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Transcribed by:
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J. Ray Kennedy, Chair
Antonio Le Mons, Vice-Chair
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Linda Akutagawa, Commissioner
Jane Andersen, Commissioner
Alicia Fernández, Commissioner
Neal Fornaciari, Commissioner
Sara Sadhwani, Commissioner
Patricia Sinay, Commissioner
Derric Taylor, Commissioner
Pedro Toledo, Commissioner
Trena Turner, Commissioner
Angela Vasquez, Commissioner
Russell Yee, Commissioner

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PRESENTERS
Justin Levitt, Loyola Law School

Also Present

Public Comment
Lori Shellenberg, California Common Cause
Megha Manohar
Steve Harnisch
Deborah Howard, California Senior Advocates League
Lupe Camacho
Rosalind Gold, NALEO
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November 18, 2020

CHAIR KENNEDY: Welcome everyone. This is the final day of our meeting this week. We have done well on our agenda, I believe, and I will review where we are and what we have yet to do in just a moment.

And I would ask, first of all, that the roll be called.

MS. SHEFFIELD: Good morning, Commissioners.

CHAIR KENNEDY: Good morning.

MS. SHEFFIELD: Good morning.

Commissioner Ahmad?

COMMISSIONER AHMAD: Here.

MS. SHEFFIELD: Commissioner Akutagawa?

COMMISSIONER AKUTAGAWA: Here.

MS. SHEFFIELD: Commissioner Andersen?

COMMISSIONER ANDERSEN: Here.

MS. SHEFFIELD: Commissioner Fernandez?

COMMISSIONER FERNANDEZ: Here.

MS. SHEFFIELD: Commissioner Fornaciari?

COMMISSIONER FORNACIARI: I'm here. And I like your hat.

MS. SHEFFIELD: Oh, thank you.

Commissioner Kennedy?

VICE CHAIR KENNEDY: Here.
MS. SHEFFIELD: Commissioner Le Mons? No?
Commissioner Sadhwani? I don't --
COMMISSIONER SINAY: Your mic's not working,
Commissioner Sadhwani.

COMMISSIONER SADHWANI: Oh, here. Can you hear me?
MS. SHEFFIELD: Okay.
COMMISSIONER SADHWANI: Sorry.
MS. SHEFFIELD: Commissioner Sinay?
COMMISSIONER SINAY: Here.
MS. SHEFFIELD: Commissioner Taylor?
COMMISSIONER TAYLOR: Present.
MS. SHEFFIELD: Commissioner Toledo?
COMMISSIONER TOLEDO: Here.
MS. SHEFFIELD: Commissioner Turner?
COMMISSIONER TURNER: Here.
MS. SHEFFIELD: Commissioner Vasquez? No?
And Commissioner Yee?
COMMISSIONER YEE: Here.
MS. SHEFFIELD: Okay. Thank you.
CHAIR KENNEDY: Let's check again. I think
Commissioner Vasquez is on.
MS. SHEFFIELD: Hmm. I don't see Vasquez.
CHAIR KENNEDY: Commissioner Vasquez? Oh, she's --
I think she's trying to dial in also. She may be having
some problems.

CHAIR KENNEDY: Okay. Are there any general announcements, Director Claypool, or any of the Commissioners?

EXECUTIVE DIRECTOR CLAYPOOL: I have none, Chair.


On the agenda, we have two main topics for today. We have Voting Rights Act issues coming from the VRA Subcommittee this morning. We have outreach discussion this afternoon, item 10 on the agenda, brought to us by the Outreach Subcommittee. Depending on how things go, we may have an extended break in between, just because of various schedules, but that is the general outline of the day.

And so with that, let me ask Katy to start us off with the instructions for public comment.

Good morning, Katy.

PUBLIC COMMENT MODERATOR: Good morning, Commissioner.

In order to maximize transparency and public participation in our process, the Commissioners will be taking public comment by phone. To call in, dial the telephone number provided on the livestream feed. It is (877) 853-5247. When prompted, enter the meeting I.D. number provided on the livestream feed. It is
91505532099 for this week's meeting. When prompted to enter a participant I.D., simply press the pound key.

Once you are dialed in you will be placed in a queue from which a moderator will begin un-muting callers to submit their comment. You will also hear an automatic message to press star 9. Please do this to raise your hand, indicating you wish to comment. When it is your turn to speak the moderator will unmute you and you will hear an automatic message that says, "The host would like you to talk. Press star 6 to speak." Please make sure to mute your computer or livestream audio to prevent any feedback or distortion during your call.

Once you are waiting in the queue, be alert for when it is your turn to speak and, again, please turn down the livestream volume.

These instruction are also located on the website. The Commission is taking general public comment at this time.

CHAIR KENNEDY: Thank you, Katy.

PUBLIC COMMENT MODERATOR: And --

VICE CHAIR KENNEDY: We'll stand by for -- we have someone already?

PUBLIC COMMENT MODERATOR: No. I was going to say we do not have anyone in the queue.

CHAIR KENNEDY: Very good. We'll stand by for a
couple minutes to let the livestream catch up.

PUBLIC COMMENT MODERATOR: Okay.

CHAIR KENNEDY: There's Commissioner Vasquez. Good morning.

COMMISSIONER VASQUEZ: When can I throw this into the ocean?

CHAIR KENNEDY: I feel your pain. I was panicking yesterday and it turned out that it was my ISP that was having an outage. It's like, how am I supposed to chair a meeting if I can't even get online?

Commissioner Fornaciari?

COMMISSIONER FORNACIARI: So I thought yesterday someone said that the phones showed up. And I was just wondering if we have an update on what -- you know, when those might get distributed?

CHAIR KENNEDY: Director Claypool?

EXECUTIVE DIRECTOR CLAYPOOL: So Raul is picking them up, I believe either today or tomorrow, and checking with how quickly he can simply turn them right back around at the same location and ship them to you. So we're still at the mercy of Verizon. But it appears as though the sun is going to shine on us and you will all get better telephones.

And Commissioner Vasquez, you can't throw your old telephone in the ocean either. We need to return those
to Department of General Services.

COMMISSIONER VASQUEZ: Ah. But the computer would work so well under water compared to above water.

EXECUTIVE DIRECTOR CLAYPOOL: Okay.

CHAIR KENNEDY: Katy, do we have anyone in queue?

PUBLIC COMMENT MODERATOR: We do not.

CHAIR KENNEDY: Okay. Then with that -- and I know that we have Professor Levitt joining us at 10 o'clock.

I wonder if the VRA Compliance Subcommittee would like to start with a more general introduction? And I realize you had some time yesterday, as well, but the floor is yours.

COMMISSIONER YEE: Thank you, Chair.

You can go ahead and take a look at the three handouts, or you probably have, in the meeting handouts for today. I apologize that one of the -- we apologize that one of the handouts is duplicated, so you'll see four handouts listed, the Litigation Counsel Statement of Work, VRA Counsel Statement of Work, and then the next two, the Memo of VRA Subcommittee. And the last one, Memo-VAR Compliance Subcommittee, that was an earlier version of that same third memo. So those are the things we'll be discussing.

Sara, what else can we say to introduce?

COMMISSIONER SADHWANI: So perhaps we can start
going through the memo and reviewing the recommendations that we have laid out. And I'm just trying to pull it up in front of me. My apologies. So -- and then that way we, you know, we can all kind of be on the same page when Justin arrives.

Oh, Commissioner Fornaciari?

CHAIR KENNEDY: Commissioner Fornaciari?

COMMISSIONER FORNACIARI: I'm sorry.

COMMISSIONER SADHWANI: Your frozen.

CHAIR KENNEDY: And now you're frozen.

COMMISSIONER FORNACIARI: I just want to be clear.

Which is the correct memo? I'm sorry.

COMMISSIONER YEE: The third one.

COMMISSIONER FORNACIARI: Okay.

COMMISSIONER YEE: The Memo-VAR Subcommittee.

COMMISSIONER FORNACIARI: Okay. Sorry.

COMMISSIONER YEE: It's the late version, yeah.

COMMISSIONER FORNACIARI: Internet problems. Thank you.

COMMISSIONER SADHWANI: The differences between them are fairly minor. It's a matter of language, I think, that was used in some of them. Excuse me.

And you know, Commissioner Yee, feel free to jump in at any point in time.

As we have reported previously, we've had a number
of conversations. We have attempted to talk with many of
you about some of the needs folks have for additional
training on the VRA. And we've put together this memo to
really provide, hopefully, a consolidated report back to
you all about the work that we have been doing and, also,
the recommendation that we have for the full Commission.

So the first one, as we discussed yesterday, is to
distribute the RFIs. I don't want to go into too great
of detail here, unless there are additional questions,
because I feel like we did talk at length yesterday about
the processes. Basically, we wanted to just let you all
know that we had had many conversations about RFPs, IFBs,
RFIs, interagency agreements. And what we came to learn
is that the RFI would make the most sense for hiring both
VRA Counsel and Outside Litigation.

As I believe we've even mentioned previously, point
A refers to the fact that we are putting out two RFIs,
one for VRA Counsel and one for Outside Litigation. We
recognize that this could be the same entity but it
doesn't have to be. And so we wanted to make sure that
there are two separate RFIs because it could be the case
that we could have a VRA expert who we would bring
onboard, but we would have a litigation expert for if and
when we face any lawsuits regarding the maps. So we
wanted to put them both out, but again to stress that it
could be the same entity. We really want to be flexible there so that we can get the very best kinds of feedback and the best kinds of proposals in response to the RFI.

Point 2 is combining the task of the statistician and analyst. So there had been mention at the last meeting of putting out four RFPs or four requests. We don't think that that's actually necessary. We think that we would hope that we can identify a statistician who also has expert experience in the VRA. Certainly, right, we could hire, potentially, a grad student or something just to do racially-polarized voting analysis of the entire state for us.

But ideally, we would rather hire someone at a higher level, right, who has experience in the VRA and VRA litigation and lawsuits. And therefore, that should really just be one person. So in that, we feel like we just need one person, rather than the two that was previously mentioned.

Ideally, we would like to recommend having someone brought onboard as soon as possible. And so we've had several conversations with Matt Barreto, who was the 2010 analyst for the 2010 Commission. We would advise to the Commission and recommend that we would actually move forward in hiring Matt to, at minimum, start with an overview of racially-polarized voting in California.
So what does that mean? And I think Justin, when he gets here, can also help talk through some of these pieces as well. But racially-polarized voting, if we kind of go back and try to remember the training that we had quite some time ago, it is not reliant upon census data. It's actually reliant upon voting data, which the statewide database already has. And so that analysis could begin.

The purpose of racially-polarized voting analysis is to identify historically -- communities that have been historically discriminated against and to identify the ways in which they vote together; right? And so hopefully, Justin will be able to talk more about how our PV analysis is used in VRA cases.

But we feel like a top-level analysis could be done now, potentially, or soon. Obviously, I know Thanksgiving is coming up, but we could get started with this work. And that could be an externally-facing document for the full Commission, for the public, so that we have a sense of some of the key areas that we might need to be taking a greater look at.

We anticipate that that kind of assessment could help us identify additional conversations that we might need to have, additional outreach that we might need to have in select areas. For example, right, if we can have
a sense of even the number of voters in new areas where 2010 didn't have to really look, right?

So for example, yesterday the Black Census and Redistricting Hub talked about how there has been a migration of African-Americans in California since 2010. We can begin to start thinking about some of those things and looking at it with an overview of racially-polarized voting.

In the next piece, which is point three, again, this is the piece that we would like to change our recommendation. From some of the conversations with Justin, we had talked more about why and under what circumstances racially-polarized voting analysis should be kept under attorney-client privilege. That was the case for the 2010 Commission. That report has never been released and continues to be held under attorney -- as an attorney work product, I believe. And all of this is important because it matters in how we hire the statistician to do this work. Okay?

So when it -- so, for example, going back to 2B, hiring someone now, our recommendation is that our Chief Counsel, Ms. Marshall, could go ahead and hire Matt Barreto, or another statistician, but we, after having several conversations, we feel very comfortable with Matt Barreto and would recommend him. She could go ahead and
hire that person now and we can choose to have that be public-facing.

In the 4.3,, however, we may need to hire in that regard, and it could be the same person, it could, potentially, not, we would want to hire through our attorney for that role if we want to keep the RPV analysis at a more localized level as attorney work product. And I hope Justin can speak more to this when he comes.

But I think, I don't know, Commissioner Yee, if you have anything you want to add to this kind of piece? But he was very helpful in laying out some of the pros and cons of whether or not to keep -- to make everything public or to keep some of those pieces, you know, under attorney work product in case of future litigation.

Commissioner Yee, do you have anything else you want to add to that piece?

COMMISSIONER YEE: Right. So basically, the considerations -- I mean, he can speak more to it when he comes -- but you know, on one hand, making things public, just out of principle, versus keeping data at that level private to reduce the likelihood of challenges based on this or that particular piece of data. Obviously, we would have other data and, you know, public debates and so forth, sufficient to justify, you know, whatever
decisions we finally do make.

But the question is whether the RPV analysis, the technical side of it, is kept confidential or not?

COMMISSIONER SADHWANI: Yeah. And so ultimately, that is a decision that we will have to make as a Commission. We should, certainly. And that's really part of why we wanted to have Justin come today. You know, we have not -- I know Ms. Marshall just started, so we haven't had a chance to talk about this with her, but we have talked about it with Marian previously. And so these are some of the things that, as a Commission, we need to decide. And what our decision is will inform how we hire people, right?

And so for the previous point, in terms of hiring Matt Barreto or someone else as soon as possible, we feel that could be done as an interagency agreement as it was done for 2010, and we could move forward with that quite quickly. He is a senior professor at UCLA, and so certainly, that's something that we could ask of him.

So my guess is there's some questions about point two and three. But perhaps we can hold off until Justin is here. I'm sure he can also help give additional background to some of the choices that we need to make.

It would be my recommendation that the more localized RPV analysis does remain under client --
commissioner yee: another quick note, just that the vra counsel does not have to be california-based. you know, vra is a federal law. and there was some thought that, in 2010, the commission -- that commission should have looked more widely. and so just keep that in mind when we get to that point.

commissioner sadhwani: yes. i think that's such an important point.

as we had mentioned in previous meetings, you know, just to uplift what commissioner yee is saying, there had been a letter from community groups with deep concern about the vra counsel that was hired. so i think commissioner yee is absolutely right on. that is something that we have learned from multiple conversations with prior commissioners, as well as community groups, about some of the concerns over vra counsel.

and commissioner yee is absolutely correct, the vra is a national law. and while it might be helpful to have someone here in california, we're on zoom for now at least, so they could really be anywhere and providing that expertise.

our fourth point here is to actually develop a larger legal subcommittee that would be public-facing.
So as of right now, thus far, we have been operating for the whole Commission in creating small subcommittees of two because those subcommittees can, you know, do work, get things done.

Moving forward, however, and as well as in terms of the hiring of VRA Counsel, we would recommend creating a larger subcommittee, perhaps, specifically, inviting our Commissioner, who is an attorney, to join, if he so chooses, as well as, you know, perhaps one or two others, if there is interest, so that as we’ve thinking about who to hire, those meetings would be public. We would have public input. And we would have to figure out the logistics of that. Is it a breakout room somehow? Is it a separate login? I'm not certain of all of those. I would ask that staff assist us in figuring out how to make that happen.

This was the tactic used in 2010. And we had had a long conversation with Angelo Ancheta from the 2010 Commission, and he also shared this recommendation, and we very much agree. You know, we want the public's input moving forward. Certainly, when it comes to the VRA, we can -- there could be multiple understandings of the law or the application of the law. And I think it does serve/will serve us well to have those meetings of the subcommittees in public.
And I think it's something that other subcommittees may want to consider moving forward also. Once we get into the, you know, more of the external, you know, relations, shall we say, of actually holding the meetings, that it might be something that we would want to do in other areas also. Certainly, as we've seen, there's a lot of overlap between subcommittees.

And then our final point, really, here is to -- that we'll continue to develop trainings and training materials. Mr. Levitt coming today, just given -- I think at one point I said, "We don't have to do a training," so we didn't put it on the agenda, but we did want him to be available to answer any questions and provide a little bit of background for Commissioner before we ask you to approve a statement of work or anything of that nature. So at minimum, he's here to do that today.

But we are still, most certainly, in the planning phases of additional trainings. As I've mentioned previously, we've had this idea of putting together some sort of briefing book, potentially, as well as having additional trainings on the VRA, a hands-on sort of workshop about what VRA considerations might look like, as well as additional training on future-proofing voting analysis, how it's conducted, and how to interpret those.
results.

So that's kind of the overview of the memo. We also have for you two Statements of Work.

Commissioner Yee, do you want to talk about the Statements of Work?

COMMISSIONER YEE: Sure. With the memo, just two quick additional thoughts.

One is that, you know, the VRA training. So I mean, my sense is that of the six criteria that we use to draw these maps, this is the trickiest one.

COMMISSIONER SADHWANI: Um-hmm.

COMMISSIONER YEE: You know, it's the one that's going to require the most judgment calls and kind of debate among ourselves, and even within our own heads, you know? So that's what I'm anticipating.

Let's see, oh, the recommendation to form a larger committee, Legal Subcommittee, too, that would meet in public, especially when it comes choosing a firm.

You know, as it happens, these firms will have done work in the past and often, representing one side or the other, which means that they are sometimes often, and 2010 certainly was the case, perceived, you know, as leaning one side or the other, which becomes a point of public debate, of course.

And so the hope would be that in having those
discussions, you know, whom to choose, which firm to select, in public, that we can, you know, just be ahead of the curve in meeting any objections that one choice or another may have, rather than having that come up, you know, later, after our choice is made, so.

Okay, the two memos. So one is for the VRA Counsel, one is for Litigation Counsel. So these are the Statements of Work that would be embedded into the larger, full RFI.

COMMISSIONER SADHWANI: Before you move into the Statement of Work, I did see that Marian had raised her hand.

I don't know if you have something more to add, Marian, about the --

COMMISSIONER YEE: Yes, please.

COMMISSIONER SADHWANI: -- points of the memo?

MS. JOHNSTON: I have no idea, technically, how to accomplish that, though I'm sure Kristian can do it. But legally, there is no problem having a meeting of a committee at the same time as there is a noticed meeting, or it could be done as a separate noticed meeting with the 14-day requirements. So there's no problem procedurally in doing it.

COMMISSIONER YEE: Very good.

CHAIR KENNEDY: Okay.
COMMISSIONER YEE: Let's see.

CHAIR KENNEDY: Commissioner Yee, before you proceed, Commissioner Turner had also had her hand up earlier.

COMMISSIONER TURNER: Thank you.

COMMISSIONER YEE: And I think Commissioner Andersen as well. Yeah.

COMMISSIONER TURNER: Thank you, Chair. It was a point of clarification and I received it through Commissioner Yee. Thank you.

CHAIR KENNEDY: Okay.

Commissioner Andersen?

COMMISSIONER ANDERSEN: I do have a quick question before you jump into the scopes of work, if you don't mind, on just, again, for clarification here?

The two scopes of work that you're talking about are both for -- one for VRA Counsel, the other for VRA Litigation Counsel, but -- so that's two. Then you have the Racially-Polarized Analyst/Statistician, essentially one. And then you also have -- then you're talking about, in item number 3, VRA analysis.

COMMISSIONER YEE: Right.

COMMISSIONER ANDERSEN: Isn't that --

COMMISSIONER YEE: Yes.

COMMISSIONER ANDERSEN: -- the same as the Counsel
or are you talking about two different people? I mean, I thought we're going to three contracts, but now it looks almost like four. So maybe --

COMMISSIONER YEE: Right.

COMMISSIONER ANDERSEN: -- you can clarify that, please?

COMMISSIONER YEE: Right. Sorry for that confusion. So the four idea was an early iteration of how it was put up to work. At this point we were thinking that the VRA -- the analyst, maybe Matt Barreto, and the VRA analyst could be the same hire. So that's what we're proceeding with at this moment.

COMMISSIONER ANDERSEN: Thank you.

COMMISSIONER YEE: And then there's the two counsels, yeah, which could the same firm also. So in the end it could actually be only two hires and not three and not four. Yeah.

CHAIR KENNEDY: So on that, I mean, it's clear on the Outside Litigation Counsel and the VRA Counsel that there are going to be two, or the proposal is to have two separate RFIs with the potential for deciding in the end to collapse them or to award both to the same entity.

And I'm wondering, you know, would it not make sense to do the same with the other two, is go ahead out with two instruments with the possibility of awarding both to
the same entity but not have to if for some reason there
was a determination that maybe it could be better done by
two entities rather than one? I mean, if we only put out
one, then we're stuck with going with one. If we put out
two, we still have the possibility of awarding both to
the same entity.

COMMISSIONER YEE: Yes, that's entirely possible. We
haven't gotten to that point yet of drawing out an RPV
for VRA Analysis State of Work and RFI.

COMMISSIONER SADHWANI: If I may?

I think that when it comes to this analysis we do
want someone who understands the implications of the VRA,
right? I can do this analysis. I've written papers
using it. I wouldn't necessarily feel confident,
however, because I have generally done this statistically
analysis to then come and say, okay, we should be
conducting this analysis in particular locations. I
think that that does require a secondary level of
understanding of the application of the VRA.

And so to me, while we could have them be separate,
my sense is that we will be better served by someone of
that kind of higher caliber who could actually do both,
who could be kind of strategic in helping us think about
where do we need to have this analysis conducted?

COMMISSIONER YEE: It's a big state.
COMMISSIONER SADHWANI: That's kind of my --
COMMISSIONER YEE: Yeah.
COMMISSIONER SADHWANI: -- thoughts.
COMMISSIONER YEE: So --
COMMISSIONER SADHWANI: Yeah, it's a very big state.
So if we do every school board, every local city council,
that would be a lot of data. But instead, if we have
someone who can kind of help us, you know, think about
like, well, these are the areas that we really need, my
sense is that that might serve us better.
CHAIR KENNEDY: Well, and I agree, and I'm just
asking if that is a decision that we want to make before
we issue the RFI or after?
COMMISSIONER SADHWANI: Absolutely. Absolutely. And
that's why it's written as a recommendation to have them
be together, right? It's a recommendation to keep this
together as one entity that would provide all of this.
CHAIR KENNEDY: Okay, Marian, I've got too more
points, and then your next.
COMMISSIONER SADHWANI: And I also see that John
Levitt has joined us.
CHAIR KENNEDY: Okay. Perfect.
How are the RFIs going to be disseminated?
COMMISSIONER SADHWANI: We haven't gotten that far
yet. I think my sense is that, certainly, we would have
them on our websites. And I think that we would need to, most certainly, engage everyone in reaching out to their contacts, as we did with the Chief Counsel search. We've also asked Justin Levitt if, well, if it's something he would be interested in applying for, but also to assist in that dissemination, as well, just to make sure we have a great pool of candidates with VRA expertise.

CHAIR KENNEDY: Okay. Perfect.

And finally, you might recall that I had suggested as a possible training activity that we try to find a moot-court exercise on video and sit through that together and learn from it. I started looking for some. I didn't find any moot-court exercises specifically on this yet.

But what I did find that looks interesting, Street Law, which is streetlaw.org, has a number of free resources dealing with the VRA, including a lesson plan. And you know, perhaps it's worth taking a look at some of those resources from Street Law, and there may be other providers, but there are some resources out there.

Marian?

MS. JOHNSTON: Just two points. One, the RFI would also have to be posted, of course. But for the consultant/analyst, if you go with the Subcommittee's recommendation, you don't need to do an RFI because it
would be done as an interagency contract, so you skip that step altogether.

CHAIR KENNEDY: Very good.

MS. JOHNSTON: Thank you.

CHAIR KENNEDY: Thank you, Marian.

And I turn it back over to the Subcommittee.

COMMISSIONER SADHWANI: Well, I see that Justin Levitt is here.

Commissioner Yee, shall we move into that portion then we talk more about -- good morning.

COMMISSIONER YEE: Yes. Good morning, Professor Levitt.

PROFESSOR LEVITT: Good morning.

COMMISSIONER SADHWANI: Oh, go ahead.

Well, Professor Levitt, we've been discussing the -- we didn't have any public comment this morning, so we were able to get started a little bit earlier. We had provided -- Commissioner Yee and I had provided a series of recommendations to the Commission in a memo, which is available on our website. I'm not sure if you have seen that but we had discussed many of them with you. And then, also, we've developed draft versions of the Statement of Work portion for two RFIs, one for VRA Counsel and one for Outside Litigation.

I think, since you're with us now, I would hate --
you know, I certainly want to maximize your time, and so I would say I'd love to move into that conversation with you. I know you have slides prepared. And then we can kind of come back to the statement of -- reviewing the Statement of Work, perhaps, with you and you can respond to questions?

PROFESSOR LEVITT: Sure. Happily. And with your permission, Commissioners, I'll do something very similar.

First of all, I'm delighted to be back before you again. Thank you, again, for your continuing work. I'm just as proud of you now as I was before, and I'm sure that won't change, and just as grateful for your service.

The training that I had the opportunity to give you before I thought went really well with sort of a guided presentation where then you could stop and pepper me with questions whenever you have them, and so I've prepared something similar today. The presentation part is designed to last about a half-an-hour-ish, but that should be plenty of room for questions, both during and after.

