not use the speakerphone
2 but rather speak directly into your phone.

3 After the moderator introduces you, please state the
4 name you provide to the operator and then state your
5 comment clearly and concisely.

6 After you've finished making your comment, the
7 commissioners will move on to the next caller, and you
8 may hang up the call. If you would like to comment on
9 another agenda item at a later time, please call back
10 when the commissioners open up public comment for that
11 item and repeat this process.

12 If you are disconnected for any reason, please call
13 back and explain the issue to the operator. Then repeat
14 this process that's just been described and rejoin the
15 public comment queue by pressing 10.

16 The commissioners will take comment for every action
17 item on the agenda. As you listen to the online video
18 stream, public comments will be solicited and so this is
19 the time to call in. The process for making a comment
20 will be the same each time, beginning by dialing 877-266-
21 8163 and following the steps stated above.

22 These directions are also posted on the website on
23 the website. Please click the link.

24 CHAIR TURNER: Thank you, Raul.

25 I'd like to acknowledge a public comment received



1 that was from the League of Women Voters that just was
2 encouraging us to ensure that we are following and
3 allowing for public comment. So we just want to
4 acknowledge that we did receive that and appreciate the
5 reminder.

6 And at this time, Colin, if you would please check
7 to see if we have any public comments waiting.

8 MS. JOHNSTON: AT&T, is there any public comment?

9 Kristian, we're not hearing anything from AT&T.

10 (Pause)

11 AT&T OPERATOR: Hello, this is the conference
12 operator. Can you hear me?

13 MR. MANOFF: Yes, we can hear you. Thank you so
14 much. And your name is Colin? Conference operator. Are
15 you there?

16 AT&T OPERATOR: If you are speaking, I cannot hear
17 you from the main line.

18 (Pause)

19 MS. JOHNSTON: Kristian, why don't you ask him if
20 there's any public waiting?

21 MR. MANOFF: We are not showing anybody in the queue
22 at this time. We don't have anybody on the line either.
23 But I would like to get this straightened out.

24 CHAIR TURNER: Absolutely.

25 MR. MANOFF: So that we can talk to the operator.



1 Are you there, Operator?

2 (Pause)

3 AT&T OPERATOR: Okay. This is the conference
4 operator, and I am in the main conference.

5 MR. MANOFF: Okay. Wonderful. Please stay in the
6 main conference all day and the Chair will periodically
7 ask you for public comment. And whenever the Chair asks
8 you, if you could please remind anybody who has dialed
9 into the conference, press 10 to give their comment.

10 Do we have anybody on the line right now to give a
11 comment? Operator? Are you there, operator?

12 (Pause)

13 AT&T OPERATOR: Sir, I am in the main conference.

14 MR. MANOFF: You're in the main conference?
15 Wonderful. Can you hear me now? Colin, can you hear me
16 in the main conference? Yes or no?

17 (Pause)

18 MS. JOHNSTON: And there's still no one on the line?

19 AT&T OPERATOR: One moment, please. We have four
20 participants on music hold.

21 MS. JOHNSTON: Please let the first one in. Remind
22 them to press -- what is it, 10?

23 AT&T OPERATOR: Yes, Madam Chair. One moment,
24 please.

25 MS. JOHNSTON: AT&T, do we have a speaker?



1 AT&T OPERATOR: And ladies and gentlemen, again, if
2 you would like to make your voice heard for public
3 comment, please press 1 then 0 at this time, and we'll
4 take the first comment from the line of Julia Marks.
5 Please go ahead.

6 CHAIR TURNER: Julia, are you there?

7 AT&T OPERATOR: Excuse me, Ms. Marks, would you
8 please press 1 then 0? And your line is open. Please go
9 ahead with your comment.

10 MS. MARKS: Hi. Can you hear me okay?

11 CHAIR TURNER: Yes, we hear you.

12 MS. MARKS: Okay. Thank you. Hi. My name is Julia
13 Marks, J-U-L-I-A M-A-R-K-S, and I'm an attorney at Asian
14 Americans Advancing Justice, Asian Law Caucus. Thank you
15 all for being here and providing additional opportunity
16 for comment.

17 I will preliminarily note that we're having a bit of
18 difficulty getting through. I think it would be helpful
19 to include online that people need to dial 10 to be put
20 in queue because the operators don't always verbally
21 advise us of that when we call in.

22 So besides that, though, I just wanted to share some
23 thoughts about the language access agenda item for today.
24 Our organization does a lot of work with Californians for
25 whom English isn't their primary language, and we often



1 do that work around census outreach and elections and
2 various forms of civic engagement. And we're really
3 looking forward to your efforts to include Californians
4 who do not primarily speak English in the redistricting
5 process.

6 These community members should not be excluded
7 because of language barriers. There are many
8 Californians who don't primarily speak English and who
9 have really important interests in being heard in this
10 process and in identifying their communities of interest
11 and commenting on that proposal.

12 Immigrant communities are often communities who are
13 already left out of the political process, and so the
14 redistricting process actually offers a really important
15 opportunity to include immigrant communities and make
16 sure that maps are drawn in a way that is fair and that
17 actually does empower and reflect their communities of
18 interest.

19 So we have some initial suggestions relevant to
20 preliminary stages on kind of a minimum floor of language
21 access. And we also anticipate additional language
22 access measures will be really helpful and essential
23 honestly in the future, as CRC business expansion
24 includes more public comment and more public
25 opportunities.



1 But for now, we'd recommend that you announce public
2 comment times and agenda items more clearly so that
3 people can plan when to call in, and if needed, arrange
4 for their own interpreter to join them on the call. So
5 being clear about when comment will be happening and what
6 would be covered would be very helpful. And if it could
7 be posted in advance, that would -- like a day or two in
8 advance, that would also be helpful.

9 We also recommend that you extend comment times if
10 people do you use interpreters while providing comments
11 so they're not cut short? And we also recommend that you
12 allow -- explicitly allow written comment in languages
13 besides English and work to expedite translations so that
14 people can still chime in on the process.

15 We'd also ask that you look into contracting with
16 interpretation phone lines, which have some downsides and
17 don't provide ideal interpretation, but might be useful
18 for this stage before more robust language access can be
19 arranged.

20 And then later in the process we'll have multiple
21 suggestions on what else could be done, including having
22 live interpretation services available and more robust
23 ways to set up language access -- language access and
24 public comment opportunities together.

25 And our organization, along with many others, do



1 work with communities that don't primarily speak English,
2 and we would be happy to come and talk with you all to
3 provide some views on how to improve access and also how
4 to think about outreach strategies for reaching these
5 communities. We could either talk to the whole group or
6 meet with a subcommittee, if you all do end up setting up
7 subcommittees around access and also subcommittees around
8 outreach to diverse communities.

9 So that's just a standing offer. We care deeply
10 about, you know, these topics, but we also care deeply
11 about your work. And we would like to provide as much
12 support to your efforts as possible to make sure that
13 everyone can be included in the process. So thank you
14 very much for your time.

15 CHAIR TURNER: Thank you, Ms. Marks. Very helpful.
16 Thank you.

17 Colin, we'll take the next speaker, please.

18 AT&T OPERATOR: Thank you.

19 And our next public comment comes from the line of
20 Laurie Shellenberger. And please state your name for the
21 public record.

22 MS. SHELLENBERGER: Good morning. This is Lori
23 Shellenberger, L-O-R-I S-H-E-L-L-E-N-B-E-R-G-E-R, and I
24 am a redistricting consultant with California Common
25 Cause. I called in on Friday and spoke to you briefly,



1 but I just want to commend you for the marathon of last
2 week, and you must be setting records on Zoom meetings,
3 and we really, you know, were inspired by your ability to
4 stay so focused and engaged throughout last week's
5 meetings.

6 I'm calling in just to reiterate a few points that I
7 made on Friday. One of those was about the issues with
8 public comment, which we experienced again this morning.
9 Some of us getting in, and I really appreciate that you
10 waited for the public and for things to get sorted out
11 before you began today's meeting.

12 But I would echo the comments of the League of Women
13 Voters that were in their letter submitted to you
14 yesterday on August 31st to consider reopening discussion
15 if it turns out that the public has been shut out of the
16 meeting for a period of time and to reopen items for
17 discussion when the public has not had an opportunity to
18 weigh in.

19 The other item that I had urged you to consider last
20 week was for those things that are time certain on these
21 very long agendas where you have to jump around quite a
22 bit, it would be great if the public knew what time those
23 items were scheduled for.

24 So for example, I'm sure you knew that Justin Levitt
25 with going to be speaking this morning. And you know,



1 there are lots of folks who would love to hear his
2 presentation. And so for those items that are remaining,
3 if you know the time that those presenters are scheduled,
4 if you can share those with the public, that would be
5 great.

6 The other thing I have raised with you is the
7 request that item 16, which is an item that has several
8 issues you'll be discussing, those are great interests to
9 the public. And to the extent that you could schedule
10 that for a specific time, I know there are a lot of
11 organizations with expertise that would like to weigh in
12 and also listen to your discussion of those items.

13 And finally, the last thing I'd like to flag, which
14 I did not raise on Friday, relates to your decision of
15 whether or not to proceed with the RFP for your chief
16 line drawing consultant.

17 Common Cause and several other organizations
18 submitted letters to the auditor and also to the first
19 eight commissioners urging them to withdraw that RFP so
20 that you all would have the time of the full commission
21 to discuss what you want in a chief line drawing
22 consultant, and so that the public could weigh in on that
23 as well.

24 There is no sense of urgency to do that, given the
25 extension of time that you have to get started here, so

1 we, again, would just reiterate our request that you
2 withdraw the RFP until you've had a chance to decide what
3 are the qualities and the skills and the expertise that
4 you want in your chief line drawing consultant. Thank
5 you so much.

6 CHAIR TURNER: Thank you for the comments.

7 Colin, will take the next call, please.

8 AT&T OPERATOR: Yes. And the next comment will come
9 from the line of Jacqueline Coto. And please spell your
10 name for public record.

11 MS. COTO: Hi. Good morning. I'm Jacqueline Coto,
12 J-A-C-Q-U-E-L-I-N-E. And my last name is C-O-T-O.

13 Good morning, Commissioners. Happy Tuesday. I'm
14 calling from behalf of the NALEO Educational Fund. And
15 briefly, I am simply calling in to support Julia Marks
16 comments earlier related to the recommendations on
17 language access and the interpreter services. We ask
18 that you consider those recommendations to heart to
19 facilitate an inclusive participation by providing
20 language access opportunities to the community.

21 Thank you so much. And we will connect with you
22 later on. Have a good day.

23 CHAIR TURNER: Thank you. Thank you for calling in.

24 Colin, do we have another caller?

25 AT&T OPERATOR: Yes, Madam Chair.



1 And we'll go to the line of Helen Hutchinson. And
2 please spell your name for public record.

3 MS. HUTCHINSON: Good morning, commissioners. My
4 name is Helen Hutchison, H-E-L-E-N H-U-T-C-H-I-S-O-N, and
5 I'm with the League of Women Voters of California. And I
6 want to say thank you for the attention that was paid to
7 our letter that -- we just sent it yesterday afternoon,
8 so I appreciate you calling attention to it.

9 I also would like to second the remarks of the three
10 previous speakers: Ms. Marks, Ms. Shellenberger, and Ms.
11 Coto. And thank you for waiting today through all of
12 these technical problems that we had. We know that it's
13 frustrating for you. It's frustrating for us on the
14 other end of the line also. And we hope that can be
15 ironed out before we start taking public comment more
16 generally. But just a thank you to all of you for
17 putting up with the technical difficulties. Thank much
18 and look forward to the rest of your meeting.

19 CHAIR TURNER: Thank you. Appreciate it.

20 Have we had anyone else join for public comment,
21 Colin?

22 AT&T OPERATOR: And Madam Chair, we have no other
23 lines in queue.

24 CHAIR TURNER: Thank you so much.

25 All right, Commissioners, we will proceed with our



1 day. A couple of things. I am really appreciative of
2 the comments in regards to public comment and the timing
3 involved. For sure, attempt to be much more diligent
4 about starting our day as we kind of indicated we wanted
5 to do before, after lunch, et cetera.

6 I'm also hearing in the public comment a desire for
7 us to be a little bit more deliberative or deliberate or
8 consistent with agenda items so public will know when to
9 call in about them. Specifically requested was about
10 agenda item 16. And so I'm going to think through when
11 we can put that in the agenda.

12 We're at 9:57 now, so here's how I'm seeing the day
13 unfold and then would just like to get feedback from all
14 of you.

15 Of course, we have Prof. Levitt that's going to
16 start now.

17 And once he finishes -- and actually Prof. Levitt,
18 in the middle of while you're speaking, we will be
19 required to take a fifteen-minute break, and then we'll
20 come back and complete that portion.

21 Let's see. Thank you. And count staff just
22 sent - I was requesting just an update of other things
23 that we have.

24 Why don't we let you get started? And I'll look to
25 see where we are with our other agenda items. And then



1 perhaps when we come back from break, I'll have a clearer
2 picture of what we will be able to accomplish at certain
3 time periods.

4 Commissioner Sadhwani?

5 COMMISSIONER SADHWANI: Thank you, Madam Chairman.

6 And good morning to everyone.

7 I'm wondering if, in addition to kind of us making
8 a -- getting a better sense of all of the agenda items, I
9 know that we have the times for not only for Prof.
10 Levitt, but also Karin MacDonald is coming back to speak
11 with us and Prof. Barreto.

12 I'm wondering if that's already posted online. I
13 believe it was Ms. Shellenberger who had called in and
14 tested that information. I'm wondering if while we're
15 doing this meeting, if it's possible for Raul to post
16 those times so that people have them available.

17 INTERIM ADMINISTRATOR VILLANUEVA: Sure. We have
18 two presentations today and one left, but I can certainly
19 post the two that are left.

20 COMMISSIONER SADHWANI: I think that would be great.
21 I mean, it sounds like that's what people are asking for
22 and looking for. And I don't see why -- I don't see that
23 as being problematic. So if it's possible to post as
24 soon as possible.

25 INTERIM ADMINISTRATOR VILLANUEVA: I'll get that in.

1 I don't do it. I have routed through a few folks, but
2 I'll get that done.

3 COMMISSIONER SADHWANI: Thank you so much.

4 INTERIM ADMINISTRATOR VILLANUEVA: You're welcome.

5 CHAIR TURNER: Okay. And Commissioners, so that
6 we're all on the same page, I'm showing we will have
7 agenda items 13, 15, a report on the Commission staffing,
8 14, 16, 18 and then 23 and 24, that we'll hopefully
9 accomplish today and perhaps tomorrow. And then we'll
10 also go back and there's a request to revisit from the
11 agenda item number 17. And so if you would also check
12 your records, I think that's what we have left.

13 Thank you.

14 INTERIM ADMINISTRATOR VILLANUEVA: You're welcome.

15 CHAIR TURNER: And we'll go from there.

16 At this time, Prof. Levitt, I do want to make sure
17 we get you in on time.

18 PROF. LEVITT: Thank you very much, Madam Chair.

19 And I'll say just in prelude, that I would love to
20 be as responsive as I can to you all. This is for the
21 public, yes, but it's really for you. And so I'll take
22 your lead and your instruction on when you'd like breaks,
23 whether you'd prefer to ask questions throughout. That's
24 entirely fine with me. How you'd like to do that,
25 whether you'd want to call on people, whether you'd want

1 me to do that, when you'd like me to make sure that I
2 close, and I will keep to that time. So if there are
3 particular ways that you would prefer I structure the
4 presentation, I can tailor to whatever the Commission
5 wish.

6 CHAIR TURNER: Absolutely. Let's see. So we have
7 you going -- I think you were on and scheduled for 11, so
8 you're here. So I'd like for you to -- let's start with
9 you. We need to take break by 11:00. So that is the
10 required time period.

11 I'd love, in the interest of time, for you to
12 address questions directly. And for me, I think, while
13 we are very sensitive to want to make sure that you
14 actually have opportunity to train, I think if there is a
15 question that is needing to be answered that will
16 prohibit the learning and understanding, people should
17 ask as you're talking. Okay.

18 PROF. LEVITT: That seems very wise to me, Madam
19 Chair. And certainly I want to be as responsive as I can
20 to anybody who has questions throughout.

21 The first thing I want to start with is a thank you
22 to each of you, not only as somebody invested in the
23 redistricting process, but as a resident of California.
24 I benefit from the work that you all are doing. This is,
25 as you've begun to discover already, and as some of you

1 knew -- as all of you knew well in advance, this is quite
2 a large task, but an exceedingly important one. And I
3 thank you all for your commitment, not only to the
4 process that this involves, but to the final maps that
5 you will deliver. And I really appreciate all of your
6 energies to that end.

7 I've had the privilege of speaking with some of you
8 before now in a training session to the applicant review
9 panel that was repeated for the first eight commissioners
10 selected. And then in a little bit of a question and
11 answer for that. I will apologize in advance if some of
12 this seems familiar to the first eight. Hopefully this
13 will be an opportunity for more questions. The
14 presentation that I have developed today is very similar
15 to that. But of course now -- at that point, I was
16 speaking to the sort of traits that you would want to
17 look for in choosing the remaining six commissioners.

18 Now that you have constituted as a body, now that
19 the Commission is complete, this is really directed to
20 how to actually accomplish the line drawing, the legal
21 principles that you will use to actually draw the lines.
22 So it's not just the same presentation, but some of it
23 may seem familiar. I hope that that's a welcome
24 opportunity for review and not just a boring reiteration.

25 The other thing I'll note is that this is a



1 presentation. This is training that is tailored to
2 California. There is inevitably some federal backdrop in
3 that. There are laws that apply across the country that
4 you also have to apply, some of which are stated
5 explicitly in the California Constitution.

6 But this training is not a generic training on
7 redistricting. It's about the task before you. And
8 that's particularly important because California has some
9 quirks that are not unintentional. They were very
10 specifically designed for California, and they differ
11 from some of the rules and some of the practices that
12 other states apply.

13 And so you may hear in the press or from other
14 presenters things that other states do. Some of them
15 will be options available to you. Some of them will not.
16 And I'm trying to make that really clear in my
17 presentation, what the legal principles are that you have
18 to abide. There is some discretion with how you apply
19 them. But the California Constitution is actually
20 helpful in setting the setting them out in some detail.

21 The final thing I'll say is that the very first
22 public comment you got today, even before the AT&T lines
23 were open, was for my dog. I apologize for that. I will
24 hope that he does not feel the need to continue to
25 contribute to the conversation, but will apologize in



1 advance if he feels need to weigh in. He feels very
2 passionately about redistricting.

3 So with that, with your permission, I will try to
4 share my screen. And with any luck, you now see a
5 slideshow that is titled, Redistricting. What that also
6 means is necessarily I can only see some of you in the
7 strip along my screen, so I can only see five or six of
8 you. That means I won't necessarily see you if you
9 physically raise your hand. So please feel free to jump
10 in verbally so that I know that you have a question. Or
11 if you're familiar with raising your hand on the Zoom
12 function, I will keep an eye out for that as well in the
13 participants list of Zoom.

14 But otherwise, please help me help you ask all of
15 the questions that you need. Again, this is for you, and
16 I want to make it as useful as possible.

17 So with that, I'm going to skip over my background.
18 You can see it if you wish. If you don't wish, there's
19 no need. I know that many of you have statistical or
20 scientific backgrounds or public policy backgrounds.
21 Some of you are quite vested in aspects of what I'm about
22 to cover. So again, I apologize if that information is
23 old hat to you. It may not be old hat to many of your
24 colleagues. I've tried to tailor the experience that
25 I've got and the presentations I've got to make this both

1 digestible and fairly thorough. But I will welcome your
2 help in calibrating whether the information is too
3 detailed or too general.

4 As mentioned, today's conversation is about the laws
5 that you'll need to apply, specifically about the laws
6 governing California districts, specific to districts --
7 Congressional district, State Legislative district, Board
8 of Equalization districts. Those are the districts that
9 you all are tasked with drawing, not local district
10 lines. There are separate set of rules, thankfully, that
11 you needn't worry about at all. I've tried to distill
12 the legal requirements and concepts without using too
13 much legal jargon, but I appreciate your help in
14 correcting me when I've ventured too far in that
15 direction.

16 And also, I want to be clear, I am attempting to lay
17 out the requirements of California law and not advocacy,
18 not the things that I would prefer, but the things that
19 you are tasked with doing. And I'll try and very clearly
20 identify. I hope not to blend in to what I would prefer
21 at all. But I'll be very clear to identify the instances
22 when do.

23 I would approached this in a set of very basic
24 questions because I hope, I think, the fourth grade
25 journalism questions actually help structure most



1 conversations around this. It's useful for you to have
2 some idea about why you're doing this that actually plays
3 into the rules that apply to what it is you're going to
4 be doing.

5 So why do this? What you're doing is drawing or
6 redrawing the lines that determine which voters are
7 represented by each Legislative seat. Each seat in
8 Congress. Each state in the State Legislature for
9 California. Each seat of the Board of Equalization.
10 That's because the representation that we have is driven
11 by the population and where they live. Districts are
12 territorial, and so they respond to people who live in
13 places.

14 Communities grow and shrink, and people are born,
15 and die, and move. And over time, areas where there were
16 once roughly the same number of people become lopsided,
17 some areas become quite a bit more populated, other areas
18 a little less populated.

19 There's a Constitutional mandate born of a case in
20 1962 and then a series of cases that stemmed from that.
21 And it amounts to the requirement that districts have to
22 provide roughly equal representation for everyone in the
23 state. And so when we know where the people have moved
24 to, we have to reconfigure the lines to reflect that, to
25 make sure that representation is equal, as people are

1 born, as people die, as people move. We need to
2 reconfigure the lines to reflect today's reality of where
3 people are so that they have roughly equal
4 representation.

5 That means that every ten years following the
6 decennial census, you are tasked with the redistricting
7 process. This has a direct impact on where you draw the
8 lines because the very first criteria that you'll be
9 asked to apply speaks directly to where the people are
10 and where specifically people are as driven by the
11 requirement to provide equal representation.

12 This is a Constitutional mandate, a federal
13 Constitutional mandate. It is also explicitly in the
14 state constitution. It is also explicitly in the state
15 statute. And they're all consistent, thankfully.

16 What federal law requires, is that there be a
17 reasonably equal number of people in each district? That
18 does not mean precise equality. It is sometimes a
19 misimpression or a false impression that every district
20 has to have exactly the same amount of people. That is
21 not true. But they have to have approximately the same
22 number of people.

23 The requirement for Congress comes from Article I of
24 the Constitution. And through a series of Supreme Court
25 cases, they've interpreted that to mean that small

1 differences from Congressional district to Congressional
2 district are generally acceptable if there's a legitimate
3 reason for those differences. The Court has never
4 precisely defined what small means. But it is generally
5 accepted that within approximately a percentage deviation
6 from the largest district -- for the most populous
7 district to the least populist district, at least that is
8 probably fine if there's a legitimate reason for the
9 disparity.

10 State Constitutional -- or state districts -- State
11 Legislative districts, the Constitutional background for
12 that is in the equal protection clause. And the latitude
13 given for population disparities is a little bit larger.

14 The Court has been clear that ten percent variation
15 from top to bottom -- from most populous to least
16 populous is acceptable if it's for a legitimate reason.
17 If it's for a bad reason -- it's for an illegitimate
18 reason, such as partisan gain, ten percent deviation is
19 not saving. So a smaller deviation if the reason for
20 that shift is specifically the benefit of party, not
21 okay. And conversely, it may be that a greater
22 difference than ten percent is acceptable if it's for a
23 really good reason.

24 The Court has set a bit of a threshold, and it said,
25 if there is a relatively good reason, we're not going to

1 look more closely at lines that are ten percent apart for
2 State Legislative districts or for a Board of
3 Equalization district, or for state-based districts. The
4 Constitution provides that latitude.

5 How do we calculate this? This is basically just
6 math and not very difficult math. You look for a
7 population. You calculate the total population of the
8 state. That resolves to an average population. It's
9 sometimes called the ideal population. I have that in
10 quotes, and I want to emphasize, that's really heavy
11 quote. Because there is nothing actually ideal about a
12 perfectly equal average number. So that is most
13 definitely a term of art. Remember, the Constitution
14 gives you permission to vary the population of a district
15 away from that average if there's a good reason to do so.
16 And as we'll discuss, there will be many good reasons to
17 do so. I'll encourage you not to think of yourselves as
18 aiming for precisely average.

19 But you still have to have some sort of lodestar to
20 know the rough range of what you're aiming for. And so
21 looking for the average, then you figure out in each
22 district how far above or how far below. In this highly
23 stylized example, I've given you a whole lot, skipping to
24 the very end of the presentation. Usually my dog is stop
25 me.



1 In this particular example, you would see that the
2 smallest district is six percent below the average. The
3 largest district is five percent above the average.
4 That's a total deviation of eleven percent. And that
5 should be, in this instance, a red flag. For a state
6 Legislative districts, ten percent would be unremarkable.
7 Less than ten percent would be unremarkable. More than
8 ten percent is remarkable, and you'd better have a pretty
9 good reason for doing exactly this.

10 State law adds to this a little bit and demands that
11 you use some of the flexibility that you're given. So
12 recall, federal law gave a bit of flexibility, a
13 reasonably equal number of people in each district.
14 State law says you have to use that flexibility. And
15 I'll get to exactly how in just a moment.

16 First, one very quick note, there is in the news, in
17 the press, some amount of controversy over the baseline
18 for determining roughly equal representation. That is
19 what group you are dividing into districts. To the
20 extent that there's any sort of controversy about that in
21 other states, there is no controversy in California.
22 California makes clear, you divide all people, everyone
23 in this state is counted for purposes of equal
24 representation. And that is abundantly clear in
25 California law. Whatever discretion there may be

1 elsewhere, and there's a big fight about that, that's not
2 actually a fight in California.

3 California state law says that for Congressional
4 districts, the districts have to be as nearly equal as is
5 practicable. So aim for the average. But if there's a
6 good reason to deviate slightly from the average,
7 California state law allows you to do that.

8 For State Legislative districts the permission, and
9 in fact, the command is even broader. State law asks for
10 a reasonably equal population. It's generally assumed
11 that that means within ten percent. But deviation that
12 is required to comply with the Voting Rights Act or that
13 is allowable by law is exempt from that equality
14 requirement.

15 So aim to be reasonably equal, get close to average,
16 except where a deviation is permissible by law. And that
17 means you have to use the flexibility that you have --

18 THE COURT REPORTER: This is the court reporter. I
19 no longer hear Prof. Levitt.

20 MR. MANOFF: Standby. It looks like Prof. Levitt is
21 frozen for everybody. Standby.

22 (Pause)

23 COMMISSIONER VAZQUEZ: Did we have this training on
24 the handouts on the website?

25 COMMISSIONER ANDERSEN: Well, I did notice that --

1 because I went to look at it today, I have like an old
2 copy. I did not see it on the handouts or on the
3 website. I do not believe that the slides are available.

4 Is that true, Raul?

5 MR. MANOFF: Stand by, everybody. I'm going to try
6 to get Justin back in. Is that you dialing in here,
7 Prof. Levitt?

8 PROF. LEVITT: It is.

9 Pardon me, Commissioners, I just encountered a blue
10 screen, which is not my dog's doing. I apologize for
11 that. Rejoining if possible.

12 MR. MANOFF: I'm sorry. Go ahead with your
13 question, Commissioner Andersen.

14 COMMISSIONER ANDERSEN: Oh, I was just wondering
15 that, as Commissioner Vazquez said, that slides
16 presentation does not appear to be available to anyone
17 unless you had a previous presentation (audio
18 interference). And I'm asking our Counsel and Mr.
19 Villanueva.

20 INTERIM ADMINISTRATOR VILLANUEVA: I'm in the
21 process of looking.

22 COMMISSIONER ANDERSEN: Great. Thank you very much.

23 INTERIM ADMINISTRATOR VILLANUEVA: You're welcome.

24 PROF. LEVITT: And Commissioners, while that
25 question is being addressed, again, I apologize. I am

1 rejoining you as speedily as I can. My computer decided
2 that it did not want me to continue the presentation.
3 Hopefully, I have convinced it otherwise.

4 Like some of the public comment earlier today, I,
5 too, appreciate your capacity to deal with technical
6 difficulties and your patience in doing so.

7 COMMISSIONER ANDERSEN: Actually, I do want to say
8 on that, we've actually had great success, knock on wood,
9 in that we've had very little on technical difficulty.
10 All of this is done with technical difficulties and fire
11 rages across the state. So thank you very much,
12 everyone, who's been involved in keeping this going. We
13 all, I think, appreciate it a great deal.

14 PROF. LEVITT: I should actually add, as I'm
15 rebooting and as my computer is reloading, if -- and I
16 don't want to judge the issue at all -- if it presents
17 any sort of problem for you to use this slightly tailored
18 presentation as opposed to the presentation that I gave,
19 which has been public for months now, to the applicant
20 review panel, I have both available, and I'm happy to
21 proceed modifying verbally, but not in terms of printed
22 presented content with the earlier version, if that makes
23 anyone more comfortable.

24 CHAIR TURNER: I'm hoping we can get what you're
25 currently presenting online. I really am appreciating it

1 and able to follow you a lot closer.

2 PROF. LEVITT: That's fine. Okay.

3 INTERIM ADMINISTRATOR VILLANUEVA: It'll just be a
4 few minutes.

5 PROF. LEVITT: For what little it's worth, Windows
6 is now telling you that it has recovered from an
7 unexpected shutdown, which is exactly what I was
8 experiencing. So my computer and I are on the same page.

9 CHAIR TURNER: Including the recovery. Wonderful.

10 PROF. LEVITT: Yes. There we go.

11 COMMISSIONER YEE: Mr. Levitt, I'm wondering, just
12 out of curiosity, the states where equal districts are
13 being debated or -- whose count is being debated. I'm
14 wondering if you could just clue us in a little bit more
15 about which states those and what's being debated so we
16 don't have to worry about it.