And at Commissioner Sadhwani and Commissioner Yee's request, what I've done is try to focus on the Voting Rights Act in particular. The last training was considerably broader, and both deliver something of a
refresher of the conversation we had last time on the VRA very quickly, but then also move into the sort of challenges you might expect in litigation, the sort of challenges you might expect from contests of your work, that would help you better assess, this is designed in order to help you better assess the sort of personnel you'll want to bring in from the get-go, so very much a part of the same conversation we were having moments ago that I happened in on. This is designed to help you better appreciate the work that the counsel will do so that you can figure out who you want as that people or those people.

So if I might, I will try to share my screen once again and see if I have as little success this time as I did last.

Theoretically, you're all looking at something that says, "Voting Rights Act Litigation," VRA Litigation. Excellent. And because in this mode I can only see some of you, if you have questions in the meantime, please shout out. That's the only way that I'll be able to see that you have a question either. I don't know whether you've been asking people to use the participant's list in raising a hand or whether you otherwise -- whether you've been otherwise collecting engagement. But I'm happy to pause if you signal to me that you want me to
So just to begin, briefly a fresher. Where we last left our heroes, we had talked about three basic rules for staying out of trouble when it comes to race and ethnicity in the redistricting process. I'm trying to distill down, obviously, a lot of much more complicated stuff. But I think these rules accurately capture the bulk of what you'll be asked to do, and so they may be helpful as a mnemonic device for a lot of other detail beyond.

First, don't set out to hurt voters based on their race or ethnicity, either by dividing and diluting, what's generally known as cracking, or by overconcentrating voters in order to tokenize, essentially, in order to bring all voters of a certain type into one district to deprive them of influence elsewhere, what's generally known as packing. It doesn't matter if the lines are pretty. It doesn't matter the ultimate motive, we did this in order to X. If your goal is to use race in order to injure, not okay, flat out.

The second rule, comply with the Voting Rights Act. Obviously, that's a big chunk of what this conversation is today. Actually, rules two and three go together, and that's part of the point I want to make. So the basics of the Voting Rights Act have to do with a certain set of
thresholds. Below those thresholds there's no obligation
to draw districts under the Voting Rights Act. You may
choose to draw around various communities independent of
this. The Voting Rights Act is not the maximum that you
can decide to accommodate race of ethnicity. It sets a
floor but not a ceiling.

So that floor asks three basic questions to
determine whether there's an obligation, that you all
have an obligation to draw particular districts in and
around minority communities.

One: Are there sizeable, relatively concentrated
minority communities? Could you draw a district such
that about half of the electorate in that district was a
minority group or a combination of minority groups voting
together, so they're big enough and reasonably compact
enough to be district size?

The second question: Do minority communities have
distinct electoral preferences, and this is the
shorthand, different from other communities in the
district? So do one or more minority groups have a
distinct set of electoral preferences? Does the
remaining population in the district have a different set
of electoral preferences? Normally, that's going to mean
that the minority communities get outvoted most of the
time.
And the third question: Did they or do they, do underrepresented minorities, minorities that haven't yet achieved a proportional degree of district control across the state, do they face discrimination, and are there lingering impacts from historical discrimination that they face? In, unfortunately, most parts of California, that answer to that third question is going to be, yes, we have a history of not being particularly kind in much of California. But you'll also want to bolster that with local historical information and not just rely on -- across the board, not just rely on a statewide stereotype of any kind, but in this analysis as well.

If those three questions are yes, if they're sizeable relative to the concentrated communities of minority groups with different preferences from the rest of the electorate, and if they did or do face discrimination, then the question is: Can you design districts to give minorities a fair shot?

COMMISSIONER SINAY: Professor Levitt?

PROFESSOR LEVITT: Yes, please.

COMMISSIONER SINAY: It's Commissioner Sinay. Can you talk a little bit more about the do they face discrimination, just so that we can have a better understanding?

PROFESSOR LEVITT: Yeah. I actually don't have a
slide on that one. Normally, I would click to the next slide down. That refers to a group of characteristics, a group of present and historical factors called the Senate Factors, so called because they reflect what the Senate Judiciary Committee wrote up extensively when amending the Voting Rights Act in 1982, as a list of factors to try and suss out whether there are -- whether there was past discrimination or present discrimination or the lingering impacts of past discrimination.

So that includes things like is there discrimination in the voting process, both official and unofficial? Are there slating practices that generally work for -- against minorities? Are there features of local elections that generally work against minorities, things like at-large districts that subsume minority preferences? Is there a real hurdle or burden to minority's participation in campaigns through campaign finance structures of through local organizing?

It also embraces discrimination outside of the voting process that might have an impact on the voting process. So historical educational discrimination, housing discrimination, general racial appeals in campaigns or beyond campaigns that might tend to work to a minority groups disadvantage in an electoral context, even though the discrimination itself was outside of that
There's a list of between eight to ten factors that courts generally consider. And you'll actually find that list in my last presentation to you, but that's what that's about. And it's a very guided, structured, not -- checklist is the wrong way to approach it because you don't have to hit every bullet on the list. It's a guided, structured analysis for are there real problems beyond just current voting patterns that give reason for concern?

COMMISSIONER SINAY: Thank you.

PROFESSOR LEVITT: You bet. Great question.

The third factor or the third rule is make sure, when you are considering race and ethnicity, that you consider other factors at the same time. There's a constitutional limitation on race predominating unless there's a really good reason. The courts have always said that compliance with the Voting Rights Act constitute a really good reason. But you don't ever want to have to get there if you can avoid it. So to the extent that you can draw districts conscious of race and ethnicity without allowing race and ethnicity to predominate, to really drive the discussion exclusively to the subordination of everything else, that leaves you on safer legal ground.
The analogy I presented last time, everybody knows it's important not to speed. But if you spend the entire time in a car driving staring at the speedometer and ignoring everything else, including the traffic, including the weather, including other cars on the road, including where you're doing, including music, including in-car comfort like heat and air, including passengers in the back seat kicking up a storm, you're going to crash. So watch the speedometer but also watch the other stuff. And if you are watching the other stuff, while also being very conscious of the speedometer, that's where you don't run into a problem.

Avoid fixating, I guess is a better way to it, on a particular racial number. It's fine to have a number in mind. But also consider other aspects of a district whenever you're drawing that provides some insulation. So as a brief refresher, overly brief refresher, but what I really want to do is get into how this actually plays out in a real-world context so that you can start processing what this means for your choices of who you will choose and how you engage them.

When the lawsuits come, and I put it that way because the lawsuits will come, unfortunately -- by the way, you should not take the fact of a lawsuit as a sign that you have done anything wrong. You should take the
fact of a lawsuit as somebody’s unhappy but that’s very
different. And you should not be alarmed by the fact of
a lawsuit if you've done what you've been asked to do by
counsel, by the constitution. You'll prevail. And
that's the way the system should work. You're going to
get sued.

And you're going to get sued from two different
directions or the options will come from two different
directions on this. One allegation is that you've made
an improper use of rates, that you violated rule three.
You're staring at the speedometer so much that you
crashed. And another allegation from the opposite side
will be that you paid insufficient attention to race.
You had a voting rights obligation that you ignored or
that you did not live up to.

Avoiding the improper use of race, that looking --
staring so hard you're going to crash, is really pretty
straightforward. It's fine -- I really want to emphasize
this, it's fine to consider race and ethnicity when you
consider where to draw districts. That is totally okay.

If you don't set out to overpack voters inside a
district and dilute their strength elsewhere, if you
don't set out to divide and splinter minority groups,
that is to draw lines through minority groups so that its
influence is dispersed, and you consider factors in
addition to race and ethnicity, and when you produce the
report that California law asks you to produce at the end
of the process, you explain that you used those other
factors in addition to race and ethnicity, things like
communities of interest, things like political
boundaries, like cities and counties and neighborhoods,
things like the California Unique Compactness Standard
based not on pretty geometric shape but based on
bypassing nearby population, if you consider those things
in addition to race and ethnicity and you say as much,
that will actually help avoid or fight back against
allegations that you have improperly used race.

The other side of the coin, avoiding insufficient
attention to race, the litigation is going to come in
these places instead, right? They're going to challenge
whether local minority groups -- whether you paid
attention to local minority groups that were large enough
to be over fifty percent of the CVAP, the citizen voting
age population, either separately or together, that is
either groups on their own or groups considered together
if they have voting preferences together. So if there's
a large minority group that you ignore, that's trouble.

If there are local minority groups that have
distinct political preferences, so challenges will come
about their evaluation of their distinct voting
preferences, that's the racially-polarized voting studies
that I know I heard Commissioner Sadhwani talking about
just before we got started at this point, you'll want to
consider both distinct political preferences or
individual minority groups, but also occasions where
minority groups tend to vote together where. For
example, African-American and Latino voters may have
common political preferences, and that may be true in
some parts of the state and not true in other parts of
the state, that's a localized determination and
relentlessly based on actual facts on the ground, you'll
also want to consider the differences between primaries
and general elections.

So there may be some common choices in a primary or
there may be some common choices in a general election.
You'll want to consider them both to make sure that
you're giving voice to make sure that if there's a
sizeable community with particular distinct preferences,
they're actually drawing a district that provides a fair
opportunity for political power that arise through both
the primary and the general election process. And with
the top two primaries (indiscernible) than just deciding
if somebody can win the Democratic Primary or the
Republican Primary. And that will automatically bring
them to a viable general election. The top two primaries
complicates that a little bit. You'll want to make sure that you evaluate whether there's a history of discrimination with lingering effects, that same sort of analysis we just discussed, the Commissioner just asked me about, with a localized analysis.

You'll want to find out -- these are sort of the last two elements of a Voting Rights Act claim. Do minority groups have a meaningful opportunity in a proportional number of districts so the Voting Rights Act does not impose an obligation? If, for example, Latino communities constitute -- I'm making up the number -- thirty-five percent of the state, and already having meaningful opportunity to elect candidates of their choice in thirty-five percent of the districts, the Voting Rights Act might create an obligation up to that point but it does not create an obligation beyond that point. And again, you can choose to account for race and ethnicity beyond what the Voting Rights Act creates an obligation for. I'm just talking about the legal obligation to at least that, as I said before.

Finally, you're going to have to evaluate what it would take for local minority groups to have meaningful opportunities to elect candidates of their choice. And I'm going to get into what that means and give an example.
in just a second.

So I want to bring you through the wrong approach to help you see what not to do. And then talk about what a group of individuals trying to do a better job might actually do. And I don't want to use California as the example. I've been critical of some of the advice that the last Commission got from their counsel. It turns out they did something very similar to what happened in Virginia. But I want to focus on Virginia so that we can avoid talking about what happened in California. This is an easier example. It also went up to the Supreme Court. So in this extent, I know I'm right because of what the Supreme Court said.

So here we have an example of the wrong approach. The trouble in Virginia -- this is for the Virginia House of Delegates election, the lower -- their state assembly, effectively -- when Virginia redrew the lines in 2011, those are the actual districts that you see in outline there, and the districts that are colored in were the districts presented on the right-hand side of the slide, individual districts with a certain percentage of African-American voter -- voting age population.

The assembly found that the gold district, right sitting there in the sort of southeastern section of Virginia, actually needed fifty-five percent of the
voters in that district to be of voting age, fifty-five percent African-American voting age population, in order to give the African-American community there a reasonable equitable opportunity to elect candidates of their choice based on some past elections, based on demographic data, based on political analysis of how voters voted in the area.

And I want to emphasize, they didn't do formally racially-polarized voting studies beforehand. They had a different means of evaluating elections. They looked at a number of very close elections and they talked to the representatives there to determine at what point they thought the line would tip. It wasn't particularly rigorous. But it was informed by something other than guesswork. It was informed by actual past election results.

And so in that gold district they determined that in order to give African-Americans a real opportunity to elect the candidates of their choice, there's a sizeable group of African-Americans in that area, the district had to be at least fifty-five percent Black voting age population. And then the legislature just assumed that meant everybody had to be at fifty-five percent across the board, that the only effective way for African-Americans to elect voters in any other part of the state
was if they had fifty-five percent of a district.

And so you can see that every one of the districts
that are colored in here, every one of the districts that
are listed on the right-hand side of the slide, had an
African-American voting age population percentage of more
than fifty-five percent because the legislature took
fifty-five percent from the one district and made it a
floor across the board, independent of local facts
statewide. That got them in trouble.

And it led to things like this. It led to -- this
is House District 95 in Virginia. It's small. I know
it's small. The white dots represent African -- sorry,
represent Anglo voters. The black dots represent
African-American voters. The solid black outline
represents the outline of the district. And you can see
that the inside of the district is a whole lot more
heavily African-American than the outside. And they took
census tracts, those are the little dotted red lines, and
they selected census tracts that were very heavily
African-American in order to get up and over this fifty-
five percent. And then there was a fight about whether
they were staring at the steering wheel too closely.

The litigation that came out of this used records,
used legislative history from the legislature where it
sure seemed like they had taken this fifty-five percent
assumption or stereotype and applied it statewide, and
they took individual demographics from each of the
challenged districts. And they looked at population maps
of each of the challenging districts in order to try and
reconstruct, was race the predominant reason for drawing
the district as it was? Was race the predominant reason
why voters were put either inside the district or outside
the district? Were they staring too hard at the
speedometer?

In litigation, this gets contested. So you can see
that not every African-American is put within this
district. There are little pockets of black dots outside
of the district lines and zones. And I've basically
copied the exhibit from the defense here pointing out,
hey, we didn't do this everywhere. There are pockets of
African-Americans outside the district too. And there
was long and painful litigation over whether this
evidence showed staring too closely at the steering
wheel, at the speedometer, or whether it showed attention
to race but not racial predominant?

The court ultimately found that given the comments
on the records, and that given the patterns, that it sure
looked like the reason House District 95 was drawn as it
was and the reason people were put inside or outside
House District 95 was their, way over and above anything
else. That is, the legislature couldn't really articulate any other reason why 95 looked as it did, other than we felt we had to get over fifty-five percent. And that fifty-five percent wasn't justified based on the Voting Rights Act because they just used assumptions about what level of Black voting-age population would be necessary to actually give a meaningful opportunity here?

Virginia's politics are -- well, they're not unusual any longer. They are not the stereotypical politics of the Deep South. In some areas, African-Americans need more than fifty percent in order to have a reasonable opportunity to elect. In some areas, they need just about fifty percent. In some areas, considerably less than fifty percent; forty-two, forty-three, forty-four percent provided more than enough opportunity for (indiscernible) had, in the past, demonstrated that districts with that level would reliably elect the representatives of choice of the African-Americans community.

And so once the court found that the legislature had been starting too closely at the speedometer, it looked to whether that could have been justified by the Voting Rights Act and found out, no, that the legislature didn't do enough homework to show that the speedometer number it was fixated on was actually necessary based on the Voting
Rights Act. It was, instead, an assumption taken from elsewhere.

Curiously, the original district, that gold district, District 75, the basis for the fifty-five percent assumption, that district was grounded on fact. And so the court said, we actually find that you focused too much on race here. You focused predominantly on race here. You need a really good reason but you have one. The Voting Rights Act actually does require that in that district you have an obligation to create a reasonable app for African-Americans to elect. And fifty-five percent is a reasonable judgement about what that might be.

So where there was no empirical basis for the assumption the court struck down those districts. But even when the legislature was overly fixated on race where there was empirical backup for what we need to make this necessary for the Voting Rights Act the court said, fine, that's okay.

So the legislature got itself in more trouble than it needed to by fixating on race to the exclusion of everything else. But at least in the districts where they had empirical support, the court said, that's okay. Where they didn't, where they made assumptions that they just translated to elsewhere, the court struck down that
part of the method.

How do you do this right, rather than landing where Virginia landed? They started in the right place.

So you can see that those portions of the Virginia map in the south and east, unsurprisingly, are portions where there are an awful lot of African-Americans. This map is a heat map of the voting-age population that's African-Americans by precinct. And you can see the warmer colors, the red and the orange, are where there's relatively more African-Americans in each precinct, and the blue are areas or the gray areas of where there's relatively few.

So the legislature started off with a good idea, which is go find out where there are sizeable compact communities to see where you have an obligation. That part was right. And I would encourage you to use your analysts and your counsels to help you find similar heat maps in California of individual racial and ethnicity groups, but also of groups in combination, that show you were there are sizeable communities that you might have an obligation for. That's step 1. You'll find lots of them in California.

Step 2 is to actually get some empirical support for whether you need to draw districts to satisfy the Voting Rights Act or not. This is the thing that the Virginia
legislature sort of, kind of, did in the one district
where it was based on past election results and didn't do
at all in the other districts. And that's where it
really ran into trouble.

There are more empirically-grounded techniques than
just kind of guesstimating at where, what level of
disparate elections, whether there's polarization in the
community or not. It's generally called racially-
polarized analysis. I know you've discussed this before.

We discussed this last time.

This happens to be an exhibit that I have changed
the labels on, this happens to be an exhibit from Matt
Barreto from Los Angeles at the beginning of the decade,
showing, in particular, one race. Each circle is a
precinct. The circle sizes vary a little bit because of
the number of voters in the precinct. And what you're
trying to do in this sort of analysis is to look for
patterns.

Not every precinct is going to behave exactly in the
same way. You're looking for an overall pattern. As the
percentage of minority voters in the precinct increases,
does the vote share for a particular candidate increase?

And based on background knowledge, do we think
that's probably because minority voters prefer a
particular candidate? Sometimes the patterns are super
clear. I would call this one super clear. There's a very tight cluster that shows this probably means, on my legend, this is not the actual legend but on my legend, that African-Americans reliably prefer one type of candidate.

You're not done here. You also want to find out what the rest of the voters in the area look like. If you saw a pattern like that, and I've cheated, this is just the inverse of the same graph that I showed you a second ago, but if you saw a pattern like that showing radically declining Anglo support for a candidate, the more Anglo voters there are, the less they support that candidate, then you would see that voting is pretty clearly racially-polarized.

This example here shows you, very likely, that African-Americans voters prefer one type of candidate and that Anglo voters prefer another type of candidate, even though we can't see the individually racial designations on any individual ballot.

Not all analyses will be this clean. Sometimes the patterns are not this clear. That's why you want to hire somebody to do the work. You can evaluate -- you can both perform the analysis and evaluate it for you to let you know, well, this is kind of clear, this is very clear, that's not clear at all, actually, I can't find...
any pattern here. All of those are possibilities in various parts of California.

This would be the next way to do this correctly, is to look for the large and sizeable pockets, perform the analysis to find out if voting is polarized, and then set out about the final factors on your Voting Rights Act checklist.

Is there a history of discrimination or is there present discrimination using the Senate Factors that we just talked about? Are there already districts elsewhere in the state that provide proportional opportunities to minority groups? And if there is a history and there's not already sort of the right proportion of opportunity elsewhere, then, okay, what's the right number? What speed limit should we be aiming for? It doesn't have to be exact. You don't have to peg to the Xth decimal place the precise number of -- the precise percentage of voters to give a reliable opportunity to elect. But you do want to have, and this is the legal, this is actually the legal framework, a strong basis in evidence for letting you know that you're in the right zone.

The same racially-polarization analysis can help you decide what the right number-ish is or what the right range is because it helps you know, yes, on average, eighty-five percent of Latinos prefer a particular type
of candidate and ten percent of Anglo voters prefer that
same type of candidate. It lets you know the rough
percentage of any one district that you have to have in
order to give the Latino population a real opportunity to
win that race.

Kind of the outcome is, essentially, algebra.

There's a lot of both art and science to developing the
analysis itself. But once you have a rough feel for
polarization in the community, it's not that difficult to
indicate a rough range for a real minority concentration
of voters.

And again, I want to emphasize, in some communities,
particularly given turnout patterns and other factors
that go into real-world elections, that right range is
going to be more than fifty percent. In some communities
it's going to be right around fifty percent. In some
communities it's going to be less than fifty percent. In
large parts of Virginia and North Carolina, local
African-Americans communities can reliably elect the
candidates of their choice with forty-three or forty-four
or forty-five percent of the district, just based on
patterns locally.

And then the last step, consider other factors, too.
When you're doing this analysis, make sure that you're
not only focused on whatever that percentage or range is,
but other local aspects that will help guide where the
districts should be. This is the right way to do it so
that you're not stuck facing a map like this and having
people question, okay, was the only reason we drew that
map as it was because of race?

So consider communities of interest. Consider city
and county and neighborhood boundaries. Consider making
the district compact based on where the population lives,
not based on geometry. And that will help guide you to
stay out of trouble in the right approach. That's a
balance of living up to your obligations under the Voting
Rights Act --

COMMISSIONER SINAY: Professor Levitt?

PROFESSOR LEVITT: Yes?

COMMISSIONER SINAY: On these three points, the
community of interest, city, county and neighborhood
boundaries, and compactness, a lot of that will come
later when we actually get the census data. So we can do
the VRA, you know, some of the stuff ahead of time, but
we won't be able to set those -- map those VRA
communities until we have the other data as well?

PROFESSOR LEVITT: That's correct. So you can
get -- that's absolutely right. You can get started on a
lot of things. You can get started on analysis of
electoral results, because all of this is based on past
electoral results. There's no reason you need to wait for the census data on anything like that.

You can even get started on estimates of where minority populations are. This will formally come -- the best data will come from the census when it arrives but you can get started. You've got a pretty good estimate now, not just based on 2010 data but based on constantly updated data, including the most recent is probably going to be for 2018 or so. So you can get started on this part now as well.

And in places where there are sizeable communities and where you've done that polarization analysis to know where there's distinct preferences, you can look into the history or present discrimination in order to see if you have an obligation. You don't need census data for that either.

The last factor in sort of considering other factors, too, that's only important when you are actually drawing the final map. And so you're right, you'll have to wait for census data on that. You actually may not have to wait for census data to start collecting information on some of those. City and county and neighborhood boundaries aren't going to change in the census. Communities of interest, you can, if you choose, go out into the community and ask about various
assortments of people with different interests in the legislature before you get census data. So you can do a lot of the prework for this.

The only thing I want to make sure is that once you know there's a VRA obligation, when you're actually drawing a map in order to live up to that obligation, consider other stuff, too, that helps insulate the mapping challenge.

COMMISSIONER SINAY: And one other question. I know I asked this last time but my brain is a little foggy on remembering the answer.

You know, we're drawing the lines for ten years. How do we take into account the young vote, those who are under eighteen, who will be voters within those ten years?

PROFESSOR LEVITT: It's still a great question. That will continue to be a great question.

So the answer is the law asks you to respond to the population that is there now. So if there is an obligation the obligation is based on now. That doesn't mean that you have to ignore how demographics might change in the future. You can certainly consider that. But the law doesn't allow you to bank on the future in terms of living up to a present obligation.

So for example, in drawing a district that provides
a real opportunity for minority communities to elect
candidates of choice you can't say, and there's case law
on this, I know we're drawing this at a level where the
opportunity doesn't exist now but it's probably going to
exist in four or five years. That's -- so we'll -- they
call it the snowsuit approach. We'll let the population
grow into their opportunity. That's not okay.

But when designing districts that do live up to that
present obligation it is fine to consider how
demographics are likely to shift in the next couple of
years, as long as that's not a tradeoff of future
representation for representation there.

COMMISSIONER SINAY: And then one follow-up
question, I'm sorry, is around the incarcerated
population and how now it's going to be -- you know,
we're looking at it differently. How do we consider that
within the VRA?

PROFESSOR LEVITT: So that, you'll consider
individuals who are incarcerated and their demographic
components. In the data that you hopefully will receive,
so hopefully you'll engage a vendor to provide you the
data, I don't know whether Karen's going to be able to do
that or whether that's going to be somebody else
associated, I don't know what that's going to be within
the statewide database or beyond. But you'll have to --
the data you'll receive, hopefully, should allow you to consider these local demographic patterns in way that include incarcerated populations that you are returning home, that have always been home for legal purposes, back to the communities where they resided before they were incarcerated.

They won't impact voting patterns much because, at least for individuals who have been incarcerated, they won't have voted, and they're not going to be able to vote until they are out of incarceration. So it shouldn't really impact the voting assessments but they will impact the demographics. And hopefully when you receive these sorts of maps, you'll be looking to see with the information, with the data already pulled in.

I'll say that for the most part, when you're talking about communities that are this sizeable for state house districts and state senate districts and congressional districts, you're unlikely to change the heat map much based on reallocation of the incarcerated population.

So it's important. I'm a big supporter of the change in the law. It actually provides better representation for all of those individuals. But it shouldn't actually change your assessment of where there's a Voting Rights Act obligation much at all. And that's simply by virtue of the size of the incarcerated
population when compared to the size of a California Assembly district. Great question.

So that was really, essentially, the end of the presentation. The one guidance I'd give to you is in all of this, and when you're thinking about engaging or retaining VRA Counsel or a VRA analyst or other people it's structure, you want to start early. Thank you. That was a magnificent segue. You want to start as early as you can with getting the data and with considering the data, even before the Census Bureau provides you. You want to give yourself time to consider not just individual minority groups but blocks of multiple minorities who may or may not be voting together.

And you want to give yourself time to try different combinations without getting locked into one particular approach that, if you're blinded to, well, what if we did this slightly different? That's easier said than done. And the best way to effectuate that is to draw up some proposals and then get feedback on them. And then be prepared to throw them out in part or in whole and drawing up a different set of proposals. The more you can remind yourselves not to get too terribly attached to first drafts the easier that will be, which is hard as a human.

And that's really the end of the presentation I had.
I'm more than happy to take other questions if you have them.

CHAIR KENNEDY: I do have a couple of questions.

So first, and I think this is a question that I posed to Professor Barreto when he was with us, I still have a little bit of discomfort of uncertainty about how we tease out or how we isolate the effect of candidate quality. Because we talk about, you know, we talk about candidate of your preference.

But sometimes, you know, there's just a candidate that's bad or, you know, there's a candidate that, you know, wouldn't necessarily fit into a category that a group would normally vote for but, because the quality of the candidate is so good, they end up voting in a way that doesn't fit their historical pattern.

So how do we -- and I know that we don't necessarily have to be the ones doing that, but I want to make sure that, you know, that's -- we understand that phenomenon and how it could be dealt with.

PROFESSOR LEVITT: Yeah. So that's absolutely right in terms of the empirical reality. That happens. Obviously, that happens. The way that researchers generally address it is by -- is twofold.

One, don't ever just use one race to gauge racially-
blend of several races to see whether the patterns are consistent, not only across group and across precinct but across time and race, not racial preference, across time and candidacy. So if you find a pattern from four different elections that's the same in four different elections, or very similar, that's going to tend to cut against the this was a really bad candidate or really bad candidate (indiscernible).

And the second is to have somebody to engage somebody who either knows themselves or is willing to do a little bit of research into the qualitative measures of particular races to see whether there are those sorts of anomalies. It is embedded in the law of the Voting Rights Act and the law of doing racially-polarized voting analysis.

There may be weird races that you count but discount a bit. So it's not like you eliminate them but you give them less weight when you're assessing them if something odd happened in a race where there was a odd candidate quality, that it's not true that every race is treated exactly the same, every candidacy is treated exactly the same when you're doing this polarization analysis. And that means you want to retain somebody who either, again, knows or can find out whether there are some super bizarre qualities to a particular candidate in a
particular race or a particular issue that sunk one candidate or elevated them. It doesn't mean that they're not particularly representative of how the community feels.

The goal in all of this is to try and assess how the community feels, how the community votes, not the success or failure of any particular candidate. And so optimally, you want to talk to the community and say, hey, was there something weird going on in this particular race? And get you several so you (audio interference).

CHAIR KENNEDY: And somewhat related to this, I mean, how do we deal -- we talk about citizen voting-age population. But you know, that doesn't guarantee that those people are voting. You know, how do we deal with ascertaining preferences of nonvoters that we really should be? I mean, to me, people are out there who aren't voting because they just don't like any of the candidates. But theoretically, there's a world in which there could -- they could be voting.

PROFESSOR LEVITT: True, or they're not voting because they know they're going to lose because the districts aren't currently built for them. And I think I used this analogy that last time. If you put me in a footrace with Usain Bolt, I might not try super hard
because I know what the answer is going to be before I even get off the blocks.

This is very much related to Commissioner Sinay's question. The law asks you to take the voters as they are. You can acknowledge, always, that designing a district differently may lead to different turnout effects, and so voters may show up in the future where they have not shown up in the past. But the analysis asks you to take the communities where they are in terms of who has actually voted and what preferences does that demonstrate, that is the law, generally, it asks you not to assume, flat out.

That's the sort of -- the biggest overarching statement I can give. It doesn't say you have to blind yourself to what might happen in the future. But it asks you not to make your decisions based on assumptions.

So just like you take the composition of the district as it is and not based on who might be coming into the electorate in the future. You take the political preferences and the voting preferences of the electorate as they are and not what might change in the future, even though if you do this right and you're creating a district where the Voting Rights Act has an obligation for a community that had no opportunity before, you would actually expect to see a change. You
would hope to see a change. That's what the Voting
Rights Act is for.

So you're right, that happens, but the law asks you
to evaluate the community as it exists.

CHAIR KENNEDY: Thank you.

Commissioner Sinay?

COMMISSIONER SINAY: Sorry. I'm just so intrigued
with all of this now. I didn't think I was a data
person.

So how do we look at --

PROFESSOR LEVITT: For a data person, by the way,
that really warms my heart.

COMMISSIONER SINAY: Well, I guess I always
have --

PROFESSOR LEVITT: (Indiscernible.)

COMMISSIONER SINAY: -- I guess I always have been a
data person but I like to put faces on data, is more what
I see myself.

And so the question is 2020 has been -- the election
that just happened was an unprecedented election, and
that makes me giddy. I love that people voted from all
walks and life and stuff. How is that going to affect
how we look at a lot of this?

PROFESSOR LEVITT: So first of all, the circles will
probably be bigger in 2020. The precincts, that's
actually not just precinct size, that's the number of
voters within each precinct, and those will get bigger
than they have been in the past. I agree with you, that
seems like a good thing.

So this is relating. Your questions are all
relating to each other. This relates to the question of
what if we get a weird race? And there may be plenty of
ways in which the presidential race of 2020 was not the
norm for anybody across the board. That's part of why
you want to choose a selection of races to view racially-
polarization so that you're not capturing any one
anomaly.

You may find that the -- first of all, assume
there's a pattern, but in some places you may find
there's no pattern, right, that there is no real reliable
polarization based on race. That's possible. It will
often depend on which racial of ethnic groups you're
considering at the time. There may be one group that's
quite polarized. And there may be a different group
that's quite polarized in another part of the state.

But assume there's a pattern. You may find that the
latest race followed the pattern or you may find that the
latest race didn't quite follow the pattern. But that's
why you're looking for an overall pattern. So if it
really stands out as weird, and not just weird in the
presidential race but weird in a number of other races in 2020, that may mean you've got a changing electorate. If it doesn't stand out as weird, that may mean you've got more of the electorate than before but according to very familiar facts.

CHAIR KENNEDY: Commissioner Sadhwani, and then Commissioner Toledo.

COMMISSIONER SADHWANI: Sure. Just to add on to this from some of my own research, I know Commissioner Sinay and I are asking to put a face on this, right? And so I very strong agree that having multiple datapoints and multiple pieces of analysis from various elections would be, ultimately, very helpful.

You know, in this Commission, I haven't really talked at all about my research, but it's all published and out there. So there are pieces that I've done specifically, for example, looking at Asian-Americans in Orange County. I would argue that that is a community that is very much in a process of changing.

So a piece, and I'm happy to share it with you, it's in the Washington Post, that looks at the Asian-American community in Orange County. And a handful of districts will show that there is this kind of variation from one election to the next.

In one district, for example, what we saw, what I
found was that while there was a predominance, you know, there was this push for reelecting Republican incumbents until there was a Chinese-American on the ballot. And I found racially-polarized voting amongst the Asian-Americans.

In the 2016 election, right, with Hillary Clinton, she had won that district. And I find that it was due to the polarization of the Asian-American community for -- in support of Hillary Clinton in that district alone.

Similarly, in 2018, that same district sent a Democrat who was a Latino to congress. Again, Asian-Americans were polarized in support for that candidate.

However, in this past election an Asian-American Republican has won. Did they switch their vote? Is it because there was greater turnout? I don't have the answer to that yet. The vote is not certified, so hopefully we'll be able to take a look at those kinds of pieces.

But my sense is when we look, when it comes to actually looking at some of these areas, yes, we're going to need a pattern in those districts. But we might also need to drill down more locally to better understand how, you know, people in Fullerton might be voting in local city council elections versus other elections. And we might need to start thinking about those kind of local
areas, which is where it ties into those communities of interest as well.

Similarly, I've studied Latino voters, as well, you know, under the constraint of the top two primaries. When you arrive at a general election with two Latinos on the -- or excuse me, two Republicans on the ballot, one being Anglo, one being Latino, what we saw is that -- with my coauthor, what we saw that was Latinos were polarized towards a Latino candidate, regardless of the fact that they were Republican, right?

So I think all of these kinds of considerations we can begin looking at now so that we have a sense of, okay, well, where is it that we need to go? What additional information might we need to make the best kinds of decisions, right? Because the RPV analysis isn't going to be the only datapoint, it will be one, right? It will be an important one. But we'll have to kind of have a sense of, okay, we should probably be focusing in here, and really having a lot of those conversations in those areas, right, when we go out to do the public testimony and receive public testimony.

PROFESSOR LEVITT: And what Commissioner Sadhwani is speaking to is very -- first of all, it is very in line with how the courts actually treat these races, and very in line with just not making assumptions, even
assumptions that, you know, you feel like you may know how the community feels. The data will show whether your assumption or your history or your sense is right, or might have been right but is now wrong, or wasn't right all along. It's really important to have that empirical data to back you up on how different groups go to different places.

CHAIR KENNEDY: Great.

Commissioner Toledo?

COMMISSIONER TOLEDO: Thank you.

Given the likelihood of legal challenges, I'm just wondering and curious about your thoughts around the changes to the Supreme Court, the composition of the Supreme Court, and whether there's any insight as to changes to the VRA or any thoughts about how the interpretation might differ with the new composition?

PROFESSOR LEVITT: That's a really good question. I want to premise this with, similar to Commissioner Sinay, your obligation at the moment is to take the law as it exists and not how it will. So I realize that's not what you -- you weren't suggesting anything different. I don't know that it's clear how this court will view these issues that I've talked about and whether there will be departures are all, much less radical departures.

There are -- the basic push against stereotyping,
against assumption, I was critical of the past Commission
and of other states that adopted a similar sort of
numbers-only demographic without political reality. In
2011, well before this court had the opportunity to
evaluate some of those cases in 2016 and '17 and '18 and
'19, and that was a very different court that evaluated
them later in the decade, and they felt about the issue
exactly as I had thought they would, which was exactly as
prior courts had.

So even though the court as a whole changed
composition over the course of a decade, their approach
later in the decade was exactly what I thought it -- what
it was and what I thought it would be in 2011. And I
don't know that that part if going to change much at all.

Similarly, the courts have been -- just like the
court says don't make assumptions, and I would expect
that to continue, the court has always looked to the
basics of the Voting Rights Act, the sort of provision
that you have in front of it. It's not I'll leave aside
some changes the court made in 2013. That's something
that you no longer have to consider.

The court has always held up that part of the Voting
Rights Act as the example of good, valid congressional
litigation when it's striking down other things that do
bad things. So it has always turned to -- unlike the
Voting Rights Act, this thing that we're evaluating here doesn't do one of the following things. And that has been true across administrations, across appointees, sort of independent of the composition of the court. Even when members of the court are fighting about applications or particular circumstances, they tend to take the basic core of the Voting Rights Act that I've described to you today as an example of the good stuff, and so I don't know that I would expect that to change either.

On the margins, it's entirely possible that the court's interpretation of some elements of these things may change. I don't know. I don't know that we'll know until your map or others has the opportunity to get presented to them. But actually, just like the law asks you not to make assumptions, I don't make assumptions about what the court is going to do outside of the context of a particular factual scenario, outside of a particular case they've given.

So it's a really good question. And the straight answer is in some cases I would expect nothing to change with respect to what we're talking about today. And in some cases it might well change but I don't really have a good feel for how. And I don't know that the simple membership of the court tells me.

CHAIR KENNEDY: Very good.
After our break, we will have Commissioner Taylor and Commissioner Yee. But we are at the point where we are required to take a fifteen-minute break. Actually, let's -- since we went over, let's make it just a little bit longer and be back at 11:20.

(Whereupon, a recess was held from 11:02 a.m. until 11:20 a.m.)

CHAIR KENNEDY: Welcome back everyone. Thank you for your patience during our break.

And as indicated just before the break, we have, first of all, a question from Commissioner Taylor, followed by Commissioner Yee.

COMMISSIONER TAYLOR: Good morning, Professor Levitt. Again, thank you.

PROFESSOR LEVITT: Thank you.

COMMISSIONER TAYLOR: In your advice you say start early, time to try different combinations. And you also say to consider blocks of minority groups. Can you further expand upon that? And I guess, can you speak as to what's the relationship when you have a district that has multiple groups that might fall under VRA criteria?

PROFESSOR LEVITT: So that's a great question and one where I think, unfortunately, your predecessors left themselves too little time to consider real possibilities in this respect. Data came too late for them to really
evaluate.

The obligations under the Voting Rights Act, this is very much of a pattern with everything we've discussed before, are relentlessly driven by local data. So there will be some instances where different minority groups have very different political preferences. And there may be instances where each of those groups is sufficiently sizeable of sufficiently compact to merit protection on its own.

There may be other circumstances where different minority groups have very different political preferences but only some of those groups are sufficiently sizeable or sufficiently compact to merit VRA obligations. Again, you can consider race and ethnicity beyond what the Voting Rights Act requires if you wish.

And there may be other circumstances still where data on the ground showed that some minority groups had similar political preferences, and that you can effectively treat members of those groups for Voting Rights Act purposes as one coordinated voting block if the data show that they perform as a coordinated voting block.

So there may be instances where, for example, African-Americans and Latino voters have very similar political preferences distinct from the rest of the
voters in a community. And in that circumstance, if the
data actually show that's a thing, you can never assume
it, but if the data show that's a thing then you might
have an obligation to draw districts to give that
combined group, to give African-Americans and Latinos
together, the reliable opportunity to elect the
candidates of their choice. And their choice would be,
the data would show, collectively very similar. If the
data don't show that, then you can always consider
coalition districts like that beyond the Voting Rights
Act but the Voting Rights Act wouldn't impose the same
obligation.

So it really depends on how members of different
minority groups tend to vote. And that's shown by the
same sort of polarization analysis that you do for any
one minority group on its own.

Does that answer your question?

COMMISSIONER TAYLOR: Thank you very much. Thank
you.

CHAIR KENNEDY: Commissioner Yee?

COMMISSIONER YEE: Thank you. I so appreciate your
time and help, Professor Levitt. You've been so
magnificently generous and forthcoming and we really
appreciate it.

So I have a question about defining a minority
group. The VRA language talks about race or color or membership in a language minority group.

So one specific question, and a more general question, the specific question is how to apply that with the census categories? So the census, of course, divides Hispanic/Latino out as an ethnicity versus categories of race, so how do those get applied in a VRA situation?

And then the more general question is how straightforward were these VRA categories applied in the past? If another group comes along and, outside these specific categories, you know, would we consider that, and so forth?

PROFESSOR LEVITT: Yeah. So you're absolutely right, these, for better or worse, the racial and ethnicity groups are defined in the statute. It's not merely a free-floating determination. So the statute talks about, exactly as Commissioner Yee mentioned, race, color, or language minority group.

There's a separate portion of the statute that says -- that defines what language minority group means for Voting Rights Act purposes. And it includes, and I'm quoting here, "persons who are American Indian, Asian-American, Alaska Natives, or of Spanish heritage, Latinos or Hispanics. The Voting Rights Act does not, itself, provide obligations for members of other language
minority groups. Again, you can always decide to do so, if you wish, over and above what the Voting Rights Act requires. But those are the obligations that the Voting Rights Act imposes.

How do you deal with census categories?

So the Department of Justice has been remarkably consistent in this since individuals first began to -- since the Census allowed people to designate their own racial or ethnic identities in 2000 and, in fact, to designate more than one in 2000.

The Department has said you essentially consider -- the data that will arrive will reflect this, by the way, so some of this is done for you in the data that arrives -- you consider each racial or ethnic group on their own. Somebody who might identify as more than one racial or ethnic group will count, essentially, for both because they may experience the rationale that they may experience discrimination as a member of either group. So somebody who checks off that they are both Black and White might experience discrimination, depending on the circumstances, as either. Somebody who checks off both Black and Latino might experience discrimination as either or as the combination of both.

So when the data arrives you would see those people represented the way that the data comes from the Census
Bureau to you will probably be individuals who identify as Black or Black and another race, individuals who identify as Asian or another race, all in one collapsed category. And then separately from that, individuals who identify as Latino, because Latino is presented on the census not as a racial group or as a language minority group, that will, itself, mean Latino and/or another race, right? That will include in it because it will include everybody who checks off the Latino box. And then people who identify -- the census will usually back out people who identify only as non-Hispanic White and not members of any other race. So those (indiscernible).

The way that you use those data are, you look for -- first, let's consider, imagine that the voting patterns are all distinct. You would look to see whether there's cohesion within the racial group and cohesion in other members of the majority. So you'd look for political cohesion among those who are Black alone or in combination with others. And you'd look for political cohesion among those who are Asian-American alone or in combination with others.

It may well be that the data show that there's not political cohesion within a group, in part because -- for Voting Rights Act purposes in part because the census categories are too big, essentially.
So for example, Asian-Americans, they have very
different political preferences in different parts of the
state. And so you may find that Asian-American, alone or
in combination, if you look, those voters don't have a
distinct political preference, where Chinese-Americans or
Vietnamese-Americans might, or other particular sub-
ethnicities might. That would mean, generally, I
believe, that you could choose to acknowledge the
communities of interest within the Asian-American racial
or ethnic or language minority group, but that the Voting
Rights Act would not include that group as a distinct
protected minority for polarization purposes if the data
show that there's so much difference in that group, that
they don't have distinct political preferences for
purposes of drawing distinct district.

I will say, I don't know that it's been tested when
a redistricting group has chosen to draw districts on the
basis of the Voting Rights Act, for example, Chinese-
Americans, when there is clear polarization in the
Chinese-American community from everybody else but not
within the Asian-American community at large. And
obviously, I'm making all of these examples up just for
demonstration purposes.

So I don't know that that assessment, that there
would be no Voting Rights Act obligation if there's no --
if there's enough diversity within Asian-Americans to show a lack of polarization among Asian-Americans, even if there's polarization of other groups. I don't know that it's ever been tested that a group decided to draw a district based on the subgroup.

To be safest, I would always encourage you, always, always, always, if you are inclined to draw those districts, to consider other factors, as well, and then to rest your reliance not purely on the Voting Rights Act but on other communities. But that's something that the courts -- that I am not familiar with the courts having tested.

COMMISSIONER YEE: I'd like to follow up.

Specifically, the census, you know, ends up with a lot of Latino-Hispanic bi-ethnicity and of marking other, right, for race.

PROFESSOR LEVITT: Yes.

COMMISSIONER YEE: It's been an ongoing issue. How has that been handled?

PROFESSOR LEVITT: Yeah, that is an ongoing issue. There are several different problems with the data collection, I'll say, including Middle Eastern and North African individuals, including Latinos who mark down race of other.

If the community is consistent then what you'll see
is a local group of other that also writes down Latino or Hispanic and so you'll recognize them as Latino or Hispanic individuals. If they don't also check the box on Latino or Hispanic but they mark themselves as other without designating Latino or Hispanic as a separate ethnicity, you won't necessarily have the census data to support their presence in the community, but you may know from the community that they're there.

That would be another instinct of where -- that would be another instance of where the legally safest course is not necessarily to rely on the Voting Rights Act for which the census data is really the gold standard, but to otherwise embrace the community that you see located locally that isn't reflected, necessarily, in the empirical data you get or in -- I shouldn't say that. It isn't reflected in one type of empirical data. Data from the community, hey, we're here, we just weren't included in the census, is empirical data, it's just not the same sort of data.

So I think the legally safest approach might very well be to acknowledge that but not necessarily in reliance on the Voting Rights Act as the source. But there, too, I don't know that that's been litigated. I'm not familiar with a circumstance in which that's been litigated.
And if you decided that you were going to rely on a large portion of voters categorized as other who were not identified in the census as Latino, but where you know from your community outreach or from other sources of data as Latino, if you decided that you were going to base a Voting Rights Act district on that information, I think that's entirely defensible. It's just you'd want to make that the -- that you were clear about what information you were using to make that finding.

I don't know if that answered the question. It was a really good question.

COMMISSIONER YEE: Yes. Thank you.

CHAIR KENNEDY: Okay. Commissioner Sinay --

MR. MANOFF: I'm sorry. I'm sorry to interrupt, Chair. This is Kristian. We have a caller and I'm not sure if it's one of the Commissioners. With your permission, I'll allow them to talk and we can double-check.

CHAIR KENNEDY: Go ahead.

MR. MANOFF: Oh, they're gone now. I'm sorry. We'll keep an eye out for them.

PROFESSOR LEVITT: I scared them away.

CHAIR KENNEDY: Okay. Commissioner Sinay, then Commissioner Andersen, then Commissioner Sadhwani.

COMMISSIONER SINAY: As we're thinking about the
VRA, and what I keep hearing is, you know, sometimes you need to go deeper, especially when it comes to the Asian community because there is a lot of, you know, diversity within it. And the same, you know, like East County in San Diego, you may get a lot of White, but the White is really Middle Eastern, you know? And so there's little nuances.

If we identify things like that, I guess I'm thinking about targeting our outreach in those specific areas to collect, you know, the communities of interest information. If we were to do something like that is that race leading it? I mean, is it okay? Is it advised that --

PROFESSOR LEVITT: Yeah. That's a great question.

So the only prohibition on the improper use of race is in whether you put a sizeable group of people inside or outside a district, whether you're drawing the district line to include or exclude based predominantly on race. And again, that's okay if there's a really good reason. I don't want to say that's out of bounds entirely. But that only comes into play based on where you put the district lines. Your decisions to do outreach, your decision to do investigation, your decision to collect facts, I don't think there's any prohibition on your understanding that there are groups
of particular races or ethnicities that you want to get extra input from. It's totally fine. I can't think of a reason why that would be improper under the law as I understand it.

CHAIR KENNEDY: Okay. Commissioner Andersen?

COMMISSIONER ANDERSEN: First of all, thank you very much for the presentation. You always take sort of dense topics and make them just so accessible and easy. I really appreciate it.

I have two questions. The first one is kind of a quick easy one. The second one is more involved. The initial question of size of a group, what's the ballpark?

PROFESSOR LEVITT: So the ballpark is going to be your -- the average population, plus or minus. So you know that the size of your district is going to be roughly the average population plus or minus five percent bigger/five percent smaller, right, ish in order to stay within constitutional bounds.

COMMISSIONER ANDERSEN: Um-hmm.

PROFESSOR LEVITT: And so when you're considering whether a group is fifty percent of the electorate in a district-sized population --

COMMISSIONER ANDERSEN: Okay.

PROFESSOR LEVITT: -- that district-sized population
will range plus or minus about five percent-ish. That's approximate because, for a good reason, you can over or go under. But that's a good target to start with, that you're looking for a district-sized population about -- in a range from about five percent over the average district size to five percent under. And the average is just driven by the number of people in the state and the number of districts you're drawing to. It's going to be a different measure for the assembly, for the senate, and for congress, and for the Board of Equalization.

COMMISSIONER ANDERSEN: But in terms of like a racial group, the racial group then needs to be about fifty percent, plus or minus --

PROFESSOR LEVITT: The electorate --

COMMISSIONER ANDERSEN: -- (indiscernible)? Oh,
ookay, I'm sorry.

PROFESSOR LEVITT: -- needs to be. So --

COMMISSIONER ANDERSEN: The electorate.

PROFESSOR LEVITT: -- there are two different things and that is complicated.

COMMISSIONER ANDERSEN: Okay.

PROFESSOR LEVITT: You're looking for a district-sized population, total population, and you want to know that the racial group or groups that you're evaluating are at least fifty percent of the citizen voting-age
population within that total district size. So you're not just looking for fifty percent of the total population. You're looking for --

COMMISSIONER ANDERSEN: Right.

PROFESSOR LEVITT: -- fifty percent of the electorate that, and that may be different.

COMMISSIONER ANDERSEN: Right. Okay. Thank you.

The second question is, you know, obviously, we have a -- California has a huge plurality of races. And because of that, could you address the change, the 2013 change in the Voting Rights Act in that, specifically for California, you know, it's changed the rigidity of you don't have to do certain things. But in a lot of states that's obviously really going to affect, and adversely affect, minorities. In California, that actually, the laws of rigidity might help us stay with the intent without the rigidity.

And could you, one, explain sort of what actually happened? Because, particularly, because when we're going to go back, you know, we don't want to be looking at rules we don't need to follow.

PROFESSOR LEVITT: Right.

COMMISSIONER ANDERSEN: And then, you know, the how we can work with that, please?

PROFESSOR LEVITT: Sure. So I will try to make this
short. I also will try to make this not confusing because now we're talking, as Commissioner Andersen recognized, about something you don't have to do.

So before 2013, and still, technically, if congress ever gets around to applying a different formula, maybe in the future but not right now, in some areas, including parts of California, in addition to all of the responsibilities that I've talked about so far, there was a separate part of the statute that, essentially, said if you have racial communities with certain levels of political power, no backsliding. So this was because of a particularly troubling history, that once you'd reached a certain level of community power, you can't take that power away, you can't backslide, you can't make things worse for the minority community there, period.

That was -- this is another portion of advice that I don't know that I agree with from Counsel from ten years ago -- that was always meant to be a functional evaluation and not based on specific demographic percentages. So that wasn't a prohibition. To put it differently and in your terms, I think that was less rigid than it was sometimes interpreted to be.

So I don't interpret that backsliding as a limitation that said if a group now constitutes 57 percent of the district, that it could never, in the
future, constitute 56.8 percent of 0.7 percent or fifty-five percent of a district, if that meant, functionally, the same level of political power. If the group had an opportunity to elect with fifty-seven percent and still had an opportunity to elect that was reasonably the same with fifty-four percent, that sort of change in demographics was, I think, fine.