17 PROF. LEVITT: There is there is a little bit of a
18 conversation, including begun by the president, recently,
19 about whether, on the one hand, undocumented individuals
20 are properly counted within the count, or whether -- in
21 other states whether noncitizens are also included in the
22 count. Some have also proposed that citizens below
23 voting age not be included with the count.

24 I want to emphasize, there is no state, in 2010, the
25 last time the districts were drawn, that used anything

1 other than the total population. So this debate has
2 largely been outside of official state policy. Official
3 state policy in 2010 for every state in the country was
4 to count every individual. And that has been true for
5 several decades. It was not always true. It has not
6 always been, but it's been true for several decades.

7 The Supreme Court precedent of whether that is
8 permissible is clearer for Congress. The thumb on the
9 scale is very firmly in favor of counting every
10 individual for Congress. That seems to be the design in
11 the Constitution. And consistent with practice in
12 redistricting for Congress, for the entire history of the
13 country.

14 For State Legislative districts, I would say that
15 the Supreme Court law is a bit more equivocal. I think
16 there's a correct answer, but others have different
17 points of view.

18 I want to emphasize, again, in California.
19 California has made that choice. So whatever other
20 states choose to do or whether that's permissible in
21 other states, California has come to a policy decision
22 that everyone is to be counted equally in terms of
23 representation.

24 COMMISSIONER YEE: Very good. Thank you.

25 PROF. LEVITT: You bet.



1 All right. With permission. And by that, I mean,
2 unfortunately, both permission from you and permission
3 from my computer, I will attempt to rejoin.

4 COMMISSIONER ANDERSEN: Mr. Levitt, if I could ask
5 you a quick question just to follow up on that last
6 question?

7 PROF. LEVITT: Of course.

8 COMMISSIONER ANDERSEN: I hear what you're saying
9 about California counts everybody. But given the lawsuit
10 that I think is winding its way through the federal
11 courts right now about counting undocumented, how does
12 that pertain in terms of California, should the federal
13 government prevail? That's --

14 PROF. LEVITT: So that the federal government is
15 right now essentially asking for permission to have the
16 potential to exclude undocumented individuals from the
17 census count for purposes of apportionment. And I'm
18 choosing my words carefully, in part because the federal
19 government has not said that it will do this. It's
20 asking for permission.

21 I will say, I think that that permission is
22 exceedingly unlikely to be forthcoming. That is the -- I
23 don't believe I'm exaggerating here. The vast consensus
24 is that there is no latitude under the Constitution to
25 count anything other than all individuals, under the 14th

1 Amendment, under Article I, Section 2, particularly for
2 Congress.

3 And so I think that that lawsuit is exceedingly --
4 well, the lawsuit is challenging what the president has
5 asked for authority to do. There are several lawsuits
6 challenging that authority. I think the legal answer is
7 likely to be clear that it is -- what the president is
8 seeking permission to do is not an option. But even if
9 that were an option, it's not clear that the federal
10 government will actually act on the permission it's
11 seeking.

12 If the federal government did act on this
13 permission, you would have a hard -- depending on what
14 information the census released, you might have a hard
15 task ahead of you. If the census releases numbers that
16 reflect the total population, then your task is easy
17 because California law makes this very explicit. The
18 federal government is not seeking to require that the law
19 exclude this; it's seeking permission for apportionment
20 purposes.

21 For redistricting purposes, it's up to California.
22 And California makes it abundantly clear you have to
23 count everybody.

24 If for some reason the census only releases a
25 partial set of numbers, that is does not give you the

1 information that you will need, you'll have a challenge
2 in figuring out whether there is any alternative source
3 of the information you need to do your job. That's not
4 unique to the equal population. There are actually --
5 you may hear this from Karin MacDonald later on today.
6 You may hear this from others. There are concerns about
7 the accuracy of the census. There are also, frankly,
8 concerns about the accuracy of alternative datasets,
9 whether any exist that will be more accurate than the
10 2020 census. And I -- and I don't pretend that those are
11 easy questions as to whether you will have available
12 alternatives or whether those alternatives would be
13 permissible to use if there are real provable problems
14 with the census numbers that exist.

15 Fortunately, at the moment, all of that is still
16 hypothetical. Both the manifest -- both a -- a severe
17 problem with the count, and also any sort of legal
18 controversy about what the census can or will release, at
19 the moment, the plan is to release all of the numbers,
20 including the total population. And at the moment,
21 California law says that's what you are to count for --
22 for these purposes. It's an excellent question. Going
23 down various hypothetical branches of increasingly small
24 likelihood, there are lots of what ifs that could happen.
25 Fortunately, at the moment, there's clarity in this area.

1 I hope that's responsive.

2 COMMISSIONER AKUTAGAWA: Yes. Thank you very much.
3 That was helpful.

4 PROF. LEVITT: Of course.

5 So where I was before my computer so rudely
6 interrupted me, the state law actually requires you to
7 use the latitude that you have in the following way. It
8 says that where population deviations are allowable by
9 law, you have to use them in order to achieve other
10 criteria that the California State Constitution makes
11 more important than strictly equal population.

12 So if, for example, and we'll get into this, you
13 have the opportunity to create districts of slightly
14 unequal population in order to comply with the Voting
15 Rights Act or keep communities together or create
16 districts that are under California standard more
17 compact, you have the obligation to deviate in terms of
18 the population equality in order to achieve those other
19 objectives, at least up to a ten percent threshold from
20 largest to smallest, and maybe in some circumstances
21 beyond.

22 The 2010 Commission, I think, really struggled here.
23 I think it handcuffed itself in a way that was ultimately
24 detrimental. The legal requirement, as mentioned, is
25 that the population be reasonably equal, except where

1 deviation is required or allowable. That means you are
2 commanded to use the flexibility you have.

3 An old California Supreme Court case set rules for
4 itself, not for any other body, not for the Legislature,
5 not for independent commissions, said when we, the courts
6 are drawing the lines, we'll try to keep within two-
7 percent population deviation. But even that was under
8 constitutional language that has been superseded by the
9 law that you are now applying.

10 And the 2010 Commission seems to be all over the
11 place in terms of the standards it set for itself.
12 Started with this old superseded, not applicable
13 California Supreme Court standard of two percent, then
14 move to plus or minus five percent with any -- with an
15 explanation required for deviation over two. Then move
16 to as little as possible up to five percent total, then
17 one percent total deviation. Then it seemed to end up
18 with two percent total deviation, but more if there's a
19 Voting Rights Act concern, it was acceptable to have a
20 larger population disparity.

21 I think all of those standards were unlawful. If it
22 meant that a tighter population constraint was not
23 allowing the Commission to live up to some of its other
24 responsibilities, to keep communities together, to draw
25 lines that were compact according to California's

1 definition, et cetera, all of the other criteria. So
2 California, it chose itself in 2010 a standard that I
3 think constrained unnecessarily, and in fact, potentially
4 unlawfully.

5 And I would urge you to follow instead the language
6 that's actually in the California State Constitution.
7 Don't give yourself a more rigorous handcuffing than you
8 need to in order to fulfill those other criteria. And
9 that's because every decision has tradeoffs. Maintaining
10 a reasonably equal population may in some circumstances
11 keep you from achieving any of these other goals that
12 California says you have to fulfill or have to attempt to
13 fulfill.

14 It won't always do that. But California law makes
15 clear that you may not sacrifice those goals in order to
16 achieve a more equal population disparity except within
17 federal constitutional standards. So within the, again,
18 rough-gauge, ten percent for State Legislative and Board
19 of Equalization districts and a slightly narrower band,
20 one percent or so for Congressional district.

21 I mentioned this before. I just want to mention it
22 very briefly again. The census may be rocky this time
23 around. There are real concerns about the degree to
24 which the pandemic has affected census operations
25 separate and apart from any of the legal fights that the

1 commissioner mentioned. We don't yet know how accurate
2 the census will be. We certainly hope and there is still
3 time for it to be fully accurate.

4 The Census Bureau asked for more time to complete
5 census operations earlier this year and then withdrew
6 that request later this year. And there is a fight in
7 Congress about whether Congress will mandate more time,
8 essentially, to get the census more accurate. You should
9 know that you may be facing controversies about the
10 accuracy of the census numbers that you are delivering.
11 It's not clear that there are good alternative datasets
12 for you to use instead of the census, though there may
13 be.

14 And I want to point out one thing for you to keep in
15 mind just because this controversy will no doubt continue
16 as you continue your work. It's not clear what the
17 conservative, and by that I mean, safe-legal position on
18 using the census numbers will be. If the census
19 numbers -- if the official census numbers are known to be
20 wildly inaccurate, you might well draw litigation for
21 using them and drawing districts with population that is
22 not, in fact, equal because the census numbers are wildly
23 inaccurate.

24 And if you choose another source of data, you will
25 probably draw litigation for choosing another source of



1 data. That is, in this zone, the one thing you may -- if
2 the census is not accurate in a significant degree, no
3 census is perfect, the one thing you can count on is
4 litigation. That shouldn't necessarily scare you away
5 from doing your job as you see best so as to fulfill the
6 California Constitutional mandate of counting people such
7 that of drawing districts, such that districts are
8 equally populated. Normally, the census data is the
9 single best piece of evidence we have about that. Just
10 to flag, this year that might or might not be the case.

11 Yes, Commissioner Sadhwani.

12 COMMISSIONER SADHWANI: Yes. Thank you. So are you
13 suggesting that we are not legally mandated to use the
14 U.S. Census in redrawing the lines, either under federal
15 law or state law, whether the state --

16 PROF. LEVITT: It's unfortunately not clear. In the
17 past, this hasn't been a question because despite flaws
18 in the census, there has been no alternative data source
19 that is anywhere near more correct that arrived in time
20 for you to do your job. That may still be the case this
21 year. We don't know. It depends in part on how flawed
22 the census is. It is likely that -- and certainly the
23 tradition is to use the census numbers in order to do
24 redistricting. That's the reason that you do it every
25 ten years.

1 But I don't believe that there is a requirement
2 explicitly, at least, in California law, to use the
3 census numbers. What California law requires is that
4 districts achieve population equality as nearly as
5 practicable for Congress, and that districts have
6 reasonably equal population for State Legislature and for
7 the Board of Equalization.

8 In the past, that's always meant use the census
9 numbers and the single best piece of evidence is use the
10 census numbers. You will be called on if you decide to
11 use anything else -- if anything else is even available,
12 you will be called on to show that it is, in fact, more
13 accurate than whatever it is the census delivers.

14 COMMISSIONER SADHWANI: Thank you. Thank you.

15 PROF. LEVITT: But I can say this is -- this is a
16 point of some substantial uncertainty.

17 COMMISSIONER SADHWANI: Absolutely. And it'd be
18 highly controversial, I'm sure.

19 PROF. LEVITT: Yes. And unfortunately, if I -- I
20 will hope that this never comes to pass. If the census
21 is wildly inaccurate and known to be so based on past
22 projections, based on past estimates, based on the best
23 numbers we have now, I think any decision is likely to be
24 controversial. That is, if we know that the numbers that
25 arrive are bad, using the bad numbers will be

1 controversial and using an alternative will be
2 controversial. And I don't know that there's a way for
3 you to avoid that controversy.

4 So the upshot and this is just a repetition of what
5 I've said before, you can set a default threshold for
6 population variation if you want, but that does not need
7 to be small. And the constitution -- the California
8 Constitution requires you to depart from that default to
9 achieve other objectives, particularly for state
10 districts.

11 So be careful about setting a default that is too
12 small and be careful about living by the tight
13 constraints of that default. It's not a bad idea to aim
14 for the average, but make sure that you give yourself a
15 very wide band around that average so that you're able to
16 live up to the legal mandate of meeting the other
17 criteria that California law requires you to consider.

18 One more thing. I'm not done yet. There is one
19 other piece of California law in statute that speaks to
20 something the Census Bureau won't address, and this is
21 the incarcerated population. The incarcerated population
22 is counted by the Census Bureau, where individuals lay
23 their heads most of the time. This often leads to
24 substantial differences in the population between those
25 who are incarcerated and those who are not incarcerated.

1 It also leads to substantial representational differences
2 between those who are incarcerated and those were not
3 incarcerated.

4 So for example, in Lassen County, the total
5 population of Lassen County is one percent African-
6 American, and eleven percent Latino. The incarcerated
7 population is twenty-seven percent African-American and
8 thirty-five percent Latino. Very different from the
9 surrounding community. That's not unique to Lassen; I'm
10 using that just as one example.

11 Prisons also represent about twenty-seven percent of
12 the total population in Lassen. So it's not a small
13 factor in the community. And the permanent residents of
14 those who are in Lassen County, incarcerated there, is
15 often elsewhere not in Lassen County. That is the
16 permanent residence of many people who are incarcerated,
17 are from the communities where they lived before they
18 were incarcerated.

19 And California law reflects that in a lot of
20 different ways, including your ability to file a lawsuit,
21 including your ability to do all sorts of things.
22 California law says you can't lose a residence by means
23 of temporary absence, including incarceration. That is
24 reflected now in California state law, where the -- the
25 Legislature has asked you to deem each incarcerated



1 person as residing at his or her last known place of
2 residence.

3 They will give you a dataset -- the Department of
4 Corrections will give you a data set that will attempt to
5 provide you with the information based on where people
6 lived before they were incarcerated. And the Legislature
7 has formally requested that you consider this information
8 and adjust the information you get from the Census Bureau
9 in order for redistricting purposes to count people who
10 are incarcerated as receiving representation where they
11 last resided before they were incarcerated.

12 And this is permissible under federal law. It's a
13 choice that California and several other states have
14 made. Other states have made different choices. But
15 this is something that is now formally codified and a
16 request to you all to accomplish when you receive the
17 numbers from the census to adjust them so that people who
18 are incarcerated are counted for redistricting purposes
19 where they used to live.

20 COMMISSIONER YEE: Just why --

21 PROF. LEVITT: Yes, please.

22 COMMISSIONER YEE: -- why requested and not
23 required?

24 PROF. LEVITT: There was some question about whether
25 you are subject to statutory Legislative mandates. That

1 is, it is very clear that -- that you are an independent
2 body receiving information from sources and instructed to
3 follow constitutional mandates and instructed to follow
4 the mandates of -- of Prop 11 and Prop 20, the citizens
5 initiatives that give you authority in this area. I
6 believe that the Legislature was not sure it could
7 command you to use these sources without stepping on your
8 source of authority. But I'll confess, that's a -- a
9 very abbreviated Legislative history. And I -- I may not
10 know the full details of (indiscernible).

11 COMMISSIONER YEE: Thank you.

12 CHAIR TURNER: Prof. Levitt, excuse me a moment.
13 For those that was looking for the presentation, I just
14 wanted to let you know that it is on the website at this
15 point.

16 Thank you, Counsel -- staff, thank you.

17 That's all. Go ahead.

18 PROF. LEVITT: Thank you, Madam Chair.

19 I'll say this a few times in the course of this
20 presentation, understand the limits of the data you
21 receive, including the quality of the census data that
22 you may get. And it's really important to remember that
23 the answer that may seem the cleanest, that is, precisely
24 equal populations, is not only not always the best but
25 may not even be legal.

1 In this circumstance, requiring that every district
2 be exactly equally populated may seem clean and
3 satisfying, but is actually unlawful. It's a really
4 natural tendency to aim for clean. And you'll have to
5 remind yourselves, not infrequently, that your legal
6 obligation is different from that.

7 As an analogy, the fact that the speed limit is
8 sixty-five doesn't mean that zero is the right speed. So
9 even if you have in your minds a ten percent total
10 deviation that you should know sets up a red flag to have
11 a really good reason to step beyond, the fact that there
12 is a ten percent threshold for State Legislative
13 districts does not mean that zero is best. In this case,
14 the California Constitution expressly says zero is not
15 best.

16 Also of note, with this and with a bunch of other
17 stuff that I'm going to say, there's some question about
18 when the census data will arrive. As mentioned, the
19 Census Bureau asked for an extension and then withdrew
20 that extension. You may get census data in February or
21 March, or it may take until June or July. And right now,
22 that's greatly uncertain.

23 You don't have to wait for the census data to get
24 started on a lot of what you're about to do. That's true
25 in this considering equal population. That's true for

1 the Voting Rights Act, as I'll discuss in just a minute.
2 That's true for many other criteria that you have to
3 engage. That's also true for other operations and
4 hearings.

5 It will be important to provide the opportunities
6 for public input and to consider public input after the
7 census data arrive. It will be really important for
8 refining some of the broad choices that you explore after
9 the census data arrive, but you don't have to wait to get
10 started. This table is drawn from Census Bureau
11 estimates of the total population from 2010 to 2019, so
12 the Census Bureau gives you estimates. These are guesses
13 that show the growth or moving of the population from
14 2010 to 2019. And the coding here is just how much more
15 or less than the state average did particular regions
16 grow or lose population -- gain or lose population.

17 And you can see that L.A. County has been growing,
18 but less quickly than the state average. And counties
19 like San Diego and Riverside have been growing more
20 quickly than the state average. California, as you see,
21 counties like Sacramento and the -- the East Bay counties
22 have been growing. And so those areas will need more
23 districts or smaller -- districts that appear
24 geographically smaller because there are more people per
25 unit of space. And districts that have lost population

1 will grow in size -- and in apparent geographic size
2 because there will be fewer people within each district.

3 So you can already see that some of your districts
4 will have to expand in Los Angeles County in order to
5 have more population per district -- in order to have --
6 to compensate for the growth, to have smaller districts,
7 to maintain population equality in Riverside and San
8 Diego. Similarly, some of the districts in the very
9 northern part of the state and in the North Bay and San
10 Francisco region may have to expand so that you can have
11 more districts in the East Bay and in the Sacramento
12 region.

13 You can already start with some of those choices
14 today. And even if these data aren't sufficient to be
15 drawing block by block, they're good in setting up what
16 it is you have to do.

17 COMMISSIONER VAZQUEZ: Mr. Levitt?

18 PROF. LEVITT: Yes, please, Commissioner.

19 COMMISSIONER VAZQUEZ: So in a previous
20 presentation, we had a question from one of the
21 commissioners about you know, the likelihood that
22 California will lose one, if not, two Congressional seats
23 and sort of where that will happen. In my understanding,
24 in terms of like population growth and loss, that the
25 likelihood is that the Congressional seats if we do lose

1 one or two will likely come from the areas that have
2 experienced population loss as compared to the rest of
3 the state?

4 PROF. LEVITT: Yes. Although, I'd encourage you to
5 think of it not as a district vanishing, but as districts
6 spreading out, right. It's not that any district goes
7 away. It's not that L.A. County will have one fewer
8 district. It's that the districts there will expand
9 because there will be fewer people in each district, so
10 the district boundaries have to grow to encapsulate the
11 same population equality. And the districts -- you can
12 think of it as, the districts elsewhere in Riverside and
13 San Diego will have to shrink a bit because now there
14 will be more people living in -- in each geographic area.

15 So rather than think of it as a district vanishing,
16 think of it as expanding and contracting, maybe an easier
17 way to understand. And at some point, one of those
18 districts -- you'll -- you may have, if the census data
19 finally showed us, we don't yet know, A lot actually
20 hinges on the census count over the next month or so.
21 You may have one fewer district or not. But it's not
22 that you should think of it as picking a district to get
23 rid of, if that makes sense. Is that -- is that
24 responsive to your question?

25 COMMISSIONER VAZQUEZ: Yes. Thank you.

1 COMMISSIONER SINAY: This is Patricia. And I've got
2 a question on -- so the federal kind of gives us how many
3 Congressional districts we'll have in the State of
4 California.

5 PROF. LEVITT: Correct.

6 COMMISSIONER SINAY: How do we know how many
7 districts we'll have for the state for the Assembly and
8 Senate?

9 PROF. LEVITT: So that's --

10 COMMISSIONER SINAY: Where does that number come
11 from?

12 PROF. LEVITT: -- set by the state constitution, and
13 that won't change. So that -- you'll have exactly the
14 same number of senators and the same number of
15 representatives you have now, unless there's a state
16 constitutional amendment. And you're absolutely right,
17 the official number of members of Congress will come from
18 Congress, actually.

19 Before I move on to the next topic, which is a big
20 one, is there any other questions on this? I -- I've
21 spent a fair amount of time on this because the
22 background's important.

23 CHAIR TURNER: We have about ten minutes before
24 break, Prof. Levitt. Since the next topic is a big one,
25 we certainly can go earlier if it would be better for

1 breaking up the presentation.

2 PROF. LEVITT: I was just about to suggest if it
3 makes sense to have the break now, Madam Chair, that --
4 that certainly fits.

5 CHAIR TURNER: Okay.

6 PROF. LEVITT: And just to be clear so that I know,
7 when -- when would I be aiming to finish? When would you
8 like me to be done? I can -- I can speed up or slow down
9 as required. When would you like me to seed the floor
10 today?

11 CHAIR TURNER: I would actually like for you to
12 continue and ensure that we are all comfortable and have
13 the information.

14 PROF. LEVITT: Okay. That's -- that's great
15 guidance. Thank you, Madam Chair.

16 CHAIR TURNER: Okay. So at this time, we're at
17 10:51. And so we'll go to -- Commissioners, we'll go to
18 break at this time. And we'll be back in fifteen
19 minutes. So let's have us come back at -- let's come
20 back at 11:05. Okay. Thank you.

21 (Whereupon, a recess was held from 10:51 a.m.
22 until 11:05 a.m.)

23 CHAIR TURNER: Okay. Welcome back from a break.
24 Prof. Levitt, we're ready.

25 PROF. LEVITT: Thank you very much, Madam Chair.

1 And just before I get going with the -- the remainder, I
2 want to take another chance to pause. See if anybody had
3 any questions related to the equal-population
4 requirements, either in federal law and state law, you
5 know, whether anything occurred to anyone over the break?

6 COMMISSIONER ANDERSEN: I just do have a quick one
7 about the prison population. We could come back to that
8 at a later point, about the particulars, the pros and
9 cons on.

10 PROF. LEVITT: It's -- so what I can say is that
11 the -- the -- I can give you the -- the policy pros and
12 cons later if you wish. The Legislature seems clear that
13 it is -- it is requesting this not as a favor or -- or
14 something to consider, but as the public policy of
15 California. So although the -- it -- it is instructing
16 the Department of Corrections to provide you this
17 information. It is instructing the Department of
18 Corrections to provide you not only information regarding
19 to where individuals live, but also race and ethnicity so
20 that you can take that into consideration when you draw
21 districts under the requirements of the Voting Rights
22 Act.

23 And I think the request is that you, in fact, deem
24 individuals to be residing at their prior place of
25 residency and that you adjust race and ethnicity data. I

1 think it is -- I want to be careful in not stepping into
2 the place of your commission counsel. You will hire
3 counsel that will advise you on the legal latitude that
4 you have to ignore that request. But I don't think it is
5 simply presented to you as one option among many you
6 choose. I think that it reflects what the Legislature
7 believes should be the public policy of California.

8 And I'm happy to describe sort of why and how and
9 the rationale for that. I could do that now or I can do
10 that later if you want. The -- I don't want to leave the
11 misimpression that it asks you merely to consider whether
12 you wish to accommodate that request or not, if that
13 makes sense.

14 COMMISSIONER ANDERSEN: It does. It was just -- I
15 was thinking in terms more of financially apportionment
16 also considering like large schools, like where campuses
17 are you know, located, that kind of issue. And that's
18 different than the racial aspect of it.

19 PROF. LEVITT: Yes. And so I -- I -- I can tell you
20 responsive to that -- so I can tell you some of the
21 reasons why incarcerated persons are -- were treated
22 differently under that law and why they are -- they are
23 counted differently. So the Census Bureau counts people
24 where they leave -- where they lay their heads at night
25 most of the time. That's the standard for what the

1 Census Bureau calls usual residence, and that's sort of
2 conditioned for everybody on April 1st, 2020, that's
3 the -- the pinpoint, where as of April 1st, 2020, you lay
4 your head most of the time.

5 For students who are boarding at college or
6 something like that, that may well be where the Census
7 Bureau counts them, or students in high schools or the
8 like, they're counted where they lay their heads most of
9 the time at night. They're counted at home, presumably.
10 And most other itinerant populations are counted where
11 they lay their heads most of the time at home, not where
12 they happen to be at the moment the census (audio
13 interference) comes on April 1st.

14 Every other population, every other community that
15 is not laying its head most of the time where they are a
16 permanent resident has the choice about where they lay
17 their head most of the time if they're not a permanent
18 resident there. But the incarcerated community the state
19 removes from their permanent residence and places them
20 affirmatively somewhere else. And so I believe that the
21 legislation was meant to reflect that this was not an
22 individual's choice of geography. I don't want to
23 suggest that there wasn't choice involved in any point in
24 the process, but there was no individual choice of
25 geography for where they considered home that meets with

1 where they're currently incarcerated. That, I believe,
2 was the reason to treat -- the reason the Legislature
3 thought that it made sense to treat incarcerated
4 populations differently from others.

5 It's also generally the case that other populations
6 that may be transient or may not be living at home
7 interact with the community, purchase goods and services
8 from the community, use the streets of the community,
9 sort of use resources in the community in a way that the
10 incarcerated population, not only doesn't, but is legally
11 restricted from doing.

12 And so in addition to the racial impact, there's
13 also the sense that this population uniquely is deemed
14 apart from the population that otherwise exists in the
15 counties where they are incarcerated, if that makes
16 sense.

17 COMMISSIONER SINAY: If you look at active military,
18 because that's another transit population that -- you
19 know, especially in some places like San Diego, is a huge
20 impact on everything.

21 PROF. LEVITT: Correct. And although there are
22 certainly -- active military maybe stationed somewhere,
23 but they also have the freedom to go on and off base to
24 interact with the local community in ways that the
25 incarcerated population does not. That's correct.

1 COMMISSIONER SINAY: So they are measured or they're
2 accounted for voting purposes and stuff, they count; they
3 vote in the state that was their permanent residence.
4 But for the census, they're counted in the state they lay
5 their head on in April?

6 PROF. LEVITT: The -- in voting -- and I'm being
7 careful because I want to be sure I capture what actually
8 happens. Each state's rules on casting a ballot --

9 COMMISSIONER SINAY: Ah.

10 PROF. LEVITT: -- are slightly different. They
11 usually resolve -- revolve around domicile. And it is
12 not necessarily the case that someone who has a house
13 elsewhere or has family elsewhere will be domiciled with
14 that family versus domiciled on a military base. They
15 may have the opportunity to make that choice. Someone
16 may choose to be domiciled on a military base. They may
17 choose to be domiciled where their family may be if the
18 family's not with them -- the families not stationed in
19 the same area.

20 The -- so they're -- oddly, voting geography and
21 voting domicile does not always coincide with where the
22 Census Bureau decided you lay your head most of the time
23 at night. For most of the population, that's a voluntary
24 choice. And for the incarcerated population, at least
25 with respect to geography, it tends not to be.

1 COMMISSIONER ANDERSEN: Okay. Thank you. These are
2 just interesting questions because they do affect, like,
3 you know, the military; that affects San Diego. Large
4 college populations affect, obviously, every single
5 college town. And they're different. They're -- where
6 they vote, where they live can be very different. What
7 the prison --

8 PROF. LEVITT: Absolutely.

9 CHAIR TURNER : -- that's also in terms of voting,
10 they actually would legally vote back where their
11 residence was, but they need services where the prison
12 is, like medical --

13 PROF. LEVITT: So --

14 CHAIR TURNER : -- that the --

15 PROF. LEVITT: -- in California at the moment, those
16 who are incarcerated, at least, for felony convictions,
17 not for misdemeanors, not for pre-trial time, but those
18 who are incarcerated for felony convictions aren't able
19 to vote, period, while they're incarcerated. After
20 they're incarcerated, there are different rules for when
21 people can get reenfranchised. But while someone's
22 incarcerated, at least for a felony conviction, that is,
23 at least for something with more than a year of
24 incarceration potential, they're not eligible to vote at
25 all. They're still represented much like other

1 communities that aren't able to vote, like kids, like
2 noncitizens; they're still represented.

3 So I want to -- although it can be tempting, and
4 although I'm about to conflate those in discussing the
5 Voting Rights Act, for purposes of equal population,
6 representation is actually different from and has always
7 been different from voting. We are all represented even
8 when we are not all eligible to cast a vote.

9 COMMISSIONER SINAY: If I can say one last thing to
10 address what Commissioner Andersen said, usually the
11 services that prisons use, they've got their own budget.
12 It's coming from a whole different budget. It's not
13 allocated the way the other allocations are. So it's a
14 really interesting topic when you think about a lot of --
15 a lot of those pieces. And I have -- somewhere I have a
16 really a good piece on this and I'll share it with the
17 Commission.

18 PROF. LEVITT: Commissioner Sadhwani. Pardon me.

19 COMMISSIONER SADHWANI: Thank you. I'm wondering if
20 there are grounds to make an argument that federal prison
21 inmates would constitute a community of interest in some
22 regard. And while they may not be a part of a
23 geographically contiguous community, that they may be a
24 significant kind of community that is in need of
25 representation in their residential district, right, in

1 the district where they came from. I wonder if you have
2 thoughts about that or if that's something that's been
3 used previously. And also if this is an issue that has
4 been taken up in other states and if there's any sort of
5 best practices?

6 PROF. LEVITT: There -- this is and there are
7 most -- so let me deal with the second part first and
8 then I'll come back to the first part of the question.
9 Actually, let me take them in order so then I don't
10 forget them.

11 It certainly is available to the commission to
12 consider, as it considers any community of interest,
13 committees of formerly incarcerated -- a community of
14 formerly incarcerated individuals who are currently
15 incarcerated, that's distinct from the Legislative
16 request that you account for them where they were from in
17 terms of redistricting. So someone who is sitting in
18 Lassen County who is incarcerated, the Legislature has
19 asked that you reflect them for equal-population
20 purposes, for race-and-ethnicity purposes, that you
21 reflect them wherever they -- they were last resident.