Some legislatures, some commissions, I think last time the guidance was a little bit ambiguous from Counsel on this, said whenever you've got a certain percentage you have to peg at that percentage and go no lower. And I think that was a misinterpretation of what the statute required. The statute said no functional backsliding, rather than no demographic percentage point backsliding.

And so I think to the extent there was rigidity in the last cycle that may have been artificially imposed, to the extent there are now groups with functional levels of political power, there's no legal mandate to maintain them in the abstract. But where those groups have the opportunity to elect candidates of their choice, there may still be an obligation to provide those same groups with opportunities to elect the candidates of their choice. The data will show whether that's still an obligation or not.

But in many places, voting that was polarized will
remain polarized on the basis of race, unfortunately. And in many places that means where there was a functional level of ability to elect candidates, you may still have to provide that opportunity to elect under the section of the Voting Rights Act you do have to apply, regardless of the disappearance of this other. That is, I think, the biggest change for you all is a procedural change and not a substantive one.

The part of the Voting Rights Act that no longer applies required that you run stuff by the Department of Justice or by a federal court before it could take effect. That was a measure designed to stop discrimination before it started. And so entities across the country, including California, had to pre-clear maps with the Department of Justice or with a federal court before they could take effect. And that chunk of time that it took for pre-clearance meant that you had to leave room at the end of your process for the Department of Justice to run stuff by before you could have candidates file for primaries and the like.

That no longer applies in California, so you no longer have to leave extra room for a Department of Justice procedure at the end of the day. I suspect that will be the more meaningful impact for you all on the absence of this one part of the Voting Rights Act this
time and not necessarily the substance, if that makes sense.

There's so much more there, there, and I want to make sure that I'm answering the question without going to deeply --

COMMISSIONER ANDERSEN: That's one of the --
PROFESSOR LEVITT: -- down the rabbit hole.

COMMISSIONER ANDERSEN: My understanding was, also, it did lock in certain counties. You had no flexibility in that. And that's sort of the other part I was really kind of hoping you might address as well.

PROFESSOR LEVITT: Yes. Sorry. That's a good point.

So this part of the Voting Rights Act applied only in certain jurisdictions. And there were four counties in California that had this special obligation. That meant, essentially, that the Commission had to start in those four counties to make sure that they lived up to this part really firmly.

To the extent that are minority communities in those counties, my hunch, to be examined by the data, but my hunch is that voting is still likely to be polarized there, and there are still obligations that you may have in those areas, so I don't think you'll be able to ignore those counties, not that I'm suggesting you were going to
do that. I think you will have to treat them with similar care as in 2010. It just means that you won't necessarily have to start there and there alone.

But they may still be worthy of your focus, in part because the fact that they had obligations under that other section of the Voting Rights Act, number 1, it shows you've already got a pretty clear history of discrimination. That's save you a little bit of data gathering. The congress and the Justice Department decided that there was already a history of discrimination there. And to the extent there are minority communities in those areas, if voting is still polarized there, you're still going to have obligations under the part of the statute that does apply.

So it takes a little bit of procedural rigidity out. But I don't think it changes your approach much in terms of the substance.

COMMISSIONER ANDERSEN: Great. Thank you. Also, it allows the accounting for migration. We've had a lot of, you know, that sort of thing. This is where I'm sort of the multi-tiered thought there, so thank you very much for the answer.

PROFESSOR LEVITT: Yeah. Yeah. And that -- I should emphasize, it may be that the communities in those areas still are polarized and still are sizeable and
still -- but all of that is subject to, what did the
data actual show? So California has had migration all
over the place, different growth rates in different
communities, so there may well be places in the state
where you have obligations now that you didn't have in
2010. There may well be places in the state where you no
longer have obligations that you had in 2010. And there
may be places where you have very similar obligations to
what you had in 2010.

CHAIR KENNEDY: Very good.

Commissioner Sadhwani, and then Commissioner Turner.

COMMISSIONER SADHWANI: Thank you so much, Professor
Levitt, because, as always, this is so helpful. And I
think I echo Commissioner Andersen and others, you have a
way of explaining things that is precise and very clear,
which I think is extraordinarily helpful. And I also
anticipate that we have an infinite number of questions
regarding the VRA and what compliance will look like.

Before you came on, Commissioner Yee and I had
presented a number of recommendations to the Commission.
And I'm wondering if we could center some of our
conversation around some of those recommendations and
specifically get your feedback on those so that we can
move forward, begin some of the analysis that you have,
you know, even suggested that we should start with, as
well as move forward with our process to identify VRA Counsel who could answer these questions for us in the future at every single meeting?

So to that end, I wanted to get your thoughts on two pieces.

First, one of our recommendations -- well, one of the pieces that the Commission needs to consider is the -- and that we, you know, the Subcommittee has discussed with you previously, are the pros and cons of keeping RPV analysis either public or as attorney work product or under attorney-client privilege? The answer to that question will determine how we hire an RPV analyst because of all of the various state procedures for hiring these kinds of individuals, so I'm wondering if you could walk us through that?

Our recommendation to the Commission has been, you know, taken from our conversation with you, as well as with others, has been to instruct, at this meeting, instruct our Chief Counsel to move forward with hiring an RPV analyst at this point in time who could begin a public-facing analysis, kind of at the statewide level, to craft an overview of racially-polarized voting in California. And also I'm thinking, as you're showing these beautiful heat maps, to also provide some of that assessment using ACS data to inform our process moving
forward.

   We have also advised the Commission to consider whether or not to keep additional analysis, that more localized analysis, under attorney-client privilege. And I'm wondering if that's something that you could speak to and help us understand the pros and cons?

   We, of course, all value transparency in this process. But as it relates to potential future litigation, what might we need to know about the pros and cons of releasing that information?

   PROFESSOR LEVITT: Sure. And I will attempt, as best I can, to lay out the pros and cons for you without any role as an advocate for one end result or another.

   So this is, essentially, a choice about the degree to which you want to be transparent versus the degree to which you want to incur litigation risk. And there's not a wrong answer to that choice. There are different answers. There may be different answers based on your preference. But there's not a wrong answer to that choice.

   So when the lawsuits come, those who are planning to attack the work of the Commission will use every tool at their disposal to attack the work of the Commission, whether the Commission's work on that particular subject has anything to do with their complaint or not. So you
may see someone suing you on Voting Rights Act grounds or other grounds, even if their complaint has absolutely nothing to do with the Voting Rights Act really. They're just trying to get a different map in a place that they prefer for other reasons. Or you might see somebody suing you because their complaint is actually based on Voting Rights Act.

The data that you provide are one source of that potential attack. So those who are unhappy with your work will claim, if there is a district that you draw based on the Voting Rights Act, that there was no reason for you to draw that district based on the Voting Rights Act, and that you drew predominantly based on race, just like what happened in Virginia.

And so if there's a group for critiquing you for drawing a particular district, ostensibly on Voting Rights Act grounds, then they'll come after the choices that you made about which people to put inside or outside the district, the same as those sort of maps that I showed highlighting where African-Americans voters were in District 95 in Virginia. But they will also come after the basis for your assessments of Voting Rights Act need, like racially-polarized voting analysis.

And just as you will be hiring a VRA analyst who is an expert in doing this work, somebody who would be
critiquing would be hiring a VRA analyst who is an expert in racially-polarized voting analysis to say, no, what you heard from your expert is not actually right. This isn't polarized or isn't sufficiently polarized because of X or Y.

We've mentioned before that you want to choose a selection of races, of particular candidacies, of particular elections, that you don't ever want to rely on just one. And so the challenge will come, they chose the wrong bucket of races. There was something weird about this race they shouldn't have included. They should have included other races in the mix.

So if you make that data public, not only will challengers have information or data of their own, they'll have yours to attack. And if you don't draw districts on Voting Rights Act grounds and somebody asserts that you should have, if you make your analysis public, the same attack will come, they showed no polarization in X or Y area. They really should have found polarization because they chose the wrong races. You did the wrong analysis because there was something flawed in what you made. So there's risk to putting that localized information out there in the world.

There's also a transparency boost to putting that information out there in the world so that you can say,
look, the reason we drew this district was, in part,
based on the Voting Rights Act because we showed there
was polarization there and, look, here it is, you can
see. Or the reason we didn't draw this district is
because we found there was no polarization. Here, you
can look at the entity at large. Here's the analysis,
look, you see.

So that, the decision of what ultimately to do is
ultimately a preference for which of those values you
think speaks more strongly to you in a particular
instance, those are the basic pros and cons of either
releasing the information or holding it tight.

CHAIR KENNEDY: Commissioner Sadhwani?

COMMISSIONER SADHWANI: Thank you. That was much
more eloquently put than I ever could myself, and much
more informed, so thank you.

And I think I just want to also stress for the
Commissioners that what we decide today does not have to
necessarily be our final choice. The recommendation that
we are giving to the Commission is to move forward in
hiring someone who can start this now, the overview.
When we have VRA Counsel, they, too, may have someone
different. They might want the same analyst. We don't
know that yet. And so we didn't want to tie our hands,
necessarily, to one and only analyst for racially-
polarized voting assessments. And so, therefore, we do have a little bit of time. But it's something that definitely has to be on our radar.

And I would also stress that to the extent that we can -- that the Subcommittee and, more importantly, that our Counsel can be given that authority today to move forward with hiring an RPV analyst to do that top-level analysis that would be public-facing, would be really important. And as we move forward we can further decide whether or not we want to make the more localized analysis public.

PROFESSOR LEVITT: I'd just like to add something very quickly to that analysis, and that is a limit on what I'm telling you here today, I am not a Brown Act specialist and don't -- certainly don't want to suggest anything other than what your General Counsel tells you about the extent to which your information can or can't be public more generally, or the extent to which part of the information you make more public may lead to other bits being more public.

So I just want to frame all of that very carefully in the caveat, you should take your Counsel's recommendation on how your decision here generally affects what you may have the obligation to release or not. They will guide you. And you should not - the pros
and cons that I weighed out may have important asterisks or caveats based on what they tell you about information that you have the obligation to release or not, so follow their guidance over mine in that respect, in all respects, but also in that respect.

CHAIR KENNEDY: Commissioner Sadhwani?

COMMISSIONER SADHWANI: Thank you.

And just to add, also, there's so many components here, I think what we have arrived at in our many conversations, if we end up going the route of putting out a Request for Proposals for an RPV analysis -- analyst, excuse me, we might ultimately have to make that work product public. And so then we are tying our hands to that decision. Whereas if our General Counsel were to hire that person, for example, through an interagency agreement or some other form, then we would have more choice in that matter.

And that's my understanding of the procedure, the state procedures. So if I'm misspeaking, you know, Mr. Claypool or Marian or Ms. Marshall, please feel free to correct me, but that was my understanding and what we were using to develop these recommendations, to allow us the greatest amount of flexibility on this piece.

CHAIR KENNEDY: Commissioner Andersen?

COMMISSIONER ANDERSEN: Thank you. One quick, quick
question.

You know, sometimes, not to get caught up in names because when we're -- for proposals and scopes of work, when we're talking about Litigation Counsel, it would be for, you know, obviously, once it hits litigation.

And a VRA Counsel -- a VRA analyst and an RPV analyst, could we have our VRA analyst, maybe if it is or is not completely client-attorney privilege, but if our VRA Counsel and VRA analyst is the same, then we have the opportunity of opening up what we'd like to the public or not because it's of Counsel.

So is that -- and this is a bit more, one, to check terminology and things with Justin Levitt.

Also, Marian, the state agency agreements, are those also -- I mean, attorney-client privilege is an easy one, but state --

MS. JOHNSTON: Contracts are always public.

COMMISSIONER ANDERSEN: State agency is always public?

MS. JOHNSTON: Contracts are always public, yeah.

COMMISSIONER ANDERSEN: The contracts, yes, but the work product?

MS. JOHNSTON: No. The work product can be, if it's done on the request of an attorney, it's protected as work product.
COMMISSIONER ANDERSEN: And what if it's on the state -- oh, is the state agency agreement, if it's through an attorney, then it's --

MS. JOHNSTON: If, yes, if the analyst reports to the attorney based on what the attorney wants the analyst to do, then it's attorney work product.

COMMISSIONER ANDERSEN: Okay. Thank you.

MS. JOHNSTON: It's not absolute privilege, but it's protected.

COMMISSIONER ANDERSEN: Thank you.

Mr. Levitt, do you have any, you know --

PROFESSOR LEVITT: Oh, no. In that regard, I'll actually, I'll defer entirely to Marian. The way in which you structure that arrangement has far more to do with the rules that govern you in your responsibilities as a public Commission than they do about the Voting Rights Act. So --

COMMISSIONER ANDERSEN: Okay. One --

PROFESSOR LEVITT: -- I'll leave that to her.

COMMISSIONER ANDERSEN: In terms of having the VRA Counsel and VRA analyst as the same person, different person, what are, maybe, pros and cons on that?

PROFESSOR LEVITT: I think you want them to be on the same page, but I don't know that they have to be the same person. So they want to have the same understanding
of what the data are actually showing of where you might have an obligation or not. And so you want them to be aligned and able to work together if they're not actually the same individual. But I don't know that they have to be the same person.

Commissioner Sinay, did you have your hand up?

COMMISSIONER SINAY: Yeah. And this might be a little in the weeds, so I apologize, but the stuff that we said -- you know, I'm still trying to figure out the pros and cons of making it private or not, or public.

And when we go to draw the lines and we present our maps, we're supposed to give reason for every single line we draw. And so how would we give a reason if that data is private?

PROFESSOR LEVITT: So my understanding, and here, too, I'm going to defer to both Marian and Dan and others, is that you can say we drew this district in order to comply with the Voting Rights Act and for other reasons, including the following thing, without necessarily releasing all of the underlying data or information that you used to make that conclusion, or you can decide to release some or all of that underlying data, I believe, and I think that's up to you.

MS. JOHNSTON: And I agree with that.

CHAIR KENNEDY: Director Claypool, did you have your
EXECUTIVE DIRECTOR CLAYPOOL: I did. I just wanted to say that I remember the reports that went with the maps from the last one and it might be well worth it for you to read them. They were very brief and they were, in many cases, nonspecific about exactly why things were done. So you have a lot of latitude.

CHAIR KENNEDY: Thank you.

Commissioner Fernandez?

COMMISSIONER FERNANDEZ: So let's say we don't disclose the data when we write the reports. Is that data, however, discoverable once it goes to litigation?

MS. JOHNSTON: It might be.

COMMISSIONER FERNANDEZ: That's a very maybe. Okay.

MS. JOHNSTON: Attorney work product may be discoverable if it becomes relevant in a litigation.

CHAIR KENNEDY: Anyone else? Okay. Well, we certainly --

PROFESSOR LEVITT: I think you've got Commissioner Vasquez.

COMMISSIONER VASQUEZ: Sorry.

CHAIR KENNEDY: Oh, Commissioner Vasquez?

COMMISSIONER VASQUEZ: Yeah. Yet to find a background that doesn't make my hand disappear into the ether.
This might be a dumb/basic question that has already been answered, and I apologize. I've missed some of the Q&A. But if we're choosing -- if we make a choice to not disclose the data, but we are discussing and drawing many of these -- you know, drawing all of the lines sort of in public and having discussions about, oh, you know, what are the impacts of moving a line here versus here, in those discussions we will be discussing the data as part of our sort of thinking on why we want a line versus why we want a line here.

So I'm a little confused about sort of how much of that is already public via our conversations anyway?

MS. JOHNSTON: Your reason could be based on advice from your VRA Consultant. If you actually discuss the content of the document in public session, then under Bagley-Keene it becomes public, but you don't need to discuss the document itself.

COMMISSIONER VASQUEZ: So a follow-up question.

So then we could, theoretically, even have the data sort of in front of us, privately viewing, but in the discussion say, based on the data, I think it should be here?

MS. JOHNSTON: I'm not sure. I think last time the nuts and bolts of the analysis was not given to the entire Commission. It was given the overview, the broad
conclusions that were reached by the analyst.

COMMISSIONER VASQUEZ: Oh.

PROFESSOR LEVITT: And there, and just to clarify, so for example, if I could share my screen for another thirty seconds and only that, the -- where did you go? My apologies. I can't seem to get it.

If you remember the chart of the racially-polarized voting, of all of the circles and the lines, there are lots of those that combine to give you an assessment of whether voting is racially polarized or not in a particular community, and also the extent to which it may be racially-polarized in a particular community. And all of those add up to and this, therefore, is the level at which we feel comfortable that a particular racial group that is polarized would have a real equitable opportunity. And I think you can decide how much of that, back down the chain, you want to make public.

So it's a little bit like raw data, and then analysis of the raw data, and then analysis of the analysis, and then a conclusion. And I think you can decide at which point you want to make any of that public versus at which point you would rather retain it for yourself. You can still act on the conclusion if you decide to keep the underlying data private.

CHAIR KENNEDY: Okay. Commissioner Fernandez --
PROFESSOR LEVITT: Does that make sense?

CHAIR KENNEDY: -- and then Commissioner Sadhwani.

COMMISSIONER FERNANDEZ: Well, maybe I misunderstood it when Commissioner Sadhwani was presenting it, but some of the discussion around the data may be in closed session, or was I mistaken with that, or we don't know yet?

MS. JOHNSTON: It could be. I can't be more specific than that. It depends. If you know there is a real risk of litigation and you want to avoid presenting that information to the world, then --

COMMISSIONER FERNANDEZ: Right.

MS. JOHNSTON: -- then it could be in closed session.

COMMISSIONER FERNANDEZ: So then at that point, and this is just addressing Commissioner Vasquez's question, if it's something that we discuss in closed session, then we would not necessarily -- we could choose not to put it in the report; does that make sense?

MS. JOHNSTON: Well, what would go into the report is that, based on VRA analysis --

COMMISSIONER FERNANDEZ: Um-hmm. Right. Right.

CHAIR KENNEDY: Commissioner Sadhwani?

COMMISSIONER SADHWANI: So just to keep us moving, and not to stop discussion, but I also see that callers
are starting to call in, I'm wondering how we feel about if I were to make a motion to instruct our Counsel to move forward with an interagency agreement to hire an RPV analyst at this time specifically for that outward-facing initial assessment that may or may not be the same person that we ultimately use for the more localized analysis? But at least so that we can get started with a broader outward-facing process that we would make public, that would be more statewide in nature, and would create some of these maps for us to identify regions where we might want to focus more?

That would be that first motion. Well, that's a very long version of it, but that would be the content of that first motion.

Separately, we can think about the Statement of Work for the VRA Counsel and Outside Litigation Counsel. Whomever we hire for VRA Counsel might have their own RPV analyst that they would want, right? We don't know that. They might have different recommendations on whether or not to keep this analysis public or private. So that's why I want -- I'm putting forth a motion specifically for this first stage of analysis and to empower our Counsel to just move forward with an interagency agreement to start that process for us.

And I suppose, Marian and Ms. Marshall, if I need to
solidify that more, I most certainly can. But I wanted
to explain it first.

MS. JOHNSTON: Two things. One, you need a second.
And two, it would be a special vote requiring the three,
three and three.

COMMISSIONER SINAY: I second it.

MS. JOHNSTON: I'm sorry. Who was that?

COMMISSIONER SINAY: Sinay.

CHAIR KENNEDY: Commissioner Sinay. Okay.
Commissioner Fornaciari, and then Commissioner Yee.

COMMISSIONER ANDERSEN: And Fernandez.

CHAIR KENNEDY: Commissioner Fernandez was before
me.

CHAIR KENNEDY: You have to raise it a little higher
because I'm just seeing your name.

COMMISSIONER SADHWANI: I'm just pale all overruled
the place. It's pale walls, pale face, it's just pale.

Anyway, I just wanted to confirm whether or not -- I
mean, we're going to make this motion. Have we brought
in our Chief Counsel into this conversation, if
Commissioner Sadhwani and Yee -- I just want to make sure
that we're not doing something that maybe she's also
looking at something else, so --

COMMISSIONER SADHWANI: Unfortunately, we haven't
had the --
MS. JOHNSTON: Exactly, right now, I don't know.

COMMISSIONER SADHWANI: Oh, sorry. Go ahead.

We haven't had that chance to have that conversation with her. We were working on this and developed all of this as of Thursday of last week. I don't know what her first start date is. But I know Commissioner Yee also had sent an email kind of laying out some of our recommendations and that we hope to have that conversation very soon. I don't know. There's not a camera on Ms. Marshall, so I'm not sure if she's there, but please feel free to weigh in.

COMMISSIONER YEE: We're going to meet together on Friday.

MS. JOHNSTON: I'm sorry?

COMMISSIONER YEE: We're meeting her on Friday.

CHAIR KENNEDY: Okay. I have next Commissioner Fornaciari, then Commissioner Yee, and Commissioner Akutagawa. Did I miss anyone? Commissioner Turner.

PROFESSOR LEVITT: Director Claypool, I think, is also a hand up.

CHAIR KENNEDY: Thank you.

COMMISSIONER FORNACIARI: Okay. So Commissioner Sadhwani, maybe I just missed it, but can you kind of clarify, is -- kind of be a little more specific as what is the deliverable, what's the outcome from this higher-
level analysis?

COMMISSIONER SADHWANI: To better inform our process and to produce one public-facing document about racially-polarized voting in California. I think some of the -- well, there's only been a very small amount of criticism about not releasing the information from 2010. I think only one individual has shared that concern.

To me, it's about giving us information about how we might want to structure our process early on, as well as kind of offering a good-faith effort of transparency, right? And I think the Commission has never received public feedback about racially-polarized voting analysis. So with such a document, what is the kind of feedback that we might get, perhaps, that could help inform our later decision about whether or not to release that information?

That's kind of my thought process, in any case, about why to start here. And also, it allows us to get started now.

One of the things is, if we went forward and put an RFP for this analyst, it's going to take quite a long time, right? So we could have some of this analysis before we even hire a VRA attorney, right, VRA Counsel, so there's the time element.

But it also ties our hands that the analysis would,
most likely, have to be public, right, if it's the
Commission asking for that work, rather than attorney
asking for it. And I don't know that we're prepared to
make that decision today. And that's why I've made this
recommendation that we get started with the analysis,
that the initial analysis would be public-facing, and
that we can then move into a secondary stage in which we
can make decisions about the more localized analysis.

Does that help?

COMMISSIONER FORNACIARI: So the outcome is going to
be a report? Okay.

COMMISSIONER SADHWANI: Hiring, and a report, yeah.

COMMISSIONER FORNACIARI: Yeah. Yeah. Okay. I
just, I didn't know if we were going to get a map or if
we were going to get -- you know, I didn't know what to
expect out of the analysis. Okay. Thank you.

CHAIR KENNEDY: Very good.

Commissioner Yee?

COMMISSIONER YEE: Yes. Chair, a recommendation.
Respecting Professor Levitt's time, I'm wondering if we
could go to public comment, and then for any questions he
might -- that might be directed to him, and then, you
know, considering the motion after his time with us?

CHAIR KENNEDY: Okay. Marian, on that, if we take
public comment now, is that going to be sufficient for
the vote?

    MS. JOHNSTON: If.

CHAIR KENNEDY: Okay. Then I would ask Commissioner Akutagawa, Commissioner Turner, and Director Claypool -- well, Director Claypool, is yours immediate? Please.

EXECUTIVE DIRECTOR CLAYPOOL: It is, in short.

So to clarify, you are asking us to actually draft the interagency agreement so that we can work with the RPV expert, develop what we're going to present, and then we come back with that draft for finalization; am I correct? So we are going to develop the costs and everything else first. Perfect. Thank you.

CHAIR KENNEDY: Okay. Commissioner Turner?

COMMISSIONER TURNER: Yeah. The clarification I wanted on the proposal from Commissioner Sadhwani as to the questions about Counsel being present or not, was that it was just a proposal that also included determining if our Counsel is in agreement that this is the way that we should go, right? I think I heard you say that in there. So we may -- Counsel could come back and say that this is not my recommendation, I don't want it.

So I just wanted to name that. Because when you said it, I thought, well, this is great. This does free her to be able to move forward in whichever manner.
CHAIR KENNEDY: Okay. Let's go ahead and -- okay. We do have three callers in line.

Katy, can you go ahead and read the instructions for others?

And I will get back to Commissioners with hands raised.

PUBLIC COMMENT MODERATOR: Yes, Chair.

In order to maximize transparency and public participation in our process, the Commissioners will be taking public comment by phone. To call in, dial the telephone number provided on the livestream feed. The telephone number is (877) 853-5247. When prompted, enter the meeting I.D. number provided on the livestream feed. It is 91505532099 for this week's meeting. When prompted to enter a participant I.D., simply press the pound key.

Once you have dialed in you will be placed in a queue from which a moderator will begin un-muting callers to submit their comment. You will also hear an automatic message to press star 9. Please do this to raise your hand, indicating you wish to comment. When it is your turn to speak the moderator will unmute you and you will hear an automatic message that says, "The host would like you to talk. Press star 6 to speak." Please make sure to mute your computer or livestream audio to prevent any feedback or distortion during your call.
Once you are waiting in the queue, be alert for when it is your turn to speak and, again, please turn down the livestream volume.

These instruction are also located on the website.

The Commission is taking public comment on the motion in regards to hiring a VRA analyst made by Commissioner Sadhwani.

And we have three. I will start here. Please press star 6 if I have -- oh, yes -- oh, no. Shoot.

Please state and spell your name. Caller 051 --

MS. SHELLENBERGER: Hi. This is --

PUBLIC COMMENT MODERATOR: Could you state and spell your name please?

MS. SHELLENBERGER: Yes. This is Lori Shellenberger --

PUBLIC COMMENT MODERATOR: Okay.


I'm actually calling in, I just, I want to actually, and perhaps Marian can answer this, is I was calling in to speak regarding the RFI and Statement of Work for the Voting Rights Counsel. And I wasn't sure when you would get to that topic. And I wanted to present those questions while Justin was still there. But I also
understand this is to speak on the motion at hand.

So is it appropriate to offer comment on the RFI for the VRA Counsel at this time?

MS. JOHNSTON: I think, since that's part of the discussion that led up to that, that would be fine.

MS. SHELLENBERGER: Okay. All right. Thank you.

And good morning to the Commissioners. I think it was the last one to call in yesterday and the first one to call in today. And I really appreciate, just I can't say enough how much we appreciate the thought that's gone into the various documents produced by the VRA Subcommittee and the things that they've done and the outreach they've done. And also, always enjoy hearing Justin Levitt speak about the Voting Rights Act.

I just wanted to raise a few items related to the RFI. And I'm actually submitting these comments on behalf of myself and on behalf of NALEO Educational Fund, Rosalind Gold. And I discussed these at length. And she cannot call in right now because she's actually conducting a redistricting training for her staff at this time. So I have three comments on one general comment.

The first is regarding what is a redistricting activity? And we would suggest that you define that at the beginning of the RFI, and perhaps discuss how you want to define that. But in most of the places that it's
listed, it seems to be referring to the work of the Commission. If so, just make it clear it's not just a line drawing but, also, accessibility to hearings, evaluation of testimony, et cetera. I just think it would be good to define that a little more clearly.

I have a comment related to section 5 and the section paragraph of section 5 regarding expertise. And we would recommend that you change the word "experience" to "expertise" in that second sentence of that second paragraph, just because it's a little unclear what the experience would mean. And you do ask for more details about experience later in the RFI. So just suggesting you change "experience" to "expertise" in that second sentence.

In addition, we'd recommend you strike Bagley-Keene. We don't think that -- you have General Counsel, and you have Marian Johnston at your disposal, and they're experts on Bagley-Keene. And I think that doesn't seem to be as important for the VRA Counsel.

I have a recommendation regarding section 5, and it's number 3 in section 5. And it's really just a recommendation that you get rid of the reference to two specific pieces, which we were a little curious about why you chose to include the Shaw and Miller cases in there, in particular, and highlight them. The Voting Rights
Act, as you've just spent two hours discussing, has lots of comment complexity. And there are lots of lines of cases. And attaching special importance to some over others just may inadvertently signal things you don't want to do. And we don't think it's critical that you highlight any particular case over another.

And then, finally, on page 2 in section 6, item number 3 regarding experience, we would recommend that you expand that a bit at the beginning of that section to list all experience related to districting, redistricting, and election-related litigation, potentially. Because, first of all, there is a difference between districting and redistricting. And because there are folks who have experience, and under section 2 and section 5, there's litigation that happened related to at-large and conversions that require initial districting.

And secondly, related to Election Law, generally, you have asked for experience with California Election Code and the Voters First Act. But it would be good to know if folks have experience litigating voting rights in other context besides the VRA because there are instances where there can be litigation to expand or restrict those rights that are specifically under the Voting Rights Act.

And we'd also suggest that you change "significant"
to "all" so that -- so you don't -- do you avoid someone cherry picking what they want to share. And if you do include "all," maybe you only want to go back twenty years. Maybe someone has forty years of experience. You don't want every case they've ever been involved with.

Finally, we would also suggest that on that list of experience, you include publications, because there are folks who have done significant amounts of writing, and that's not litigation to be rated.

So that concludes my comments. I'm sorry I went over time. And I'm happy to stay on if anyone has questions.

CHAIR KENNEDY: Ms. Shellenberger, just to make sure that we do have all of that, did you indicate that you would also be submitting it in writing?

MS. SHELLENBERGER: I did not, but we can do that. We just -- unfortunately, we didn't have a chance to connect until very early this morning with our feedback and didn't have time to put that in writing, but we'll absolutely do that.

CHAIR KENNEDY: That would be helpful. Thank you so much.

MS. SHELLENBERGER: All right. Thank you.

CHAIR KENNEDY: Thank you.

PUBLIC COMMENT MODERATOR: Our next caller, could
you press star 6? Thank you. Could you please state and
spell your name for the Court Reporter? You are live.
Could you state and spell your name for the Court
Reporter? Caller 2790, you are live or not. Okay.
Next person — oh, no, they're back.
Can you please state and spell your name? You are
live. Can you talk please? Okay. I will move on.
Can you please — Caller 4557, press star 6 to
unmute. Please state and spell your name for the Court
Reporter.

MS. MANOHAR: Megha Manohar.
PUBLIC COMMENT MODERATOR: Yes, you're live. Can
you please state and spell your name for the Court
Reporter?

MS. MANOHAR: Sure. My name is Megha Manohar. My
first name is M-E-G-H-A. And my last name is
PUBLIC COMMENT MODERATOR: Thank you. Will you
please state your comment?

MS. MANOHAR: Sure. Good morning everyone. My
comment is about representation for the Asian community
in Silicon Valley.

As of 2019, there are thirteen congressional
representatives of Asian-American descent who are
currently serving. Many Silicon Valley cities have
switched over to the strict elections under the threat of
litigation, making it easier for minorities to be
elected.

Would you consider redistricting to ensure that more
Asian-Americans will have a chance to be elected to
Congress?

For example, Congressional District 18 has never had
a minority congressional representation. And Asian-
Americans are the largest minority community of this
district.

That's my comment. Thank you so much. I appreciate
giving me the opportunity. Thank you.

CHAIR KENNEDY: And thank you for calling in.

PUBLIC COMMENT MODERATOR: The other two callers
that we have in the queue, if you would like to make a
comment, can you press star 9 to signify that you would
like to speak. Thank you. If you'll press -- please
state and spell your name for the Court Reporter.

MR. HARNISCH: Steve Harnisch.

PUBLIC COMMENT MODERATOR: Thank you.

MR. HARNISCH: S-T-E --

PUBLIC COMMENT MODERATOR: The floor is yours. Oh,
go for it. Sorry.

thank you, Commissioners.
You know, if you do direct Counsel to enter into an interagency agreement with UCLA to do this preliminary analysis, I think it's important that the agreement state that Mr. Barreto shall exclusively use the data provided by the Statewide database. And this is important because the purpose of the document is to be available to the public. So it's critical that it rely on data that is also available to the public. Prop 11 includes this requirement for an official publicly-available redistricting database in the interest of transparency so any Californian can replicate and verify the Commission's work.

When Mr. Barreto presented in September, he proposed using his own racially-polarized voting methodologies and BISG, and that would use individualized voter data not part of the statewide database. Relying on proprietary methodology, using confidential voter records, it could certainly bias or at least limit your choices for future vendors. And as Professor Sadhwani noted, you don't want to tie your hands at this point.

Thank you for your consideration.

CHAIR KENNEDY: Thank you very much for your comment.

PUBLIC COMMENT MODERATOR: And we have one more. If you'll press star 6? Caller 3732, if you will press star
6 to unmute yourself? If you'll press star 6, I will unmute you.

They do have their hand up but I can't unmute them unless they hit star 6.

CHAIR KENNEDY: They may still be listening to the livestream.

PUBLIC COMMENT MODERATOR: Oh. Oh, there we go. If you'll state and spell your name please?


And I want -- my first one, which was the one that I just added, is, really, we have to do better on technology. Being the last caller in the queue, I think I tried to unmute myself, probably, fourteen times.

There's better technology available.

And that actually feeds into my other comments which all follow under the category of, again, an issue that I've raised in the past, which is that the default position of the Commission, being transparent, I understand about protecting yourselves for litigation purposes, but the default position would be to share, and I think in the comments, to share with the public so we can contribute to the conversation meaningfully.
And I think just before you went to public comment there was a question about only one person has requested the former report for racially-polarized voting that was done in 2010 by Professor Barreto. Let me -- number 2, I absolutely think that that should be made public now. It can no longer be relevant to litigation. And if we want communities to, again, contribute meaningful, they need/we need to know what it looks like, so I'll do that.

And I did have a third thought and that is that, again, I understand that it's really hard to do this while you're building relationships with each other, trying to bring in the larger community of people who are interested, as well as those who will simply be affected by these districts that will be drawn over the next ten years, but I think there is also a really good model that the Biden-Harris-almost transition team is working in that they're providing readouts of calls and conversations that they are having at a very high level. I think that's actually a really good model that doesn't -- is not onerous in sharing the information but, also, creates a record that tracks, you know, the pathway that you're taking to make these decisions.

And I say all my -- I apologize for my frustration at the beginning. It is really hard to listen to the live feed which, in my circumstance, is delayed, I don't
know, I'm going to say close to a minute, and being able
to track, being able to call in and make these comments. It's not about me being comfortable but it is about you all being able to get legitimate feedback.

So I echo everything that has been said. These are hard conversations. You're approaching them with intelligence and deep consideration and, for that, I am thankful. And I appreciate the opportunity to comment and again emphasize default to transparency and share the past work on racially-polarized voting that was presented to the 2010 Commission.

Thank you.

CHAIR KENNEDY: Thank you, Ms. Howard.

Katy, are there any others in queue?

PUBLIC COMMENT MODERATOR: No, there are not.

CHAIR KENNEDY: Okay. So I have Commissioner Andersen in queue for comment.

COMMISSIONER ANDERSEN: Well, this is back to the getting the Counsel to, basically, essentially, RPV analyst. And you're saying, okay, the outward document, based on what? This is the whole state? I mean, what? You know, there, what's the scope?

COMMISSIONER SADHWANI: And may I respond?

COMMISSIONER ANDERSEN: Yes.

CHAIR KENNEDY: You might as well.
COMMISSIONER ANDERSEN: Please.

COMMISSIONER SADHWANI: The thought is that we would be -- that the analysis could be done looking at statewide elections as opposed to the localized elections.

COMMISSIONER ANDERSEN: But you're looking at the entire state as one general -- looking at statewide elections in each area; is that correct? It's not just -- I mean, is it basically data on the entire state or on certain areas?

COMMISSIONER SADHWANI: I could be based on certain areas but how they're voting in statewide elections --

COMMISSIONER ANDERSEN: Okay.

COMMISSIONER SADHWANI: -- as opposed to localized elections, if that makes sense?

COMMISSIONER ANDERSEN: Right. But are we asking for this report to cover areas of the entire state or just specific areas?

COMMISSIONER SADHWANI: My sense is that we could ask the analyst to help us determine that. My sense is that we can take the ACS data, as was suggested, actually, by Professor Levitt, to conduct it, to do those types of mapping to identify those areas where we find populations that would be covered by the VRA and begin
that analysis but using statewide elections, as opposed
to more localized elections where we get into, you know,
all sorts of variations in terms of the, you know, the
candidates that are available, et cetera.

COMMISSIONER ANDERSEN: Okay. So just to clarify
then, so you're saying we're essentially looking at the
entire state roughly but it's using -- and state -- but
based on statewide election to give us, these are the
areas that we'll probably have to address, and roughly
addressing those?

COMMISSIONER SADHWANI: That's right.

COMMISSIONER ANDERSEN: And then the next stage
would be actually looking at the local elections on those
particular areas?

COMMISSIONER SADHWANI: That's correct.

COMMISSIONER ANDERSEN: Okay. Got it. Thank you.

CHAIR KENNEDY: Commissioner Taylor?

COMMISSIONER TAYLOR: Yes. I think I would like to
hear from Justin and Marian as it relates to the
statement by Mr. Harnisch in that we should use
information that is accessible to everyone and not
specifically a private methodology to come up with the
analysis.

PROFESSOR LEVITT: So I can speak to the limits of
what census data may provide. I'm going to let Marian
speak to the obligations that you may have about the data
that you've drawn, if that's okay, Marian?

The census data may be quite accurate for some
purposes and less accurate for others depending on
problems that the Census itself has in measuring. We
don't yet know exactly whether -- exactly how good the
census data will be in every part of California.

Some other information can be used to supplemental
the information you get from the census in order to
confirm accuracy, in order to raise questions about
accuracy, or in order to more finely tune the
polarization analysis that you get.

So for example, the Department of Justice recently
used a method that Mr. Harnisch actually mentioned called
BISG analysis, Bayesian inference statistical, I don't
know the G stands for, I've forgotten. Commissioner
Sadhwani is going to illuminate. The Department of
Justice used this, by the way, in overlapping
administrations, so it's not a particularly politicized
method of evaluation. It's a statistical method that
essentially means in addition to or rather than looking
at information top down in a precinct to determine which
voters of which races or ethnicities preferred which
candidates. You look at the information bottom up by
evaluating the likely racial of ethnic identity of
So one way to approach -- if you recall, in any polarization analysis the circles that you have represent the precinct and the racial composition of the voters within the precinct. One way to do that is to look at the census-based breakdown of the racial or ethnic identify of all of the people within that precinct and assume that the voters mirror all of the people within the precinct. So if the precinct is fifty-five percent Black voting-age population, then you would assume that the voters in the precinct are fifty-five percent Black.

A supplemental source of data looks bottom up and says here are the actual voters. Based on what we know about their likely ethnicities, does that confirm that the voters in this precinct, the people who actually cast ballots -- which is public information, just coming from a different source -- the voters who actually cast ballots, not who they voted for. That's not public. But their names and the fact that they voted are public.

And there are reliable, again, Department of Justice approved, court-approved statistical techniques to evaluate, if we know the following 400 people voted, here is their likely racial and ethnic composition. Rather than guessing at those 400 people from the 1,000 people who live within the precinct area, we can try and
estimate based on the identities of the actual 400 people
who voted.

Often, those two sources of information, one taken
from a broader assessment of the precinct demographic and
one taken from the actual voter roll match. And so they
just confirm each other, yes, we think that that shows
that the overall assumptions we were making from the
census data are correct. Sometimes they don't and one
may be -- it may be easier to see that one is more
reliable than another.

And in some cases, for example, in the Department of
Justice instance that I'm mentioning, the location was
small enough. It was a case in Eastpointe, Michigan.
There aren't that many people who live in Eastpointe.
The census estimates weren't that precise. And so the
more accurate information actually came from examining
the voter rolls. There was a wide margin of error in the
information that came from the census, a much smaller
margin of error that came from the actual voter rolls,
and that allowed for more precise analysis than you might
otherwise get.

Those are two different data sources, one coming
directly from the census, another informed by the census.
But all of them involved public data. And all of them
involve a methodology that is also public.
So I don't know that, at least the particular method that Mr. Harnisch was mentioning, I don't know that there's anything private or proprietary about that. The individual choices that any analyst will make, which races to include or how to do that evaluation specifically, those may be individual choices tied to your analyst or your particular choice of consultant. But neither the underlying data nor the methodologies are secretive, if that makes sense, if that's a good clarification?

COMMISSIONER TAYLOR: Yeah. Thank you.

PROFESSOR LEVITT: Now, we have to measure the extent to which the state law limits your choices in that regard.

MS. JOHNSTON: I would agree with that and add the caveat that we don't yet know the validity of the census data, particularly as far as California is concerned, with I don't know how the statewide database is going to deal with census data if it doesn't include undocumented immigrants. So I think we can specify that public information be the basis for the analysis. But at this point I would not want to limit what that public data would be.

COMMISSIONER TAYLOR: Got it. Then are we tied to the same methodology that is used or can we have a
contract where a person uses their own methodology?

MS. JOHNSTON: The methodology would be the consultants methodology.

CHAIR KENNEDY: Commissioner Sadhwani?

COMMISSIONER SADHWANI: Sure. So if I can just weigh in?

The BISG refers to one methodology, as Professor Levitt very clearly kind of laid out, Bayesian improved surname geocoding. And for all of the reason that he laid out, it's very difficult to identify voters.

Surname matching is the method used by the statewide database.

I would absolutely agree with the caller that he should only be using statewide database data and/or ACS data, the American Community Survey's data, if we choose to use the BISG. It is a part of a package that he developed but it is one option in that package. I've used that package. I've actually used that in my research. And what's nice about it, it's an R package. R is a statistical language that can be used in the program. What is new about is not any of the methodology that's being used, with the exception of BISG, it actually allows you to conduct ecological inference, which is the statistical method that's used for racially-polarized voting.
There are a couple different methods of doing that. There are Goodman Regressions, King's method, the Rosen method. And what eiCompare, which he had -- which Professor Barreto had done his presentation on previously using that package, that statistical package, the reason it's called eiCompare is it actually runs the data through all of those different methods and allows you to compare them across to ensure that, regardless of which method you're using, which statistical method you're using, that all of the data is going in the same direction.

My recommendation would be that, assuming we're going forward with Professor Barreto, that we would ask him to conduct both kind of the traditional analysis using CVAP, citizen voting-age population, and the new BISG, using publicly-available ACS, American Community Survey, data so that we could see both. I agree with the caller that BISG is newer. We wouldn't want to tie our hands using only that. But I think if we can actually get both conducted, we would have a whole lot of data at our disposal.

PROFESSOR LEVITT: And just to add 15 seconds to Commissioner Sadhwani -- thank you, by the way, for reminding me about the acronym -- all of the methods, all the different methods that Commissioner Sadhwani just
mentioned have all been approved by various courts, so none of these are sort of newfangled in the way that the courts aren't recognizing. Some of them have been developed more recently than others but the courts have actually validated each of the components that she just mentioned.

COMMISSIONER TAYLOR: Thank you.

CHAIR KENNEDY: Okay. Do we feel that we have exhausted our discussion to the point where we are ready to point, or shall we break for lunch, take public comment, as usual, after lunch and then hold our vote?

Commissioner Ahmad?

COMMISSIONER AHMAD: We actually can't vote right now. We're missing three people. And it's a special vote, correct? So we're missing Commissioner Akutagawa, Le Mons, and Toledo.

CHAIR KENNEDY: Yeah.

MS. JOHNSTON: They're from different groups.

CHAIR KENNEDY: We can vote but the vote wouldn't succeed. Okay.

Then I think we are in a position where we need to hold off and break for lunch, be back at 1:50, and we should be able to take our vote on the motion at that point.

COMMISSIONER ANDERSEN: Actually, one quick thing.
Commissioner Sadhwani won't be here after lunch, so could I ask one quick question of her before she takes off?

CHAIR KENNEDY: Yes.

COMMISSIONER ANDERSEN: In the scope here, so just, I think, Commissioner -- Mr. Claypool said what we're voting on here is, essentially, to get the Counsel to start roughing up a scope. It then is going to come back to us, the actual details of this. It's not like, okay, this is generally what we're doing and then just go, and we don't see it again, or what was -- what are we actually, exactly, voting on?

COMMISSIONER SADHWANI: My sense is that we could go either way, in all honesty. You know, if the Commission feels like we need to see the interagency agreement and approve it in advance? And I think a part of it is I don't know enough about how the interagency agreement works. So if Director Claypool feels that it's prudent to return it to the Commission, I'm perfectly fine with that.

My understanding previously was that RPV analysts were simply hired by the VRA Counsel of 2010. I don't know if that was approved by the Commission but, I mean, I see Marian shaking her head. So please, you know, please let us know what you would recommend.

MS. JOHNSTON: It was a contract with the Commission
COMMISSIONER SADHWANI: A contract that the Commission approved?

MS. JOHNSTON: Yes.

COMMISSIONER SADHWANI: Got it. Okay. Okay.

And in the interagency agreement, is it then the case that the, you know, the monetary request, et cetera, is negotiated then between the attorney and the analyst? So it's -- so then it sounds like then there would be a negotiation between our Counsel and the analyst and then be brought back to us for final approval.

EXECUTIVE DIRECTOR CLAYPOOL: Yes. It's going to work like any contract. And we want our Chief Counsel to have a lot of input in this and to make sure that we've looked at the terms of the agreement and everything else. So it's going to be a typical contract. And we're going to need to reach out and work this out. That's why I talked about it being a draft. It can be done very quickly. But I think that you'll want to know -- this Commission will want to know what the terms are and everything else, and what they're getting, before they sign onto it.

CHAIR KENNEDY: Very good.

Commissioner Fornaciari?

COMMISSIONER FORNACIARI: So then do we need to vote
now? I mean, do we need to vote at all or can we just give direction to the staff to go do that and bring it back, and then we vote on it?

CHAIR KENNEDY: That sounds like a good idea.

Marian, can we proceed?

MS. JOHNSTON: That would be fine.

CHAIR KENNEDY: Okay. Then we would ask staff to prepare a draft for our consideration.

EXECUTIVE DIRECTOR CLAYPOOL: And of course --

CHAIR KENNEDY: Director Claypool?

MS. JOHNSTON: If Commissioner Sadhwani wants to modify or withdraw her motion?

EXECUTIVE DIRECTOR CLAYPOOL: Right.

COMMISSIONER SADHWANI: Sure. I'm happy to do that if we can move forward. Yeah.

EXECUTIVE DIRECTOR CLAYPOOL: And of course, this is going to move through the Subcommittee. I mean, we're going to draft with and they're going to approve and so forth, so it's going to be a coordinated effort.

CHAIR KENNEDY: Very good.


Director Claypool, are you okay with the direction given?

EXECUTIVE DIRECTOR CLAYPOOL: Absolutely.

CHAIR KENNEDY: Okay. Very good.
Professor Levitt, thank you so much, again, for your generosity and sharing your expertise and devoting so much time to us. I feel like you're our coach in the background.

PROFESSOR LEVITT: If I'm the coach, it's a spectacular team that I'm helping to coach, so thank you all for being on the team.

CHAIR KENNEDY: And we will break for lunch and be back at 1:55 please.

(Whereupon, a recess was held from 12:53 p.m. until 1:55 p.m.)

CHAIR KENNEDY: Thank you everyone. Hope you had a good break. Welcome back.

As usual, we will begin the afternoon session with an opportunity for public comment.

So Katy, would you please read the instructions for public comment?

PUBLIC COMMENT MODERATOR: Yes.

In order to maximize transparency and public participation in our process, the Commissioners will be taking public comment by phone. To call in, dial the telephone number provided on the livestream feed. The telephone number is (877) 853-5247. When prompted, enter the meeting I.D. number provided on the livestream feed. It is 91505532099 for this week's meeting. When prompted
to enter a participant I.D., simply press the pound key.

Once you have dialed in you will be placed in a queue from which a moderator will begin unmuting callers to submit their comment. You will also hear an automatic message to press star 9. Please do this to raise your hand, indicating you wish to comment. When it is your turn to speak the moderator will unmute you and you will hear an automatic message that says, "The host would like you to talk and to press star 6 to speak." Please make sure to mute your computer or livestream audio to prevent any feedback or distortion during your call.

Once you are waiting in the queue, be alert for when it is your turn to speak and, again, please turn down the livestream volume once you are in the queue waiting to share your comment.

These instruction are also located on the website.

The Commission is taking public comment on the motion -- I don't know how to call that -- the motion for the VRA.

And we do not have anyone in the queue.

CHAIR KENNEDY: Okay. We will stand by for two minutes to let the livestream catch up.

PUBLIC COMMENT MODERATOR: I will tell the Commission, earlier, the lady that had issues, I will take responsibility for that. I believe it was my fault
because of the way -- because I had repeated the automatic message, she was hitting star 6 when I wasn't actually un-muting her, so I apologize. And if she is listening, I apologize. So hopefully, we've kind of hammered out some of the issues, so it shouldn't come up again.

CHAIR KENNEDY: Fantastic. Thank you.

PUBLIC COMMENT MODERATOR: So Le Mons?

CHAIR KENNEDY: Commissioner Le Mons, welcome.

VICE CHAIR LE MONS: Thank you. Thank you. Good afternoon everyone.

CHAIR KENNEDY: Hope you had a productive morning.

VICE CHAIR LE MONS: Oh, yes, very, very busy up until this very moment.

CHAIR KENNEDY: I can imagine.

Commissioner Yee, that's not just a wave?

COMMISSIONER YEE: Yeah, it started as a wave. Yes, Chair. Thank you.

So for your consideration, so Commissioner Sadhwani does have to teach this afternoon. I have her permission to continue work on the Statements of Work, if you desire. Of course, it would be more preferable to have her here. But I think the proposed statements are pretty ready, some edits to suggest, but it's up to you whether or not to proceed with that after public comment.
CHAIR KENNEDY: Okay. Let me just poll everyone. Do you have questions or comments or suggestions on the scopes of work?

Thumbs up. Commissioner Fernandez does. Okay. I do want to devote most of the afternoon to outreach. But Commissioner Fernandez, we've exhausted our two-minute wait, so please go ahead.

And then, Katy, is there someone waiting? No?

Okay.

So Commissioner Fernandez, you can go ahead.

COMMISSIONER FERNANDEZ: Okay. And it's really quick.

Commissioner Yee, again, thank you for putting this together. I know it's a lot of work, so I appreciate that.

And I only had a comment on the Litigation Counsel one. When it goes into section 6, number 3, and it talks about the experience and it says, "Describe at least ten cases argued." And I was wondering if maybe we want to say describe at least the last ten cases? Because you know they're obviously going to want to maybe put the ones that they did best on and had the best outcome. And so I'm thinking, you know, we kind of want a flavor of everything. And then that would be the same for -- that was A. And then B -- BB.
And then for number 3C, I think it would be important to include the dates in terms of when they represented those agencies or boards of commissions, if they put dates, instead of just saying, you know -- and I don't know, maybe they will. And then also, maybe, references for that, which I think that's what you're getting to.