22 If -- if you believe that the population of
23 incarcerated individuals has common interests that would
24 best be represented by keeping them whole within a
25 district, just like any other community of interest

1 within the state, that's certainly available to you. And
2 the choices about when or how to accommodate that and
3 whether it has to be perfectly consistent throughout the
4 state or whether that choose to vary, whether you
5 represent some areas but not others. Those are all
6 choices that are available to you.

7 The -- unlike some of these arenas, the choices
8 about which communities of interest you consider, and
9 which should be represented within a district are --
10 those are choices that the people of California have
11 asked you to make. And so that certainly within your
12 capacity.

13 I'm not aware of a community specifically being
14 drawn in order to represent incarcerated individuals in
15 other states. That does not mean that it hasn't
16 happened. I'm just not aware of one.

17 The best practices with respect to how other states
18 have managed have mostly been around the data, have
19 mostly been about the mechanics of how, when receiving
20 information from the Census Bureau. You then adjust in
21 order to reflect population totals and race and ethnicity
22 totals in particular block areas.

23 And that's a perfect segue way to the speaker that I
24 understand is on the agenda for later today, Karin
25 MacDonald, who serves at the Statewide Database, is one

1 of the individuals who will be able to help you in
2 negotiating those data constraints. And I know she has
3 part of her presentation devoted to exactly that. Some
4 states, that process has gone fairly smoothly and some
5 states it has not. And so the best practice is really --
6 revolve not around the "whether", which is usually set by
7 state law, but around the "how".

8 COMMISSIONER ANDERSEN: All right. One last sort of
9 question on this one.

10 PROF. LEVITT: Please.

11 COMMISSIONER ANDERSEN: Isn't it sort of -- like,
12 say, certain federal prisons, like, I'm thinking of San
13 Quentin, when people are on life sentences, they're not
14 going back to where they previously lived. So is there a
15 difference in types of prisons? Has that ever come up in
16 other states or even within California in terms of, you
17 know, I guess the idea -- I mean, it's funny that these
18 people have been permanently moved to a different area
19 and they're not going to go back, where others, they're
20 there short-term, sort of so.

21 PROF. LEVITT: That's right. And two things on
22 that. San Quentin is an interesting example. It's
23 actually a state prison. And so it's in -- it will be in
24 the dataset that's provided to you. Federal prisons, my
25 understanding is, will not. So actually, the California

1 Legislature can't ask the federal government to give you
2 that information or hasn't asked the federal government
3 to give you that information. They've instructed the
4 state Department of Corrections to give you that
5 information.

6 I'm not sure, Karin may be able to speak to this,
7 whether that information will be available from the
8 Federal Bureau of Prisons or not. The law requests that
9 you make this choice with respect to state-prison
10 population. The vast majority of whom, if not all of
11 them, are from within California, or whose last residence
12 was within California before they were incarcerated.

13 Even for those who are incarcerated for life, it is
14 also true that many -- not exclusively, but many of their
15 support systems, the individuals with whom they interact,
16 families and the like, are physically living in the
17 locations where the individual who was incarcerated was
18 living before they were incarcerated. So in terms of the
19 representation they receive, it's very much in keeping
20 with California's concept of community to tally these
21 people for redistricting purposes, to tally incarcerated
22 people for redistricting purposes where the rest of their
23 community may live, including where members of their
24 family may live.

25 COMMISSIONER ANDERSEN: Thank you.



1 PROF. LEVITT: Of course. And yes, all of these
2 issues are truly, endlessly fascinating. And I don't
3 just mean that because I'm a professor who studies the
4 subject. I really appreciate your engagement on this.
5 These are real questions, some of which, as I mentioned,
6 the Legislature has decided for you, but has left to you
7 to implement. And some of them are questions that you'll
8 have to grapple with, including the question about
9 treating those who are incarcerated as -- as members of a
10 community of interest.

11 Yes. Sorry, Commissioner Fernandez.

12 COMMISSIONER FERNANDEZ: Yes. Thank you so much.
13 Regarding the inmates -- and because I have worked for
14 the Department of Corrections for many, many years, you
15 also have the reverse, where families actually move to
16 wherever their loved ones are incarcerated. So if we
17 move that potential inmate back to where the residence
18 is, it's actually incorrect information because now their
19 family has moved to within Lassen County or wherever the
20 case may be. But I mean, there's just so much involved
21 with trying to extract that information.

22 PROF. LEVITT: All correct. The Legislature made an
23 overall assessment that on balance, even though there may
24 be individuals in exactly the category that Commissioner
25 Fernandez mentioned, on balance, the Legislature has

1 asked that the -- the individuals be reflected in the
2 community where they last lived before they were
3 incarcerated. That does not mean that there won't be
4 exceptions. And also, in all of this, does not mean that
5 there won't be individual exceptions as to whether
6 someone represented in the correct place, even if that's
7 where the Census Bureau happens to have counted them.
8 The Legislature made an assessment based on -- based on
9 the majority of circumstances or based on what it
10 perceived to be the majority of circumstances even if
11 that doesn't hold in the individual case.

12 Yes. I'm sorry. Commissioner Yee.

13 COMMISSIONER YEE: A footnote and a question.
14 Footnote, so there are lifers with no possibility of
15 parole. But there are many, many, many lifers who become
16 eligible for parole and do get paroled, so that's a
17 distinction.

18 PROF. LEVITT: Yes.

19 COMMISSIONER YEE: The distinction being federal and
20 state prison, so did the Legislature cover both, and we
21 just can't get data for -- don't expect to be able to get
22 data for federal prisons or did it only -- did the
23 Legislature only ask in regard to state prisons?

24 PROF. LEVITT: It asked for both. So the -- the --
25 the language, and I'm actually looking at it right now,

1 is in California Election Code 21003. And it -- the
2 Legislature hereby requests that the Citizens
3 Redistricting Commission deem each incarcerated person as
4 residing at that person's last known place of residence.
5 And that -- it specifically said that you -- it asked
6 that you deem an inmate incarcerated in a state
7 correctional facility for whom the last place of
8 residence is outside California, for an inmate in federal
9 custody in a facility within California, to essentially
10 reside in a location outside of California that you are
11 not counting for purposes of the population within a
12 ward. For someone who is not, it's consistent with
13 treating that individual in their home community.

14 As for how to get that information, I'm actually not
15 sure. And I don't want to -- I don't want to guess. The
16 extent to which the Statewide Database or Karin or others
17 in the state Department of Corrections or elsewhere are
18 able to get you information from the Federal Bureau of
19 Prisons. So I don't know about the data coming in. I do
20 know that the Department of Corrections specifically
21 mentioned federal -- those who were incarcerated in
22 federal facilities and has asked you to adjust, but in a
23 different way, not putting those individuals back within
24 a home community, remain in California. That's the way
25 that 21003 actually reads.

1 COMMISSIONER YEE: Okay. Thanks. Well.

2 PROF. LEVITT: Yes. Sorry, Commissioner Taylor.

3 COMMISSIONER TAYLOR: No worries. Thank you. Has
4 the state typically delivered this information on time
5 and with a fair amount of accuracy? Is there a degree of
6 error in there, too?

7 PROF. LEVITT: So as with so much of what you're
8 doing, I can't tell you what the state is typically done
9 because this is a new provision. This law was passed in
10 2019. So you will be the first commission to execute or
11 implement the Legislature's wishes. The experience in
12 other states has reflected -- the rich diversity of other
13 states, that is, in some places relatively smoothly, and
14 in some places it's not less so. But I can't point you
15 to California's history on this because it hasn't
16 happened yet.

17 This actually -- this particular conversation and
18 the way that the incarcerated population helps to
19 particularly speak to communities of color,
20 unfortunately, given the demographics of the incarcerated
21 population, fits directly in with the next segment of the
22 presentation I planned. And with your permission, I will
23 move to it also in the interest of time.

24 Obviously, I can hope that this is not my last
25 opportunity, whether just as a member of the public or in

1 further training to speak to the commission. And so if
2 you have further questions on any of this, I'm more than
3 happy to engage as much as you want, but I -- I also want
4 to leave enough time to get to the -- the remaining
5 responsibilities. With any luck, you're now seeing a
6 slideshow. And now that I've done this -- thank you. I
7 appreciate the feedback.

8 Now, that I've done this, once again, I can only see
9 some of you along the side of my -- my screen. So if you
10 have questions, please let me know verbally if I don't
11 happen to pick up on your waving a hand.

12 So other than equal population, the way in which you
13 consider race and ethnicity is the other really important
14 provision of federal law that will affect what the
15 Commission does. There are lots of complexities here,
16 and you will get, I hope, lots of feedback and
17 instruction from your counsel whom you choose. And
18 the -- there's a weight on the scale expressed in state
19 law to have counsel who are versed in the Voting Rights
20 Act in particular. I've tried to boil down these rules
21 into three basic principles.

22 The first, I'm hoping will be easy, there's a
23 federal constitutional prohibition on setting out to hurt
24 voters based on their race or ethnicity. Historically,
25 if you can imagine this highly stylized jurisdiction and

1 the darker circles as people of color. There are
2 individuals mixed throughout the jurisdiction. In some
3 communities, one could divide that community up with
4 district lines to draw district lines through the
5 minority community, to crack the minority community, and
6 distribute their power so that the minority would not
7 have reliable electoral power in any given district.

8 If you look at the rough tally of voters here and
9 you assume -- the law doesn't assume, but if you assume
10 that people of color vote differently from Anglo voters
11 here, then you can see that even though there are quite a
12 few minority voters in this highly stylized jurisdiction,
13 in no district, if the lines were drawn like this, would
14 they be able to execute -- would they be able to
15 effectively exercise the franchise to elect their
16 candidates of choice. They would lose in every single
17 district if the polarized lines were perfectly even.

18 And I want to mention that in particular, because
19 these lines don't look particularly irregular. They
20 don't look particularly unusual. They're nice and
21 pretty. But they can be used to accomplish the very same
22 thing as strange-looking lines that may run right through
23 the middle of minority communities.

24 Another way in which this has been done in other
25 jurisdictions in the past, and unfortunately, in parts of

1 California, is to draw the lines so that minority
2 communities are packed into a district providing a
3 reliable opportunity in one district, but leeching
4 support from others to ensure -- essentially tokenism, to
5 ensure that minorities only have a realistic opportunity
6 to elect candidates in one district and not in multiple.

7 Setting out to impair voters, to hurt voters based
8 on their race or ethnicity is unconstitutional, no matter
9 if the lines are pretty, and no matter if the ultimate
10 motive is something else. If the ultimate motive is
11 based on community, or if the ultimate motive is based on
12 partisanship, but in order to effectuate that ultimate
13 motive, you categorize people based on their race or
14 ethnicity, and you draw lines specifically to
15 disadvantage those people, even if you had something else
16 in mind for later, unconstitutional.

17 The Ninth Circuit actually had an opinion out of Los
18 Angeles that describes as well, it was a redistricting
19 opinion in which, unfortunately, local government in Los
20 Angeles intentionally discriminated against racial
21 minorities. Not because they had animus against racial
22 minorities, but in order to preserve their own -- this
23 was a county supervisory board, in order to preserve
24 their own incumbencies. They intentionally took action
25 to split up the Latino community of Los Angeles in order

1 to preserve their own incumbencies.

2 And the Court said that's intentional discrimination
3 against the Latino community. I don't care why you did
4 it. What you did was you intentionally split up the
5 Latino community so that they could not effectively
6 exercise the franchise to elect the candidates of their
7 choice. And that was unlawful, and clearly so. So
8 that's rule one, relatively straightforward.

9 Rule two is harder -- or at least more complicated.
10 Comply with the Voting Rights Act. Under certain
11 conditions, jurisdictions may have the federal
12 responsibility to design districts so they provide
13 equitable opportunity based on race or language-minority
14 status. I'll explain what all of that means.

15 But the thing to understand in this arena is that
16 when we were talking about equal population, the goal was
17 representation. So the notion that districts have to be
18 approximately equally populated is about representation.
19 The Voting Rights Act, the federal law, speaks to -- it's
20 federal law that's actually embraced by the California
21 Constitution. It's an explicit criterion that you're
22 asked to apply by state law as well, speaks not to
23 overall membership of a district, but to political
24 electoral opportunity. This is about voting power
25 distinct from representation. Obviously, related, but a

1 different touchstone and that changes the analysis of it.

2 What are these conditions? What does it mean? How
3 do you know when you've got it? The law essentially
4 breaks down into four basic questions. Are there
5 sizable, relatively concentrated minority communities?
6 And in California, the answer to that is emphatically
7 yes. It's just a question of where and in what parts of
8 the state.

9 Do the minority communities have distinct electoral
10 preferences? And there the answer is in many parts of
11 the state, yes. And in other parts of the state, perhaps
12 not.

13 Did or do underrepresented minorities face
14 discrimination? That is, was there past discrimination
15 or is there present discrimination? And unfortunately,
16 in many parts of the state, the answer thereto is yes.
17 In other parts of the state, perhaps not, depending on
18 the minority group in question.

19 And if each of those things is correct -- and I'll
20 go into each of them in a little bit more detail, can we
21 design districts to give minority communities a fair shot
22 at electing the candidates of their choice?

23 And we start with the first bit. Are there sizable,
24 relatively concentrated minority communities? Here,
25 federal law speaks to are there communities that

1 constitute more than half of the electorate in a
2 district-sized population? So if you take a district of
3 a -- of a particular size -- remember, your band for
4 equal population varies a bit, so there's not one size
5 for a -- a district. If you have a district-sized
6 population, is more than half of the electorate of the
7 sitting citizen voting age population, or CVAP, you'll
8 hear CVAP quite a bit. Is more than half of the CVAP in
9 that population minority? I'll get into in just a
10 second, does that mean one particular minority group or
11 does that mean several? The answer is it depends.

12 What you're looking for are patterns like this. So
13 in Los Angeles, this is a map from 2016, and this is a
14 map of population rather than voters. But you can still
15 see, even visually, that there are sizable in Los
16 Angeles, virtually every community is sizable. There are
17 sizable, relatively concentrated minority communities in
18 and through the L.A. area.

19 Purple dots here represent the Anglo population.
20 The blue dots, the African-American population in
21 Inglewood and Compton. The orange-ish dots represent the
22 Latino population. Green dots represent the Asian-
23 American population.

24 And generally, the law treats populations like that
25 in categories recognized by the census. That is,

1 communities of color as the census defines them. That's
2 also where you get your data from about how many people
3 of each racial or ethnic category, how many voting-age
4 citizens may live in a particular area.

5 I'll get into in a second, the Voting Rights Act
6 does not assume that everybody who's African-American or
7 everybody who's Latino or everybody who's Asian has
8 similar political preferences. This is just step 1. Is
9 there a sizable, relatively concentrated minority
10 community?

11 Step 2, do the minority communities have distinct
12 electoral preferences? This is something that has to be
13 proven or demonstrated. And the way that you do that --
14 obviously, we don't communicate electoral preferences on
15 ballots -- we don't communicate racial or ethnic
16 preferences; we do communicate electoral preferences.
17 But your ballot is secret. I don't know how you voted,
18 and I don't know how people of your race or ethnicity
19 voted.

20 We do have demographic information that is fairly
21 reliable to attach to registration rolls. That is, there
22 are certain ways in which it is possible to predict
23 roughly race or ethnicity based on name and community
24 demographic from registration rolls. And there's pretty
25 good information about the demographic content of a

1 community, of a precinct from the census.

2 And based on that, it may be possible to take a
3 large number of precincts and look for a pattern. This
4 is a methodology that's been repeatedly endorsed by both
5 state and federal courts as a way to figure out if
6 minority communities have distinct electoral preferences
7 under the Voting Rights Act.

8 If there are distinct patterns from lots of data
9 points about precincts preferring particular candidates
10 as they are more and more and more African-American or
11 Latino or Asian-American, then the law assumes that the
12 reason for that is not happenstance or geography, the
13 reason for that is in part based on racial or ethnic
14 communities preferring a particular candidate. This is
15 not something that's assumed; it's something that's
16 demonstrated.

17 And it may be that different Latino voters, that
18 Cuban-Americans or Mexican-Americans or different pockets
19 of the Mexican-American community have very different
20 preferences when it comes to candidates in any particular
21 area. It may be that different African-Americans have
22 very different preferences to candidates when it comes to
23 a different area. Maybe the different pockets of Asian-
24 American population have very different preferences to
25 candidates. And that will reveal itself in the lack of a

1 pattern like you see here. This is an actual pattern
2 from an actual local race where precincts actually
3 demonstrated there was very consistent -- this is a
4 fairly tight grouping as it goes, very consistent
5 preference is demonstrated by the electorate.

6 It may well be in other regions or other areas that
7 people's preferences aren't consistent with race or
8 ethnicity. And in those arenas, there is no
9 responsibility under the Voting Rights Act to draw
10 districts specifically to give a fair opportunity to
11 minority voters as such.

12 The Voting Rights Act also contemplates that
13 different minority communities may or may not vote
14 together. So it may be that African-Americans and
15 Latinos have similar political preferences in some areas
16 and have very distinct political preferences in others.
17 That, too, is something the data will reveal. And as
18 with any other combination, I'm using examples here, but
19 that's true with any other combination of -- of racial or
20 ethnic backgrounds, right.

21 It may be that multiple groups share political
22 preferences. It may be that they have very distinct
23 political preferences. Local political analysis will
24 show that. And where there are combined preferences, you
25 may have to consider minority groups in combination.

1 For example, if in a district-sized population,
2 thirty-five percent of the voters are Latino and twenty
3 percent of the voters are African-American, if those
4 communities share political preferences, now you have a
5 community that's more than fifty percent of the
6 electorate in a district-sized group with similar
7 political preferences. And so there may be a
8 responsibility under the Voting Rights Act. If those
9 communities don't share political preferences, then you
10 may have a thirty-five percent group or a twenty percent
11 group, but not a fifty percent group of minority
12 community with similar political preferences.

13 So the question of which ethnicities or which races
14 to sort of count toward, a fifty percent of a district-
15 sized population depend on the data, depends on how they
16 vote, and whether they vote together as group or not.
17 The Voting Rights Act does not make assumptions in this
18 arena. It asks for (audio interference).

19 It does not ask for perfect alignment. So it asks
20 for distinct preferences most of the time. These are
21 group-based assumptions. So it is not the case that
22 every African-American has to vote with the remainder of
23 the bulk of the African-American community, or vice versa
24 for any particular ethnic or racial group. It's asking
25 for broad assessments in this area most of the time.

1 Are there distinct preferences? And are those
2 preferences distinct from the Anglo community?

3 COMMISSIONER SINAY: How do you take into account --
4 I mean, communities that have low voter participation
5 rate --

6 PROF. LEVITT: So the Voting Rights --

7 COMMISSIONER SINAY: -- or --

8 PROF. LEVITT: -- Act -- it's a great question. The
9 Voting Rights Act is about electoral power and accounts
10 for turnout. That is, it asks in making this assessment
11 to take the voters as they are, rather than asking voters
12 to show up who don't, in part because areas that have not
13 had districts drawn to accommodate their electoral
14 preference may not reveal a great motivation to turn out
15 and vote. If you know you have a very distinct electoral
16 preference and you know you're going to lose every
17 election, it may well be that your turnout is very
18 rationally lower than if you know you've got a shot.

19 If I'm in a footrace with Usain Bolt, I very well
20 might not try my hardest because I'm going to lose that
21 race no matter what. But if I'm in a foot race with a
22 neighbor, unless my neighbor's Usain Bolt, I might give
23 it more of an effort.

24 The Voting Rights Act contemplates that. And so it
25 responds to turnout differential as it exists in

1 assessing electoral preference. There are several
2 techniques here. And I'm not going to go too far into
3 the details, mostly because of time, although your
4 consultants and -- and by the way, you will -- I hope,
5 hire consultants to engage in precisely this analysis to
6 inform you of where there are distinct preferences or
7 not. Your consultants know there are several techniques,
8 some more sophisticated, some less sophisticated about
9 assessing the preferences of particular racial or ethnic
10 groups, including compensating for turnout.

11 You may be able to see on this particular chart
12 these -- each of these circles here represents a
13 precinct. And so it's looking at the precinct returns
14 for a particular candidate. And some of those circles
15 are bigger than others. That's actually a representation
16 of the turnout within the precinct. And the mathematics
17 of doing -- this is known as ecological regression.
18 There's a slightly more-sophisticated version known as
19 ecological inference, uses some of the same statistical
20 traits. But the sophisticated techniques take into
21 account the particular turn out in particular precincts
22 when assessing whether there's a pattern.

23 I also want to say that this is not just a partisan
24 calculation. This is not an assessment of whether
25 African-Americans tend to vote Democratic and Anglo

1 voters tend to vote Republican, and therefore there are
2 differences. This is an assessment that it can also be
3 assessed within primary elections, within local-
4 nonpartisan races. It's meant to say, does the community
5 have a different set of preferences from others generally
6 speaking, not purely based on partisanship.

7 It is true that partisanship will feed into this
8 assessment. But it is not merely an assessment based on
9 overall partisanship including in a particular area. It
10 is entirely -- I'm going to say that differently. It is
11 entirely possible and in fact, usual to have racially
12 polarized voting, where different segments of the
13 population prefer different sorts of candidates, within
14 an area that is overwhelmingly democratic or within an
15 area that is overwhelmingly Republican.

16 COMMISSIONER SINAY: And we need to take into
17 account the age -- I mean, the electorate, but as we've
18 talked with other presenters -- you know, ten years is a
19 large span and one generation may vote one way. And
20 younger individuals from that same ethnic community may
21 or a community interest may vote a different way. How
22 do --

23 PROF. LEVITT: Yes.

24 COMMISSIONER SINAY: -- we account into that -- you
25 know, those coming?

1 PROF. LEVITT: So just with your question about
2 turnout, the Voting Rights Act essentially asks you to
3 take the community as it is today. And not to make
4 forecasts or predictions about the preferences that a
5 community may have tomorrow or how big they may be
6 tomorrow, or how aligned the voting patterns may be
7 tomorrow. There is nothing wrong with considering
8 outside of the Voting Rights Act.

9 So the Voting Rights Act tells you what it -- there
10 are certain circumstances when you must do something.
11 There will be additional circumstances when you have the
12 freedom to consider racial or ethnic populations in all
13 sorts of other contexts where there is no mandate based
14 on the federal voting right. And there's nothing from
15 stopping you from considering those communities in a
16 whole lot of different flexible ways, including trends or
17 patterns or ways in which those communities may have
18 something else in common with all the other parts of the
19 community. With respect to the Federal Voting Rights Act
20 mandate, where there is an obligation, they ask you to
21 take the community as it is.

22 If there is a sizable -- or in California, several
23 sizable -- this, obviously, is of immense important in
24 California, in part because there are obligations under
25 the Voting Rights Act in many parts of the state -- for



1 different minority communities in many parts of the
2 state. Where there are sizable minority communities
3 within the electorate, where those communities as
4 individual racial or ethnic communities or as multiple
5 racial ethnic communities have distinct electoral
6 preferences from the remainder of the electorate.

7 The next question the Voting Rights Act asks you is
8 either did or do underrepresented minorities face
9 discrimination. Unfortunately, California is not alone
10 in this regard, but minorities when this -- within the
11 state, in many areas of the state, many different
12 minorities may have faced, to different degrees,
13 discriminatory practices.

14 That's been represented. This is something you need
15 not specifically consider, in part, because this portion
16 of the statute has been invalidated. But there was a
17 portion of the Voting Rights Act that had a special
18 procedure for jurisdictions with some of the worst racial
19 history in the country. It applied to large parts of the
20 Southeast, but also communities in Michigan, communities
21 in New Hampshire, and four counties in California. And I
22 mention that only because one should not have the
23 illusion about California having always responded with
24 equal kindness to all members of the population.

25 Thankfully, much of that response is now better.

1 Unfortunately, all of that response is not entirely
2 better. And so you may still find lingering aspects of
3 discrimination, either formal or informal, in pockets of
4 the state.

5 The answer to this question in California will
6 unfortunately often be yes. And if that is true, if you
7 have a sizable portion of the minority community with
8 distinct electoral preferences that has either faced
9 discrimination in the past with lingering impact or that
10 faces discrimination today, then the question for you is,
11 can we design districts to give the minority community a
12 fair shot.

13 This is an iterative process. And I suggest, as I
14 think others have suggested, that you essentially start
15 here. It will help guide you in a very helpful way in
16 making other choices along the way that follow from the
17 choices that you have to make under the Federal Voting
18 Rights Act. It's also the second highest criterion that
19 state law asks you to apply. The only criterion that is
20 higher is equal population.

21 How do you start? So determine an approximate
22 localized threshold for electoral effectiveness,
23 remember, this is about electoral effectiveness, that is
24 not purely fifty percent in parts of the state. Minority
25 communities may be quite electorally powerful at lower

1 thresholds.

2 And the Supreme Court has been very clear that
3 making electoral assessments is not just about
4 demography. You cannot assume that fifty percent of a
5 district will always elect candidates of choice. And you
6 cannot assume that forty-nine percent of a district will
7 never elect candidates of choice. So start with
8 approximately localized thresholds about how large does a
9 community have to be to have real effective political
10 power in this area if you have minority communities with
11 distinct preferences. Then seek pockets of that
12 population with about that number -- about that
13 demographic threshold of communities that will have
14 effective electoral strength there.

15 So if, for example, in -- I'm making this up -- the
16 Central Valley, minority communities have effective
17 electoral strength at X percent. Then look around the
18 Central Valley for pockets of the population with more
19 than fifty percent of the community as a threshold that
20 can exercise their effective electoral strength at
21 whatever that demographic number happens to be. Consider
22 other criteria at the same time you're doing this. So
23 also consider as you are drawing, the opportunity -- your
24 ability to keep communities together, to keep political
25 geography together, to keep districts that are relatively

1 compact according to California definitions and iterate.
2 You will have to do this not only at the beginning, but
3 throughout. And that's really important.

4 The past commission waited too long and got stuck.
5 And I think, didn't actually set up a process that was
6 conducive to ensuring that they fulfilled their Voting
7 Rights Act obligation. I don't actually know; I don't
8 want to speak to the result. But the process that the
9 prior commission used was not attuned to the Voting
10 Rights Act early enough, did not start with thinking
11 about multiple Voting Rights Act criteria.

12 They got bad advice. They -- they were wedded to a
13 fifty-percent threshold that did not actually reflect the
14 law at the time. And then they set those districts in
15 stone without looking for whether there were other
16 opportunities to comply with the Voting Rights Act as
17 they progressed. And I think that -- that was not a
18 process that was particularly conducive.

19 The prior commission also made it very hard on
20 themselves to consider districts with multiple groups of
21 minorities to see whether they had similar electoral
22 preferences, to see whether these sorts of multi-minority
23 districts were available. And therefore, under the
24 Voting Rights Act occasionally required.

25 I mentioned the struggles of the commission, a lot

1 set them up to this. So they delayed training on the
2 Voting Rights Act specifically. And I am abbreviating
3 this -- this could obviously go on for much, much longer.
4 The Voting Rights Act is, as I mentioned, not only
5 incredibly important, but complicated. It's not
6 impossible. It just requires a lot of thought and you
7 all are giving that a lot of thought. Part of that is
8 getting more in-depth training on exactly how to
9 accomplish the objectives.

10 Prior commission knew that it needed that but
11 delayed actually getting it. It delayed acquiring the
12 data they'd need, things like knowing whether voting was
13 polarized in a particular jurisdiction. It flirted
14 with -- the prior commission did not actually but flirted
15 with blinding itself to local voting results. That is to
16 say, the prior commission considered should we just -- I
17 know there are different rules about paying attention
18 where candidates live, should we just ignore voting
19 results entirely.

20 Thankfully, the prior commission did not do this.
21 But the extent to which it flirted with this idea made it
22 very difficult to actually assess the electoral
23 preferences of minorities in various parts of the state
24 and made Voting Rights Act compliance much harder.

25 The prior commission gave short shrift to path

1 dependence. Once they had made a choice, they didn't
2 recognize the necessity to go back and review whether
3 that was still correct in terms of the choices it was
4 making down the line.

5 As I mentioned, failed to consider blocks of
6 multiple minorities voting together. It set itself a
7 harsh population constraint that it didn't relax until
8 the very end of the day. That might well have precluded
9 for clients -- compliance with the Voting Rights Act.
10 Certainly, didn't set it on the right path.

11 And as mentioned, it conflated the assessment of
12 electoral strength with demographics. It said, we're
13 drawing Voting Rights Act districts whenever we can find
14 fifty percent of the population. And we're drawing them
15 necessarily at fifty percent of a population. That was,
16 to some degree, the advice they got from counsel, but it
17 was bad advice.

18 And in other states, maps were actually invalidated
19 based on that sort of approach. Again, I don't want to
20 suggest that what the California Commission ended up
21 doing in 2010 was unlawful, but it did not set itself up
22 for success. The results that -- the resulting districts
23 might well have been consistent with the Voting Rights
24 Act, but the process was not particularly well-designed
25 to ensure that that would be the case.

1 And the big overall failing that -- that I point to
2 in that process is because they had late training,
3 because they had late data, because they didn't start
4 with the Voting Rights Act, they created a big
5 unnecessary risk by saying, we'll draw the districts
6 first and then we'll tweak for VRA compliant.

7 In my mind, that's precisely the opposite of what
8 I'd recommend to you. You give yourselves the best
9 chance of success by starting with the Voting Rights Act
10 and then returning periodically to the Voting Rights Act
11 as you make other choices as well.

12 I know that's a lot. Are there questions about that
13 just before I proceed?

14 Commissioner Yee.

15 MS. JOHNSTON: The --

16 COMMISSIONER YEE: Yes. Go ahead, counsel.

17 MS. JOHNSTON: One of the changes that was made by
18 an amendment was to start this commission four months
19 earlier than the last commission started, just to deal
20 with that problem of the lack of opportunity for
21 training.

22 PROF. LEVITT: Yes. And -- and I'll add to that,
23 the Supreme Court has given you more flexibility in the
24 final results. It's allowed you more time than the past
25 commission had to pursue drafts. It's allowed you more

1 time to pursue a final set of maps anticipating late-
2 census data arriving. But I encourage you to pay
3 attention to exactly what Counsel just mentioned. The
4 four months extra time you have up front, you have more
5 time upfront to get started.

6 And I'd encourage you to use that to start in on
7 Voting Rights Act compliance and not to take the extra
8 time the Supreme Court has given you at the end of the
9 day to -- to think that you have more breathing room.
10 It's really important to start this early, not least,
11 because some of the consultants you'll want to engage to
12 help you with polarization analysis, some of the
13 consultants you want to engage to help you with
14 demographic analysis, they're pretty popular and other
15 states may be looking for them, too. And so one of the
16 reasons to start early is just basic fundamental con --
17 contracting. You want to make sure you have folks on
18 board who are available to you when you walk them.

19 Sorry, Commissioner Yee.

20 COMMISSIONER YEE: Yes. Let's see. Can we go back
21 to the previous slide?

22 PROF. LEVITT: Of course. One back further?

23 COMMISSIONER YEE: No, that's it. Okay. So the
24 second bullet point -- or the first two. So I'm trying
25 to sort out in my mind electoral effectiveness. So for a



1 while, we're talking about fifty percent or more of a
2 district-sized population and looking for that. But
3 electoral effectiveness could -- I mean, it could be --
4 let's say, a thirty-five percent minority that happens to
5 be very influential. I mean, is that one way of being
6 electorally effective? And I don't know, organizes,
7 draws in, forms coalitions with other groups effectively?
8 And I'm trying to figure out how do you get to other
9 numbers besides fifty percent?

10 PROF. LEVITT: Yes. So the easiest example is with
11 forty-nine percent or fifty-one percent, right. So if
12 you have a community that is more than fifty percent of
13 the citizen voting age population, district-sized area,
14 if you have an electorate that is more than fifty percent
15 of the population, there may be responsibility to draw a
16 Voting Rights Act district for that community. But you
17 need not draw that district necessarily at fifty percent.
18 You have a responsibility to the community, but that
19 responsibility is to make sure the community has
20 effective electoral power.

21 It may well be that political data on the ground
22 show that that community can reliably elect candidates of
23 their choice at forty-nine percent, forty-eight percent,
24 forty-seven percent, forty-five percent on down the line.
25 At some point, the community isn't electing candidates of

1 its choice, it's simply influencing the election, among
2 others.

3 COMMISSIONER YEE: Right.

4 PROF. LEVITT: So at some point, the -- the size of
5 the population, they may still be decisive, but they're
6 not really in the driver's seat. But it might well be
7 that the populations in the driver's seat at less than
8 fifty percent.

9 That comes from actual electoral analysis of real
10 races on the ground. This is one of the reasons to start
11 early. So some of the same analysts who are giving you
12 assessments of whether the population is polarized, will
13 also tell you how polarized. And that means that if most
14 of the Latino population, for example, has certain
15 preference and most of the Anglo population has a
16 different preference, some of the Anglo population will
17 reliably join the choice of the Latino community to
18 effectively elect the candidates (indiscernible) the
19 Latino community. And that number, how much is some, is
20 going to be very different in different parts of the
21 state and based on different levels of -- of cohesion
22 among the minority group and cohesion among the Anglo
23 group.

24 And so that's part of why you want analysts telling
25 you what the data show about what levels of support

1 actually translate to effective electoral power. But
2 your -- your intuition is exactly right, Commissioner
3 Yee. At different levels of size within or strength
4 within a community, different populations may be sitting
5 in the driver's seat or may be just riding along as a
6 passenger.

7 COMMISSIONER YEE: So thinking of that another way.
8 So in fact, if you created a district with fifty-five
9 percent of a similarly voting minority group, that could
10 be construed as packing, which would be a different
11 violation?

12 PROF. LEVITT: It could be unless what you saw is
13 that the population, based on turn out or based on other
14 factors, really only sat in the driver's seat at fifty-
15 five percent. So some groups may be effectively in the
16 driver's seat at more than fifty percent. Some groups
17 may be effectively --

18 COMMISSIONER YEE: Right. Right.

19 PROF. LEVITT: -- in the driver's seat at less than
20 fifty percent, is absolutely right. What you're looking
21 for is if the population is sizable enough to
22 theoretically yield power --

23 COMMISSIONER YEE: Right.

24 PROF. LEVITT: -- there might be an obligation.
25 Now, where do we draw the district lines? It's where

1 they would actually have the effective opportunity. So
2 if --

3 COMMISSIONER YEE: Right. Right.

4 PROF. LEVITT: -- there's an obligation, the first
5 step is essentially theoretical. That determines whether
6 you've got an obligation if voting patterns reflect real-
7 polarized choice. Once you know that there's an
8 obligation, then it is precisely to your point,
9 Commissioner, relentlessly pragmatic on the ground about
10 the actual level of community strength needed to be in
11 the driver's seat.

12 COMMISSIONER YEE: Very good. So that's why we need
13 these DRA consultants to give us that data. Wow. I see.

14 PROF. LEVITT: Yeah. To tell you -- and it's really
15 important -- you -- you can see why you start running
16 into back-of-the-envelope thumbnail assessments that
17 don't really mirror prac -- facts on the ground if you
18 wait too long to get yourself the information you need.

19 COMMISSIONER YEE: Right. Right.

20 PROF. LEVITT: You start running into trouble with
21 making assumptions about how people vote or what's
22 effective, rather than actually looking on the ground at
23 what that means.

24 COMMISSIONER YEE: Right. Okay. Thank you.

25 PROF. LEVITT: Are there other questions on this

1 just before we -- we continue?

2 COMMISSIONER ANDERSEN: Commissioner Andersen here
3 with a quick question.

4 PROF. LEVITT: Yes, Commissioner Andersen. Thank
5 you.

6 COMMISSIONER ANDERSEN: Along the -- you know, the
7 fifty percent, it's sort of -- if you happen on a certain
8 number to start considering it, and it's very easy to
9 say, well, yes, you know, this is the Latino group, and
10 that's a Black group. But as you know -- and I'm
11 thinking most -- well, through lots of parts of the
12 state, it's both. I mean, there -- you know, it isn't
13 clean cut of we have that minority group and that
14 minority group. There's many, many mixed. And so at
15 what point -- or there's thirty percent here and twenty
16 percent there and no particular one is more than fifty
17 percent, how --

18 PROF. LEVITT: Correct.

19 COMMISSIONER ANDERSEN: -- do we address that?

20 PROF. LEVITT: So let me take the second part first
21 and then I'll -- I'll come back to the first part about
22 mixing. So when there are blocks where areas where there
23 may be thirty percent of one particular group and twenty
24 percent of another group -- this is where the last
25 Commission ran into trouble. The last Commission

1 effectively ran out of time to consider whether those
2 groups could vote together or did vote together, and
3 whether that made them a coalition with responsibilities
4 under the Voting Rights Act.

5 So if there is a thirty percent group and a twenty
6 percent group and they share similar political
7 preferences, then you might well have an obligation to
8 draw a district that recognizes that combined group. If
9 there's a thirty percent group and a twenty percent group
10 and they don't share political preferences, you may, as
11 permission, want to consider that coalition of community,
12 but you may not have an obligation to do so under the
13 Voting Rights Act. So it doesn't preclude you from
14 deciding that under other criteria, you want to
15 acknowledge these separate communities and have them in a
16 district together. But if there are distinct political
17 preferences, if that's what the data show, then you
18 wouldn't have an obligation under the Voting Rights Act
19 to draw because the group's not above that fifty percent
20 theoretical threshold.

21 What about individuals who have more than one ethnic
22 affiliation or racial affiliation or check the census box
23 in more than one area? The Department of Justice
24 recognized this problem or recognized this fact that
25 people have multiple identities. And it considers for

1 voting rights purposes, the -- essentially each group
2 alone recognizing that individuals may belong to more
3 than one.

4 So the data that you'll receive consistent with
5 twenty years of -- thirty years of Department of Justice
6 practice, ever since the census actually moved to
7 allowing people to check more than one box. Was not
8 always the case that the census acknowledged that people
9 might have multiple racial identities. But since they
10 did, consistent Department of Justice practice has been
11 to receive the data for those who are -- identify as
12 African-American, and then also those who identify as
13 Latino, even though there may be individuals in that
14 population who identify as both.

15 It's not -- because these are group preferences --
16 because these are our -- our responsibilities to ensure
17 that there is an equal opportunity based on group
18 affiliation, it actually considers the notion that it's
19 an anti-discrimination measure. That in some contexts a
20 person who is an African-American, Hispanic or African-
21 American Latino may be treated by the external population
22 as African-American or may be treated by the external
23 population as Latino and may experience that
24 discrimination in -- in either or both identities. And
25 so the Department of Justice consistent treatment of

1 multiple racial affiliations or multiple ethnic
2 affiliations recognizes that.

3 COMMISSIONER SADHWANI: Commissioner Sadhwani. I
4 have an additional question as well as --

5 PROF. LEVITT: Yes, please.

6 COMMISSIONER SADHWANI: -- a comment. So this is
7 extraordinarily helpful and I appreciate the prior
8 Commissioner's questions around this fifty-percent
9 threshold and the flexibility that that should have
10 particularly here in California. You know, from some of
11 my own research, I'm thinking about some of the districts
12 in Orange County, even in Los Angeles and other places,
13 where you have multiple races and ethnicities living in
14 various districts.

15 I actually have a lot of data on one district in
16 particular in Orange County that's thirty percent Asian
17 and approximately thirty percent Latino as well. So I
18 definitely feel like there needs to be flexibility on
19 what that threshold is. So I really appreciate your, you
20 know, your thoughtfulness on that piece.

21 I had had a question and comment a few days back
22 when we had had a presentation by the Rose Institute.
23 And I wanted to get your feedback on this. Obviously,
24 you have said that this should be an iterative process,
25 that we should start early and do this early. So one of

1 my thoughts from a process perspective was because there
2 is now various kinds of softwares as well as consultants
3 out there who can -- you know, basically use a computer
4 to draw maps, right, maximizing various kinds of
5 criteria.

6 One of the things that we had discussed is that from
7 a process standpoint, perhaps we release a series of
8 quote/unquote discussion maps of some sort. Something
9 that -- you know, perhaps we maximize the VRA components
10 in one of the maps and put that up for public discussion
11 and comment, acknowledging that is not our draft map, but
12 something at least to solicit feedback. And perhaps
13 there's other maps, you know, maybe based on contiguity
14 or other components that I just wanted to get your
15 perspective on that from a VRA standpoint. Obviously, if
16 we did that, we would have to set a threshold to generate
17 those kinds of districts. Do you see pros, cons and if
18 we were to -- if we were to move forward with such an
19 approach?

20 PROF. LEVITT: Yeah. So thoughts on that, just
21 from -- from -- if I understand the approach that you're
22 considering. The first is I would encourage you not to
23 put out draft maps that maximize any one criterion
24 because they will get people used to options they don't
25 have or they suggest that you have options that you don't

1 have. So I don't think it's useful for you to actually
2 put out a draft map that maximizes compactness according
3 to a mathematical score. I'll get into, that's not the
4 California standard anyway.

5 But I don't think that's useful because that's not
6 available to you as a final map. And showing that only
7 leads people to think that they may have choices they
8 don't have because you don't have them either. So I
9 think that maybe -- I would not encourage you to do that.

10 It may well be useful for you as an exercise to ask
11 a consultant or others to show you all of the pockets
12 where there are populations either alone or in
13 combination that meet a fifty percent threshold. But I'd
14 encourage you to tweak those maps before you release
15 those as well, because those may also hide opportunities
16 and get people anchored in the public to this is a
17 veering maximized map that might not be.

18 So for example, if you set the criteria to give you
19 roughly equally populated maps that show all the fifty-
20 percent thresholds that there are. There -- there are
21 many, many, many, many, many different ways to do that.
22 So I'm not even sure that that is a -- you certainly
23 won't get one map back. You'll get thousands of maps
24 back if you do that.

25 But there may be ways for you to draw in ways that



1 essentially show effective electoral power at populations
2 that are lower than fifty percent, even if the group
3 would have -- it -- even if the group would suggest that
4 the fifty-percent line shows a different demonstration
5 district, the actual district that you'd want to draw to
6 effectuate their electoral power, is it forty or at
7 fifty-five. That's going to look like a different
8 configuration and that's going to get the -- the public
9 used to a different response.

10 So to the extent that you have -- I shudder to use
11 the word, automatic. To the extent that you have
12 consultants who are able to draw various forms of
13 computer-generated starter maps, I would -- I would very
14 strongly encourage you to take a look at those and see
15 where you might want to tweak, expand, and modify even as
16 a draft construction before you release.

17 But I would absolutely encourage you to release --
18 if the broader question is, should we release a series of
19 draft, here's what we're thinking about before we get to
20 a final draft map, yes, because you'll get feedback that
21 allows the public to tell you where you've missed
22 something. Where, hey, you haven't considered, but these
23 populations have very different political preferences and
24 you combine them together or you may not have considered
25 these populations actually have quite similar political

1 preferences and you haven't thought about whether they
2 could be added. And that feedback is -- is most profound
3 when people are looking at something to react to.

4 So I absolutely encourage you to release drafts in
5 an iterative process. But I don't know that I would
6 encourage you to release sort of, externally computer-
7 drawn maps alone for any single criterion, much less
8 maximizing several, if that made sense.

9 COMMISSIONER ANDERSEN: Commissioner Andersen here
10 with a question on that. Because the idea of putting
11 together you know, rough maps several different times
12 always helps, particularly communities of interest, kind
13 of the idea we can use that roughly. But in terms of --
14 I mean, we have to look at politics and the voting to
15 determine the Voting Rights Act criteria. But we can
16 never then say, ah, yes, we're looking for your political
17 input because we can't consider politics ultimately in
18 drawing the lines.

19 So how do we sort of handle -- you know, where we're
20 looking at that as one criteria, but then not ultimately
21 because when we come to the communities, we really
22 talking about all communities of interest, not
23 necessarily voting communities of interests? So do you
24 see the difference, what I'm trying to --

25 PROF. LEVITT: I do.



1 COMMISSIONER ANDERSEN: -- account --

2 PROF. LEVITT: And I've only start sharing my screen
3 for one moment, I want to come back to it because I want
4 to get the precise language up in front of me. I want to
5 be really clear with the Commission. I think you are not
6 precluded from considering politics. And I don't want
7 you to believe that you are precluded from considering
8 politics. I think what the law actually states, and this
9 is why I wanted to make sure that I had it in front of
10 me, is that you not consider the place of residence of an
11 incumbent or candidate flat out. So you can't know; you
12 have to blind yourselves to where do the candidates live
13 or where do the incumbents live; that is true. And that
14 districts shall not be drawn for the purpose of favoring
15 or discriminating against a candidate or party.

16 So you can't set out to draw districts that benefit
17 Democrats or Republicans or Libertarians or Greens or
18 that discriminate against Democrats or Republicans or
19 Libertarians or Greens. But that does not mean that you
20 have to be blind to or that you have to keep yourself
21 from information about the political composition of a
22 community.

23 And I think those are very different. And I think
24 that you all can -- can understand community preferences
25 without setting out to favor or discriminate against

1 those preferences based on their party.

2 COMMISSIONER VAZQUEZ: This is Commissioner Vazquez
3 with a potential follow-up question. So it seems then,
4 perhaps one of the questions we would -- to get to your
5 point about like, there's a difference between not
6 considering partisanship and incumbency versus
7 considering politics and political power, may be one of
8 the questions we should have our consultants help us
9 answer is more in -- or is in addition to candidate
10 favoritism but policy favor -- like, how folks are voting
11 in terms of local policy decisions? So things that
12 aren't necessarily tied to strict party lines, but that
13 gives us additional information about whether they're
14 voting for -- you know, this is probably more political,
15 but like tax -- you know, parcel taxes or other strictly
16 policy-related questions on the ballot versus partisan
17 questions on ballots?

18 PROF. LEVITT: I think that you are absolutely free
19 to -- to consider communities of interest that have
20 distinct preferences with particular policies, whatever
21 those are, so yes. But I want to be clear, you're not
22 precluded from considering partisanship, right.

23 The Democrat or Republican is not a dirty question.
24 Where does an incumbent live? That, according to
25 California state law, is a dirty question. You're not

1 allowed to know that, but you are precluded from
2 intentionally drawing a district to favor or discriminate
3 against a party. But that's very different from knowing
4 whether there are a group of people who are affiliated
5 with a party or whether that happens to be important with
6 them, either mixed up with race or not.

7 So I don't want you to think that you have to blind
8 yourself to whether people are Democrats or Republicans.
9 That's different from -- or how particular minority
10 communities will tend to actually vote, where they have
11 distinct political preferences. That's different from
12 setting out to benefit or discriminate against a party in
13 how you draw the lines, if -- if that's a distinction
14 that makes sense.

15 MS. JOHNSTON: And one other distinction is that
16 we're talking here about the Voting Rights Act. When
17 you're considering communities of interest, you may not
18 consider relationships with political parties.

19 PROF. LEVITT: Correct. Thank you, Counsel. Thank
20 you.

21 Yes. That's -- there are -- the -- the -- the law
22 also communicates what it -- what is a valid community of
23 interest and what is not valid community of interest.
24 And the law very specifically says, Democrats aren't
25 considered a community of interest or Republicans as such

1 aren't considered a community of interest. So you can't
2 set out to draw a district around Democrats or around
3 Republicans as a community of interest. That does not
4 mean that you have to blind yourself to the information
5 about what party affiliations people have.

6 COMMISSIONER ANDERSEN: Yeah. I am Commissioner
7 Andersen, it's more like we must be aware to make sure
8 that we're not accidentally doing that. It's not like,
9 you know, with not knowing, we could indeed be creating
10 Democratic or Republican districts. We need to be aware
11 of what's happening so we can follow the rules, and not
12 accidentally do something we're not supposed to.

13 PROF. LEVITT: I think the not knowing part is more
14 in relation to --

15 COMMISSIONER ANDERSEN: Yeah.

16 PROF. LEVITT: -- the Voting Rights Act. I mean, if
17 you blind yourself to political preferences, you won't
18 know whether -- you will only have a limited set of
19 information on whether certain minority communities have
20 distinct preferences from the remainder of the
21 population. And you don't want to blind yourself to that
22 unintentionally.

23 The law actually doesn't speak to political effect.
24 It speaks to districts shall not be drawn for the purpose
25 of favoring or discriminating against a political party.

1 And you may not consider a community of interest to be a
2 community that responds to a political party, but it does
3 not speak to political effects or not.

4 You can decide that you would rather not, having
5 satisfied all of the other criteria, have a district that
6 is wildly lopsided in terms of political effect. The law
7 doesn't actually preclude you from -- it doesn't mandate
8 that you do it; it doesn't require that you do it. It
9 sets out certain things that you may not put political
10 fairness above. But at the end of the day and I want
11 to -- I want to come back to that. That's really
12 important. You have a responsibility to draw districts
13 under the Voting Rights Act. You have a responsibility
14 to draw districts that are compact under California law.
15 You have a responsibility to draw districts that reflect
16 communities of interest.

17 If at the end of the day, you do all of that, and
18 then you're able to import some partisan fairness, that's
19 up to you. You may, if you choose. California law does
20 not require you to achieve any level of partisan fairness
21 or not as long as you are not setting out to discriminate
22 or benefit against a political party, if that distinction
23 is clear. And I think it would be a big mistake to blind
24 yourself to information that will help you actually
25 achieve the legal requirements you are mandated to -- to

1 try to achieve.

2 Commissioners Sadhwani, I know, had her hand up.

3 COMMISSIONER SADHWANI: Thank you. Thank you. Yes.
4 I so appreciate that. I think one of the -- one of the
5 potential points of conflict might be coming from -- you
6 know, last week when Eric McGhee came to speak with us
7 from the Policy Institute of California, he had suggested
8 that we should set as an aspirational goal having you
9 know, his theory around an efficiency gap and having
10 partisan competition at the district level.

11 I think having that as a potential goal could
12 certainly undermine our ability to uphold our commitment
13 to the Voting Rights Act. And you know, and I think a
14 couple of pieces, right. Just in response to -- you
15 know, Commissioner Vazquez's, you know, great suggestion
16 of thinking about policy preferences, I would just put as
17 a reminder that what we're thinking about here is not
18 policy preferences, but representational preferences.
19 This preference by minority communities to have a
20 representative of their choice, not simply a policy. So
21 I can think of ballot initiatives even this year that I
22 would not want to use as a proxy for representational
23 choices of various communities, for example.

24 And I did have one final point. And now it's
25 escaped me as well. I'll try to remember it (audio

1 interference).

2 PROF. LEVITT: No, that -- that's certainly right.
3 The -- this is part of what your consultant that you hire
4 to do a polarization analysis, which is what -- what I'm
5 showing on the screen is called determining whether
6 minority communities have distinct electoral preferences.
7 The best practice is to use a range of elections, so a
8 number of different offices over a number of different
9 years in order to figure out whether there are consistent
10 group patterns.

11 Again, this isn't about every minority voter having
12 exactly the same choice, but over time, over a series of
13 elections, do voters have similar preferences? That's
14 distinct from Commissioner Vazquez's suggestion about
15 reflecting policy, which is available to you under the
16 communities of interest, if you wish, but not necessarily
17 the goal of the Voting Rights Act here, as Commissioner
18 Sadhwani mentioned.

19 With respect to -- to Mr. McGhee's presentation, if
20 you choose, you may consider things that aren't listed in
21 the California Statute or in the California Constitution
22 as other things you want to accomplish, but only to the
23 extent that they don't detract from your accomplishing
24 the things that California law says you have to
25 accomplish.



1 And so partisan fairness, for example, were
2 competition within the district, for example, those are
3 things that the drafters of the propositions that became
4 the California State Constitution considered, and very
5 specifically, did not put in the state constitution. If
6 you set yourself goals, be very, very careful that those
7 goals don't detract from the things the people of
8 California actually asked you to do.

9 So first, equal population again within that band,
10 within that threshold, second, the Voting Rights Act.
11 Third, communities of interest, fourth, compactness, as
12 California law defines it. Fifth, nesting requirements,
13 and on down the list. I -- apologies if I've -- if I've
14 skipped one in the process. But only after you have done
15 all of those things are you legally free to consider
16 other things that you might want to do, including the
17 partisan composition of any (audio interference) or of
18 the -- the district representation as a whole.

19 So it's -- you're not precluded from considering
20 those things, but if you consider them at all, you have
21 to leave them to last priority. And to the extent that
22 those ever get in the way of these other criteria, then
23 you're actually not following the law that California
24 asks you to follow.

25 I have a quick suggestion and that is I -- I suspect

1 people would like a break soon. And I don't know when
2 you have a break scheduled. I also am very conscious
3 that there are other presenters today. There's a lot
4 more that I could go over, but I just wanted to -- to
5 step in for a quick time check.

6 I've probably got another ten minutes on the Voting
7 Rights Act and race and ethnicity in particular, ten or
8 fifteen minutes. But then there's a natural point for a
9 break. And I just wanted to check in with the Chair on
10 how you'd like to use the time. I can also abbreviate
11 dramatically, if that's what's called for.

12 CHAIR TURNER: Yes, we have a required break at
13 12:35.

14 PROF. LEVITT: Okay. So then I've got seven minutes
15 and that's -- that's very clear.

16 How long is that break and what do you have
17 thereafter? Just so that I --

18 CHAIR TURNER: We have a speaker coming in after
19 that can be delayed. We have a -- the break is one hour
20 for lunch.

21 PROF. LEVITT: Okay. Let me do this. I know the
22 speaker afterward; I quite admire her. We have worked
23 together on -- on occasions. And I think part of this
24 discussion will actually make the discussion with her
25 easier in some ways, because she'll be talking to you

1 about the sources of the data where you get all of this
2 information, but it's important for you to know why
3 you're getting it first.

4 CHAIR TURNER: Um-hum.

5 PROF. LEVITT: So let me take the seven minutes that
6 I have, soon to be six and a half until 12:35 to give you
7 that break, and then set up what I want to talk about
8 next. And let --

9 CHAIR TURNER: Okay.

10 PROF. LEVITT: -- me try and do that in the six-
11 minute block.

12 CHAIR TURNER: Um-hum.

13 PROF. LEVITT: So we've just discussed the Voting
14 Rights Act. There's a lot of there there. There's
15 plenty more there there than I had the chance to get
16 into. Some of you are quite familiar with all of these
17 things already.

18 The third factor that federal law tells you to do is
19 only allow race to predominate in the construction of any
20 given district if there's a really good reason for it.
21 And courts have consistently said that compliance with
22 the Voting Rights Act is a really good reason.

23 There's a lot of confusion about what this factor
24 means and how much you can consider race in making
25 choices. And the analogy that I gave to the -- to the

1 eight prior commissioners, I think will be useful to the
2 commission as a whole.

3 The way to make sure you don't run afoul of these
4 limitations is to never make race the exclusive thing
5 that you're considering. But that's easy. You're all
6 used to doing that all of the time whenever you draft.
7 And I can use this example in California because most of
8 you are driving, at least, you used to in the before
9 times.

10 So it's really important to pay attention to the
11 speed limit. We know that. It's a legal requirement not
12 to speed. But nobody is ever exclusively focused on the
13 speedometer in their car because if you were you, you'd
14 crash. You are constantly checking in with the
15 speedometer, but also looking at the exterior
16 environment, also considering where traffic is flowing,
17 also considering how you're steering, also considering
18 the route, also considering the weather conditions, also
19 considering the light, also considering your GPS, or your
20 music selection, or your passengers, or your passengers
21 in the back seat or other distractions around. You're
22 attuned to a lot when you drive and you're also
23 considering your speed.

24 If you are only looking at the speedometer, you're
25 going to crash. Similarly, if you are only looking at

1 race, if that is really your predominant characteristic
2 and the only reason a district is drawn as it is, is
3 because it hits a precise threshold number. That's
4 dangerous, but it is extremely unlikely that that is
5 really ever the only thing you're considering.

6 You will also be considering where political
7 boundaries are. You will also be considering how compact
8 the district looks. You'll also be considering whether
9 there are other communities in the area. You'll also be
10 considering a lot of other factors that go into
11 redistricting, while checking in, just as you might check
12 in on the speedometer, while checking in to make sure
13 that the demographic and political composition of the
14 district allows minorities an effective opportunity to
15 exercise their voice under the Voting Rights Act. Or
16 while checking in to see the extent to which, where you
17 don't have a Voting Rights Act responsibility, a certain
18 community may have a racial or ethnic composition.

19 I want to be clear about this. You are not
20 precluded from considering race in a lot of different
21 ways. We just don't want to ever consider it
22 exclusively, if you can avoid that. And in the vast
23 majority of redistricting decisions you're going to make,
24 you won't be asked to consider it exclusively as long as
25 you are considering lots of other factors and also

1 checking in on the demographic composition, just like you
2 are considering lots of other factors in driving down the
3 road and also checking in on speed, you should be fine
4 with this particular, massively oversimplified
5 constitutional limitation.

6 But because that's poorly understood, you may hear a
7 lot of noise about how it's unlawful to consider race, or
8 as we've already discussed, a lot of noise about how it's
9 unlawful to consider partisan. And I just want you to be
10 able to distinguish that from the actual legal
11 restrictions, which allow you a lot more flexibility as
12 long as you also consider other things.

13 This one's super-great and super-easy because it
14 doesn't apply to you. The California Voting Rights Act
15 is a separate statute. It applies to jurisdictions with
16 at-large elections. You may hear a lot about it. It's
17 in the news at the moment.

18 There's a case that may or may not be heading to the
19 California Supreme Court. It will come up as you do your
20 work. It applies to local jurisdictions. It does not
21 apply to Congress or to the State Legislature or to the
22 Board of Equalization. And so this is a thing that you
23 may hear about that you can take off the table entirely.
24 And if there is ever a place to simplify, this is a
25 blessing.

1 I do want to walk through some things that I'd
2 recommend with respect to complying with race and
3 ethnicity. And to tell you a real quick story about how
4 the cleanest answer may not be the best. It may not be
5 legal. It's really good to keep in mind. That, I think,
6 will have to wait for after the break because I don't
7 want to rush it.

8 After that story, you're getting a quick preview
9 here, I just want to show there are a few other things
10 that you have to keep in mind, but I can go through those
11 with a bit more speed.

12 There are distinct rules here, but none of them are
13 as complex as the various considerations about equal
14 population and the way that you deal with that with
15 potentially census data that might or might not be flawed
16 with incarceration data. And none of them are as complex
17 as the rules on race and ethnici -- race and ethnicity.

18 So that's what's coming up. But it's not
19 proportionate to scale in terms of time. I think I can
20 actually walk through the remainder, some of which we've
21 already discussed. We already discussed some of the
22 rules on --

23 CHAIR TURNER: Um-hum.

24 PROF. LEVITT: -- candidates and partisan data. So
25 I think in -- in seeing at least what I have prepared for

1 you, don't assume that that all takes the same amount of
2 time. And now I see that I'm right at 12:35 and don't
3 want to step a minute over.

4 CHAIR TURNER: Right.

5 PROF. LEVITT: Madam Chair, I'm at -- I'm at your
6 disposal.

7 CHAIR TURNER: Thank you so much. We will go ahead
8 and take our break now. We'll come back -- I'll ask if
9 we would please still come back at 1:30, please. Just
10 give us five minutes. And we'll start, Prof. Levitt,
11 with public comment, because we do want to let the public
12 know when they can call in. So at 1:30 when we
13 reconvene, we'll start with public comment first and then
14 we'll go back to your presentation. Okay. Thank you
15 all.

16 PROF. LEVITT: Thank you very much.

17 CHAIR TURNER: Back at 1:30, please.

18 (Whereupon, a recess was held from 12:35 p.m.
19 until 1:30 p.m.)