But that's all I had. Thank you so much. I appreciate it.

COMMISSIONER YEE: Excellent suggestions. No problem adding those.

We did have a question of whether ten is the right number? And you know, I don't know. Does anyone have any sense?

Commissioner -- or Chair, do you want me to call on folks or --

CHAIR KENNEDY: Commissioner Fernandez?

COMMISSIONER FERNANDEZ: I was thinking ten might be quite a bit but I don't -- I mean, but if we say up to ten, I don't know, because some firms may not have that many. Some firms may, obviously, have more than that. So I don't want them to feel that if they don't have ten they can't respond, if that makes sense?

MS. JOHNSTON: If I may?

CHAIR KENNEDY: Commissioner Turner?
MS. JOHNSTON: Ten cases in litigation is not very much if you're looking for someone who's experienced.

CHAIR KENNEDY: Commissioner Turner, and then Commissioner Sinay.

COMMISSIONER TURNER: Yeah. I was going to say, I thought ten was a lot. I did understand that, perhaps, beginning at experience level. But just since you left it in, I thought it was a lot, and it was a lot to read through.

CHAIR KENNEDY: Commissioner Sinay?

COMMISSIONER SINAY: Commissioner Akutagawa had her hand up first.

CHAIR KENNEDY: I do have her next.

COMMISSIONER SINAY: Well, mine is quick.

Whenever I advise philanthropic organizations who are creating grant-making processes, I always say don't ask what you don't want if you're not going to read it. So if you're going to read all ten, then that's fine. But if you're not going to go through and actually -- you know, don't ask for anything you're not actually going to use.

CHAIR KENNEDY: Thank you.

Commissioner Akutagawa?

COMMISSIONER AKUTAGAWA: Hi. My -- I guess I just have some general, other comments on the Litigation
Counsel versus the ten or not ten, so --

CHAIR KENNEDY: Go ahead.

COMMISSIONER AKUTAGAWA: Okay. On the Litigation Counsel part, I would suggest removing that very first portion of the section 2 where it says, "Over the last forty years," up until, "cannot be certain that will be the case again." I think, just to keep as neutral as possible, I would suggest removing that first portion of that sentence and start it with, "The Commission is seeking statements of qualifications from attorneys," et cetera.

I would also ask, in terms of the part that says, "to defend the maps in the event of litigation," I don't know if the maps needs to be a more formal description versus the redistricting maps or something along those lines. It just seems a little casual to just call it "the maps."

And the I also have a suggestion on the Litigation Counsel, number 3, Experience, subset C, so 3C under Experience where it says, "Describe representative legal work performed on behalf of public agencies," I would also add state boards or commissions, to be clear that we're looking for state-level experience.

And the last one is under number 4. It's the -- I guess it would be the third paragraph on the third page
where it says, "Describe any work relating to redistricting or other work," and it says, "during the past ten," and then it just seems like it just drops off. Is it past ten years? That's what I was assuming.

COMMISSIONER YEE: Yeah.

COMMISSIONER AKUTAGAWA: And I guess I'll just make one other comment on the Voting Rights Act Counsel. You know, I noticed that on the Litigation Counsel, you had underneath there, there was a lot of, I guess, other -- not a lot but there were at least three paragraphs plus the fourth one, which is B, about other conflicts. The conflict of interest paragraph or paragraphs under number 4 is fairly short. Do you want to have similar language from the Litigation Counsel also apply to the VRA Counsel? Because I do like some of the things that was in the Litigation Counsel language around conflicts of interest.

And that's it.

CHAIR KENNEDY: Okay. Director Claypool?

EXECUTIVE DIRECTOR CLAYPOOL: I had a suggestion but I reread and it was already in the Litigation Counsel, so I have no comments.

CHAIR KENNEDY: Very good.

Commissioner Toledo?

COMMISSIONER TOLEDO: I would think that asking for
the ten cases would be fine, especially if we might want to just change it to briefly describe. I believe most of these firms would have that already, right? They already have their portfolio of cases they've done and could easily just put it in here. And if just want to know what the cases were, we could -- the Committee could always look into those further through the court records. So if we had a brief description, we'd be able to look into them further, or ask, of course, in follow-up conversations, ask them about it.

Thank you.

CHAIR KENNEDY: Very good.

Commissioner Andersen?

COMMISSIONER ANDERSEN: I just want to -- also, I think it was Commissioner Akutagawa said the conflicts of interest, that should be under Litigation Counsel, as well, so not just, yeah, not just the -- I sorry. It was under Litigation. It should be under the VRA Counsel as well. I think I missed it there.

CHAIR KENNEDY: Okay. Can we -- Commissioner Vasquez?

COMMISSIONER VASQUEZ: Are we for our contractors and others, are we going to ask them to adhere to the same policy around campaign activities? It probably won't be relevant for anyone but just wanted -- I don't
want to -- I guess I don't want to make an assumption.

CHAIR KENNEDY: Commissioner Andersen?

COMMISSIONER ANDERSEN: I know the line drawing, and I believe that Commissioner Sadhwani would be probably saying this about these next -- these ones if she was here, the idea is, yes, you want to ask all the questions. They must disclose everything. It is not an automatic dismissal. It's not an automatic disqualification. But the intent would be -- and you know, Russell, if you would make sure that this is in there, this is what I was saying was a conflict of interest, yes, the same criteria needs to be disclosed. And then it's up to us to decide if it's disqualifying or not.

COMMISSIONER YEE: We had not thought of that. If we did have to add it, would that apply to a whole firm? I mean if they --

COMMISSIONER ANDERSEN: It applies. Well, it does apply to the firm. And they always have those kind of conflicts because they have to bring that up. Again, they'll have them because, in voting rights, they're going to basically work, you know, with Democrats or Republicans and they'll have issues, and we just need to be aware of them all. And then we decide how that -- you know, if it's disqualifying or not.
CHAIR KENNEDY: Okay. With that, are we ready to
turn the afternoon over to the Outreach Subcommittee?

Commissioner Yee?

COMMISSIONER YEE: Okay. Not quite.

So those changes all sound good to me. I think we
can go forward with those. I think we'll stay with the
ten cases. It sounds like that's actually a reasonable
ask.

For the Voting Rights Act Counsel, I think the
suggestions that the caller had this morning, actually,
are pretty good, so I think we can also incorporate
those. Shall I go over them? I actually typed them
up --

CHAIR KENNEDY: Yes.

COMMISSIONER YEE: -- during lunch, and so let me
see if I can manage to share a screen. Wow, that worked.
Okay. Here we go.

CHAIR KENNEDY: Can you enlarge that as much as
possible please?

COMMISSIONER YEE: Okay. Oh, I have to do that
here.

CHAIR KENNEDY: Grab your slider down at the bottom
right.

COMMISSIONER YEE: Oh, I see. No. Okay.

Starting at the top, the section 2, the very end of
that section, "Any applicant wishing to apply," that sentence, just remove that unless we actually do get that posting up in time, you know, so it's there.

Down to section 5, first paragraph where it says, "Based on the 2020 census," based on the discussion before lunch, just change that to "public data," so that could be the census, ACS, right, and so forth, voting records, such as "public data."

The second paragraph, the short paragraph, change "expertise," so, "In addition to expertise with the California Elections Code" -- I'm sorry, "experience -- in addition, experience with the California Elections Code, change "experience" to "expertise," the caller suggested.

I think I would leave Bagley-Keene in there. And then there's that trailing considered there, which we can just strike.

It's amazing how many times you can read something over and miss small things.

Okay, stop me if anyone wants to discuss any of these.

COMMISSIONER SINAY: The Bagley-Keene one --

COMMISSIONER YEE: So --

COMMISSIONER SINAY: -- can you explain why you would like to keep that in? Because every time I've
ready something where we have Bagley -- the public keeps asking us not to include it because it becomes restrictive.

COMMISSIONER YEE: So we're asking for experience with it, that would mean experience exercising good judgment about when it does or doesn't apply, I guess, so it's not -- I think that's relevant.

COMMISSIONER SINAY: But then should we ask that versus what is your experience with Bagley-Keene? Because someone may have everything else but not have done -- you know, we have other legal counsel for Bagley-Keene.

COMMISSIONER YEE: True.

CHAIR KENNEDY: I had seen Commissioner Akutagawa's hand.

COMMISSIONER YEE: And then --

COMMISSIONER AKUTAGAWA: Thank you, Chair.

COMMISSIONER YEE: -- Commissioner Vasquez as well.

COMMISSIONER AKUTAGAWA: Thank you. Thank you. It was just more of a question. I wasn't sure if this got discussed earlier, but during Justin Levitt's presentation, I think Commissioner Sadhwani, or maybe it was prior to him coming on, Commissioner Sadhwani said something about the possibility of VRA Counsel also having their own RPV analyst. And I was looking through
the Statement of Work and I'm not quite sure if it's --
at least for me, it wasn't clearly stated that that would
be an option. And is that something that would be an
expectation that you would want the VRA Counsel to come
with, and whether or not that needs to be laid out much
more explicitly in the Statement of Work?

COMMISSIONER YEE: Good question. It's actually
mentioned, but only briefly, and that's in item three
below.

COMMISSIONER AKUTAGAWA: That's what I thought.

COMMISSIONER YEE: Yeah. The advice will
require --

COMMISSIONER AKUTAGAWA: Because it wasn't really
clear that that -- would we want them to do that, I guess
is maybe more the question, given what Commissioner
Sadhwani had said earlier?

COMMISSIONER YEE: Right. So we drafted this in the
middle of all of those debates over what to do. And even
now, you know, we're not landed yet on which route to
take, so we wanted to leave the option open but not spell
it out yet.

COMMISSIONER AKUTAGAWA: Or it is an option to
include that that's something that we would be open to so
that it leaves that flexibility but it's also spelled out
that we would interested in seeing what they would come
forward with?

COMMISSIONER YEE: We could ask for that more explicitly, sure, you know, that they -- we would prompt them to actually provide -- or to weigh in on that question and, perhaps, provide a proposal, rather than just leaving it open. We could do that.

CHAIR KENNEDY: Yeah. In fact, on that, it might be useful to put that under Personnel in the submission format as a second bullet. If there is an intention to bring your own consultant, then we need that information in that Personnel section.

COMMISSIONER YEE: Right. Okay. We can add that.

CHAIR KENNEDY: Commissioner Akutagawa?

COMMISSIONER AKUTAGAWA: Sorry. One more question on that. That just reminded me that I did have one other question.

I noticed that in the Litigation Counsel there was a section under Personnel that said that the Commission would need to approve any additions to the team and that they would need to bring it forward to -- or maybe it was in this one. Sorry. Maybe it's the other way around.

I think in one of them it was saying that the Commission needs to approve any additions to the legal team, and that they would need to bring them forward so that we can approve it. I think it then -- yeah, I think
it's not in the Litigation Counsel Statement of Work.
And do we want to apply the same standard to both or was there a reason why one had that kind of caveat versus the other one?

COMMISSIONER YEE: No, there was not a particular reason. We just did not think of that.

COMMISSIONER TURNER: I'm looking for that entry. Which one is it on? I don't see it.

COMMISSIONER AKUTAGAWA: Yeah. I'm looking for it real quick.

(Pause)

COMMISSIONER YEE: I'm actually not seeing it.

COMMISSIONER AKUTAGAWA: Sorry. I thought I read it under the Litigation Counsel.

COMMISSIONER YEE: In the Litigation Counsel, yeah, section 2, the third paragraph talks about the Commission retaining the right, at its discretion, to hire others.

CHAIR KENNEDY: Oh, it is in the Litigation Counsel at the bottom of, I believe, the first -- no, the second page where it says, it talks about, "Prior to the date of additional assignment the law firm or entity must submit a resume and Certification of Non-Conflict identified in four below for preliminary review and approval, and then the individual may be cleared to work on behalf of the Commission until final approval. Final approval must be
obtained by a supermajority vote of the full Commission."

That's the paragraph you're referring to --

COMMISSIONER AKUTAGAWA: Yes.

CHAIR KENNEDY: -- Commissioner Akutagawa?

COMMISSIONER AKUTAGAWA: Yes. Yes. And I didn't
see something similar under the VRA Counsel. I think
that's where it was.

COMMISSIONER YEE: Right. Right. Yeah, we can copy
that over.

CHAIR KENNEDY: Okay. Commissioner Vasquez?

COMMISSIONER VASQUEZ: Yeah. I was just going to
offer a potential solution for Commissioner Sinay's point
about Bagley-Keene potentially being restrictive. Could
we just generalize instead of referencing Bagley-Keene,
since I think we're looking for folks, this is a
nationwide search, to say open -- familiarity or open
government law -- open government and sunshine laws?

COMMISSIONER YEE: Let's think. Even if it were an
outside firm, outside-California firm, they would still
need -- it would still be under Bagley-Keene because, I
mean, the work is here, I believe, right? So --

CHAIR KENNEDY: Right. But that's where our own
counsel, chief counsel and Marian, will be able to
provide the necessary guidance on those.

COMMISSIONER YEE: Oh, right. And they may not have
done any work in California before. Right. Right.

COMMISSIONER AKUTAGAWA: Right.

COMMISSIONER YEE: So yeah, okay. So open government and sunshine laws. Okay. That's --

CHAIR KENNEDY: Anyone else? I'm only seeing a portion of my screen.

COMMISSIONER YEE: Okay.

COMMISSIONER ANDERSEN: I just want -- on Bagley-Keene, I mean, it's not like -- it isn't as though you have to have it because you're asking. If they don't have the experience, they don't have that experience.

It's just I like, though, the idea of adding like the sunshine, you know, other open meeting, sunshine, and put like -- you could even say, for example, Bagley-Keene. And that way anyone in California is, obviously, going to put that in. But that's doesn't mean it's -- you know, they might have expertise in that same field. We just want to know what kind of experience they have. So if they don't have it, then that doesn't mean, oh well, you're out.

COMMISSIONER TURNER: That can also be accomplished in an interview question, right?

COMMISSIONER ANDERSEN: In looking into it further, absolutely. But if we don't ask it there, then we would never know.
CHAIR KENNEDY: Marian, could we get your thoughts on this?

MS. JOHNSTON: I think that it is something that you're Counsel can look for rather than relying on outside counsel.

CHAIR KENNEDY: Thank you.

Anyone else?

COMMISSIONER FERNANDEZ: Chair, this is Commissioner Fernandez.

I agree. I mean, I don't want -- this is for a Voting Rights Act Counsel, so we really are looking for that expertise. And I don't want to exclude anyone or anyone feel that they're excluded or not apply because they feel they have to have Bagley-Keene. So I would recommend maybe changing the wording. But I don't think it's something that we necessarily need to look for, for this position.

COMMISSIONER YEE: So we could just strike the whole thing if --

CHAIR KENNEDY: We could strike the whole thing or we could go with Commissioner Vasquez's suggestion, which I think there's -- I mean, my sense is there's some support for that.

COMMISSIONER YEE: Okay. So open government and sunshine laws?
CHAIR KENNEDY: Right.


Moving down section 5 to the bottom of the page -- by the way, I didn't mention, we started with the Statements of Work from the 2010 Commission, that's why this -- that's why some of this is here. So the two cases were from the Statement of Work from them. And I, myself, wondered why these two and why not others. We could just say, "and subsequent relevant cases," you know, to sections 2 and sections 5, Voting Rights Act. I mean, that would cover it, I think, right?

CHAIR KENNEDY: Commissioner Turner?

COMMISSIONER TURNER: Yeah. I was not clear on what -- what are you asking, Commissioner Yee?

COMMISSIONER YEE: Okay. So this is section 5 --

COMMISSIONER TURNER: Uh-huh.

COMMISSIONER YEE: -- item three --

COMMISSIONER TURNER: Yeah.

COMMISSIONER YEE: -- at the bottom of the page, so, "Experience with section 2 and section 5 of the Voting Rights Act, including but not limited to issues with respect to," and then it starts listing the two cases, "Shaw v. Reno," and so forth. So the question is, why cite only those two? So instead, why don't we say, including -- so, "Experience with section 2 and section 5
of the Voting Rights Act and subsequent relevant cases,”
and just leave it at that, so not cite any specific
cases?

CHAIR KENNEDY: Right. And that was the
recommendation from Common Cause and NALEO, was to drop
the specific case references.

COMMISSIONER YEE: Right, because it wasn't clear
why those two.

CHAIR KENNEDY: Right.

COMMISSIONER ANDERSEN: Oh, one -- sorry. One
thing, I would just jump in, you know, section 5 is the
one that was -- that has been taken down in 2013. So we
definitely need someone know that section 5 does not
apply. So we'd want to kind of -- I don't know if we
want to leave that in so they will address, specifically,
what the current law is or how we want to handle that?

COMMISSIONER YEE: So I think Marian has a response.

MS. JOHNSTON: I think that it would be advisable if
someone did have experience with section 5, that you all
knew about that. There is a possibility that section 5
is going to be reinstated. There's legislation that was
introduced this last session to it. And I believe that
Biden has come out in support of it. So it may be that a
year from now you'll be having to redraw your maps so
that you cover section 5.
COMMISSIONER YEE: Okay. And Marian, so to not cite any particular cases, you think that's fine? Okay.

Moving on to the back of the page, section 6, Submission Format. So we just discussed adding a prompt to ask about an RPV analyst, whether they would want to provide one, and asked for their opinion on whether or not they should or we should. Then that was under Personnel.

Number 2 -- I'm sorry, number 3 -- item 3, so, "List significant experience in redistricting activities." The caller suggested changing it to list all experience so as to not cherry pick. I don't know. I'm not -- I understand the point. I'm not persuaded. And then change or expand "redistricting activities" to include "districting, redistricting, and election activities," to cover other work.

The, also, per the suggestions, adding an item, letter E, at, "Any experience with other than VRA-related Voting Rights Litigation." And letter F, "Any relevant publications."

Any thoughts on those?

CHAIR KENNEDY: I'm not seeing the full gallery, so speak up.

EXECUTIVE DIRECTOR CLAYPOOL: Oh, okay. Thank you. My hand was getting tired from waving.
I just wanted to go back to what we were talking about as far as section 5 goes. And I think that we had talked about this before, that we need to be prepared to cover all the bases so that you don't have to come back to redraw your lines in a year. And so it would be very important, I think, that all this analysis almost be predicated on those sections being put back in, and that we be prepared with the -- with whatever we would need to get clearance, even though they don't apply now.

So I know we've discussed that before but I think that's a very important point that we need to keep in mind.

That's all.

CHAIR KENNEDY: Thank you, Director Claypool.

Anyone else?

COMMISSIONER TOLEDO: I just had a quick question for Marian specifically around licensure requirements and/or years of experience, especially if they're going before the Supreme Court or the California State Supreme Court, and whether we should include those there? I don't anticipate a problem because we'll be, likely, contracting with a firm, but just to be very specific about in our RFP as a minimal requirement.

MS. JOHNSTON: Well, some can always be admitted for the purposes of a single case if they are associated with
a local attorney. So I don't know. If you really want to do a nationwide search, I don't think you should require licensure in California. I mean, especially, it depends on what kind of a case it is. If it goes to the California Supreme Court, it's just going to be under California Law. But if it's a Voting Rights Act case, it will be in federal court.

COMMISSIONER TOLEDO: Thank you.

COMMISSIONER YEE: I'll go ahead and stop share.

CHAIR KENNEDY: Okay. So Commissioner Yee?

COMMISSIONER YEE: So I tracked everything suggested. I think I have it down. I can, of course, incorporate all of these. I don't quite know what steps to take from here though. I, you know, of course can reshare the updated draft. But you know, this would be incorporated in the full RFIs and then sent to the Office of Legal Services and off it goes. And we should not have any major changes from that point on.

So what's the best way to proceed?

CHAIR KENNEDY: Director Claypool?

EXECUTIVE DIRECTOR CLAYPOOL: Chair?

CHAIR KENNEDY: Are we best off approving it as modified and trusting that the modifications will be made as approved or should we have time to bring it back at the next meeting? How would you advise us to proceed?
EXECUTIVE DIRECTOR CLAYPOOL: I would approve and trust that the modifications are going to go in. That allows us to push it in -- just push it forward that much quicker. So I would approve it.

CHAIR KENNEDY: Okay. And any -- well, we need to take public comment at this point, correct, Marian?

COMMISSIONER YEE: Somebody needs to make an actual motion.

MS. JOHNSTON: Yes, you should have a motion.

COMMISSIONER YEE: So I move that we approve these Statements of Work to include all changes agreed upon in this discussion.

COMMISSIONER VASQUEZ: Second.

CHAIR KENNEDY: Commissioner Fernandez?

COMMISSIONER FERNANDEZ: I was going to second it.

COMMISSIONER VASQUEZ: Yeah. I think you were first.

CHAIR KENNEDY: Okay. Any discussion?

Katy, would you please read the instructions for public comment?

PUBLIC COMMENT MODERATOR: Sure thing, Chair.

In order to maximize transparency and public participation in our process, the Commissioners will be taking public comment by phone. To dial in -- to call in, dial the telephone number provided on the livestream
feed. It is (877) 853-5247. When prompted, enter the meeting I.D. number provided on the livestream feed. It is 91505532099 for this week's meeting. When prompted to enter a participant I.D., simply press the pound key.

Once you have dialed in you will be placed in a queue from which a moderator will begin un-muting callers to submit their comment. You will also hear an automatic message to press star 9. Please do this to raise your hand, indicating you wish to comment. When it is your turn to speak the moderator will unmute you and you will hear an automatic message that says, "The host would like you to talk and to press star 6 to speak." Please make sure to mute your computer or livestream audio to prevent any feedback or distortion during your call.

Once you are waiting in the queue, be alert for when it is your turn to speak and, again, please turn down the livestream volume.

These instruction are also located on the website.

The Commission is taking public comment on the motion -- I don't know how to call that, the motion for the VRA.

CHAIR KENNEDY: The motion to approve the two scopes of work as amended during this discussion.

PUBLIC COMMENT MODERATOR: That is what we are taking public comment on. And we have no one in the
queue.

CHAIR KENNEDY: Okay. We'll stand by for two minutes.

Commissioners, any further thoughts or comments at this point?

Commissioner Ahmad?

COMMISSIONER AHMAD: Thank you, Chair.

Depending on the outcome of this vote, if the RFI is approved and it goes forward, when can we expect a final draft to start sharing with our networks?

CHAIR KENNEDY: Director Claypool?

EXECUTIVE DIRECTOR CLAYPOOL: So we get the modification and we put it into the shell. Then it will -- we will send it to the Office of Legal Services. They will start their approval, the approval process. That was, in my original timeline, that was where we had talked about the 45 days, but we're hoping for expedited. So if we get expedited, I would hope that we would have it sometime in the second or third week of December. But at the worst case, we get it at the end of December, and then we start sharing it in January, but we're shooting for that middle part. So that's the timeline off the top of my head.

CHAIR KENNEDY: Very good.

Commissioner Toledo?
COMMISSIONER TOLEDO: I just wanted to clarify.

Would the scope of work still go through legal counsel, so our General Counsel would still have an opportunity to review the scope of work prior to finalizing it, or are we finalizing it before that review? And that's just a clarification question.

CHAIR KENNEDY: Director Claypool?

EXECUTIVE DIRECTOR CLAYPOOL: Yeah. The Chief Counsel and your Counsel is going to see everything, absolutely. It's going to run through her. We have to make sure that it meets that standard, so that's the next step.

CHAIR KENNEDY: Very good.

Our two minutes have lapsed, Katy. Has anyone joined the queue?

PUBLIC COMMENT MODERATOR: Someone just came in.

CHAIR KENNEDY: Perfect.

PUBLIC COMMENT MODERATOR: And the person who just dialed in, if you would like to make a comment to raise your hand? If you're just hear to listen, that's okay, too. But if you'd like to comment, please press star 9. Yeah. Okay. Please state and spell your name for the Court Reporter. You're on the line. Can you please state and spell your name for the Court Reporter?

MS. CAMACHO: Yes. Sorry about that. I was muted.
It's Lupe Camacho, L-U-P-E, last name, C-A-M-A-C-H-O.

PUBLIC COMMENT MODERATOR: And please share your comment.

MS. CAMACHO: Yes. I wanted to, I guess, circle back to the question that was asked earlier about where the RFI was going to be published and made public for anybody to be able to submit proposals. So I just wanted to find out if that was something that was solidified during the meeting today?

CHAIR KENNEDY: Thank you for your question. My understanding, from the chair, is that the Subcommittee had not yet considered that but that we anticipate that things will circulate through members' networks. And out Interim Counsel has advised that it would have to be publicized as all other similar contracting actions from the Commission.

Marian, am I correct?

PUBLIC COMMENT MODERATOR: Your microphone.

MS. JOHNSTON: I assume on your own website, as well.

CHAIR KENNEDY: Well, I hope this answers your question, and thanks for calling in.

MS. CAMACHO: Yes. Thank you very much.

PUBLIC COMMENT MODERATOR: And that was our only caller.
CHAIR KENNEDY: Very good.
Then we can proceed to a vote. I recalled last night that we had taken a decision to change our order of voting to start with the person after the Chair in the alphabetical list. So just wanted to remind headquarters of that change in our voting procedure. So if we could start the process with Commissioner Le Mons, and then I will be last.