20 CHAIR TURNER: Thank you so much. And welcome back
21 from our break that we had. We'd like AT&T operator,
22 Colin, we'd like to open up the line for public comment
23 is the way we'd like to start off this session, please.
24 Do we have anyone in queue?

25 AT&T OPERATOR: No, Madam Chair, we don't have

1 anyone in queue at this time.

2 CHAIR TURNER: Okay. Thank you so much.

3 COMMISSIONER SINAY: Do we want to give a couple of
4 minutes just in case?

5 CHAIR TURNER: Okay.

6 AT&T OPERATOR: Okay. And I will give instructions
7 again. Ladies and gentlemen, if you wish to ask a
8 question or have your voice heard for public comment,
9 please press one, then zero at this time. And there are
10 still no lines in the queue.

11 CHAIR TURNER: Okay. Thank you.

12 Justin, we'll go ahead and continue with the
13 presentation, please.

14 PROF. LEVITT: Thank you, Madam Chair.

15 CHAIR TURNER: Uh-huh.

16 PROF. LEVITT: And just as before, I am at your
17 disposal in terms of in terms of time remaining, in terms
18 of stopping for questions, so please, I want to be as
19 useful as I can to you, and that means if there are -- if
20 there comes a point at which you say you'd like me to
21 hustle, and I can hustle. If there comes a point at
22 which you'd like me to slow down, I can slow down.

23 CHAIR TURNER: Let me ask, before you continue, the
24 rest of the commissioners. Are -- is this a good pace
25 for you? Are you all enjoying this pace, or would you

1 like it to -- okay.

2 Looks like we're good, Justin. Thank you.

3 PROF. LEVITT: Yeah. I don't take as a given that
4 that will continue. So if the feedback is move it on
5 along or slow it down a little bit, I'm happy to adjust
6 as you wish. And I thank you, again, for your commitment
7 and patience and engagement. I know this is not the
8 first long Zoom meeting you've been on, and it won't be
9 the last, but I really -- I really appreciate. And the
10 questions you're all asking are number 1, extreme lee
11 well-informed; and number 2, exactly right. I hope I'm
12 not the last person you ask them of. You're going to
13 want to ask your own counsel some of these questions,
14 you're going to want to ask your own consultants some of
15 these questions, and I have no doubt you're going to want
16 to ask some of these questions of each other, not only
17 with some of the expertise that you all have.

18 I know on this commission, there are individuals who
19 have done some of the analysis that I've presented as
20 things that you want your consultants to do, but also in
21 your capacity as policymakers for the commission. Some
22 of what I've presented are choices that California law
23 has set out for you, and some of what I've presented and
24 hopefully labeled as such are choices that are up to you
25 to make, and the questions that you have will also be

1 questions of each other about what you want to do where
2 it's within your discretion.

3 CHAIR TURNER: Okay. Great. Thank you.

4 PROF. LEVITT: I will hopefully continue to share my
5 screen and with my computer's permission, with any luck,
6 what you are seeing is more or less where I've left off,
7 and it's a great segue from what I've just said because
8 we -- I walk through very briefly the rules around race,
9 the basic rules of the road around race and ethnicity.
10 Number 1, don't set out to injure populations based on
11 their race or ethnicity. I'm hoping that's an easy rule
12 to keep in mind, but it is a very firm one.

13 Number 2, make sure that you're complying with the
14 Voting Rights Act where there are sizable minority
15 communities. Where those communities have different
16 political preferences from the remaining portion of the
17 community, where there's been a history of discrimination
18 or current discrimination, you may have an obligation to
19 draw districts under the federal Voting Rights Act.

20 And number 3, both then and beyond, it's fine to
21 consider race and ethnicity. Even if you don't have an
22 obligation to draw in a particular area, it's fine to
23 consider race and ethnicity in the mix as long as it's
24 not the predominant focus, as long as you're not staring
25 at a racial number to the exclusion of other factors.

1 In doing all of this work, you'll want to ask hard
2 questions of the experts and consultants and individuals
3 you retain in order to help you. You want to ask them
4 about how they're arriving at the numbers they're using
5 to assess the citizen voting age population and whether
6 they are carefully looking for every community that could
7 constitute more than half of a district-sized population,
8 whether they're varying district size in order to make
9 sure that they're really pulling together a broad sweep.

10 You'll want to ask hard questions about the way in
11 which your experts are assessing voting patterns by race
12 and the way they're considering potential coalitions of
13 multiracial or multiethnic communities where the data
14 actually support that those communities have similar
15 political preferences.

16 You want to ask hard questions exactly like, I
17 believe it was Commissioner Yee who was asking about the
18 practical ability to elect candidates of choice and
19 exactly how we know that any community in a particular
20 area has a practical opportunity to elect candidates of
21 choice. You want to ask hard questions about how they
22 know that, and you want to ask hard questions about the
23 qualitative and historical context about discrimination
24 they may find.

25 Understand the limits of the data you get, including

1 some of the potential difficulties with census data that
2 may be on its way, and in particular, hereto, and I'm
3 going to say this over and over and over again, remember
4 that the cleanest answer or the answer to which you may
5 instinctually gravitate is not always best and indeed may
6 not always be legal.

7 And as an example about that, you may need to
8 creatively reconcile the rights of different minority
9 communities, and that may mean comfort drawing districts
10 with what otherwise seem like "strange chafes", and I put
11 that in heavy quotes because there's nothing inherently
12 strange about the shape of a district. If you think of
13 it as responding to a community, communities live in all
14 kinds of different places in this country. Very few
15 people decide that they're going to move into an
16 establishment based on the fact that it completes a
17 box-shaped district. People decide to move into a
18 neighborhood for all kinds of reasons, and this
19 creativity and comfort can actually really help you
20 comply with the legal obligations of the Voting Rights
21 Act.

22 This is an example from Chicago from a number of
23 years ago, but it's a really potent example, I think. So
24 in Chicago, in this area of Chicago, there are multiple
25 racial communities that live, as many communities do in



1 California, side by side. In the suburbs of the western
2 part of Chicago, there is a Latino population here in
3 orange sort of intermingled with an African-American
4 population here in purple. Not at all unusual
5 residential patterns. There are clear pockets, but it's
6 not like what -- an entire portion of west Chicago is
7 entirely African-American or an entire portion of west
8 Chicago is entirely Latino.

9 All of this takes place in a relatively small area.
10 So all of these communities are relatively compact,
11 they're relatively close together. The blowup that I've
12 got for you here all takes place in a very small area of
13 the state overall. If you were to draw a nice-looking
14 district designed mostly to accommodate the Latino
15 community, you might draw a district like this that
16 embraces most of the Latino community in one district,
17 but what it would mean is cutting off parts of the
18 African-American community and leaving them unable to
19 effectively elect candidates of their choice.

20 And I should add, in this part of west Chicago --
21 again, local patterns vary, so this is not generalizable.
22 In this part of the area, Latino residents have very
23 different, have cohesive preferences, but very different
24 preferences from the equally cohesive, but quite distinct
25 African-American community. So Latino community,

1 coherent preferences, African-American community tends to
2 vote together, but they vote in very different ways from
3 each other, and each is substantially sizable. These are
4 large numbers of people in a relatively small geographic
5 area.

6 So if you were to draw a district effectuating the
7 Latino community's opportunity to elect candidates of
8 their choice with something that looks relatively smooth
9 and globular, doing that would have the effect of cutting
10 right through the heart of the African-American
11 community. And if, conversely, you were really focus on
12 African-American community and drew a relatively smooth
13 district, you cut right through the heart of the Latino
14 community separating the Latino community from each
15 other.

16 And so what districters did, recognizing that there
17 are two groups, each compact, each sizeable, each
18 concentrated close together with very different political
19 preferences and each with a right under the Voting Rights
20 Act is they do districts that look like this, one
21 district combining the north and south Latino communities
22 and another district largely incorporating the
23 African-American communities. Those districts are not
24 entirely Latino or entirely African-American, but they
25 each respond predominately to a distinct racial or ethnic

1 community within.

2 And if you look at where the population exists and
3 the population that has common elements to each other,
4 these districts make sense. If you look at the district
5 shapes in the abstract without actually rooting it to the
6 people or to the geography, the district can look a
7 little strange, and a lot of people have mocked in
8 particular the district aimed to focus on the Latino
9 population, giving the Latino population of western
10 Chicago the opportunity to elect the candidate of choice
11 for the first time in the region to Congress. A lot of
12 people have mocked this district as the earmuff district.
13 It looks weird, but it looks weird, if you think it looks
14 weird at all, on a blank piece of paper without realizing
15 where people live or the geography of the neighborhood,
16 and if you consider what you're doing as responding to
17 communities, this doesn't look weird at all. This looks
18 beautiful.

19 This was a district designed to make sure that it
20 effectuated the Latino community's cohesive opportunity
21 to elect candidates of choice, to respond to historical
22 discrimination in the region while at the same time
23 preserving a separate African-American community's
24 opportunity, itself also responding to discrimination in
25 the region.



1 This district, a lot of people mock when they don't
2 understand the history or the context or the local
3 geography, but I happen to think this looked beautiful,
4 and I'm not alone. This particular district, Illinois'
5 4th Congressional District, the earmuff district, was
6 actually featured on the wedding cake of two
7 redistricting colleagues of mine combining communities of
8 interest, they say. They thought enough of this idea
9 that this is a real picture -- I promise you, this is not
10 photoshopped of a real wedding cake of two redistricting
11 colleagues. I'm not suggesting you have to like any of
12 the districts you draw enough to put on a wedding cake,
13 but I am suggesting that you should not simply resort to
14 the districts that look or feel cleanest to the exclusion
15 of the districts that actually respond to legal
16 requirements in providing opportunities to distinct
17 minority communities that have those -- that the law
18 commands you respond to.

19 Questions about that or about the rules of federal
20 law about equal population or race and ethnicity before I
21 move onto the other state constraints? Okay. Excellent.

22 And you'll hear, by the way -- I know you're hearing
23 from Karin MacDonald later. I know you're hearing from
24 Matt Barreto later. You'll hear hopefully in slightly
25 different ways some of the same themes repeated, and I

1 know this is a lot of information to take in, so as you
2 hear it, perhaps similar things repeated in slightly
3 different ways, maybe that will help bring some of these
4 things home. And again, I hope you hear it again and
5 again and again as you proceed through your work as a
6 commission, these are important concepts to keep in mind
7 continually.

8 We've just talked about equal population and race
9 and ethnicity. There are some other criteria that the
10 state constitution asks you to consider. Some of these
11 occur in many other states, some of them are not unique
12 to California, but have particular quirks or tweaks in
13 California law that are specific to California, and so I
14 want to again focus on how this works for you in
15 California itself. And here, I promise I will move
16 forward a little more rapidly than I did earlier. These
17 are simpler. That's a good thing.

18 Contiguity laws just mean essentially that all parts
19 of a district have to be connected to each other. The
20 vast majority of states have rules about contiguity in
21 State, Legislative, and in Congressional districts.
22 Nevada is the one state that doesn't. If you live in
23 Nevada, it is perfectly lawful to draw a smiley face
24 district where the parts of the district don't connect.
25 If the districters in Nevada want one of the districts to

1 look like this, that is legal there. That is not
2 available to you.

3 Contiguity requirements mean that you have to make
4 sure that the districts' components are connected to each
5 other, and it's really only about that. It's not much
6 more complicated than that. The district on the left is
7 not contiguous. The district on the right is contiguous.

8 The one exception that's a little thorny, but you'll
9 be able to work through just fine are water and island.
10 Those obviously aren't naturally connected to any other.
11 So you'll have to decide, for example, whether Santa Cruz
12 Island belongs to the same district as Santa Barbara or
13 Ventura or both or neither. You'll have to connect it to
14 something.

15 Many, many entities unsurprisingly have to deal with
16 island and have to deal with water bodies and figure out
17 how contiguity works over water. Occasionally, some
18 entities have used ferry routes or have used geographic
19 lines, what is the geometrically closest. California
20 doesn't specify what criteria you're to use to decide how
21 to assign island and water, and so you're free to make
22 the decisions that you feel are most appropriate.

23 Municipal geography. After equal population, race,
24 and ethnicity and contiguity, California Constitution
25 instructs that you consider municipal geography, and what

1 it means by that are preserving city lines, county lines,
2 neighborhood lines, and communities of interest.

3 The constitution does not put any inherent priority
4 on these in order. So it suggests that a geographic
5 integrity of a city, county -- city and county, like San
6 Francisco, neighborhood or community of interest shall be
7 respected in a manner that minimizes the division to the
8 extent possible without violating anything else, but it
9 doesn't tell you, if these conflict, which to put first
10 or second or third.

11 Some of these are going to be more readily reducible
12 to hard geometries. So a city line is a clear, a county
13 line is clear. A neighborhood may or may not be clear,
14 depending on how local cities have defined neighborhoods,
15 and the community interests may or may not be clear. And
16 I urge you in the interest of clarity not to just -- I
17 urge you not to just prioritize the things that are clear
18 to the exclusion of things that are less clear when the
19 constitution actually puts equal importance on all of
20 these things.

21 The fact that a county line is definite and a
22 community of interest is less definite does not mean that
23 the county line is more important, and that's a really
24 important concept for you. You have the flexibility to
25 consider the importance of these distinct concept in

1 whatever order you wish, and you also have the
2 flexibility to make choices that are inconsistent across
3 the state.

4 It may be that in one part of the state, a city is
5 more important than a county or a city is more important
6 than a community of interest and that city line is the
7 thing you feel is most important, and in a different part
8 of state, you may feel that a community of interest is
9 more important and powerful than keeping a particularly a
10 city intact or a county line intact. It is fine to
11 arrive at different choices of what's most important to
12 you and to the communities that live there in -- in
13 deciding the priorities of these geographic areas in
14 different parts of the state.

15 What is a community of interest? The Constitution
16 defines it. As you heard from counsel before, the one
17 thing it says it is not is a relationship with a
18 political party or incumbent or candidate. So somebody
19 who says, we're a community of interest because we all
20 like candidate X or we are all democrats, that's not
21 legally a community of interest for California's
22 purposes, but it can include lots of other things.

23 A contiguous population which shares common social
24 and economic interests that should be included within a
25 single district for purposes of effective and fair

1 representation, that's a lot of policy flexibility for
2 you, and part of the design of this commission is
3 precisely to ask you to weigh the various competing
4 concepts of what a local community of interest is in
5 order to determine to what extent the district lines
6 should follow or depart from.

7 These lines may be irregular. Even the ones that
8 are definite may be irregular. So again, you're going to
9 have to fight a very natural instinct to keep things
10 geometrically clean when they don't correspond to actual
11 representation on the ground. That's a map of the city
12 of Los Angeles. It's not a circle or a square, and
13 that's fine. There are neighborhoods within the city of
14 Los Angeles, neighborhoods that city itself defines a
15 neighborhood association or that the county divides,
16 neighborhoods like Bel Air or the Harbor Gateway that are
17 also independently irregular. Neighborhoods aren't
18 globular either. They might be, but they don't have to
19 be.

20 And so it's important to recognize that even where
21 the lines are defined, they may not be pretty, as most
22 people think of pretty in terms of geometric regularity,
23 and as long as that actually maps to community
24 representation, there's nothing wrong with that at all.

25 There are also parts of city lines that are not



1 contiguous or that are barely contiguous. So in San
2 Jose, you see a portion in the southeast portion of San
3 Jose and a portion in the northeast that, because of
4 annexation and local annexation battles, is not
5 contiguous with the rest of San Jose.

6 In San Diego, there's a portion that is connected by
7 a tiny little land bridge and is only barely contiguous.
8 You'll have to decide how to reconcile these mandates of
9 keeping cities/county/neighborhoods/community of
10 interests together while also making sure that the
11 district as a whole is contiguous, but recognize that
12 city geography can look pretty weird.

13 The fact that the lines aren't precisely defined
14 does not mean they're entirely amorphous or unknowable.
15 Community of interests, for example, you may be able to
16 use census data in order to help you assess, not to
17 mandate, not to drive, but in order to help you assess.
18 Here, and I know that Karin MacDonald will talk a little
19 bit more about this, I'm not talking about census data
20 about number of people or -- or age or race or ethnicity.

21 I'm talking about some of the more detailed data
22 from surveys, from the American Community Survey about
23 things like employment, about things like owning or
24 renting housing, about things like leasing a car. And
25 that data may help you evaluate, not exclusively, but may

1 assist you in evaluating whether data supports a
2 particular community or not in terms of representation.
3 You may find that the census data is sufficiently rich to
4 guide you in assessing where a community is.

5 I would never suggest that you use that exclusively.
6 The last commission put a lot of weight, I think very
7 appropriately, in testimony that it collected at
8 hearings, I believe over 2,700 speakers and over 22,000
9 submissions, and organizing that information is itself a
10 challenge, but people will let you know where their
11 communities are, and sometimes those will be precise,
12 well-articulated, and drafted on the map, and sometimes
13 they will be quite a bit more flexible or fluid. And I
14 with don't think -- this is now not legal mandate, this
15 is my suggestion. I think it behooves you to listen to
16 both kinds of testimony, both that which is precise and
17 that which is not, in order to evaluate the communities
18 that you think are real and legitimate and important
19 locally in order to draw districts around for
20 representational purposes.

21 There's no requirement that you believe or buy the
22 presentation of a particular community that someone
23 suggests to you, and there's no requirement that you rely
24 exclusively on hearing testimony if you know a community
25 to exist that somebody has not happened to testify about,

1 that's also fine, but I think the last commission found
2 the testimony that it perceived to be instructive, and I
3 think the last commission was also -- was listening
4 appropriately to the testimony they got. I think that
5 they credited some testimony that they believed was
6 sincere in describing a real community that wanted to
7 stick together for representational purposes. I think
8 they did not give particular credence to other testimony
9 that they judged was manufactured, perhaps on behalf of a
10 political party or candidate, to present a community that
11 didn't really exist.

12 This calls for your sense and your evaluation and
13 your good instincts about what parts of a community may
14 be important locally. It's part of the reason why
15 geographic diversity was so important on the commission
16 itself. So you all are from different parts of the state
17 and will be in different parts of the state, but this is
18 where you can draw your base data for establishing
19 community of interests.

20 And again, hereto, I don't think these need to be
21 precisely consistent in every part of the state. In one
22 region, you may find hearing testimony very important and
23 a really good guide to the communities of interest, and
24 in another region, you may decide that the census data
25 speak better or some other experience speak better or

1 some other data source speaks better and the hearings
2 weren't particularly useful. That's entirely for your
3 consideration and is a viable choice for you.

4 The law in particular doesn't speak to privilege in
5 one source of data for this -- for communities of
6 interest or not. One of the things that the law does
7 speak to is when you're considering a community of
8 interest, the thing that you're trying to do is to
9 include it within a district. That's the main touchpoint
10 of the law is to preserve a community of interest rather
11 than split it up into five or six or seven.

12 The reason being, at least the rationale behind the
13 law being, that it's easier for legislators to represent
14 when they know what they're representing, and if there's
15 a community that is kept whole within a district, that
16 allows the community to hold its representative
17 accountable for legislating and for representing in a way
18 that benefits the community, and so that's what it's for.
19 If you split up a community so that little bits and
20 pieces are represented in multiple districts, it's very
21 hard for that community to hold its representatives
22 accountable.

23 And understand that in assessing municipal
24 geography, I mentioned a possibility. Here's a real-life
25 example. Things may conflict. So what you see here, the

1 black outline is an outline of Franklin County, Ohio.
2 The red blood spatter pattern in the center is a
3 municipal outline of Columbus, Ohio. That's the city
4 outline of Columbus. And if you made a decision,
5 example, you decided we are always going to privilege
6 county lines over city lines or we are always going to
7 privilege city lines or county lines, what you might miss
8 that there are two parts of Columbus that are very much a
9 part of the Columbus community that spill over the county
10 lines just because of annexation battles and the like.

11 So understand that you're not always going to have
12 concentric circles of community, that a city more overlap
13 with a neighborhood or vice versa, or a county or a city
14 or neighborhood might overlap, and you're going to have
15 to figure out how you think you best want to reconcile
16 those locally based on what's locally most important.

17 I've mentioned all of this before. For this, you'll
18 need be able to instill and assess the testimony that you
19 do collect. You'll need to know testimony may conflict,
20 and it may not be that there's a right or wrong answer.
21 There may be very passionate opinions about what local
22 communities are that don't necessarily mesh with each
23 other, and you'll need to be equally comfortable
24 assessing communities with strict predefined boundaries
25 as those that are not as well as shapes that may seem

1 strange when viewed in the abstract.

2 I'll come back to there is no strange shape in
3 redistricting if it's divorced from the community or the
4 population that lives there. You're not drawing artwork.
5 You're drawing representation, and that has to be drawn
6 from the individuals that live where they live. And
7 you'll hear consistently every single element in the
8 California Constitution that instructs you on where to
9 draw the lines is drawn from that principal. They're all
10 drawn from representational principals.

11 Compactness is as well, and this is different from
12 the rules in many states and may well be different from
13 the suggestions in the software you use, and so I flag it
14 specifically because California has a unique definition
15 of compactness, and you should not -- I'll encourage you
16 not to get drawn into definitions that are drawn from
17 other states or other places or underlying baseline
18 software.

19 So the usual elsewhere is that people think about
20 compact -- people may think about communities of interest
21 in terms of people representation, but people think about
22 compactness, generally, in terms of abstract shapes, the
23 stringier, squishier, more irregular lines are generally
24 less compact. And the smoother, nicer, neater, rounder
25 lines are generally more compact. And so what you hear

1 in a lot of other states is the district on the left is
2 not compact. The district on the right is compact.

3 And I'm going to tell you, knowing just what I see
4 here on this chart, I can't tell you which district is
5 more compact or less compact under California law,
6 because -- and by the way, before I go on to because.
7 You will also hear some people think not in terms of
8 abstract shape, but in terms of formulas. Things like
9 the total perimeter. Things like the area of a
10 circumscribing circle. These are common elements to be
11 represented in redistricting software. And so you will
12 often see software presenting you with a compactness
13 score that represents one of these formulas.

14 There are two in particular that are quite commonly
15 used again in other states. There are about -- well,
16 there are more than a hundred total. There are thirty
17 that are common. Different choices about the formula you
18 use to assess compactness. And by the way, those lead to
19 different outcomes. So choosing one formula may lead to
20 it privileging a certain number of districts over another
21 formula. But again, none of that reflects California
22 law.

23 California law is relentlessly focused, just like
24 the other standards, on population, on people. How does
25 this work? Give you example using California and using

1 California counties. If you take the Central Valley and
2 you take the counties stretched along the Central Valley.
3 If you knew nothing else about the state and you were
4 trying to aim for something that both fit county lines
5 and was relatively compact, it is conceivable that you
6 might think of a district like this purple district.
7 It's relatively regular. It follows county lines, it
8 splits one county; that's normal. Right? You can't
9 always follow county lines, but it's essentially a nice,
10 neat shape. And it violates California law because
11 California law tells you look to the population. And
12 this purple district, which looks nice and neat, would
13 actually bypass the nearby population or a population
14 that is farther away in splitting the cities of the
15 Central Coast.

16 And it follows abstract county geography and not
17 where the people live. California tells you you've got
18 to start in the area under the circle. You can't bypass
19 the nearby population or farther flung population. This
20 is really hard to train yourself out of.

21 By the way, the circle doesn't do it either, right?
22 If the circle actually leaves population that is just
23 over the line out in order to include a globular area
24 where there is no population, that might also be not
25 compact under California law. Follow the people is the

1 single best way to not get in trouble here. And not
2 necessarily the abstract shapes.

3 But that's really hard to remember. And I have
4 given versions of this talk and versions of other talks
5 on redistricting to lots of different constituencies.
6 And the impulse to put the shapes up on the wall in the
7 abstract just like that is tremendously powerful. And so
8 you have to very consciously fight against the notion
9 that you're drawing districts in the abstract to put on a
10 blank piece of paper. You need to be comfortable with
11 shapes that may seem strange if they actually respond to
12 where the population is or where geographic boundaries
13 are. Sometimes your districts may twist and turn because
14 of a mountain or because of a particular community that
15 stretches on one side of a freeway but not the other.
16 That's not only fine, that's required under California
17 statutes. If you decide that's a community.

18 Remember that the answer that seems cleanest isn't
19 always the best and may not always be legal. You've
20 heard me say that a lot. I keep saying that. It's hard
21 to remember.

22 Same principles are true when it comes to nesting.
23 This is the thing that is last on the list in terms of
24 what you should be looking for. What does nesting mean?
25 It essentially means that if you've got Senate lines and

1 you've got Assembly lines, try to make them coincide when
2 you can. So if the black lines on the left are the
3 Senate lines and the dotted blue lines are the Assembly
4 lines, these lines are not nested. They don't fit within
5 each other.

6 By contrast, here's a Senate district and two
7 Assembly districts that are nested where the Assembly
8 lines fit within a Senate line. But it's really
9 important. And the framers of the California
10 Constitution did this intentionally. This is the last
11 priority. It is the least important thing that you do on
12 the list. And the criterion itself says exactly that to
13 the extent practicable and where this does not conflict
14 with the criteria above, each Senate district shall be
15 composed of two whole, complete, and adjacent Assembly
16 districts. So to the extent practicable, and where it
17 doesn't do damage to anything I've just discussed, try
18 and put Assembly districts within Senate districts.

19 This too may require some iteration. You may have a
20 perfectly valid map for State Senate or Assembly Board of
21 Equalization. This may be an entirely valid state
22 Assembly map, but combining those districts would lead to
23 an invalid State Senate map. That is, you might have to
24 start over for the State Senate or vice versa.

25 And so while you should nest districts where you can

1 the California Constitution is clear, you can't privilege
2 the neatness of dividing a Senate district in two if that
3 means that the Assembly districts that result violate the
4 Voting Rights Act, don't have equal population, don't
5 respond to communities, aren't compact. Those are the
6 four things that the California Constitution gives
7 preference to over nesting.

8 So all else equal, try and fit the Assembly
9 districts within the Senate district. Try and fit the
10 Senate districts within the Board of Equalization. That
11 actually helps election administrators. It does. It
12 make sure that the precincts are sort of nice and easy.
13 But the framers of the proposition in California,
14 Constitution said this is the least important thing. If
15 you have to make the districts, if you have to break them
16 up, if you have to have them on different axes, if they
17 have to look different, if they're not nested in order to
18 achieve the other criteria, that's your obligation.

19 And so you may need to draw one set of maps and then
20 return to see whether those maps can be tweaked in order
21 to nest the maps without violence to the other criteria.
22 You may also have to have the flexibility to have one set
23 of maps and just realize it's not going to be practicable
24 to nest a smaller division that's within that.

25 And again, remember that the cleanest answer just

1 dividing a Senate district in two for an Assembly
2 district may not always be best and again may not even be
3 legal.

4 Questions about that just because I know that can
5 get confusing before I go on to the very last criterion
6 for you to consider.

7 Excellent. Moving faster, I promise. Tenants and
8 parties. So we talk about this a bit before. I'll make
9 the same points just in briefer fashion. The
10 Constitution says you shall not consider candidate
11 residence. That is, you don't know where an incumbent
12 lives. You don't know where a candidate lives. These
13 districts are not theirs. They belong to the people and
14 so design them for the people.

15 There's a reason for this. When districting bodies
16 do know the candidate residence, it can on occasion lead
17 to real harm. This is an example also from Chicago.
18 There are lots of examples from Chicago. This is a
19 district in Chicago in 2000 and the reconfiguration of
20 that district in 2002, so after redistricting. This
21 district changed shape to look like that district. And
22 the most important part of that change was probably in
23 this part of the district where Barack Obama, then a
24 state senator, was running for Congress in 2000, ticked
25 off the incumbent member of Congress who asked that the

1 district be redrawn the next year, a block to the north,
2 a block to the west, and two blocks to the south. To the
3 east is Lake Michigan. There's nowhere to go over there.
4 So the district very neatly cut out then state Senator
5 Obama from the Congressional district so that the
6 Congressional incumbent wouldn't have to face a repeat
7 challenge from Senator Obama.

8 This is part of what the framers of the Constitution
9 wanted you to avoid. If you don't know where a
10 particular candidate lives, it's really hard to draw a
11 district that precisely excises that person or precisely
12 includes that person, right? If you're going to draw a
13 line along a particular street to not deviate, to make
14 sure that a particular individual is included in the
15 district.

16 The California Commission, I think, did a really
17 good job of this. And part of the reason that you know
18 they did in 2010, this is one of the things they did very
19 well, they kept this is. Is that they drew a commission,
20 the drew a Congressional district that was known as the
21 Erman Seat, because it combined the residences of Erman
22 and Sherman, of Howard Berman and Brad Sherman. And the
23 only thing anybody knew about the results of that
24 election was that the guy who won would end in Erman.
25 The commission did that in part because it did not know

1 where either one of them live. And it did not respond to
2 particular communities that were clamoring for the
3 community attached to their incumbent. And so instead,
4 the commission drew lines that it thought would be fair
5 in the sort of northern Los Angeles area for the
6 community, and let the contestants fight it out as they
7 may. And that is what the California Constitution
8 exactly asks you to do. Draw the districts that you
9 think are fair for the community and let the contestants
10 fight it out as they may.

11 We talked about this a little bit before in some of
12 the questions that came up. The California Constitution
13 also says that you can't draw for the purpose of favoring
14 a candidate or party or discriminating against a
15 candidate or party. That means you can't intend to help
16 or hurt the Democrats or the Republicans or another party
17 or another candidate. But this is not a mandate to draw
18 districts that are intentionally set out to be
19 competitive. It is not a mandate to draw districts that
20 are partisan symmetric. It is not a mandate for any
21 districts intentionally drawn to achieve a particular
22 score of fairness. It is a prohibition against intending
23 to help or hurt a party. It doesn't mean you have to
24 blind yourselves to the information. It means you can
25 know the partisan structure of the district you're



1 drawing. The only thing you have to make sure that
2 you're not setting out to intentionally favor or
3 discriminate against a party. And as mentioned before,
4 it's fine. It's available to you to choose if you wish
5 to consider partisan fairness or to design districts that
6 are competitive or with a certain score, but only, really
7 only, where doing so doesn't detract from any of the
8 other things that we've walked through.

9 There's an obligation to draw districts along all of
10 the other criteria that I've mentioned so far today. And
11 then after you're done with all that, you're free to
12 consider whatever other criteria you wish, but only after
13 you're done. That's the bow on the gift. But make sure
14 the gift is wrapped first. And to the extent you
15 consider other criteria that cause you to deviate from
16 the obligations I've already laid out, that's actually
17 violating state law.

18 All of this is an encapsulation of what I just said.
19 It's obviously fine for you all to have a personal
20 partisan affiliations. That's part of how you were
21 chosen for this commission to have a personal partisan.
22 And it's fine to know information about the communities
23 that you're encountering. Focus really on the
24 prohibition that exists, which is don't know where the
25 candidates live and don't intentionally favor or disfavor

1 a party. And what I just mentioned don't add extra
2 criteria if they work to the detriment of the criteria
3 that the law actually sets out for you.

4 That's in a nutshell, the rules of the road for you.
5 Those are the rules that you'll be asked to apply.
6 You'll have to consider and resolve conflicts both within
7 and among those rules. Understand, you don't have to
8 resolve those conflicts in the same way in every part of
9 the state. Some things may actually be more important
10 than others in different parts. And I'll say again, I'll
11 urge you to be ready to reconsider your assumptions. It
12 can be tempting to make decisions and have them fixed and
13 then set off down a path, and then only later discover I
14 might have to change some of the things that I thought
15 right up front. Allow yourself the permission, allow
16 yourself that flexibility. It's hard once we sort of
17 mentally made decisions to go back and reevaluate them.
18 But it's really good practice in this area.

19 I've mentioned this a couple of times, but it's also
20 a useful reminder. In summary, watch out for natural
21 human tendencies that people have. It's natural and
22 instinctual to prefer clarity to ambiguity. It's natural
23 and instinctual to spend less mental effort on more
24 ambiguous concepts. But where the law actually tells you
25 to privilege things equally, you might have to devote a

1 little more mental time and energy on the stuff that's
2 not quite so simple in order to compensate for this
3 natural tendency. The clearest example of this -- it
4 shows up everywhere, but the clearest example, don't just
5 automatically privilege city or county lines because they
6 preexist to the detriment of communities which are a
7 little harder to grapple with but not less important. In
8 some cases, the law makes the ambiguous concepts just as
9 important as the clear ones.

10 Another natural human tendency, when there are
11 difficult choices, sometimes it's very natural to limit
12 your own options. This is part of why I think the prior
13 commission decided to constrain itself on equal
14 population. Why it gave itself artificial constraints.
15 But I think that led to trouble. In some cases, the law
16 intentionally leaves discretion in order to further other
17 objectives. And if you close your mind to possibilities
18 too early in order to take some of the choices off the
19 table, you may be missing opportunities to comply with
20 the law. Put differently, you may be violating the law
21 because you've taken some of those other opportunities
22 off of the table. It's hard to fight against. But I
23 think it behooves you in this process. I also say this
24 is the big one and I've mentioned it a couple of times,
25 but I want to come back to it because it's so very



1 important. Watch out for learned human tendencies. So
2 we all import things from our own backgrounds into
3 whatever we do, and a lot of that is good and beneficial,
4 right. That's part of why you all reflect diversity in a
5 lot of different ways: socioeconomic, geographic, racial,
6 ethnic, profession, et cetera, is because we want you to
7 bring some of those life experiences into this process.
8 But be careful about preconceived notions about what good
9 looks like that don't necessarily apply to the task in
10 front of you.

11 This is not just about redistricting, obviously.
12 This shows up in a lot of arenas. Most predominantly, I
13 think it is people are coming to recognize more and more
14 that it is important to confront our own implicit biases.
15 People may have preconceived notions about which of those
16 faces look good or bad, that have nothing to do with the
17 people behind them. And the fact that we have these
18 preconceived notions is important to recognize. Implicit
19 bias testing shows we may have different preconceived
20 notions, but many of us, each of us has preconceived
21 notions. And you cannot fight back against them unless
22 you recognize that you have them. And so it's important
23 to acknowledge them in order to decide when to listen to
24 them and when not to listen. And these come in from a
25 very young age.



1 This is a picture of the study that produced Brown
2 v. Board of Education, essentially not produced it, but
3 that facilitated Brown v. Board of Education. It's a
4 classic psychological study asking children of color
5 which doll they preferred. The dolls are identical
6 except for the color of the plastic. And they ask kids,
7 show me the good doll, show me the bad doll, show me the
8 nice doll, show me the angry doll again. Again, the
9 dolls are identical except for the color of the plastic.
10 But kids had preconceived notions about which doll was
11 good or bad or nice or not nice. And yes, that was true
12 in 1947, when the study was done, but they redid the
13 study in 2009 and it was just as true then.

14 We learn these tendencies really early and you have
15 to be able to fight back against them. You have to
16 recognize them and be able to fight back against them
17 when they're not appropriate. As they may not be
18 appropriate in the redistricting context. Another
19 example from last year, and this happened just before I
20 spoke to the applicant review panel last year. This is a
21 picture of a guy named Andy Ruiz from his Instagram feed.
22 I am not as fit as Andy Ruiz, but from this picture one
23 might assume that I was as fit as Andy Ruiz. Andy Ruiz
24 looks like the kind of guy who we might know and/or be
25 around and/or hang out with occasionally. He doesn't

1 look, I would say exceptional, and particularly not if
2 you are gauging boxing skill. Andy Ruiz doesn't look
3 like a boxer. Anthony Joshua, the individual that I put
4 up next to him, I think looks like a boxer, again in
5 heavy quotes, because that fits the image we might expect
6 of a professional boxer. And the gambling markets, when
7 Andy Ruiz, who is a professional boxer, met Anthony
8 Joshua, who is also a professional boxer, the gambling
9 markets said that there was a ninety-seven percent chance
10 that Anthony Joshua would win.

11 Part of that is based on an assessment of statistics
12 and diet and weight and height and reach and all sorts of
13 other things that go into boxing. But it's hard for me
14 to imagine that a giant part of that wasn't also an
15 assessment of whether they looked like they would win a
16 boxing match. And when that was the picture from the end
17 of Fight Night, it changed a lot of people's
18 preconceptions about what a good boxer was, or a bad
19 boxer was. This happens all of the time. I'll have
20 another example for next week or next year or next month.

21 It's easy to fall into the trap of what a good
22 district or a bad district looks like. And even after
23 I've said all of that, looking at these things here, as
24 soon as I put them up, you may have an instant reaction
25 to whether these districts are good districts or bad

1 districts. That's very natural. The one in the bottom
2 right is the earmuff district. I've already talked about
3 it. It's the one from Illinois.

4 But included in here is the original 1812
5 gerrymander. Included in here is the City of Los
6 Angeles. Included here is a very regular but wildly,
7 unequally populated district. Included in here is
8 Thailand, which is not a district at all. And the reason
9 I do this is to help you recognize that you can't know
10 whether any of these are good districts or bad districts
11 until you know what they do. And in particular, whether
12 they do what the law sets out that they should do. Some
13 of these are wonderful districts and some of these are
14 atrocious districts. But your preconception of which is
15 which may not actually match their compliance with the
16 law that's applicable.

17 Without more information, you can't know whether any
18 of these are good or bad under California law. Because I
19 have not shown you population. I have not shown you
20 minority voting patterns. I have not shown you city
21 boundaries or county boundaries or community boundaries.
22 Right now, this is a blank slate. And if you have an
23 instinct about which of these are good or bad, that's
24 natural. But what I want to communicate is that doesn't
25 reflect the job that California asks you to do. And so



1 you may have to recognize that and to some degree fight
2 against it, because it is impossible without more
3 information to know whether any of these are good or bad.

4 This is also true within redistricting criteria,
5 right? Some people have preconceived notions about what
6 particular redistricting criteria mean, what something is
7 when it's compact. Just understand that's a learned
8 human tendency. And it may or may not reflect how
9 California asks you to evaluate the compactness of a
10 district.

11 And sometimes your predilection about what something
12 means is something that you'll have to evaluate, not only
13 yourselves, but in context and in collaboration with your
14 other commissioners. So for example, does to the extent
15 possible mean the same thing as to the extent practical?
16 You may have a notion about that, but that's really
17 something that's up to the Commission, with guidance of
18 its Counsel to come to an answer.

19 I point this out and I point them out at painstaking
20 detail because I know these tendencies exist and they are
21 powerful. They can be overcome in the decision-making
22 process, they're not destined. As long as you stay
23 attuned to them. And the more you can stay attuned to
24 them, the better you will do in actually following the
25 criteria that California law lays out.

1 Two other very short things. And these have one
2 slide apiece. And then I'm done with reviewing the legal
3 concepts that you'll be asked to apply. But I'm happy to
4 pose for questions. You draw lines, but you don't just
5 draw lines. You get training. As today, you hire staff
6 and counsel and consultants, collect data. You'll ask
7 others to collect data for you. You'll conduct outreach
8 and hear back from communities. You'll establish a
9 hearing process and a public review process. I know
10 you've taken extraordinary care to make sure that this
11 process is transparent thus far. I think that's
12 wonderful. I thoroughly expect that will continue and
13 very much appreciate the efforts you've made in that
14 regard. You'll have to work with the Legislature on
15 access to funding and to data. You'll have to manage the
16 budget that you have. You'll have to make broad policy
17 decisions as well as specific ones in particular areas.
18 At the end of the day, you'll have to produce a report
19 that explains why you did what you did. That's another
20 requirement in the law. And I suspect you'll have to
21 defend litigation.

22 It is likely that you will be sued flat out just
23 because it is likely in any state that the body drawing
24 the lines will be sued. I think that the best that you
25 can do is not avoid litigation. I think the best that

1 you can do is do what you believe the law requires and
2 let your Counsel defend you in the litigation that comes.
3 That is, I would encourage you to live up to your own
4 legal obligations and then not take it personally when
5 the first lawsuit is filed, as it will be filed. If
6 you've done your job under the law and your obligation as
7 commissioners, the people of the state will be immensely
8 not only proud, but gratified. And I think that the
9 possibility of litigation, as long as you're sure that
10 you've arrived at the right legal answer, should not
11 necessarily drive your decision.

12 When does all this have to happen? Now, now, now,
13 now, now, now, now. Everything I mentioned has a really
14 tight timeline. So you all have been selected and
15 chosen, and thank you again for your service. You'll
16 have to establish an internal process and teach yourself
17 more about the redistricting process. You'll have to
18 hire -- you'll have to begin collecting data and
19 exploring options. You have a great head start on that.
20 As county counsel mentioned, the Legislature has moved up
21 the timeline a little bit to allow you to get started
22 earlier. And thankfully, the Supreme Court has moved
23 back the timeline a little bit to allow you more time in
24 the middle, and I'd encourage you to take advantage of
25 all of that time. Notice, please, I have put begin

1 collecting data and begin exploring options before the
2 census delivers results because I really encourage you to
3 build that into the process. Don't wait for the census
4 data to arrive. Just start. Not only to start on the
5 administrative process, but don't wait for the census
6 data to arrive to start assessing where you might have
7 Voting Rights Act responsibility. Where you might want
8 to collect data on polarized voting. Where you might
9 want to gather testimony from the public about
10 communities. Where you might want to begin massaging
11 options, either beginning with last time's lines or
12 starting anew. That's up to you. You can do all of that
13 before the data arrives that you'll use to make your
14 final choices.

15 When will the data arrive? That's got a question
16 mark here. And for that, I'm sorry. That's not in my
17 control, nor in yours. At present, the Census Bureau is
18 obligated to deliver results no later than March 31st of
19 next year. That is the existing federal statute. The
20 Census Bureau, as I mentioned a while ago, now in the
21 morning, asked for more time. It proposed a data
22 delivery range of June to July, and has since withdrawn
23 that request. The House, I believe, passed an extension,
24 but that has not yet passed the Senate. And so the
25 status quo right now is that data will arrive to you by



1 March 31st. But that might change. And in fact, the
2 California Supreme Court gave you more time on the back
3 end, anticipating that that might change when it very
4 much looks like Congress would follow through on the
5 Census Bureau's initial request.

6 So I would say plan for the data to arrive anywhere
7 between late February and July. You don't have to wait
8 for it to get there. Plan your schedule, I would say
9 around starting even before then in considering options
10 and in collecting data. Your first maps are due November
11 1st. The Supreme Court, in extending your deadline,
12 specifically said if you need more time, if the census
13 data arrives even later than it was supposed to, we'll
14 give you more time. But if the census data arrive
15 earlier, we'd really appreciate it if you would get your
16 work done earlier. You have until November 1st to
17 deliver a first draft. But the California Supreme Court
18 made clear that all actors involved, including election
19 administrators, would welcome a draft before that if you
20 have the opportunity to produce one.

21 And December 15th is the day that you owe your final
22 maps due. I mentioned litigation before; that will
23 inevitably follow, and that litigation needs to be
24 resolved in some way, at least temporarily, before
25 candidates have to file for primaries. So that's the



1 pinch on the other end. In 2022, candidates will have to
2 file for primaries and maps. You need to know where
3 they're running before that happens. And so here too the
4 California Supreme Court gave you until December 15th.
5 But if the data actually arrive earlier and if you are
6 able to draw maps before then, it would be appreciated.

7 I want to suggest, and this is now explicitly a
8 suggestion, not a legal requirement, that you not give
9 yourselves too much of an artificial deadline that's
10 earlier than those dates. You'll need the time to do it
11 right. And the more time that you take to do it right,
12 the more confident everybody can be in the final outcome.

13 And with that, that's the presentation I had
14 planned. It's considerably over time, but I hope it's
15 just been an hour since we've come back together. I'm
16 more than happy to answer questions about any of that.
17 I'm also more than happy to take a break and then answer
18 questions later. I know you all have spent a lot of time
19 with me already today, and I'm quite sure you're
20 exhausted and there's more to come.

21 So I thank you for the opportunity to engage so far.
22 I'm at your disposal as well.

23 CHAIR TURNER: Prof. Levitt, we thank you. This has
24 been extremely helpful. I would like to see if there are
25 questions. If you'd stop your screenshare, we'll see if



1 there's questions from the Commission at this time.

2 Commissioner Yee and Commissioner Fernandez?

3 COMMISSIONER YEE: Yes. Thank you so much. It's
4 such a great presentation, worth every minute. Two
5 questions unrelated. First question. So we get data
6 from the census, get testimony from community members.
7 We get experts that we hire. Would we expect to ever be
8 in a position to actually generate data ourselves; like
9 to commission a survey? You know, I don't know. To not
10 be at -- you know, subject to just what happens to be out
11 there.

12 PROF. LEVITT: It's certainly not precluded. So I
13 can tell you the law allows you that flexibility. If
14 there's data that you don't have that you feel you need,
15 I would encourage you to try to seek it, whether you're
16 generating it or collecting it from others. There's an
17 awful lot of data that will be out there, some in
18 organized fashion, some in relatively less organized
19 fashion. And so I don't have a good sense of what that
20 data might be that you might need to generate. But I
21 certainly don't see any preclusion in the law saying that
22 you can't. That's available to you if you feel like you
23 need it.

24 COMMISSIONER YEE: Okay. Second question. So we're
25 forbidden from preferring one or another party in drawing

1 boundaries, but we are responsible to enable electoral
2 power to be wielded by communities. So I guess in my
3 mind, of course, it's a little bit of fiction because
4 electoral power is often partisan power. So the point is
5 that we are to enable communities to exercise that
6 electoral power without regard to what their preferences
7 are. I mean, I guess that's the fiction, not the
8 fiction, but the mindset that we are to carry into the
9 task. Is that a good way of thinking?

10 PROF. LEVITT: So you've hit on a difficulty, but
11 I'm not sure it's a difficulty in practice. And here's
12 why. It's the reason I keep coming back to the
13 prohibition that the law puts on is on intentionally
14 favoring a party or discriminating against a party. So
15 you can't set out to benefit Democrats or Republicans, as
16 examples, there are certainly other parties in
17 California. The law requires you in some circumstances,
18 to effectuate the electoral preferences of minority
19 groups with distinct political preferences, et cetera, et
20 cetera, et cetera. But you're not doing that because
21 their preferences are Democratic or Republican. You're
22 doing that because you have a responsibility to
23 effectuate the preferences of that community, whatever it
24 may be.

25 COMMISSIONER YEE: Right.



1 PROF. LEVITT: And that data will actually show you
2 what preferences they have. Again, sometimes that will
3 be preferences that reveal themselves within primaries.
4 So you may well have preferences of a Latino community or
5 an African-American community or a South Asian community
6 that you are drawing districts for, not because they're
7 Democratic. All of the rest of the surrounding community
8 may be Democratic, or not because they're Republican.
9 All the surrounding community may be Republican, but
10 because they have distinct preferences that reveal
11 themselves in primaries or nonpartisan races or in other
12 ways.

13 They may also happen to prefer Democrats or
14 Republicans, but the reason you're drawing those lines is
15 in order to effectuate the electoral preferences of that
16 community. And so that's why I think the intent, the
17 prohibition on intent is so important. You're not
18 setting out to give a boost to Democrats or give a boost
19 to Republicans. If drawing the lines to effectuate these
20 other characteristics, and it's not just the Voting
21 Rights Act, it's drawing communities or drawing city
22 lines or county lines. If those happened to favor
23 Democrats or Republicans, the framers of the Constitution
24 in California acknowledged that that might happen and
25 said that's not a problem. So the thing that you're not

1 supposed to do is have set out to benefit Republicans or
2 Democrats or others. But acknowledge every decision is
3 likely to have an impact on particular partisanship in
4 particular places. Whether you move a line to encompass
5 a different street or not. And that is not prohibited.
6 In fact, that's something that you have to acknowledge in
7 order to make some of the choices that are required.

8 COMMISSIONER YEE: Right. Okay. And then further,
9 so did I hear you say that -- so this all applies to
10 representatives and not any other policy issues. You
11 know, about which there may be preferences so for
12 instance up in Northern California, we tend to vote a
13 certain way on water issues, right? That would or would
14 not constitute a community of interest for our purposes.

15 PROF. LEVITT: Certainly could. Absolutely could.
16 So common social or economic issues is the way that the
17 law speaks. If I said it was about representatives, what
18 I mean to say is it's about representation. And the
19 people may want their representatives to speak out for
20 them on a particular issue. Communities of interest can
21 absolutely be based on particular issues that are very
22 important in particular communities. Absolutely. Yes.

23 COMMISSIONER YEE: Right. That's a bit for VRA
24 purposes.

25 PROF. LEVITT: Similarly for VRA purposes. The

1 more -- I will tell you the way that most data analysts
2 will analyze whether members of a particular community
3 have similar preferences is to look at electoral results.
4 That keeps them from having to make assumptions. So
5 they'll look at electoral results. Again, not only in
6 general elections, but in primaries and in nonpartizan
7 races to say most of the time does the community have
8 similar preferences for who they vote for or occasionally
9 ballot initiatives. To the extent the ballot initiatives
10 speak to a particular racial group. And most of the time
11 the assessment of common electoral preferences are drawn
12 from that data about results and outcomes.

13 But reflecting that for purposes of the Voting
14 Rights Act does not mean you can also consider other
15 communities when deciding on communities of interest.
16 That's absolutely proper. Yes.

17 COMMISSIONER YEE: Right. Thank you.

18 CHAIR TURNER: Commissioner Fernandez.

19 COMMISSIONER FERNANDEZ: Actually, not a question.

20 I just wanted to echo what Chair Turner said and thank
21 you so much for the presentation. Your ability to
22 decipher the legal aspects of it and translate into
23 simple terms is just phenomenal. And I really appreciate
24 the examples, are very appropriate. And it really gave
25 me an ability to understand the legal side of that. And

1 I appreciate it. So thank you so much.

2 PROF. LEVITT: Thank you for all of the work that
3 that you are doing and that you will do.

4 CHAIR TURNER: I'm looking for hands.

5 Commissioners. Commissioner Ahmad?

6 COMMISSIONER AHMAD: Thank you for the presentation
7 as well. I just had a quick question related to
8 something that you presented quite earlier on about
9 Congressional districts and the fact that small
10 differences are okay for legitimate reasons. Have there
11 been any litigation in California based off of that piece
12 about finding a reason illegitimate?

13 PROF. LEVITT: Not specific to California that I
14 know of, at least. There were -- so the two contending
15 examples are from elsewhere in the country, but they
16 apply to California. They were general principles they
17 were federal law in federal court. So one example came
18 out of -- there have been a few cases, but one of them
19 come out of Georgia. They had to do with State
20 Legislative districts. So a ten percent deviation, more
21 or less, is fine. More than that, we start to have more
22 questions about whether it's constitutional. You've got
23 to have a really good reason. Less than ten percent,
24 generally, you get a free walk. The Court is not going
25 to look farther unless there's a bad reason.

1 In Georgia, in this particular case, Democratic
2 districts -- this was a Democratic gerrymander in
3 essence. Democratic districts were consistently
4 underpopulated and Republican districts were consistently
5 overpopulated. So less representation for Republicans,
6 more representation for Democrats. And the variance
7 between them was about 9.98 percent. That is, the people
8 who drew the plan were trying really hard to get as close
9 to ten percent as possible in order to maximize
10 Democratic advantage and minimize Republican advantage.

11 And the Court said, I know we said we'd give you a
12 pass under ten percent, but this is a legal term, come on
13 now. You can't have a deviation of less than ten percent
14 for a bad reason. And drawing districts that are
15 unequally populated for this partisan advantage is a bad
16 reason.

17 Conversely, there was a case -- many people thought
18 in 2000 and in 2010 that Congressional districts had to
19 be really, really tight. There were a series of court
20 cases in lower courts where there was very little
21 flexibility in the population distribution of
22 Congressional districts. West Virginia, last cycle, drew
23 its Congressional districts very strictly along county
24 lines. That is, every Congressional district perfectly
25 mapped onto a county line. And the way that the

1 population fell out, it happened that there was a -- I
2 think it was 0.78 percent deviation between the largest
3 Congressional district and the smallest one. West
4 Virginia has three Congressional districts. That was
5 relatively easier. The population happened to be
6 relatively balanced. And a case was brought to say, is
7 that as equal population, as practical? Does that live
8 up to the constitutional requirement that Congressional
9 districts have really tight population bands? And the
10 Court said, that's fine. 0.78 percent, this is
11 relatively small. It was for a legitimate, consistent
12 reason. West Virginia had done it this way for a long
13 time. And so that's acceptable. You don't have to break
14 up the counties in order to get to a tighter band. So
15 those are the two opposing --

16 I don't think anybody would suggest that if the
17 difference in West Virginia, where five percent or six
18 percent or seven percent in the Congressional districts,
19 they have to be tighter. If the districts were five
20 percent apart in West Virginia, as your Counsel, if I
21 were your Counsel, I would not encourage you, even if
22 we're really good reason to draw Congressional districts
23 with that disparity. But they also don't have to be down
24 to one person, plus or minus. That's what people thought
25 for a long time. That's what some of the lower court

1 cases required. And that's not -- the Supreme Court's
2 made clear, that's not the standard.

3 So around about -- we know, 0.78 percent for a good
4 legitimate reason following county boundaries is okay in
5 Congressional districts. I think much over one percent
6 would start to draw the court's questionable eyebrows.
7 In State Legislative lines you've got more latitude. And
8 here's where in particular, I think the last commission
9 got itself in trouble by tying its hands too tightly.
10 They gave themselves a two percent threshold and then a
11 five percent threshold and then a one percent threshold.
12 And that meant that they were unable to accomplish some
13 of the other objectives. Where they set themselves up to
14 be limited in the other objectives they could accomplish,
15 because they made their population constraints overly
16 tight.

17 Again, at the last minute, they tweaked a lot of
18 stuff. And so I don't want to suggest that they violated
19 the law last time, but they did not set themselves up for
20 success in the way they went about the process by
21 constraining themselves so closely at the outset. If
22 that makes sense.

23 CHAIR TURNER: Commissioner Toledo?

24 COMMISSIONER TOLEDO: Oh, yeah. I just have a quick
25 question. So if litigation is likely, then -- in in your

1 estimation, what are the likely challenges? Are they VRA
2 challenges, data, or challenges related to -- and I know
3 this is -- you know, like a little -- it's difficult
4 because it's speculation, but in your estimate, based on
5 the litigation that you have seen what would you think
6 would be the most likely challenges to the Commission?

7 PROF. LEVITT: So I will apologize for this answer
8 in advance, but if you've heard me mention it in the last
9 couple of hours, it's a likely aspect of a litigation
10 claim. And what that means is it is impossible to make
11 everybody happy with the maps that you produce. We
12 certainly hope the last commission came to large
13 consensus, not unilateral, not uniform consensus, but
14 came to a large bipartisan, multi-partisan consensus. We
15 certainly hope that you'll be able to do so again this
16 time. But even if you all reach consensus, that's not
17 going to mean that everybody in the state's going to be
18 happy with the maps they receive.

19 And particularly where partisan actors can seize on
20 an aspect of the maps they don't like, they'll use that
21 as the opportunity or excuse to sue. And particularly
22 where nonpartisan groups are standing up for their
23 communities and see that there's been a real deviation
24 from their own, they will use that as excuse or
25 opportunity to sue. And that's not dependent on the

1 nature of the community represented or the particular
2 party. In litigation across the country, I've seen
3 Democrats suing against maps they didn't like and
4 Republicans suing against maps they didn't like. And
5 nonpartisan organizations that are more conservative or
6 less conservative suing against maps they didn't like.
7 Sometimes those lawsuits are warranted. I'm not
8 suggesting that everybody who sued is simply complaining.
9 Sometimes there are real legal violations that they're
10 standing up for and sometimes they're not.

11 I wish I had a better view of what litigation were
12 likely. I think that if the census data are not good and
13 they are known to be not good, as mentioned, I think
14 litigation on that issue is likely no matter what you do.
15 So if the census data are known to be not good, using
16 them will prompt litigation and not using them will
17 prompt litigation.

18 I think that if you are not careful about the way
19 that you go about compliance with the Voting Rights Act,
20 that's extremely likely to prompt litigation. Sometimes
21 from affected minority communities and sometimes from
22 others who are taking advantage of the legal constraints
23 in order to achieve maps that they prefer from a partisan
24 perspective.

25 The other criteria have a little more flexibility to

1 them. And that means a little bit more discretion in
2 your hands. That does not mean they won't be the subject
3 of a lawsuit. It might mean that there's less of a
4 chance that that lawsuit will succeed. And Counsel's
5 going to correct me on everything I've just said.

6 MS. JOHNSTON: No, I was going to add that there's
7 another way your maps can be challenged, and that's by
8 referendum. Just as they got on -- it was created by an
9 initiative. The flip side of an initiative which people
10 vote to enact a law, is referendum when they vote to get
11 rid of a law. And there was a referendum to the State
12 Senate maps last time. And the way the litigation
13 actually came up -- in the referendum provisions, it says
14 that if the referendum gets a sufficient number of votes
15 to go on the ballot, then the law is suspended, in the
16 meantime. When it came to the Senate maps, that meant if
17 they collected enough, that you wouldn't be able to use
18 the new State Senate map and you'd have to go use some
19 other form of a map. And so the commission had to go to
20 court and argue there was -- whether or not the
21 referendum succeeds as a policy matter, there was, in
22 fact, no better map to use because the ten year old map
23 was out of out of sync, and all the other proposals that
24 would have come up, hadn't gone through the very rigorous
25 review process and public participation that the

1 commission's maps had. So it upheld the use of the
2 commission's maps for the next election, even though
3 there was a referendum which ultimately failed.

4 PROF. LEVITT: There were also -- I think it's
5 useful to note, and I don't know whether this will be
6 comfort or not. I've described a few of the ways in
7 which the last commission, the way I put it, is set
8 themselves up in terms of the process for difficulty.
9 Again, I don't know whether the legal outcome met
10 standards or not. And I certainly don't -- in saying any
11 of that, I don't disparage the last commission. They
12 tried tremendously hard with a true task. You have the
13 benefit of their, at least, administrative decisions,
14 much less, substantive decisions to build on and to learn
15 from. I have enormous respect and admiration for the
16 commissioners from the last cycle.

17 There was litigation and the litigation failed. And
18 I don't believe that they saw their role as preventing
19 litigation either. I think they saw their role as trying
20 honestly to uphold what Counsel was telling them and what
21 they felt their obligations were under the law. And
22 unfortunately, I think they got some bad advice from
23 Counsel along the way. But that's not that's not meant
24 to disparage them or to suggest that what they actually
25 did ultimately was unlawful. There were several

1 lawsuits. None of them succeeded.

2 CHAIR TURNER: Commissioner Akutagawa?

3 COMMISSIONER AKUTAGAWA: Thank you, Prof. Levitt.

4 This is just more maybe a point of clarification or just
5 for me to understand. You mentioned the communities of
6 interest or the data sources. How the data -- basically
7 the way I'll word it is, how is the data going to be cut
8 and how is that decided? Who -- you know, do they just
9 say, okay, this is the data we're going to provide you?
10 Do we tell them what data we're going to look for? I
11 mean, there's I'm just imagining there's so many sources,
12 of cuts of data that could be possible. And I'm just
13 curious as to how is that decided, who decides it, et
14 cetera?