MS. SHEFFIELD: All right. Okay.
Commissioner Le Mons?
VICE CHAIR LE MONS: Yes.
MS. SHEFFIELD: Commissioner Ahmad? Oh, is it going this way, straight down? Okay. Okay.
Commissioner Sadhwani? No.
Commissioner Sinay?
COMMISSIONER SINAY: Yes.
MS. SHEFFIELD: Commissioner Taylor?
COMMISSIONER TAYLOR: Yes.
MS. SHEFFIELD: Commissioner Toledo?
COMMISSIONER TOLEDO: Yes.
MS. SHEFFIELD: Commissioner Turner?
COMMISSIONER TURNER: Yes.
MS. SHEFFIELD: Commissioner Vasquez?
COMMISSIONER VASQUEZ: Yes.
MS. SHEFFIELD: Commissioner Yee?
COMMISSIONER YEE: Yes.

MS. SHEFFIELD: Commissioner Ahmad?

COMMISSIONER AHMAD: Yes.

MS. SHEFFIELD: Commissioner Akutagawa?

COMMISSIONER AKUTAGAWA: Yes.

MS. SHEFFIELD: Commissioner Andersen?

COMMISSIONER ANDERSEN: Yes.

MS. SHEFFIELD: Commissioner Fernandez?

COMMISSIONER FERNANDEZ: Yes.

MS. SHEFFIELD: And Commissioner Fornaciari?

COMMISSIONER FORNACIARI: Yes.

MS. SHEFFIELD: And Commissioner Kennedy?

CHAIR KENNEDY: Yes.

MS. SHEFFIELD: Okay. Thank you.

MS. JOHNSTON: The motion passes with the special vote.

CHAIR KENNEDY: Thank you.

COMMISSIONER YEE: Thank you all.

CHAIR KENNEDY: So that concludes our segment with the VRA Compliance Subcommittee.

And I would like to turn the afternoon over to the Outreach Subcommittee with a reminder that we have a break coming up at 3:25.

COMMISSIONER SINAY: Thank you, Chair.

Commissioner Vasquez, I'm going to -- is it okay if
I start with just kind of giving an overview of the different folks we've talked to, and then you can start walking through the plan?

COMMISSIONER VASQUEZ: Sure.

COMMISSIONER SINAY: It's not a plan. It's not a map. We still need to figure out the right word.

But anyway, we've met with a lot of different people. And Angela and I have actually kind of -- sorry. Commissioner Vasquez and I have taken -- sometimes we meet together, sometimes we divide and conquer, just because. But I spoke with Jonathan, as well, Jonathan from Common Cause, and James Woodson, who also presented to us yesterday. And just part of it was I was reaching out to them because we had an agenda item and wanted to -- I constantly kind of touch base just to update folks and answer any questions. And unfortunately, Alejandra Ponce De Leon, who has also presented and called in many times, her father passed away, so she wasn't able to join us. But Jonathan had a couple of things he wanted us to know.

First of all -- and this comes from the whole, the network. And we've heard some of this already because they've called in or they've shared their comments. But his first comment to me was, "Wow. You guys are working really, really hard." And I think that's important for
all of us to hear.

And when he says, "you," you know, he means you, all
of you, all of us. And he wanted to thank us for being
so intentional in the work that we're doing and wants
us -- and wanted us to understand that this is an art,
not a science, which I thought was -- when Commissioner
Le Mons said it yesterday, I was -- I smiled because it
was twice that it's been said this week. And I think
it's a great thing to keep reminding ourselves because
sometimes we try to turn something into a science that's
really an art. And it's an iterative process, which I've
heard a couple of times being mentioned to us as well.

And then, you know, the comment about please take
the pressure off of numbers and make sure that you're
reaching a diverse swath of communities. And we
discussed how we kind of were looking at it as the
numbers and then the representation and accessibility.

And then regarding the grant making, which will do,
and I'm making this -- sharing all of this with you
publicly, just so that it is -- that we all have it. The
community is really excited about this process. And as
we've heard several times, they prefer a third party.
And his summary was a little different than the summaries
we heard yesterday from James. But the main thing is,
that he was saying that really struck a chord with me,
was to insulate the Commission from any outside perceptions that we may be biased, or that many of those that we find may be left of center, or any other type of perceptions from the community.

Also, that it's awkward to take money from government and then do advocacy towards that government entity. And that redistricting is much harder for census. And not all groups who did the census may be appropriate to do redistricting. And then he added on that one, "I'm not sure I believe that," is what he said.

I just, during lunch, popped into a Census Legacy meeting. That's what they're calling where the census tables are staying on to do other work for San Diego. And right when I popped in they started talking about redistricting. And there was a lot of excitement around that piece. I couldn't stay very long or ask any questions.

But the -- and then they said just to be careful, that the census regions, some of them were great and others of them were so-so. And I think we're all learning that as we're making our calls, that some of the folks that we email, they respond right away, and others don't. Obviously, Commissioner Turner's was the best in all the work she did. But just wanted them to -- they wanted us to know that if you're ever trying to reach out
and people aren't getting back to you, don't feel bad, that that's just -- that's some.

I also spoke with Am at Philanthropy California, and Megan Thomas from San Diego Grantmakers. Amy is a consultant with Philanthropy California. And Megan Thomas is on the leadership of Philanthropy California. Philanthropy California is comprised of the three big grant-maker associations, so Northern California Grantmakers, Southern California Grantmakers, and San Diego Grantmakers.

And the big update was that state groups that have been funded include the Asian-American Advancing Justice in Los Angeles, and the Black Census and Redistricting Hub, MALDEF, and NALEO. And they have reached out several time several times to the California Native Vote but they weren't ready to submit a proposal, so that's just something for us to keep in mind.

And the types of activities that they funded are varied, are wide, and they didn't give me -- like I don't know who's doing what. I wasn't able to get that information. I think we can get that information. What I learned was that Amy's contract has been over. And so by the time I was asking her for this, she was just being very kind in sharing.

For the sake of time, would it make -- why don't I
just copy and past this into an email so you call can
read who the organizations are and what types of
activities that they got funded in, instead of me just
listing them off; does that make sense? I'm seeing nods.
Okay.

And then for the regional grants, so they did the
state grants, and then they did regional grants. The
regional grants, they've done five and they're at $75,000
each. And they were only -- it was Inland Empire, San
Diego, Orange County, Los Angeles, and Fresno. So again,
the focus is very Southern California, you know, if
Fresno is the furthest north. So those are the two
levels that they have the funding for and that they have
made the grants to.

And then, just in popping into different meetings
and stuff, had conversations with local groups in San
Diego, like MAAC Project, San Ysidro Health. And PANA
mentioned it last week when they met with us, as well,
that there's a concern that if you give money to the
state groups, they're great for the training and stuff
but the money doesn't come down to the local groups if
we're trying to support the local groups.

And they all appreciate unity mapping and efforts to
bring different groups together. But they also want to
make sure that the local individuals and local groups
have direct access to the Commission. And yes,
redistricting is harder than the census but the
communities are ready to do more. So I just wanted to
share that.

One of my lessons learned this session is when
you -- that some of these updates, I probably should have
shared when we talked at the beginning of the meeting
since -- just so that the community and we did have these
conversations and such. And I guess we're still learning
our processes.

Commissioner Vasquez, do you want me to share my
screen?

COMMISSIONER VASQUEZ: Sure. I mean, we're not
editing, at least right now in real time, so we can edit
in real time. I mean, I imagine we will get feedback
but --

COMMISSIONER SINAY: Yeah.

COMMISSIONER VASQUEZ: -- it's up to you.

COMMISSIONER SINAY: No, you're right. It's easier
to talk that way. And everyone probably has it.

COMMISSIONER VASQUEZ: Yes. But if you wouldn't
mind, as we get feedback, keeping note of it?

So if -- everyone, if you're not already there, on
the website it's attachment 10, Proposed COI Budget
Strategy Map. And so we have led here with three
proposed actions for the Commission to consider with background information.

But you'll see, we have put quite a bit of work into fields where we have information. But really everything in the background session -- in the background section is guideposts and not intended to be exhaustive or limiting. They are foundational information from which staff will use as a launching pad.

So you know, what is in the background section also should reflect much, if not all, hopefully all of the input that the Committee received from you all, was it two weeks ago, through the Miro exercise. So again, while we anticipate having and welcome yours and the public's feedback on the background section, that is sort of for informational purposes.

The proposed actions we have framed as, ideally, intentionally building in some flexibility so that staff can take, again, take this information, including the background, and come back with a more detailed work plan, including staffing, et cetera.

So in walking you through the first proposed action, it is for staff to create a grant-making structure to fund local groups that will assist the Commission in its outreach, engagement, and activation efforts with the following parameters, so grants to inform, engage and
activate. We're proposing the size of the grants to be in the range of 5,000 to 20,000. We would like a structure that prioritizes local groups, connecting the Commission to hard-to-reach communities. And that the process that is created be timely so that the local groups are funded, you know, receive the money by March 2021.

Should I stop there or should I go through all three?

COMMISSIONER SINAY: And can I add one thing? We originally had here for staff to create a grant-making structure with a third party or with a philanthropic entity. We ended up taking it out because we've ended up getting kind of mixed messages from Philanthropy California, not that they're the only ones we could partner with, but since they've been already doing redistricting grants.

You know, since then I've had another conversation with their leadership versus their consultant. And they're open to having that conversation and seeing how we can make it work. And so the idea here is really to find and efficient and effective way to get the funding to the groups and to make sure that the funding -- there isn't a little bit taken here, a little taken here, and by the time it gets to where we want it there's very
little left. So this is really getting -- asking staff
to just go be creative.

COMMISSIONER VASQUEZ: Should we -- I can
facilitate.

Commissioner Turner?

COMMISSIONER TURNER: Thank you. Just a quick
question up front.

Looking at the size of the grants, and Commissioner
Sinay was just saying, you know, by the time you, I
guess, allocate it at a certain level there will be
nothing left. This almost feels like a nothing left to
start out with.

And so I'm wondering on grant sizes of $5,000 to
$20,000, will we also have some idea of what the
expectation is that groups on the ground would do with
this amount of money?

COMMISSIONER VASQUEZ: Yes. Yes. So we -- that's
sort of, hopefully, contained within the plan that will
be proposed, the expectations for those grants. But
again, also knowing, you're right, that that's a fairly
small amount, if the groups receive -- we were -- again,
this is sort of the logic. If the groups receive money
by March, theoretically, you know, staff and activities
don't really start until April. And then we have April,
May, June, July, potentially. If our working deadline is
August, that's about four months or a quarter of -- or a little more than a quarter of a year of work that we would be paying for.

So again, we -- I think, also, we may come back -- we may get back a work plan that says these grant amounts aren't really going to be sufficient. We'd only be able to fund X number of groups. We don't think that we'll be able to cover the state. So again, these -- we're trying to give some parameters so that staff isn't trying to create something out of thin air. But trying to build in some flexibility but, also, some guardrails for staff to get us a more detailed plan.

And also, we're now still -- we don't have a deputy executive director. And I think as Commissioner Sinay, over the last two months, have been developing this and putting thought into this, we keep having to kick some things down because we don't yet have a leader, and executive leader over the whole thing for which to hand this off. So we're trying to thread that needle, again, of giving enough details so that things can get started but not tying things too tightly that we can't undo them, they're not working.

So -- but thank you. Yeah, thank you for that question. And I acknowledge that the size of the grants is, at this point, somewhat arbitrary.
COMMISSIONER SINAY: And that these are the parameters, kind of, for the program but not the parameters for the application or the guidelines.

There was Commissioner Le Mons and Commissioner Yee.

COMMISSIONER VASQUEZ: Yeah.

Commissioner Le Mons?

VICE CHAIR LE MONS: Yeah. My recommendation would be whatever the grant window is, you know, the range, that we stipulate that that is the direct-to-organization amount. And any overhead or cost associated with the distribution of those resources is budgeted separately so that that end number, whatever it is, that ultimately, I would imagine, once we get a plan are tied to specific activities, meaning we want X done and we know the price point for that. And an organization doing that particular set of activities would get this type of disbursement versus a different set of activities.

But my main point is to really segregate. We would have a separate line item in terms of a budget for our outreach that is the cost to handle administering this, separate and apart from the in money. Hopefully, that makes sense.

COMMISSIONER VASQUEZ: It does make sense. And I think that's sort of when we even put this out we had not -- we were not factoring in sort of the
administration of it, whether it's a philanthropic organization or some other entity.

COMMISSIONER SINAY: We did ask that question, like from Philanthropy California, what would it be? Because we did want to bring that to the group. And as I said, that we kept -- we kind of got some mixed messages. But as staff goes out, that's a very -- that's one of the big questions, right? What is it going to cost us? And then separate it out and we can say which bucket.

CHAIR KENNEDY: Commissioner Yee?

COMMISSIONER YEE: Thanks for all this good work. So I think you might have addressed this but I just didn't -- it doesn't become entirely clear to me.

So the sole question of whether to administer grants directly or to find trusted partners to do so, so are we leaving that open to staff or is that still an open question and they can make that call?

COMMISSIONER VASQUEZ: Make that call in that as they're developing the plan they can make a proposal based on the information they received. And again, as always, we, as a Commission, will have to say, yes, that structure makes sense or, no, that structure does not make sense. So yeah.

COMMISSIONER SINAY: I'm going to jump over to proposed action 3, which is -- which we're kind of --
we're trying to figure out a date. And this is where
staff, it will be -- you know, but we were saying by
December 14th we would have the different pieces that
we -- the work plan, as well as the kind of the outline
for the grant, you know, the grants program so that we
can approve all that. We wanted to give staff some time.
But we can't too much time because, especially with
getting the RFP, well, whatever we are going to use, the
guidelines, out.

CHAIR KENNEDY: Commissioner Fornaciari?

COMMISSIONER FORNACIARI: So I'm coming from a place
of complete ignorance in doing this kind of stuff here
but I mean, it occurs to me that there's a time issue,
potentially, here with regard to, you know, which path
we're going to take. And if we -- and so I'm kind of
feeling like, and I could be wrong here, if we don't give
the staff guidance on which direction the Commission is
more comfortable with up front, could that cause delays,
unwanted delays at the other, you know, at the other end?

CHAIR KENNEDY: Marina?

MS. JOHNSTON: The only way to avoid that delay
would be if the staff provides two alternative plans and
that's twice as much work. So it would be, I think, very
helpful if you let the staff know which route you would
prefer them to work on. You know, right now you don't
have your deputy executive director, so -- and no staff to do it.

COMMISSIONER VASQUEZ: Perhaps -- so in anticipation of this conversation going long, we have reserved time next week for a conversation about these components. Since it sounds like the grant-making structure is a point of conversation, maybe we should have that conversation next week about where -- which road should the Commission pursue?

COMMISSIONER SINAY: And I think the main reason Commissioner Vasquez and I aren't making a recommendation one way or the other is we don't feel like we have enough information to recommend one path or the other. But if you call do feel like you have enough information, we're more than, you know --

CHAIR KENNEDY: Commissioner Le Mons?

VICE CHAIR LE MONS: I concur. I don't believe we have enough information to make that decision because some of it is beyond our control. And I think that Director Claypool is doing some research. I'm assuming that other staff will research. I can say what my preference would be, which the community doesn't agree with, but I think that if -- well, let me back up. Let me back up and say it this way.

I think if our intention is to get the resources in
the hands of the local organizations, I think this is
where we're going to have our issue, because it's a lot
more easier to facilitate working with a grant maker or a
statewide, those entities that have the infrastructure.

So I think that one of the outstanding questions for
me is what is the level of management of the resources
that's necessary to preserve integrity, to make sure that
the resources are used appropriately, et cetera? And
that can be made very complicated or that could be made
very streamlined.

And so what we've got to back into is what is that
complexity going to look like? And to me, that would
help us better understand whether or not it's something
that we might have to take on because of certain
complexity issues or lack thereof, or we'd have to third-
party it. And I think we then have to discuss all of the
implications.

Let's just say, hypothetically, the shortest path
would be for us to do it directly, if that's even an
option. This is all hypothetical. We may say that we
want to err on the side of doing that path because it
gets us where we want to go in terms of getting the
resources where we want. But we have to make sure that
we put the right guardrails on to manage for perception.
We might say that it's worth it. On the converse, we may
feel like it's not worth it and so we need another
mechanism, even though it might not get as deep at the
local level as we would have wanted.

So I think those are -- when I say we don't have
enough information, I don't feel like I have the answers
to any of those questions that would help me make an
informed decision.

COMMISSIONER VASQUEZ: You -- I was just going to
say, you are basically laying out the conversation
Commissioner Sinay at every meeting between us with those
very questions, Commissioner Le Mons, so, yeah.

COMMISSIONER SINAY: And there are creative ways
to -- the insulation fees -- I don't know if I'm using
the -- well, one of the thoughts was we -- you know,
public-private partnerships are very in and innovative
right now. And this is the Citizens Commission. And so
the way we can insulate ourselves is to create a grants
committee that includes community groups, as well as
Commissioners, as well as philanthropy, and then we've
just insulated ourselves. And so there are ways that we
can do the grants, you know?

So it's how do you create, you know, the risk
management, also the cost, and the level of complexity?
Obviously, if we're doing it, managing that committee,
still it's cost on staff to manage that committee.
But you know, so we've had fun thinking through some of the creative ways we could do it.

CHAIR KENNEDY: Okay. Commissioner Akutagawa, and then Commissioner Le Mons.

COMMISSIONER AKUTAGAWA: I guess thank you, Chair. And thank you, Commissioner Le Mons. I think you brought up some of the things that I had that I wanted to say.

I think, with that said, I do have -- one of the things that yesterday's presenter, I think it was either James Woodson or Kevin Cosney, one of them from the Black Redistricting -- Census and Redistricting Hub mentioned that struck me, and I think maybe this is the part where I began to, you know, weigh more from having us do the work, which is if we give money directly to an organization, I think what I heard is the relationship becomes complicated because anyone that we're going to give money to is, obviously, going to have the best interest of the community I mind, which is what we want them to do.

But at the same time I think they're going to be in this awkward place where they're going to also be trying to balance, you know, what it is that the Commission needs to do because this is the public money of the residents and the citizens, you know, and I guess maybe
the population of California. And so it's as much their money as it is our money, and as much as it is the communities money, too.

And so it does get me thinking, you know, how do we find that balance if we decide to do it directly?

While I like the idea of a subcommittee, I am just imagining the kind of other complications that I think we've all been discovering in terms of Bagley-Keene and the requirements about open meetings. Who is to say, how do these people get elected to be on this Commission? I mean, I heard that loud and clear from James and Kevin particular, is like, you know, selecting people -- or I think, actually, it may have come from our commenters, Helen Hutchison and Lori Shellenberger, who talked about the bias that could be built in when we select one group over another. I mean, there's a lot of land mines that I'm now becoming more concerned about.

And I am also concerned, also because of the amount of time that we have that we need to ramp this up. And we don't have a lot of time.

I even circled the December 14th time frame because we don't have our deputy executive director onboard. We just got, you know, our communications director onboard. Is he going to be -- he doesn't -- he's not even fully staffed up right now. This is, literally, his second
meeting with us or like third day with us. Is he going
to be expected to come up with this plan by himself with
no staff, without understanding what kind of resources
he's going to have? And then is he going to speak for
the deputy executive director, which we don't even know
when this person is coming on?

I think there's a lot of questions that I have right
now that I am just raising as concerns, not that I don't
like what you put out here because I was kind of excited
about, yeah, let's get the money directly into the
groups. But then, in hearing the presenter yesterday
speak about it, it just took me down this whole other
kind of path that I thought, oh, my gosh.

And then do we even have the time, on top of
everything else that we're going to be doing, you know?
Because we're going to be having to ramp up for public
input meetings and all other kinds of things. Do we now
need to also manage this money, which is going to take
up, I think, a significant amount of time because it is
the public's money? And I don't think we could just -- I
know we won't be casual about it. And I know that we're
going to be very careful. But that also means -- being
very careful means a lot more time on top of what is
already going to be required, or a lot of time in a short
period, to really get what we need ramped up, so --
CHAIR KENNEDY: Thank you.

Commissioner Le Mons?

VICE CHAIR LE MONS: So I hope this conversation is giving staff some insight into the kinds of additional things that they might need to explore, so I'm hoping that that's happening as they figure out what our options are.

I think that all of the comments that you just offered up and considerations and concerns, Commissioner Akutagawa, are possibilities. I really feel like until we really are clear about what we can do -- I mean, we could spend the next three meetings talking about all of these things without the information. So I'd recommend that we get the information and figure out what our paths are. And then we'll know what minefields we have to navigate to be able to make informed decisions based on what is actual.

Because there are -- I think one of the big distinctions that we haven't raised is that the difference with us and the previous group is it's we're making a decision about our outreach money, to give it to someone else, so that's the fundamental difference right there.

Last time there was an outside agency who used their own money. So it doesn't matter whether we do it
directly or we do it through -- whoever we choose to handle this money will be under the same degree of scrutiny. So just passing it to a third party doesn't suddenly solve that issue.

So I think that these are very important, intricate considerations that we have. But I think rather than, you know, spinning out about all the potential pitfalls of it, knowing what path we're going to walk might be a more focused way to look at, what are the pitfalls to this path or that path, whichever ones we are considering?

So that would be my thoughts about that.

CHAIR KENNEDY: Thank you.

Commissioner Akutagawa?

COMMISSIONER AKUTAGAWA: Pass.

CHAIR KENNEDY: Director Claypool, did you have your hand up?

EXECUTIVE DIRECTOR CLAYPOOL: No. I had a thought, but then Commissioner Le Mons stated it.

CHAIR KENNEDY: Okay.

EXECUTIVE DIRECTOR CLAYPOOL: Thank you.

CHAIR KENNEDY: Then Commissioner Fornaciari, Commissioner Fernandez, and then I'll have a comment.

COMMISSIONER FORNACIARI: I'll wait. Thanks.

CHAIR KENNEDY: Commissioner Fernandez?
COMMISSIONER FERNANDEZ: I think Commissioner Akutagawa was before me.

CHAIR KENNEDY: All right. I thought -- did you have something further, Commissioner Akutagawa?

COMMISSIONER AKUTAGAWA: Yes. So thank you, again, Commissioner Le Mons.

I think based on what you're saying, I do -- let me just propose, I think if there is a leaning one way or the other on the Commission, one thought I have is, to save time, in terms of having the staff do some of the research. For example, if we just decide we do want to just give the money to a third party, then we could just direct the staff to just look at that, instead of just examining all of the potential possibilities.

And it will save us some time so that then, when the December 1st meeting comes around, we're ready to move forward much more quickly than to just have them kind of figure things us, then us debate at that time, and then try to then give, basically, what's going to be about a week to two weeks for the staff to come up with a further plan. That's just what I would just like to say in terms of let's just make a decision one way or the other now if anybody has any strong preferences.

And my thought is, I mean, I would just propose that we do discuss, you know, do we want to just give to a
third party and just be able to have them manage that for us, and we'll just manage the one person versus multiple entities?

CHAIR KENNEDY: Thank you, Commissioner Akutagawa.

Commissioner Fernandez?

COMMISSIONER FERNANDEZ: Yes. I do want to echo what Commissioner Le Mons said. We're going to be scrutinized and criticized whichever route we go. My concern with going with a third party, I guess my concern would be to make sure it's an open process. The same names keep getting thrown around in terms of coalitions and all this other stuff. And you know, I'm glad and I'm happy that Southern California is covered, but I also have Northern California that I'm really worried about.

And my concern is if we go to a third party and they already have the coalition organizations they're used to they might miss out on other organizations that are also out there. And just because they're not linked to some of these, common cause or philanthropy, that they won't be selected.

So I'm really torn between do you go with a third party? But if we do I want to make sure it's a very open process because I am concerned about Northern California, to be honest with you.

So that was mainly my comment, is either way we go
we're going to be criticized, but I'm also looking out
for my part of the state.

COMMISSIONER SINAY: We also, just to respond to
Linda -- I mean, sorry, Commissioner Akutagawa and
Commissioner Fernandez, we had originally, when we first
thought of this money way back when, there was a time
when we thought as we're creating -- you know, it puts
more onus on us to think of our outreach plan and where
do we want to have focus -- not focus groups, but where
do we want to have town hall meetings, and then we pay,
you know, for the town hall meetings based on where we
are. You know, as the regional teams and we split up,
you know, we might identify who would be those partners.
And we create a quick process.

I mean, we kept saying quick. And we don't have to
create a complex. You know, it could be a two-page form
that, a lot of things, they just check off. And they
might do a little narrative. You know, which one of
these activities are you going to do? Which region?
What county? You know, none of this has to be complex.

And so it can be -- I mean, that's another way that,
yes, we would be doing it but we would be paying. Like
we've always said, we want to pay for those groups who
are going to be helping us on this effort, so it's a
whole different -- it's not competitive, per se, but it's
because we built that partnership locally. You know, so it all kind of depends, I think, also, on how we want to do our outreach and how much Commissioners want to be involved.

As much as we've said there's a lot of stuff in here, I do want to bring up a few pieces just so as you're thinking through, you know, we are looking at the outreach being about informing the public, as we've talked about often, outreach and engagement. And outreach and engagement is just going a little deeper.