15 PROF. LEVITT: That's a great question. And the
16 short answer is you do. So unlike in the area of the
17 Voting Rights Act, where there's sort of a rich, both
18 statutory and litigation overlay on the sorts of data you
19 have to use or can use, and sort of generally accepted
20 practices for that. The California state law leaves it
21 to you to decide how to determine where communities are.
22 Part of that is inevitably going to be public testimony,
23 because hearings are required. And you will hear earfuls
24 from the community. And part of that will be about where
25 communities of interest are. But -- and here, whether

1 today or tomorrow, I apologize for the time I'm taking.
2 When you hear from Ms. McDonald, she will describe to you
3 the various ways in which the last commission directed
4 her to provide the data, or the sorts of data she was
5 asked to provide. You can ask for all of those, some of
6 those, none of those. It's really up to you to direct
7 your consultants in terms of the data you'd like to
8 receive.

9 CHAIR TURNER: Commissioner Andersen.
10 Commissioner Andersen.

11 COMMISSIONER ANDERSEN: Thank you, Chair. I have a
12 question, and I don't mean to get into huge details and
13 things, but if -- because we are talking about -- you've
14 already mentioned the idea of trying to get going on maps
15 with multi-purposes in mind, trying to get communities of
16 interest interested, easier to see if you have something
17 to show them. Look at Voter Rights Act earlier. Is
18 there a reason to say we are just arbitrarily going to
19 take this set of data right here and use that at this
20 particular point to do this preliminary? Is there a
21 validity in that in that people can -- it doesn't matter
22 what the data is. I mean, it does at some point. But
23 it's an arbitrary that it's not necessarily -- it
24 prevents people from talking and arguing about the data
25 itself. So we actually get communities interested. Is

1 there a reason to do that? And if we did, what kind of
2 data would we use? Just, again, rough, not looking for
3 the best or the --

4 PROF. LEVITT: Yeah. So actually this -- I'm sorry.

5 COMMISSIONER ANDERSEN: Well, just to get enough
6 that it would be worth our while to do that.

7 PROF. LEVITT: So this is something that I know,
8 Karin McDonald will talk to you a bit about. About the
9 sources of data you can use to get started. I
10 actually -- I want to push back against arbitrary because
11 I don't think you're actually talking about arbitrary
12 data. You're talking about data that have some basis
13 that aren't perfect, but they're known to be not perfect
14 and you're going to start somewhere and that's a good
15 thing. You're not picking out of a hat. You're not
16 starting your conversation with Iowa's data. You'd be
17 starting with something that reflected something about
18 California, and that's fine.

19 I think the most important -- and data do exist.
20 There's a rolling census survey that is quite accurate,
21 that takes into account five year, three year, one year
22 increments that can give you flavors of the sort of
23 information you need. You can go out and get individual
24 testimony that gives you flavors of the sort of things
25 that you need. You can know, I mentioned the population

1 estimates from the Census Bureau that lets you see where
2 communities are growing or losing people. It gives you a
3 flavor. And as long as you are clear that what you're
4 doing is sketching, we're painting in broad brush, and
5 this is the most important thing, that you're not going
6 to get too attached to decisions before the data that
7 you're going to eventually use come in. I think you can
8 absolutely use those broader sources as flavoring to go
9 out into the community to seek feedback.

10 It's a little bit like painting the background of a
11 watercolor before you're exactly sure where the figures
12 are, but you have a rough sense of where you might want
13 the figures to be. Or a little bit like starting in and
14 in designing a dish or a meal. You know what your main
15 components are. You may not know exactly which
16 ingredients where, but you know it's going to be chicken
17 based or it's going to be fish based or it's going to be
18 some sort of sauce. You can start with the broad
19 generalizations and ask, hey, we feel like chicken, or do
20 we feel like fish, without getting down to, okay, three
21 teaspoons of this and a tablespoon of that because, you
22 know, that'll come later. I think that those broad brush
23 data do exist. And I'd encourage you to use them to
24 start asking the community about choices that you may be
25 considering to get their feedback. So that you're not



1 behind the gun when the numbers that you're going to use
2 to make the final cuts actually come in.

3 CHAIR TURNER: Okay. Prof. Levitt, we'd like to
4 thank you so much for your time, for just the
5 intentionality you had in ensuring that we had
6 understanding in what you're delivering. So Bravo. We
7 appreciate you and we're sure we'll hear from you again.

8 PROF. LEVITT: Thank you, Madam Chair. Thank you.
9 Members of the commission so very much for all the work
10 you're doing. I really, I really appreciate each and
11 every one of you.

12 CHAIR TURNER: Thank you.

13 Commissioners, we're at 2:56 now, right before our
14 break time. We do have Karin and Jaime that is on to
15 talk to us about the census data and the process of map
16 drawing. And we will begin that process.

17 When we finish break, we will go to public comment
18 again, because with the conclusion of that agenda item
19 that we just finished. Agenda item 17, so we'll take
20 comment and then we'll go into our next -- we'll begin
21 our next presentation. So I'll ask that all of you be
22 back at -- let's take the 3:15. We'll be back at 3:15.
23 Thank you.

24 (Whereupon, a recess was held from 2:56 p.m.
25 until 3:15 p.m.)



1 CHAIR TURNER: Welcome back from break. We
2 appreciate all that's been shared. I'd like to say
3 welcome to our next speakers and we -- though we fairly
4 enjoyed our presentation, we do want to apologize for
5 holding you up all here today.

6 And we're going to begin with our public comments.
7 So Colin, if you're there, if you would please, give
8 instructions -- or just how to dial in and see if we have
9 anyone waiting in the queue.

10 AT&T OPERATOR: Yes. And ladies and gentlemen, if
11 you would like to make your voice heard for public
12 comment, please press 1 then 0 at this time. And our
13 next public comment comes from the line of Peter Orsaluk.

14 One moment please. There he is. And if you could
15 please spell your name for public record. One moment,
16 please.

17 CHAIR TURNER: Thank you.

18 AT&T OPERATOR: And excuse me, Mr. Orsaluk, if you
19 could please press 1 then 0, again. And your line is
20 open, sir.

21 CHAIR TURNER: We're not hearing anything, Colin.

22 AT&T OPERATOR: And sir, if you do have your line on
23 mute, could you please unmute the line?

24 MR. ORSALUK: Yes. Hi. My name is Peter Orsaluk,
25 P-E-T-E-R O-R-S-U-L-A-K. I have a question after



1 watching last week's Rose Institute panel. And I was
2 hoping Dr. Levitt could answer, but it looks like his
3 presentation's over. Maybe the Commissioners could look
4 into it further? The Rose Institute and Mr. Bush went
5 through the history of redistricting in California, and
6 he talked about an issue in 1990 and then he skipped
7 ahead to Prop 11 in 2008. But I recalled another attempt
8 at reform that they didn't include. So I went back
9 online and took a look, because I knew I had voted on it
10 during the Arnold Schwarzenegger years.

11 I found it. It was called Prop 77. And it was put
12 on the 2005 ballot by Arnold. I don't know why prop 77
13 wasn't in the Rose presentation, even though the 1990
14 measure was. It had different criteria than the current
15 law that resulted in Prop 11 reforms. Prop 77 required
16 the nesting of Assembly districts within Senate
17 districts. Prop 77 also mandated spreading cities and
18 counties into the absolute fewest members of districts as
19 possible.

20 Also, for the life of me, I couldn't find any
21 requirement to even keep other communities of interest
22 whole; which seemed to run counter to Dr. Levitt's
23 presentation just now. So I have a few questions. I was
24 hoping Dr. Levitt could answer, but perhaps you could
25 look into it?

1 First, I -- am I right about how to characterize
2 Prop 77, the required nesting and the priority to reduce
3 the number of city and county splits? And that didn't
4 even have a requirement for communities of interest when
5 it was voted down?

6 Second, am I right when we approved Prop 11, it said
7 nesting was allowed but not required and that communities
8 of interest were equal priority to cities and counties?

9 And third, maybe Dr. Levitt would know this, but I'm
10 interested whether the Rose Institute played a role in
11 working on Prop 77? I ask because Mr. Johnson talked
12 about scoring maps based on how many cities and counties,
13 like it was the most important thing; which seemed to be
14 in line with Prop 77's goals. It sounds like he was
15 trying to potentially conflate the requirement that is in
16 Prop 77 with what the current law is under Prop 11.

17 Some clarity to this would be very helpful. Thank
18 you for consideration.

19 CHAIR TURNER: Thank you so much for calling in, and
20 the questions that you have have been captured. So we'll
21 see if we can't ensure if Prof. Levitt will get some
22 other responses and maybe they can just be posted online.

23 Do we have another caller?

24 AT&T OPERATOR: No, Madam Chair, we have no further
25 lines in queue.



1 CHAIR TURNER: Okay. Thank you so much. Well, with
2 that, I'd like to, again, apologize for the delay, but
3 thank you so much for joining us and ask you to go ahead
4 and begin with the presentation, please.

5 MS. CLARK: Absolutely. Thank you, Commissioners,
6 and no problem on little time change. I'm happy to be
7 very flexible. My name is Jaime Clark, I'm the
8 Redistricting Data and Access Coordinator at the
9 Statewide Database at Berkley Law.

10 Karin was scheduled to go ahead of me today, and
11 because my presentation just fits in a little bit better
12 with the time frame of this meeting. I'm going to go
13 ahead now and Karin will continue in the morning.

14 This presentation is going to be a recorded video of
15 a live presentation that was given to the auditor's
16 review panel. That presentation was also given with Mr.
17 Levitt and with Karin McDonnell and references their
18 presentations at some point. So if you hear that, that's
19 because we were all together in a similar setting a year
20 ago. Although it feels like quite a long time ago, given
21 all the changes we've had in our world in the last year
22 or so.

23 The presentation is a walk-through of the California
24 redistricting criteria. It involves a brief live line-
25 drawing demonstration using mapping software. And then,



1 again, just sort of going through each of the criteria,
2 each criterion, and we can kind of see how they all
3 interact and build on each other, as they are sort of
4 being balanced, as they're all being considered, when
5 we're putting these districts together.

6 The example geography is not of the full State of
7 California. It's just of Santa Clara County. And it
8 doesn't go in depth, I should say, on the VRA. Because
9 as you now know the Voting Rights Act is very complex,
10 and to be able to really do justice to the Voting Rights
11 Act we would have had to do sort of, like, a behind the
12 scenes Voting Rights analysis -- or excuse me. A
13 racially polarized voting analysis. And we didn't do
14 that in this -- excuse me. For this presentation. And
15 so it's really just the other criteria. But of course,
16 when you're creating districts, you'll have the racially
17 polarized voting analysis under your belt before you
18 start line drawing.

19 In this video we do look at what's called census
20 geography. These are the units of geography on which
21 census data is released. Some of this geography is
22 really familiar. For example, counties or a layer -- a
23 geographic layer called the place layer, which is what we
24 think of as cities. It's the census definition of the
25 boundaries of cities. And then some of the census

1 geography is not so familiar. So those are, for example,
2 census tracts, census block groups, and the smallest unit
3 of geography. This is the most itty bitty unit of
4 geography on which the census releases its findings
5 are -- is called the census block. And we'll examples of
6 this in the demonstration and the presentation, and Karin
7 will go much more deep into census geography tomorrow.

8 The video is less than one hour and we will do a Q
9 and A after, time permitting. The same map that's viewed
10 in the presentation, I also -- I still have saved and I
11 can share my screen afterwards. If any of you would like
12 to revisit anything that's specific to the map shown in
13 the video. And of course, I'm available for general
14 questions after this or tomorrow, if needed, time
15 permitting again, today.

16 And with that, Kristian, could you please play the
17 video?

18 THE COURT REPORTER: This is the Court Reporter,
19 really quickly. Do you want the video transcribed?

20 MR. MANOFF: Yes.

21 MS. CLARK: The video is --

22 THE COURT REPORTER: As part of the video record?

23 MS. CLARK: Thank you so much. The video is already
24 transcribed.

25 THE COURT REPORTER: So for purposes of today's



1 matter, do we want to transcribe it again? Or just defer
2 to previous transcriptions of that video?

3 MR. MANOFF: We're -- we're going to transcribe it
4 again, Pete.

5 THE COURT REPORTER: Thank you.

6 MR. MANOFF: Commissioners, if you'll stand by, I'll
7 be routing this video through the CRC HQ on your Zoom
8 feed. So you may want to pin that -- you may want to pin
9 that video feed. And also if you could please mute your
10 audio while the video is playing so that your audio
11 doesn't interrupt the audio of the video. Stand by, and
12 I will get that video going.

13 (Video played, transcribed to the best of the
14 transcriber's ability.)

15 UNIDENTIFIED SPEAKER: To Jamie?

16 MS. CLARK: Thank you very much. Thank you to all of
17 the members of the review panel and the alternates and
18 everyone who is here today. Thank you so much.

19 Okay. So in today's live mapping demonstration
20 we're going to be using a mapping software. Again, there
21 are multiple mapping softwares out there and available to
22 the public. This is just one of them. They all, for the
23 most part, will perform the same functions. And whoever
24 the redistricting commission's consultants are, they will
25 use some form of redistricting software, certainly.

1 Our world that we're redistricting today is Santa
2 Clara County in California, of course. As Karin
3 mentioned, the data that we're going to be using involves
4 municipal geographies. For example, the county boundary
5 and city boundaries. There will also be census
6 geographies, census blocks, block groups, and tracts. We
7 will go over those shortly.

8 The underlying data that we're using is from the
9 most recent census population numbers, the P.L. 94 from
10 the 2010 decennial census. And we will also be taking a
11 brief peek at the American Community Survey, CVAP,
12 Citizen, Voting, Age, Population figures for Santa Clara
13 County. So before we begin, we are going to be creating
14 some fictitious Assembly districts and Senate districts.
15 There will be six fictitious Assembly and three fictitious
16 Senate districts. The total population of Santa Clara
17 County, according to the 2010 census, is one 1,781,624
18 total population. So each of the six Assembly districts,
19 the population that we are aiming for will be 2,900 and
20 6,940. And for the Senate districts, we're going to be
21 aiming for 5,900 -- 593,000 -- excuse me -- 881.

22 So just a review really quick of what're looking at
23 to get everybody familiarized with the map that we're
24 working with. And of course the commission will be
25 working with a map of the entire State of California.



1 This is just one county. So this is the county boundary.
2 All of these smaller grey polygons are census places. If
3 we look at these green lines, these are census tracts.
4 As you can see there are census tracts that go all
5 throughout the State of California. And these are just
6 the tracks we'll be working with. Those are within the
7 County of Santa Clara.

8 Same with census block groups, these red lines
9 delineate the boundaries of census block groups
10 throughout California. And we'll just be working with
11 the census block groups within Santa Clara County.

12 And here are the census blocks. As you can see,
13 they're very, very -- there are very many of them. In
14 Santa Clara County there are over 22,000 individual
15 census blocks. And just a note about census blocks,
16 these are created by the census and they are not uniform
17 in size or shape whatsoever. Here's an example of one
18 census block. That highlighted red area is one census
19 block. Generally, in more rural areas, like here in
20 eastern Santa Clara County, census blocks do tend to be
21 much larger.

22 And if we zoom into somewhere in San Jose, this is
23 also one census block. This itty bitty. It's a -- you
24 know --

25 CHAIR TURNER: Excuse me. One minute.



1 MS. CLARK: -- bordered by city streets, so it's not
2 just one census block but also one city block. And if we
3 zoom out, we can see that we lose sight of it all
4 together. So there's a very, very large difference
5 between how census blocks can look.

6 (Video Paused)

7 CHAIR TURNER: I don't know how much more of the
8 video will appear the same way, but this last couple of
9 slides I was not able to see what was being illustrated.
10 I don't know if the other commissioners were seeing it,
11 if it's lines. But I'm not able to clearly see the
12 video.

13 UNIDENTIFIED SPEAKER: It is very faint; the
14 contrast is not great.

15 MR. MANOFF: Would you like to -- would you like to
16 proceed, Madam Chair?

17 CHAIR TURNER: Well, I'd like to know -- I guess I'd
18 like get a read -- if there is a way to sharpen the
19 definition on the video that would allow us to see -- I
20 don't want Jamie to make reference to things and show --
21 on the video. Either way. And that we should be seeing
22 that we're not looking at. I don't want to just have us
23 sitting -- giving the appearance that we get the form.
24 And it's not coming across.

25 So if there's a way to make it a little bit more

1 defined, if we can work on the technology? If that is an
2 option, I would prefer that. And if not, then this is
3 our option, we'll have to proceed with the words.

4 MR. MANOFF: Yeah. I don't -- I don't have a way of
5 really -- to sharpen up a YouTube video with my -- in
6 this current configuration.

7 CHAIR TURNER: I'm wondering if it's the picture of
8 the picture that's --

9 COMMISSIONER ANDERSEN: What did we do last time?
10 Because it didn't seem like we saw it this way.

11 MR. MANOFF: You saw it exactly like this,
12 Commissioner Andersen.

13 COMMISSIONER ANDERSEN: Oh, okay.

14 MR. MANOFF: We do have Ms. Clark on the call, so
15 there will be times for questions afterwards, for any
16 parts that aren't clear.

17 MS. CLARK: Yeah. I -- again, I have this same map
18 that is available. We can look at it more in depth after
19 the video. And I believe that after -- after this we
20 won't be looking at teeny, tiny grey lines on a map and
21 there will be more sort of, like, larger polygons, larger
22 shapes that we're looking at. And it might be a little
23 bit more clear just what we're looking at further on in
24 the video?

25 CHAIR TURNER: Okay. We can give that a try. I

1 just never want to sit through and have you think we're
2 seeing something that we're not. So yes.

3 COMMISSIONER ANDERSEN: Is it something that's
4 publicly on the website? The Shape California website
5 that somebody could just pull up and share a screen on
6 Zoom, so we could see it more clearly? Because -- part
7 of the resolution problem is that it's being shown on a
8 screen and then being shown on Zoom through video. So
9 it -- there's going to be a lot of degradation in the
10 quality of the picture.

11 MR. MANOFF: I think Ms. Clark had answered that the
12 best. I -- I'm not aware of it being available in any
13 other form but this.

14 COMMISSIONER AHMAD: I don't -- this is Commissioner
15 Ahmad, I don't think this is a video being shown on the
16 screen and then on the Zoom. So I think this is a actual
17 YouTube video being screen shared.

18 MR. MANOFF: That -- it's actually a -- we're
19 streaming a YouTube video through the video interface.
20 So we're not -- we're not doing a screen share because it
21 wouldn't be fast enough. So this is --

22 COMMISSIONER AHMAD: Okay.

23 MR. MANOFF: I think -- yeah.

24 CHAIR TURNER: Well, what I heard Jaime said was --
25 say was at -- it -- we'll -- we can going to come back to

1 it and she believes the other pictures are larger. So
2 why don't we proceed and just with the understanding that
3 it is a little washed out, and we'll hopefully pick it up
4 towards the end with questions.

5 (Video played, transcribed to the best of the
6 transcriber's ability.)

7 MS. CLARK: So one trait that Karin touched on in
8 terms of something that commissioners will need is
9 patience. And the goal of this training is not to make
10 everybody on the review panel expert line drawers, but to
11 sort of an example -- give an idea rather of when line
12 drawing -- through the process of line drawing and
13 determining where districts will actually lie. Some of
14 the traits that commissioners will need to possess. And
15 to that effect, we are going to create a fictitious
16 Assembly district right now, live. And we'll see some of
17 the necessary -- some of the necessary traits.

18 So we are going to start with census places. And
19 I'm going to pull out a box -- this is a tool that the --
20 that this software provides. It shows the changes.
21 Unfortunately, I can't make the text on this any larger,
22 so pardon me. This will show the total population of
23 this district. This, again, is the ideal value for our
24 fictitious Assembly district. And here's the percent
25 deviation that we're working on.

1 So if we choose one census place, you -- we can see
2 that we're still well below our percent deviation. So
3 right now we're at negative eighty-three percent of the
4 total population that we're looking for, for one Assembly
5 district. So I'm going to keep adding a couple of census
6 places. I know that up here is San Jose, which is going
7 to be too large to be in one Assembly district, so I'm
8 not going to add that one. I will make this change.

9 And I'm going to now switch to census tracts, which
10 if you remember the slide that Karin showed, census tract
11 is the next biggest -- or I'm sorry. The next smallest
12 level of census geography. So I'm moving now to the
13 census tracts, which again are these green outlines. And
14 you can see this census tract we just selected is quite
15 large.

16 And zooming in again, now we're at negative sixty-
17 seven percent. Grabbing some more. So right now I'm
18 making a square just to get as -- everything that is a
19 full census tract that's inside the area. Adding more
20 and more census tracts. Oh. Too much. So we just went
21 over, so now we're nine percent. I'm going to take some
22 of these out.

23 So this area we can see is much more -- much more
24 densely populated than this large census tract. Okay.
25 Back to negative thirty-two percent. Let's move onto our

1 census block groups as we're adding more. Just keep
2 clicking away until we're getting a little bit closer.
3 Negative sixteen percent. All right. Negative eleven
4 percent. And let's move onto our census tracts. Or --
5 census blocks. Please excuse me.

6 And if we zoom in close enough to our census blocks,
7 labels pop up. This shows the population of every single
8 person of every single census block. So this is as
9 reported by the 2010 census. We see here in this block
10 there are 447 people.

11 Negative eight percent. And if we keep going, we
12 will get to negative six percent. Closer and closer to
13 zero. All right. And now we are almost within our five
14 percent deviation. As Ms. MacDonald and Mr. Levitt
15 mentioned, the constitute guides that we want to be
16 within ten percent total deviation for each district.
17 Sometimes we think of that as within plus five percent or
18 minus five percent deviation. So right now we're here in
19 4.03 percent.

20 So this -- I'll make this change. So this large
21 blue district is now within four -- negative four percent
22 deviation. All though we have not looked at any other of
23 the criteria that are needed. This -- if we're only
24 looking at total population could be a district that
25 complies with the population standards.

1 If we go in further, we can try to get to something
2 close to a Congressional district. And again, this is
3 demonstrating the patience that the commissioners will
4 need. So now we are within 101 people of the -- of the
5 ideal value. If the Assembly district and the
6 Congressional district were the same population. So --
7 which of course is not going to be true. But if we were
8 trying to balance this Assembly district -- or rather if
9 this Assembly district was a Congressional district and
10 had a much stricter population guideline, then this is
11 within 101 people. It's 0.03 percent.

12 As you know, during the last redistricting, the
13 commission went to plus or minus one person deviation.
14 Many other states also followed those guidelines. It is
15 unclear what guideline -- what population guideline this
16 coming commission will follow for their Congressional
17 districts. But just based on this, you can imagine that
18 narrowing into exactly one person, plus or minus, is
19 going to require a lot of attention to detail while
20 you're looking at the bigger picture of exactly where
21 your district is, where you want it to go.

22 And will also require a lot of flexibility in terms
23 of -- say that you really want your district to go across
24 Seventh Street, North on Broadway, and then West on
25 Webster, let's say. And you love those lines because

1 they're really clearly -- clear markers that are really
2 easy to understand, but you just can't get there for
3 population purposes. And unfortunately, you're going to
4 need to cross Seventh somewhere. So it's going to
5 require that the commission can sort of keep an eye on
6 the big picture, what they want all the districts to look
7 like, but also maintain the flexibility to be able to
8 say, "Okay. We know that this -- we know that in, maybe
9 in Draft A, we could -- or in our first draft that's out
10 in July 1st, we made this possible. Things have changed
11 now, and unfortunately these exact lines that we really
12 liked can't be followed anymore. So we're going to need
13 to be flexible and figure out where on Seventh we can
14 change -- where on Seventh we can make one census block
15 of a change in one direction or another."

16 So one thing I will note, also -- for the sake of
17 time I'm not going to go through this exercise in a more
18 concentrated and more pop -- densely populated area. But
19 as you can see, this is one of -- this one of six
20 Assembly districts in Santa Clara County. And -- so what
21 that will indicate is that there's a lot of area that is
22 not very densely populated, and areas may be more in
23 these cities where these census block boundaries are much
24 smaller. Those will have much smaller districts,
25 geographically, but they will still have the same

1 population in them.

2 So I'm going to take these districts off and we're
3 going to keep working with the census blocks. But we are
4 really quickly going to take a look at -- at ways that
5 the commission will be able to analyze race and
6 ethnicity, pertaining to the -- to mapping software.

7 So I am going to zoom in here to San Jose. And on
8 each census block -- the census blocks are all filled in
9 and these darker blue census blocks indicate that there
10 are more people living within the census block. And this
11 is total population. So there is more people living in
12 the census blocks that are darker colored. These census
13 blocks indicate that there's nobody living in there
14 because they're more lightly colored. So this is sort of
15 an example of population density.

16 And for this -- just for this exercise, we're just
17 going to be looking at Latino population. So here, now
18 we have the percent Latino population in each of the
19 census blocks. So again, the census blocks that are
20 colored in with a more darker blue, those census blocks
21 have a higher percentage Latino population than the
22 blocks that are colored in a lighter blue. So of the
23 people living in those census blocks, a higher percentage
24 of that population of everybody living in the census
25 block is Latino or identified as Latino on the census.

1 So again, the total race and ethnicity breakdown will be
2 from the census dataset.

3 And then moving onto voting-age population. This is
4 also provided by the P.L. 94. This will represent --
5 this is the -- not a big change. The percent Latino
6 voting-age population in these blocks in these areas.

7 And finally, the Latino citizen voting-age
8 population. So you can see that in the same area,
9 depending on what data set we're looking at, we're just
10 sort of looking -- it's a different representation of the
11 populations in that area. And the commission -- again,
12 commission isn't a guiding factor of the -- redistricting
13 isn't that race should be a predominant criteria. Like
14 the example that Mr. Levitt gave of where you're not just
15 staring at your speedometer and then driving without
16 looking out your windshield, but you can sort of look at
17 the speedometer. In this case it might be where
18 different populations live -- different racial and ethnic
19 groups live throughout the area that you're
20 redistricting.

21 So it's sort of, like, keep it in your awareness and
22 avoid unnecessarily intentionally splitting groups, while
23 at the same time keeping in mind that - that just because
24 you know that there is a large percentage of a certain
25 race -- racial -- excuse me -- or ethnic group that --

1 residing in one area, that doesn't mean necessarily that
2 in that neighborhood there's a cohesive neighborhood
3 identity, just because of who is living there -- who
4 happens to be living there.

5 The way that the commissioners will get best
6 districts is not going to be to assume that they know
7 populations or understand populations throughout
8 California, but rather their best districts will come
9 from responsiveness to community input. So again, just
10 because in this area there -- as compared to the rest of
11 Santa Clara County, or the rest of the city of San Jose
12 even, there are large Latino populations living in this
13 area. That doesn't necessarily mean that it will be a
14 community of interest.

15 However, if a community member comes and testifies
16 and says, "Yes. Yes. This is my community of interest.
17 There are a lot of -- there's a shared cultural
18 background. There's shared heritage here." Then it
19 would definitely be considered a community of interest.

20 Are there any questions about that so far?

21 AT&T OPERATOR: So we have a question from an public
22 member. Please state your name for the record.

23 MR. DUGAR: Sean Dugar with Common Cause. So the
24 last go-around, the public encouraged members of the
25 commission to do the exact opposite of what you were

1 saying. In LA, you had members of the African-American
2 community come together and say, "You know what, we have
3 established relationships and coalitions that go beyond
4 race. So don't create a district that fifty percent plus
5 African-American. Let us work in partnership with other
6 communities." Do you see that in other places across the
7 state?

8 MS. CLARK: Yes, definitely. And I -- so there are
9 many areas throughout the state where there will be
10 multiple racial or ethnic groups cohabitating -- or I
11 guess living in the same areas. And this is a really
12 good example of something that could be a community of
13 interest. This particular example also could be a
14 potential voting rights act district, should the
15 commission choose to consider multiple ethnic groups
16 voting together as a voting clock. As opposed to just
17 looking at one group at a time when they're analyzing for
18 their Section 2 Districts.

19 Okay. Thank you all for -- thank you all for
20 bearing with me through that exercise. Our next
21 exercise, we are just going to -- well, okay. I was
22 going to talk about contiguity, however, I believe
23 that -- just for the sake of time -- Mr. Levitt and Ms.
24 Mac Donald have also both gone over contiguity.
25 They're -- and stole my examples of the channel island.

1 So both of them did. So we're just going to move past
2 contiguity and hopefully it's very clear from the two
3 previous presentations, issues concerning contiguity.

4 So moving onto our next criterion, which is
5 geographies. Again, there are municipal geographies that
6 will be handed to the commission from the census. Again,
7 the county boundary and city boundary, census place
8 boundaries. And those are on the same level, when you're
9 considering redistricting, as communities of interest.
10 So I've created a couple fictitious communities of
11 interest for us to consider while we are looking at a
12 couple of drafts. That draft Assembly districts that
13 I've also created, just to sort of get our creativity
14 flowing when we're thinking about redistricting here.

15 So some communities of interest are very large.
16 Here's one community of interest, which is just parts of
17 Silicon Valley. This is multiple cities, large. So it's
18 Stanford, Palo Alto, Mountainview, Sunny Vale, Santa
19 Clara, part -- here we're seeing part of Milpitas. Los
20 Altos California, Viola, part -- and part of Cupertino.
21 So we're seeing here that communities of interest do not
22 necessarily follow city boundaries or county boundaries.
23 They often time will split -- will split a city.

24 So for here, for example, is Milpitas, in case that
25 wasn't clear. And you can see that it's split by this



1 community of interest. Moving on, here is Milpitas --
2 part of Milpitas plus some areas sort of along the 101
3 Corridor. I will display some highways for you. Oh.
4 I'm sorry. So it's along 6-80, and this is just part of
5 San Jose. Perhaps this community of interest -- members
6 of the community came to speak on living along this 6-80
7 Corridor, and perhaps are dealing with similar issues
8 related to housing.

9 Some communities of interest -- those were both
10 large communities of interest. Some communities, very
11 small. So this community of interest is called Rose
12 Garden. It is a neighborhood in San Jose. It's a
13 historic neighborhood. And downtown San Jose -- I should
14 give a caveat that these are fictitious communities of
15 interest that I made up. And anyone -- you know, anyone
16 from Santa Clara County who disagrees with me, I totally
17 understand. I don't live in Santa Clara County, and just
18 trying my best to give some potential examples.

19 So here's downtown San Jose. And here are couple
20 more. South San Jose. So this neighborhood -- and the
21 folks who live in this neighborhood are dealing with
22 potential development on the horizon, there's a lot of
23 open spaces that perhaps the people who live in this
24 community of interest are focused on protecting.

25 South 101, these are a series of smaller cities that



1 are positioned along the 101 Corridor. There is a shared
2 economic history and agriculture. And really these
3 cities are different from the rest of Santa Clara County.
4 They're really not involved in tech industry or Silicon
5 Valley. More of a rural/agricultural feel to these
6 cities. And Foothill -- Foothills. These are cities in
7 the foothills of the Santa Cruz Mountains, which run
8 right along here.

9 This is also a different feel from maybe more urban
10 environments in Santa Clara County. They have more like
11 quaint downtowns and more of a small-town feel even
12 though they are in a county that maybe has larger urban
13 feel -- or a -- at least one very large city.

14 And last but not least, this COI that we'll be
15 working with is Mountain View and Sunnyvale. Pats of
16 Mountain View and Sunnyvale together. So you can see it
17 splits Mountain View and Sunnyvale, and perhaps the folks
18 who live here are focused on getting a Rec Center for
19 their -- maybe this community feels really cohesive and
20 they want to share a Rec Center where kids who live there
21 can go after school to hang, get homework help, et
22 cetera.

23 So those are our communities of interest. And I
24 will note that these two communities of interest, the
25 Silicon Valley area and part of Milpitas and more North

1 San Jose, these are both too large in population to be
2 whole in an Assembly district. So we know for sure that
3 these will be split.

4 So bearing all of this in mind, I've made a couple
5 drafts. This first draft focuses on keeping cities
6 intact. So this is keeping all of the cities in Santa
7 Clara County intact. However, the City of San Jose is
8 split for population purposes. That is also too large to
9 be in one complete -- whole -- rather in one Assembly
10 district.

11 And these numbers here on this label, this
12 represents the percent deviation of each of these
13 districts. So ranges everywhere from negative 3 percent
14 deviation to 1.67 percent deviation. So we know that all
15 of the cities in this variation are intact. We feel
16 really good about that, right? Maybe not once we
17 consider what happened to our COIs. So we were so
18 focused on keeping our cities intact that -- did we split
19 the Foothills COI? Yes. We split this Foothills COI.
20 Did we split -- we know we didn't split the South 101
21 COI, because these are just the -- geographically, where
22 they're located, less likely to get split because they're
23 on the border.

24 South San Jose COI? Yes. We split this into three
25 different districts. Our Downtown COI? Yes. Also split



1 into two districts. What about our teeny tiny Rose
2 Garden COI? We even split this COI into two districts.
3 And of course, communities of interest and cities and
4 county boundaries are on the same level. They're not
5 ranked within this criterion, and so this map would not
6 be a good version to go with.

7 What about our draft where we really just focused on
8 keeping COIs intact? So in this version, all of the COIs
9 that -- all of the COIs that we have are intact, except
10 of course for the Silicon Valley COI and the Milpitas and
11 North San Jose COI, which we know are too large to be in
12 any one large Assembly district.

13 So we see here that we're well within our percent
14 deviation. And so we want to see what happened to our
15 census places. We know that San Jose is going to be
16 split into multiple districts. And I'm just going to
17 sort of go around like a clock. Here's little, tiny
18 Lexington Hills. We split that one. Los Altos? We
19 split that city. Mountain View? Yes, it's split.
20 Sunnyvale? Also split. Santa Clara? Also split.
21 Milpitas? Yes, it is split. And East Foothills? Yes,
22 it is split.

23 So we -- as communities of interest -- which I'll
24 show a couple just to prove -- this one is whole.
25 Foothills is all in one district. South San Jose in one

1 district. Downtown in one district. Little tiny Rose
2 Garden COI in one district. So although all of our COIs
3 are sort of protected in this version, we do not have our
4 cities intact. So this would also not be an advisable
5 draft.

6 Moving onto our final draft. This draft has all of
7 our cities and all of our COIs intact. And of course, if
8 we are on a statewide level, we would also be considering
9 counties. And I would just like to note that this is the
10 draft that also uses the highest percent deviation in
11 order to keep all of our COIs and all of our cities and
12 counties -- or cities intact. And so as a result, this
13 would be the most ideal version to go with.

14 Really quick, I'm just sort of going to go through
15 each of these again. And please just notice how
16 different each of these district iterations look compared
17 to each other. Again, this is keeping the cities intact.
18 This is keeping the communities of interest intact. And
19 this is keeping cities and communities of interest
20 intact.

21 So this is just something that the commissioners are
22 all going to have to keep in mind is this balance between
23 keeping all of these geographics intact. The geographics
24 that they received from the census and the geographies
25 that they receive from the community.

1 And -- yeah. And basically, this is just a
2 demonstration of all of these different variables that go
3 into creating good districts that are going to be
4 responsive to community members and that are also going
5 to be responsive to their criteria -- there are -- their
6 mandated criteria.

7 I'm going to take this label off because it's a
8 little bit distracting. As we move onto our next
9 criteria, which is compactness. So we've heard quite a
10 bit about compactness from Mr. Levitt and from Ms. Mac
11 Donald. And basically with -- I feel like a large
12 takeaway that we've heard from their presentations is
13 sort of the eyeball test is a test that people have used
14 to sort of talk about compactness in the past. And also,
15 looks aren't everything.

16 So I'm -- I'm going to take the highway layer off as
17 well. And I would like to focus specifically on this
18 district. Which of course is not quite as exciting as
19 the earmuffs district in -- that we saw the example from
20 Chicago. But I do want to point to this, because it's
21 shaped like this. Looking at it I could just hear
22 everybody say, "Oh, yeah. The Shrimp District." Or
23 something like that. It looks like a shrimp. And it
24 does bypass this population right here. This -- these
25 towns. Los Altos and Viola.

1 However, I also would like to point out that it is
2 keeping the town of Palo Alto together. So that is a
3 reason for this boundary line. And it's also keeping
4 this community of interest, Mountain View and Sunnyvale
5 together. Where perhaps adding these cities into this
6 district would be either splitting Sunnyvale or Mountain
7 View, and potentially also splitting this community of
8 interest.

9 So just in terms of compactness, when it comes to
10 actually mapping, there are usually many, many good
11 reasons that a district will not be, like, a perfect
12 circle or a perfect square. And the commissioners will
13 need to be able to understand that, and also will need to
14 be able to explain that.

15 It is -- again, as Karin mentioned, it can be very,
16 very strong visual cues that you're getting as a
17 commissioner from the districts when you're looking at
18 them, and you're like, "I can't believe this. This looks
19 like a shrimp." When in fact, there will be very, very
20 good reasons to -- very good reasons to draw districts in
21 a way that might not seem the first compact at first
22 glance. And also keeping in mind that compactness is
23 ranked lower than keeping cities and counties and COIs
24 together, than equal population, and then any sort of
25 race or ethnicity considerations that the commission will

1 be needing to make.

2 Okay. And last but not least, unless there are any
3 questions, then I'm going to move onto nesting.

4 UNIDENTIFIED SPEAKER: So I do have a question for
5 you.

6 MS. CLARK: Yes?

7 UNIDENTIFIED SPEAKER: So once the commission has
8 identified community of interest, and they've identified
9 the -- my boundaries, and input that into whatever their
10 vendor's software program is, does the software program
11 create options and ideals, or is a person sitting down
12 and doing that? I know you were clicking on it, but does
13 it -- does the software program create a suggestion that
14 equalizes all these factors?

15 MS. CLARK: To my understanding there are some
16 software programs that will create districts that are
17 equally populated. I don't know if they take communities
18 of interest into consideration or not. However, I would
19 say that to get the best districts the commissioners will
20 need to sort of weigh all of the factors that they have
21 in mind -- or I'm sorry. That they are given. And then
22 also they'll get the best districts by hearing the input
23 that is given to them and being able to sort of sort all
24 of the input together and say, "Okay. I see that -- I
25 see that we could make a square here, and that could be

1 our district. But when I'm hearing all of the feedback
2 from the community, for example, I'm seeing that these
3 two cities, even though they are next door neighbors to
4 each other, they don't necessarily belong in the same
5 district together." And I think that there's no way that
6 redistricting software can sort of take all of those
7 complexities and all of those nuances and create
8 districts that are going to be legal and also responsive
9 to community. There's no way that a redistricting
10 software could put sort of that human touch --

11 UNIDENTIFIED SPEAKER: Um-hum.

12 MS. CLARK: -- into creating districts.

13 UNIDENTIFIED SPEAKER: All right. Thank you.

14 UNIDENTIFIED SPEAKER: So we have a question from
15 the public. Please state your name into the microphone.

16 UNIDENTIFIED SPEAKER: So I just want to follow up
17 on your question. Operationally, what goes on? It's
18 been mentioned that the commissioners have staff. So do
19 staff create these options, or do the commissioners
20 tinker and do they have to have that kind of ability to
21 explore and do the -- work the software and get the
22 answers? Or is that something staff does? You know --
23 what's the personality of the commissioner and their
24 ability to be, you know, investigative. What's their --
25 what's the need there?

1 MS. CLARK: Certainly. Another great question.
2 Thank you. So the commissioners will hire line-drawing
3 consultants who will, at the commissioners' request, or
4 at the commissioners' direction, create drafts. So
5 perhaps that would look like the commissioners conducting
6 outreach, community outreach, and then directing their
7 line drawers, "Try to make a draft that has equal
8 population, takes all of our other criteria into effect,
9 and for Santa Clara County, try and keep these cities
10 together with this COI. See how the population plays
11 out, and then come back to us with a draft that's equally
12 balanced." And then depending on their process, then
13 either live and in public they can adjust the lines to
14 make sense, or rather to be more responsive to what they
15 think the community wants and is asking for. Or they
16 could give further direction to their line drawing
17 consultant to go home and try and work some stuff out
18 according to the commission's feedback based on what they
19 saw at the previous meeting.

20 So the commissioners themselves, most likely, would
21 not be using the mapping software. But they can direct
22 their line drawers to create drafts that they feel are
23 the best for the areas that they're working with.

24 Does that answer your question?

25 UNIDENTIFIED SPEAKER: So if I were a, let's say a



1 line drawer, (audio interference) sit over your shoulder
2 and let's work on this together. You know, let's get it
3 done. I mean, is that allowed? Does that -- is that
4 within the compass of what a commissioner does, or is
5 that too micromanaging?

6 MS. CLARK: Right. Yes. I would think that is a
7 legal question, and I would also say that -- so we've
8 been talking about some of the traits Commissioners need
9 to exhibit to really excel in this position and with this
10 task, and I think that team collaboration among
11 themselves is, as Karin mentioned, something that's going
12 to be necessary. So one Commissioner sitting down with
13 the line drawings, saying do it like this, do it like
14 this, do it like this, is not exactly acting in the name
15 of collaboration, or acting in a way that is very
16 collaborative. And I would say that, again, this is a
17 legal question, and my guess would be that a draft that
18 was created in that way might just be --

19 MR. DAWSON: Ms. Clark, if I might join in. You are
20 quite correct. It is a legal question, and I think it
21 should be made clear that the Commission itself decides
22 how it will draw the lines under the authority that it is
23 granted or that it is directed under the constitutional
24 and statutory provisions. They obviously will employ the
25 consultants necessary to help them to do that, but they

1 are charged with drawing the lines, and to the extent
2 that they are receiving counsel and assistance from their
3 staff, of course they will use that to undertake their
4 duties, but I think it should be made clear that the
5 Commission itself will be determining how the lines are
6 drawn.

7 UNIDENTIFIED SPEAKER: Thank you, Mr. Dawson. So
8 Jaime, we have about seven minutes.

9 MS. CLARK: Okay. Thank you very much.

10 So quickly to talk about nesting for these
11 districts. It would be quite possible to, for example,
12 nest this light blue district with the purple district,
13 the yellow district and the green district together, and
14 the red district and the dark blue district. You could
15 probably hit all of our equal population marks.

16 We know that the cities and COIs are intact in these
17 districts, and so we wouldn't be replicating a split. We
18 wouldn't be replicating a split in the city. However, I
19 do want to turn our attention to these two communities of
20 interest that we know are larger than an Assembly
21 district. So if we're talking about Senate districts,
22 then the size of a Senate district, again, will be twice
23 as large as that of the Assembly district.

24 If we are just looking at this Silicon Valley
25 community of interest, and looking again at our draft

1 that keeps all of our cities and communities of interest
2 together, then we see that this community of interest was
3 split into four different Assembly districts. So no
4 matter how we nest, this community of interest will still
5 necessarily be in at least two different Senate
6 districts.

7 Moving on to this next Senate district or -- excuse
8 me -- this next community of interest, Milpitas plus some
9 areas in North San Jose, again, we see that this
10 community of interest is split into four different
11 Assembly districts. Again, if we try and do nesting
12 we're going to replicate -- that's a split for this
13 community of interest.

14 So the Commission in this case would have the option
15 to create Senate districts that are not nested. I'm
16 going to show, again, this draft. We can see, just based
17 on how messy these lines look, this is not a nested
18 Senate draft. This draft was built to keep a Silicon
19 Valley COI intact. We can see it is intact in one
20 district. However, and this is something that certainly
21 the Commission will face, this area of Milpitas right
22 here is shared between these two communities of interest,
23 and so these two communities of interest in a certain way
24 are at odds with each other to be intact in the Senate-
25 level plan. So you can see here that this community of

1 interest is split in this version.

2 However, the Commission could also consider a second
3 draft that keeps this community of interest intact and in
4 one district. However, in this version, the Silicon
5 Valley community of interest is again split. So this is
6 just to say that the Commission will almost certainly
7 face an issue like this where there are communities of
8 interest or other geographies that are, for lack of a
9 better word, at odds with each other in terms of being
10 able to be whole and intact in districts, and the
11 Commission will need to be able to sort of take a step
12 back, weigh different options, and sort of weigh the
13 importance or what they assign as important in terms of
14 which communities of interest, which cities, which
15 counties, to keep intact to the extent practicable.

16 Sometimes multiple different -- that could look like
17 a lot of people from this North San Jose and Milpitas
18 community of interest got together and they had a very
19 compelling reason for why their community of interest
20 should be kept together, and maybe it was a little bit
21 more compelling than the Silicon Valley COI. And so
22 they're deciding to go with this version.

23 Maybe from the Silicon Valley COI, a lot of
24 different people from a lot of different groups that have
25 different interests all testified about Silicon Valley

1 COI. Some people were tech workers who used similar
2 transportation to get to their jobs. Some people were
3 renters who were really concerned, who are not tech
4 workers, who are really concerned that their rents had
5 been going up and up and up, and they were concerned
6 about their ability to continue living in that area for
7 years to come, and so that's why they said they were a
8 COI.

9 And so maybe the Commission would say, okay, we've
10 heard from all of these different people, all of these
11 different groups, and so that's why this COI is really
12 strong.

13 Another thing to consider while we're looking at
14 this -- if we could turn our attention again to the maps.
15 So again, this was the version that kept this community
16 of interest intact versus this other draft, which is
17 keeping the Silicon Valley COI intact. So the
18 Commissioners also might want to look and say, okay, in
19 this version we're prioritizing keeping XYZ COI intact.
20 How does that play out for the rest of the map? What is
21 the ripple effect? What is the impact that the rest of
22 the map -- that it's having on the rest of the map and
23 the rest of the districts throughout the map versus,
24 again, keeping the North-San-Jose/Milpitas area intact.
25 You can see this is a very different version from the

1 previous map.

2 So I know that we are out of time. I think, again,
3 just to sort of -- just sort of thinking about all of the
4 different traits that the Commissioners will need,
5 they'll need to be impartial. A community of interest
6 might emerge that is completely different than how
7 they've been thinking about that area. They'll need to
8 be able to listen to the people who are speaking from
9 that community of interest and be, again, impartial and
10 flexible in how they're thinking about areas throughout
11 California, again, being responsive to community members
12 that they're hearing from.

13 And complex problem-solving. As you can see, all of
14 these criteria bring their own level of complexity to the
15 redistricting process and within each of the criteria,
16 there are complexities within each of the complexities,
17 so really having sort of a -- having a character that can
18 sort of put all of these little puzzle pieces together
19 that will create really good puzzle pieces that are going
20 to be the districts within the State.

21 (Video ends)

22 MS. CLARK: Thanks so much, Kristian, for sharing
23 that video. Thank you to all of the Commissioners, and
24 all members of the public that are watching. I am happy
25 to answer any questions. Again, I have this map pulled



1 up and can share my screen at any time to sort of share
2 any specific pieces of the map that might have been hard
3 to see in the video, or if there are any questions that
4 are specific to the map itself.

5 CHAIR TURNER: Commissioners, are there any
6 questions or comments?

7 MS. CLARK: Yes, Commissioner Yee.

8 COMMISSIONER YEE: Thank you so much for the
9 presentation, and now responding to our questions.

10 So I'm wondering, I guess, the nuts and bolts of it.
11 So as Commissioners instruct line-drawing consultants to
12 prioritize this, that, come up with some draft maps, I
13 mean, at some level of granularity, I mean, there's
14 judgment calls. So like the very first map you worked
15 on, you moved your mouse around, you picked up this
16 census block, that census block -- and sometimes there's
17 a clear boundary to work with, a freeway or something,
18 but other times it just kind of depends on which way your
19 hand moves the mouse in that instant, right, to pick up
20 this block rather than that block to reach your
21 population target? So I'm just wondering how that really
22 works in practice. If the line-drawing consultants are
23 doing that work, then that's quite a bit of judgment left
24 in their hands, even if we provide them the criteria that
25 we're ranking, and so forth. So what does that really

1 look like in practice as maps are developed?

2 MS. CLARK: That's a great question. Thank you. So
3 although in my examples certainly it was kind of random,
4 like click here, click here, try and get within a certain
5 population deviation, in reality, when the commission is
6 working with the maps, there will be all of the criteria
7 in mind to guide their efforts, to guide your efforts.
8 And from a line-drawer's side, I would expect that the
9 Commission would guide the line-drawers, give direction
10 to the line-drawers in anticipation of seeing a version
11 of a map that, again, adheres to all of their criteria
12 and is responsive to public testimony.

13 And then if the Commission sees that version,
14 doesn't like it, there's options to address that before
15 the draft would be published -- that official draft be
16 published.

17 And additionally -- oh, I lost my train of thought.
18 I'm so sorry. Oh, and additionally, I would also think
19 that it would be reasonable for the Commission to expect
20 that the line-drawers would be able to explain reasoning
21 behind making any decisions, that it was, okay, we're
22 keeping these counties, these three counties together in
23 our district, and then, I needed to pick up population
24 from another county that is going to be split. This is
25 why I chose this area, and it's to keep another county

1 intact and to minimize splits, or because we heard about
2 this community of interest which is in this county, and
3 we're working with that community of interest and
4 respecting the boundaries of that community of interest.
5 So although, again, in my example it was a little bit
6 random, the commission will be able to really guide and
7 give direction.

8 And again, line-drawers should be able to sort of
9 validate or say here's where the decision points were and
10 this is why this version looked like this. We can see a
11 different version that looks a different way, and the
12 Commission will be able to adjust whatever versions the
13 line-drawers can present.

14 COMMISSIONER YEE: Right. I'm just thinking that
15 validation will be -- could be fairly tricky in a very
16 densely populated area, where, you know, a block here, a
17 block there, I mean, it does come down to judgment calls,
18 right? I suppose it will be up to community testimony to
19 provide some of that validation for the choices that can
20 be made.

21 MS. CLARK: Yes. And the Commission will also be
22 able to work with a map, just as we saw, live and in
23 public. And so being able to sort of verbally explain
24 decision points along the way, say, okay, we want -- we
25 see that this community is intact in this version and

1 that means that this county is split, and we're going
2 with this because we're focusing on this community. And
3 really taking advantage of being able to make those
4 decisions in person, and talk it through amongst
5 yourselves, and work with the map live, I think, is also
6 a way to sort of deal with some of those decision points
7 and being able to really explain your thought process as
8 you go.

9 CHAIR TURNER: Thank you. Any other Commissioner?

10 COMMISSIONER TAYLOR: Jaime, I have a question. So
11 as you were making the maps, and you were clicking on the
12 populations to capture populations, it -- sort of, the
13 borders of those sort of self-promulgate, right? Is that
14 a nature of the software, or is that the border that's
15 created by the census?

16 MS. CLARK: Excellent question. Thank you. The
17 software works with the census geography, so all of the
18 boundaries of the map were along census blocks, which,
19 again, is the smallest unit of geography by which the
20 census releases the results of the -- the U.S. Census
21 Bureau releases the results of the census survey. And so
22 all of those boundaries were census boundaries.

23 COMMISSIONER VAZQUEZ: This is Commissioner Vazquez.
24 Following up on Commissioner Taylor's question then, are
25 we bound by census block boundaries in terms of creating

1 our map? And if so, what's the -- I'd be curious to know
2 what the methodology the census uses to define census
3 blocks.

4 MS. CLARK: Certainly. So I know that Karin will
5 get into this in more detail tomorrow. The methodology
6 that the census uses, I can share a very rough outline.

7 One piece of it is that the census doesn't want
8 anybody's personal information to be identifiable, so for
9 example, they're never going to put one household in one
10 census block, because then they can say, oh look, or
11 somebody could say, oh look, I know that Jaime lives here
12 in this household and there's only two people in this
13 census block, so kind of looking at all of the data, I
14 have a feeling that, like, these are about Jaime
15 specifically. So that's one reason that in rural areas,
16 the census blocks are going to be large, because, again,
17 it's just less densely populated in rural areas, and so
18 including multiple households -- well, multiple
19 households might be a mile away, depending on where you
20 live, versus in a more metropolitan area where there are
21 more households, typically, in smaller areas,
22 geographically speaking.

23 And the reason that census blocks are used in
24 redistricting, again, is because it's the smallest unit
25 of geography by which the survey results are released.



1 So using the census geography ensures that during your
2 redistricting process, you're working with the most
3 accurate data that's available. So when you're counting
4 the population you know -- okay, there are 125 people
5 living here.

6 Whether or not you could split a block, I think
7 would be a legal question, and I'm not a lawyer.

8 COMMISSIONER VAZQUEZ: Got it. So checking for
9 understanding, say, for example, we had a really big
10 census block, we would probably not be wise to try to
11 split that in order to achieve some goals, because we
12 couldn't identify then how many people we would be
13 capturing in any sort of split.

14 MS. CLARK: Yes. Yes, that's --

15 COMMISSIONER VAZQUEZ: -- is a big reason why. Got
16 it.

17 MS. CLARK: Yes.

18 COMMISSIONER VAZQUEZ: Okay. That makes sense.

19 MS. CLARK: Yes? Commissioner [Sin-ay']? Sinay
20 [Sin-eye']? Pardon me.

21 COMMISSIONER SINAY: It is [Sin-eye']. Thank you.

22 So in that presentation, people kept asking
23 questions about Commissioners, and what you should be
24 looking for in Commissioners. I'm going to turn the
25 question around and say, as we're looking at line-drawer

1 consultants, what should we be looking at and what should
2 we be asking?

3 Also, just for the sake of conflict of interest, are
4 you going to apply? You're not applying for that, right,
5 your organization?

6 MS. CLARK: Statewide Database is simply the
7 redistricting database for the State of California, and
8 Statewide Database does not draw lines under any
9 circumstances, so no.

10 And I would say that in terms of looking at line-
11 drawers, I think that it is wise to probably look for
12 experienced line-drawers and also to look at the outcomes
13 of lines that have been drawn, depending on sort of what
14 you're looking for in terms of line-drawers. See if
15 their previous lines have accomplished that.

16 CHAIR TURNER: Commissioner Fernandez?

17 COMMISSIONER FERNANDEZ: I'm going to kind of piggy
18 back off Commissioner Sinay, about what we should look
19 for in line-drawers. As we venture forward, I guess my
20 concern is going to be when we have feedback from
21 communities of interest, what should we look for in terms
22 of a legitimate community of interest versus maybe not so
23 much a legitimate one?

24 MS. CLARK: I think that that's a really good
25 question. It was a little bit quiet, and just to make

1 sure that I understood the question, it was when the
2 public is presenting community of interest testimony,
3 what to look for to make sure that it is accurate and
4 sort of real community of interest testimony.

5 COMMISSIONER FERNANDEZ: Yes, so that it's valid and
6 it's -- yes, correct.

7 MS. CLARK: That's a great question. I think that,
8 of course, it will depend on sort of the judgment call of
9 the Commission, and maybe sort of like the feeling of it.
10 I believe that in the last redistricting, the Commission
11 felt that there was some testimony that maybe was not
12 presented in good faith, simply depending on, I guess,
13 like, the distance traveled for a community in Southern
14 California, why are you at all of our Northern California
15 meetings? Are you just following the Commission because
16 it's fun to come to the meetings or is there something
17 else going on? But I think that that's really important
18 to consider.

19 I think it's a really difficult question to answer
20 because, of course, there might be people from Southern
21 California where it's extremely important to them to keep
22 their community intact and maybe it does feel worth it to
23 travel distances to be able to express their testimony to
24 the Commission, and to be able to do it repeatedly at
25 different meetings, so I think that that is going to be



1 up to the Commission to sort of determine.

2 And similarly, as we kind of mentioned in the
3 presentation, that there might be communities of interest
4 that you're hearing conflicting information about. The
5 example presented was Silicon Valley. Maybe there's tech
6 workers who want their community to be intact because
7 they use similar transportation corridors when they're on
8 their way to work and they're stressed out about traffic,
9 and then there's renters who are getting priced out of
10 somewhere that they've lived for generations, and that's
11 why Silicon Valley is their community of interest. But
12 hearing conflicting testimony doesn't necessarily negate
13 somebody else's testimony or make it so that -- okay,
14 it's not a community of interest because of the type of
15 workers -- it's only a community of interest because of
16 the renters. So there will be a lot of information to
17 sort through, and yeah, again, that will be up to the
18 Commission to sort of consider amongst yourselves which
19 to prioritize and which maybe doesn't feel as good.

20 CHAIR TURNER: Well, Karin, I'd like -- Jaime --
21 excuse me -- I'd like to thank you so much for your
22 presentation today. And for the Commissioners, thank you
23 for all of the changes that you're putting up with as
24 well. So we appreciate your flexibility in sharing with
25 us this afternoon.



1 We are going to prepare to conclude our session for
2 today -- recess, excuse me, until tomorrow. This kind of
3 lets you know, tomorrow we will begin, of course, at
4 9:30, and we will begin with public comment, and then we
5 will continue with this presentation with, I think, Karin
6 will be back -- will be here tomorrow morning. And from
7 there, the only speaker that we have tomorrow is at 1:30,
8 and that's Matt Barreto on the Voting Rights Act, and
9 then we'll get to some of our other -- depending on the
10 time, we'll get to some of our other agenda.

11 But for the public that's listening, we'll begin at
12 9:30 with public comment, continue in this presentation,
13 and wherever we are at lunch, when we come back from
14 lunch, we'll take more public comment at that time as
15 well.

16 MS. JOHNSTON: Madam Chair, did you want to request
17 public comment now in case anyone has questions for
18 Jaime?

19 CHAIR TURNER: Yes. Thank you. We can certainly do
20 that. Colin, if you're hanging in with us, will you
21 please see if there is anyone waiting for public comment?

22 AT&T OPERATOR: Yes. We do have someone on the
23 line, Mark Fisher (ph.). Please state your name for
24 public record.

25 MR. FISHER: Hi. This is Mark Fisher. So I wanted

1 to thank Ms. Clark for her presentation. I was watching
2 last week, and was quite concerned when I heard one of
3 the presenters tell you not to draw lines in public. It
4 just sounded like a return to the smoke-filled rooms to
5 me.

6 But Ms. Clark's presentation really showed to me how
7 complicated this can be, how keeping Community A whole
8 can really split City B. But precisely because it's so
9 complicated, I have a strong disagreement with the Rose
10 Institute, and encourage you to include this type of live
11 line-drawing during your deliberations. Not only just
12 putting together your first draft -- that seems way too
13 complicated -- but near the end, when you're trying to
14 fix the problems, it will be invaluable to the public to
15 understand if they can get split and why it's happening.
16 They may not be happy, but at least they can understand
17 you tried.

18 If I was the Commission, I would insist on seeing
19 that for myself. When someone's yelling at me over some
20 lines, I wouldn't want my answer to be our expert said
21 well that's that way. I would want to be -- I would want
22 to be able to speak for myself.

23 So I really appreciate Ms. Clark's and Mr.
24 Levitt's -- they really seem to get that this isn't their
25 Commission, it's your Commission, it's our Commission,

1 more importantly. I'm not sure everyone else has
2 understood that. I get the concern that -- not wanting
3 to have the last voice win, but that can be fixed without
4 sacrificing testimony. Early on folks are giving
5 testimony by region, identifying priorities without
6 drawing maps, but when you get to -- when you get to the
7 end, always make sure you have a remote option to
8 participate. That way Santa Cruz doesn't really have an
9 advantage over North Park, but figure out those trade-
10 offs in public so all could not be heard but see -- see
11 how the decisions were made.

12 But anyways, thank you Ms. Clark and looking forward
13 to trying my own hand at drawing the maps next year.

14 AT&T OPERATOR: And Madam Chair, there are no
15 further lines in the queue from the public for comment.

16 CHAIR TURNER: Thank you so much.

17 Okay, Commissioners. We'll recess until tomorrow.
18 Thank you so much for your time and energy today. I
19 appreciate it. See you tomorrow.

20 (Whereupon, the CRC Public Meeting adjourned)

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I certify that the foregoing is a correct transcript, to the best of my ability, of the videoconference recording of the proceedings provided by the California Citizens Redistricting Commission.



LORI RAHTES, CDLT-108

July 19, 2022

DATE