So the informing the public would be launched in January. It would go through mid-February.

That's the time when we, as the Commissioners, get out there. You know, we -- I'd love to say we each have five presentations a week, but let's just say one. Even if we did one presentation a week, that's a lot of presentations out in the community. And these could be -- I know all the civic organizations are actually looking for presenters. People are having all these different Zoom meetings. And this would just be a dog and pony show that Mr. Ceja would help us, would create and train us on, and could just, you know, go out and do as many of those as possible.

And then it's about going in deeper, and then going in deeper. When we talk about work -- the workshop
piece, like train the trainer, that's really we're looking -- you know, that's -- it was a great point yesterday of what are we doing and what are we seeing them do, and that's not clear on this, and we do need a little bit more clarity.

But the community has -- there's community groups that have been funded to do the train and trainer. And so it's how can we work with the train and trainer? You know, so if we give someone, you know, if we give someone $10,000, can it -- part of that has to be that they have to attend a train the trainer workshop so they're trained by them, you know? And so there's just different ways of looking at this.

Having said all that, I really, I go back and forth. And so that's why I -- we -- that's why we haven't made a recommendation, Commissioner Vasquez, is because there's -- the three nuances that Commissioner Le Mons brought up are really critical. And we've tried really hard to get all the data for you all and it's been kind of frustrating because we can't get it.

CHAIR KENNEDY: Okay.

Commissioner Taylor?

COMMISSIONER TAYLOR: Yes. Thank you. And maybe I might address with Commissioner Fernandez.

Do we have to think of it as a singular third party?
If there's a third party that might specialize in Northern California, what if we employed more than one third party? And that sort of spreads it around. And again, we're going to get scrutinized one way or another. But at least it shows some diversity in who we give this money to so that they can reach different sets of populations.

COMMISSIONER VASQUEZ: I had made that recommendation in some of our conversations in the Subcommittee. So yes, that's also -- at least that seems like a possibility for me to make sure that we got regional coverage.

So we could also -- I mean, to that end, we could think about whether we want to look at regional philanthropic partners or whether we have a statewide and then one that is doing hard-to-reach communities or, I don't know, more than one sort of outlet for the money is also, I think, an option.

But again, that's another road that we are asking staff to explore and identify. Again, to Marian's point, that's time.

COMMISSIONER SINAY: So having worked in kind of the philanthropy world for twenty years, it used to be that each Grantmakers Association was separate. And then when it -- and then recently they created the Philanthropy
California, which was bringing the three big Grantmakers Associations together. We did talk to them about Northern California and our concerns. And they did come back with a list of partners that they have in Northern California, you know, the community foundations and whatnot.

So when it comes to philanthropy, one of the best thought may be that it gets divided between the Northern California Grantmakers, the Southern California Grantmakers, and -- well, San Diego Grantmakers does Imperial, as well, but you know, there's different ways of looking at it.

I just want to make sure that we're clear with staff. When we're saying third party, we've been thinking of a philanthropic entity that then can make the grant. If we turn that into a competitive process, and then there's another competitive process to actually get the money, we're not getting that money out there any time soon.

And so it's really about how do we think through how we create a partnership with a philanthropic entity and then they do the grantmaking.

CHAIR KENNEDY: Okay.

COMMISSIONER SINAY: So I want to just make sure that we have it right.
And it is break time. I did put my alarm on.

CHAIR KENNEDY: Thank you very much. It is break time. We'll see everyone back at 3:40 please.

(Whereupon, a recess was held from 3:25 p.m. until 3:40 p.m.)

CHAIR KENNEDY: Thank you and welcome back to our afternoon session. We are continuing our discussion with the Outreach Subcommittee.

I have on my list to speak, Commissioner Fornaciari had passed. I'm coming back to you if you'd like to comment now. If not, we'll move to Commissioner Andersen.

COMMISSIONER FORNACIARI: No. I'm just going to continue to listen and try to formulate my thoughts. Thanks.

CHAIR KENNEDY: Okay.

Commissioner Andersen?

COMMISSIONER ANDERSEN: Okay. Thank you.

First of all, this is a lot of work. I really appreciate Commissioner Sinay and Commissioner Vasquez, who have been bringing up presentations and going through. This is a lot of information. This is kind of what everyone was looking forward to, you know, getting out and seeing everybody and meeting everybody. And COVID times, it really changed what we sort of get to do
compared to what we were thinking of doing.

And you have come up with a -- basically, this is a really hard thing. You're trying to establish the task of outreach. Also, how to fund the outreach. And then how to implement both. And this is -- you have great questions. I don't necessarily have answers to them. But what I do want us to have a look at is the timing of it because this is a piece that, quite frankly, alarms me, knowing what we have to do.

And also, I've always looked at this, and this is where we're maybe back to our sort of overall scope, to get people to properly participate, it's a three-touch process. And as you have down here, it's the education, then it's getting their participation, well, basically, you know, and then a third time around or fourth time around is when you actually get the real information. And I'm alarmed, if we wait for activation of public hearings until March through June, we're in trouble.

And I like the way you have the education parts, inform the public, education, you're launching in January. Like I'd like that like as soon as. Also, I believe the COI tool is -- that's supposed to be ready early January.

And so as I'm seeing, I'm kind of seeing, hopefully, the education part is number 1 touch. Getting their
information and the outreach is actually using the COI tool, using our other tools, contacting people is our second touch. That actually, rather than have -- you have down here starting in -- I guess education and some of the outreach, that's beginning almost right away, when we go out and start the presentations. And because what I believe is the people who are really into this will actually start presenting maps to us as soon as we start doing any presentations. So I'm thinking it will be -- our outreach is an ongoing thing from January, virtually to the end when we turn in the maps.

And so I think if we look it that way it might be a little easier in that we have to fund certain parts of it. But I'm concerned, if we wait and we don't have any actual activating, you know, we're not actually even starting to get COI tool going until March, I'd like that to start earlier and/or mid-February, and the idea being we actually have our information from everybody before the census data actually hits. And then from the census data hitting, then our public meetings are -- we have -- you know, also in early January, I'm kind of thinking Gantt chart here, trying to tie the outreach into the Gantt chart, and in phases.

And I'm thinking, in terms of our money, we have to come up with multiple third parties, I guess, and
incorporating it as certain people are ready to go and
other people will follow, you know, kind of like the
larger, more organized groups. And then we can see, as
we start getting information in, where we really need to
get the other grants to the smaller people to help them
and to help them help us, I guess.

Because what I would like us to see is, essentially,
changing dates on your draft here of the first education
part starts in January, the next part actually starts
in -- let's see, on page 4, and that's actually outreach
and engagement. That also starts in mid-January.

And the next part is, basically, activation, that's
starts in mid-February, not until March, with the idea
being when the data comes in, which is more like, I'm
saying, April, we don't actually know, we are already to
the point where our meetings have communities of
interest, essentially, maps of that, a lot of them. We
have all the -- we have our, obviously, state's, you
know, our counties', our cities', that's all there. So
when we start our very first initial mapping, we already
have a lot of that information there. We're not then
going the COI tools on it, you know, the COI, our
communities of interest. We have a lot of that going.

And then, as that puts together, because then our
next series of maps will be much more succinct. I'm not
sure if that makes an sense. But what I'd like to do is
move that up a little bit.

And so how -- I kind of wanted to talk about the
time frames.

COMMISSIONER SINAY: Commissioner Andersen, can I
respond to your first questions please?

COMMISSIONER ANDERSEN: Certainly. Yes. Thank you.

COMMISSIONER SINAY: So the February 15th date was
put into place because we had had the conversation that,
yes, the COI tool will be ready January 1st, but our
marketing material and all the other tools will not. And
we want to make sure that we don't just --

COMMISSIONER ANDERSEN: Yeah.

COMMISSIONER SINAY: -- release the tool without
having everything else in place. And the COI tool is not
separate from our marketing tools and our public
education and all that.

And so it was actually Commissioner Kennedy who -- I
was thinking along the same lines and he had said, "Hey,
let's do midweek," and I was thinking -- or "mid-
February." And I was thinking, oh, wouldn't it be fun to
do some theme around a heart and Valentine's, but that's
on a Sunday so I put it -- so I moved it to the 15th.

That deadline can change a little. But when you think
about that we're not getting out there until the 4th or
the 11th because we, you know, we don't have meetings, we've cut out some of our meetings, and we need to be trained on the dog and pony show and all that, that it was really going to be most groups aren't going to start meeting until the 4th or 11th of January.

So the idea is the groups -- the individuals that are ready when we do the February 15th on convening the meetings and get it out, they will be starting to submit their COI tool. It will be just like the census, that there's the early adapters, which probably all of us filled out our census right away. And then there will be those that need to learn a little more and go a little deeper on what we mean by this. And so we're looking at it as three touches.

I don't -- I mean, it's an interesting thought, and I would love to hear from everybody else, if we think that by the time the Census information comes out we should have all the information from the public, all of their COIs, or you know, we're actually going to leave more time because that's such an important part of the conversation.

COMMISSIONER ANDERSEN: Yeah. I'm just saying we'd like to. You know, obviously, we don't have -- we won't have everything. But the more we can get ahead of time the less confusion there will be in terms of people
creating a group artificially to change a map. And we want the real community input. And if they give us real communities before we're actually drawing lines, that's my idea, if we can get that moved forward. And I totally understand that.

The reason I'm bringing this up is just to say, like we did with the RFIs, to ring alarm bells. You know, we need to move these things up and quickly as soon as we possibly can. It's how the outreach fits into it that I -- the monies involved, that is the really difficult piece, which I understand we're addressing. But I just wanted to put it kind of in perspective of the Gantt chart and the timing.

COMMISSIONER SINAY: So if I'm hearing you correctly, you would like to see where we put timely -- we want the grants to be timely so local groups are funded by March 2021. You would actually like to see them funded by February. But I'm not sure if we could do that but we can put that in there.

I also want to address another point that both Marian had made and others. I think --and, Commissioner Vasquez, you can support me or not -- I think we don't have all the data we want but we're on the cusp of collecting that data that we've been wanting, and that there's really two options for staff to look at. And
it's going to be about two or three calls to get all the
information they need because we have identified the
right people. You know, Director Claypool has the right
people to talk to. And we've got the right people to
talk to on the community side now. So I think we could
get some of those answers quicker than some people were
afraid that we might not.

CHAIR KENNEDY: Commissioner Toledo?

COMMISSIONER TOLEDO: I'm just curious about the
data that you're speaking of. What's the data that's
lacking or that you're anticipating getting?

COMMISSIONER SINAY: Who can do it? What's legal?
What's not legal? What can we do at the state? You
know, what does the grant mean at the state level?
What's the timing? What's the restriction? And then on
the philanthropy side, what would it cost? How can do
they do it? Are they willing to do it? But we've found
the right people who can answer those questions now.

COMMISSIONER TOLEDO: Thank you.

CHAIR KENNEDY: Have I'm missed any hands? Things
are moving around but I just want to make sure that I
haven't missed anyone.

COMMISSIONER VASQUEZ: You didn't miss me. That was
my first hand raise.
COMMISSIONER VASQUEZ: I will say, I hear you, Commissioner Andersen, about wanting to get the money out sooner. And ideally, even once the money hits, there's going to be, you know, a two- to four-week lag time before activities actually start. People don't know if they're going to get the money until they get the money, so there's time administration costs as well.

That being said, we've also heard today that there's a huge concern about our deadline of getting even a plan for us to approve by December 14th. So if we are responsive on one end to giving more time to, you know, get our -- finally get our deputy executive onboard, give them a chance to look over a plan and at least greenlight it, much less, you know, have some real input into it, you know, we're looking at the end of the year, not approving something until after January, trying to find a partner by which to distribute it, if it's not us.

So our timelines are just not -- they're not aligning. So maybe would welcome some attempts to align these.

CHAIR KENNEDY: Thank you.

Commissioner Turner?

COMMISSIONER TURNER: Thank you, Chair. I apologize. I had to step off for a quick meeting.

But I want to find out, did you already -- to the
Subcommittee, have you already reached out in an attempt to have someone to ask as a fiscal sponsor that will be able to do the grants portion? You've already done that? Okay. And that's in progress or you're not receiving feedback?

COMMISSIONER SINAY: We were getting mixed signals.

COMMISSIONER TURNER: Okay.

COMMISSIONER SINAY: But now we've found the right person to speak -- you know, we have someone now, so.

COMMISSIONER TURNER: Okay.

CHAIR KENNEDY: Very good.

Commissioner Andersen?

COMMISSIONER ANDERSEN: I guess what I'm really asking is we don't have -- do we have to wait until all this money is in place? I mean, can we start, you know, our education? Should we -- we should be getting all of that stuff together now, I'm not sure who that's relying on, who that Subcommittee is, but start our outreach, as we are, like our groups are starting, although I haven't been working on that? And then actually starting to get out into -- you know, start making our first touches. I don't quite -- that doesn't have to wait until the money comes in, right? We can, essentially, start going and then, you know, I mean, say -- we can start lining up. If we don't start lining up, everything has to be
fourteen days ahead of time anyway, so things like that, that I'm asking about.

CHAIR KENNEDY: Commissioner? Okay. Commissioner Le Mons?

VICE CHAIR LE MONS: Yeah. I was just going to respond to Commissioner Andersen.

There's no -- the idea here isn't about waiting, a comprehensive halt until March. They're talking about these things in phases. What we were talking about was that very specific granting process, whatever that's going to look like. There's some realities that there are some outstanding information. We have to get it. We're waiting to get it. But it doesn't mean that everything else is waiting until we solve that or that even whatever that process looks like, that that's going to be the jump-off point for everything else. It isn't.

So I think that we just kind of drilled in on that point, on what they've been presenting, and we're kind of extrapolating it out across everything.

And I just want to also say that I'm going back to sort of a fundamental idea that maybe we need to get clear on because some of what we need to do is going to run at cross purposes to other things. And there's going to have to be some give-and-take depending upon what our priorities are.
And you know, not to beat a dead horse, but that part, I think, we've yet to really establish. We have some ideas. We have places that we're leaning. But we, as a Commission, have yet to weigh in on what our very agreed upon specific priorities and goals are. And I think if we had those, we'd be able to point some of the comments and reactions back to what we've agreed to. And then the first step will be either to live with that agreement or adjust it.

So I think the fact that we're, you know, right now, we're all kind of leaning different, not meaning we're all leaning different ways but there are different schools of thought, I think, at this point, and I think that we haven't gotten there.

One of the things that we've been really trying to do is be patient for our outreach wing of the organization, which is starting to happen, so that's cost us time and it is what it is at this point. And it's continuing to cost us a little bit of time. But if the position is that we are not going to allow that to cost us time and we're just going to go and do something specific, then we have to shift gears a little bit. So I think this, again, is a balance.

And then, finally, I say not only do we have a tremendous opportunity because of the pandemic to do
things differently, I think we, still, most of our points of reference is how they got there before because it's only happened once before. And what I recall is that we came into this not bound to that and really wanting to be much more expansive. And I know we all kind of, yeah, agree with that, and Director Claypool is clear on that and that's why he's talking about making projections and we're going to need more money, because we have a very different idea.

So I don't know if it will look anything like the meetings that they had before where people came and drew maps and all of that. I'm suspecting it's going to look very different. And I think the plan that the Subcommittee is putting forward, that Mr. Ceja has not had a chance to really digest and come back, I think this kind of digging in is premature. I think we should probably hear the high level and talk about philosophical concepts that we support or don't support, so that when he takes the recommendations from the Subcommittee, our feedback, and his expertise, the thing to do dig in on is this plan, not this document.

That's my thoughts.

CHAIR KENNEDY: Commissioner Vasquez?

COMMISSIONER VASQUEZ: Yes. Commissioner Le Mons expanded on many of my points. I was going to try to
redirect folks to the proposed actions. And even to the extent that we need to, in my mind, and Commissioner Sinay, you can push back or interrupt me if I'm going offsite, but I think the actions, again, are where I'd like to focus. And it sounds like, particularly this grant-making structure, there are different schools of thought and different considerations.

So while we are waiting for a more fully baked plan from a communications perspective, because we still don't have a deputy executive director, that we take either the rest of the time we have today or -- and/or next week's conversation to flush out that -- where we as a Commission stand on what that grant-making structure should look like so that we can give additional details back to staff about the direction on that particular piece.

And that may actually be most beneficial because that gives Mr. Ceja and the Subcommittee to connect, and also for us to reconnect with the philanthropy people, and also give another week for Director Claypool to get more information from the state about how we can grant and what that timeline and process looks like.

CHAIR KENNEDY: Okay.

Commissioner Sinay?

COMMISSIONER SINAY: Completely agree.
And I would also like to add, if you look at the proposed action number 2, you'll see that what we've tried to do is, looking at the 2.07, I think it's $2.07 million budget, this is just a recommendation, you know? Commissioner Vasquez kind of came up with her numbers, I came with mine, and we were excited because they were about the same, so we were like, okay. But we have no proof of how we came up -- you know, why we came up with these numbers. It was just something to put there. And we would need a fuller budget and the costs.

But the idea -- this is to answer the question Commissioner Andersen said is, wait, we're not going to get the money out there until -- no. On here we have -- let's put -- we put -- we're saying, hey, let's put some money aside for civic technology. Let's put some money aside for local grants, and the collateral, digital, visual, whatever it is we need. And so all of that -- my thought would be that all the collateral stuff would be ready by January and it would start going, you know, the sooner the better.

But the idea is just to kind of create a high-level budget breakdown, I guess, is the right word so that then staff can actually create a budget and tell us, hey, you know, you've underestimated or you've overestimated or whatnot.
CHAIR KENNEDY: Okay.

Commissioner Andersen?

COMMISSIONER ANDERSEN: Okay. With that in mind, I have two questions.

Engagement tools, I don't know if the data group has had a look to see if you have any kind of idea if $150,000 to $200,000 is in your ballpark. Do you have any clue on that?

And the second question would be by collateral, is that the education material?

COMMISSIONER SINAY: Anything we need for social media, outreach, education, videos. We left it very broad. Fredy's liking the fact that it's broad.

COMMISSIONER VASQUEZ: And if I can also add? The engagement tools are not necessarily -- again, as we're talking about overlapping of Committees, the way we saw it and the way we have tentatively proposed, you know, up to $200,000 for engagement tools, that's not necessarily the data management stuff, right?

It is simply like if we decided -- if we found something, a great new system that's not Zoom to facilitate town hall-type input sessions, that is what the $200,000 could go to, as compared to like a really fancy data management place where we can accept maps and blah, blah, blah, blah, blah. That's not -- that is a
separate line item. And that, we would look to, probably, Director Claypool. That's how we see the other operational stuff that we may need to budget out and request more money for, is how we see it.

So engagement tools, we did think it was wise to sort of hold on to some money internally for some great new public meeting software that we don't know about yet. But we're not thinking that that $200,000 is up for budgeting out for other types of civic technology.

CHAIR KENNEDY: Thank you.

Commissioner Ahmad?

COMMISSIONER AHMAD: Thank you. Can I just ask a clarifying question?

So you all have listed out three different proposed actions. Are these actions in combination with each other? Are they standalone actions in your view?

How -- I think I'm just confused as to what are you asking us to do? Are you asking us to direct staff to look into developing a work plan? Does that work plan have a monetary value tied to and the staff would work within those constraints?

I see the different proposed actions as could be, potentially, standalone, but then they contradict each other at some point. So I just need a little bit more clarification on that.
COMMISSIONER VASQUEZ: We did want to break these out so that, you know, we could, theoretically, approve actions two and three. But maybe we still feel like we do need to have that conversation about we want to get more specific on the grant-making structure before we ask staff to fully back that out.

I don't -- I guess I guess I could sort of see how they're conflicting. But we're asking in proposed -- such as proposed action two, we're asking, basically, to keep all of $2.07 million in the arms of outreach, and this is how we're tentatively, with the idea that local grants are the vast majority of that money, and then that we would hold back some amount for a great new engagement tool and some collateral.

I don't see that necessarily as conflicting with action three which is, okay, take that $2.07 million, take our ranges that we've somewhat arbitrarily put on here, and come up with a staffing budget with the idea that, yeah, maybe staff comes back and goes, okay, well, we only have $2 million and it's only going to buy you half a car. So if you want the whole car, you're going to need to double this, sort of a thing.

And again, that plan, in my mind, is also informed by proposed action one, which is to say, okay, come up with the grant-making structure, come up with potential
parameters for what the local grants will have to share in order to get the money, with the idea that, again, staff could come back and go, okay, even up to $20,000, you're going to get X amount of work that's not even remotely sufficient. If you want full coverage the recommendation is to double the grant size.

So again, we still don't have a lot of information but we are trying to be responsive to the fact that folks want an idea with some timelines. And we still, we don't -- we just don't have the staff capacity. Between Commissioner Sinay and I, we just -- we simply don't have the capacity to go through and create a full budget and plan with timelines. And that is something staff -- we need staff to do.

CHAIR KENNEDY: Very good.

Director Claypool?

EXECUTIVE DIRECTOR CLAYPOOL: So when I looked at this plan, first of all, I appreciated the fact that you stayed within the $2,065,0000, because that is what is line itemed in the budget, and it has to go to outreach. It was, as I understand it, and I'll know a little bit more this week, it was contemplated to be that money that supplanted the Irvine Foundation's grants from last time. And so -- and I read this to be fairly straightforward.

I understand that we are going to look at a program
of trying to see how much we can get for funding through these grants, that we're going to hold back some of the engagement -- some of the money for engagement tools and collateral because we have to expect that we're going to have to have some additional funds for that, and that the staff would go ahead, once we have the deputy executive director, and now that we have Mr. Ceja, they're going to go ahead and develop a plan and give you an idea of about what they can buy with this type of plan. And then we either have enough to do it or we have to shift gears.

The one thing that I think this Commission really needs to do is remember that as things come up, you're just going to have to be able to pivot. And if it's not enough money to pay for one thing, then we might have to reevaluate it and see what else it can pay for, but it has to go to outreach because that's how it was scheduled by the legislature.

So I have a pretty good idea of what I think you're asking our deputy executive director and our communications director to do and I think they'll do a good job with it. I know that Mr. Ceja is already moving forward at great strides that seem to come with youth to bring people aboard. We've talked to a couple of different people about -- or actually with one person who had been working with the census that knows quite a bit
about grants, we're looking -- he's already -- Mr. Ceja
is already looking at the staff he would need to do
things, like graphic arts and so forth.

So we're moving forward on those basic steps,
Commissioner Andersen, that will put us in a position to
have the materials and things we need to do. And I think
that the timelines fit well with this, as long as we can
actually put a plan in place sometime in mid-December,
okay?

Any questions?

CHAIR KENNEDY: Commissioner Sadhwani?

COMMISSIONER SADHWANI: I'll defer my action. Thank
you to everyone who has put in so much work on this.

Just one thought. We have an individual that we are
trying to hire as the deputy executive director. Are
there any circumstances in which we might hire that same
individual, while we are in this waiting process for all
of the paperwork, as a contractor who could help develop
this plan so that we can gain the same individual's
expertise and help move us forward? I certainly
recognize he also has a full-time job and maybe he
doesn't want to do that.

But to the extent that this is going to be a major
part of the work that they move forward, I'm wondering if
there could be an interim fix to help bring him onboard
in some sort of partial capacity?

I see Commissioner Fernandez having her hand up, so I'm going to assume not, but I just wanted to throw that out there.

CHAIR KENNEDY: And Director Claypool first, and then Commissioner Fernandez.

EXECUTIVE DIRECTOR CLAYPOOL: I'll defer to Commissioner Fernandez.

COMMISSIONER FERNANDEZ: Yes. Interesting that you should bring that up, Commissioner Sadhwani. We had a meeting on Monday. And so, actually, what -- we directed Director Claypool to go back to see if we can potentially put the candidate in what we would call a temporary blanket, so that we can bring him over right away. And then once the position is established, then roll him into the position. And he'll have more information on that.

And I have to apologize to the full Commission that I'm not sure why I didn't think of that prior. I guess I've been out of personnel too long. But I'm not even sure if that's possible anymore, but I do know that we've, in my prior jobs, we've done that in the past as kind of to fill the gap.

So anyway, I'll defer to Director Claypool with that.

EXECUTIVE DIRECTOR CLAYPOOL: And so we did look at
the blanket. And there's a -- the problem with it is
that he needs -- the individual who will be taking the
position needs a place to land. And so for that to
happen we have to have this position established. So
we're back into this circle of needing and established
position.

We did make some headway this week in finally
going -- actually, Raul had to go and get the position
classification from CalHR to give to DGS HR because,
apparently, they wouldn't make the trip themselves. And
so we've got the classification, and so we're working,
but it doesn't look like the blanket is going to work
Also, putting him under contract is problematic,
mainly because he is working for another state agency.
So we can look at that but I would be -- I would think
that his own agency would be a little bit, you know,
suspect on that, particularly given that I'm not entirely
certain that his own agency knows that the transition is
going to be made.

So I will look into it, Commissioner Sadhwani, but I
don't believe that's going to be a viable route for us.

CHAIR KENNEDY: Commissioner Le Mons?

VICE CHAIR LE MONS: I just hope that last statement
didn't mean that that bought us another two weeks passed
all of this administrative stuff that we're doing, per
se. I mean, I'd like to know if that is our reality that we're facing, I guess.

And then the second thing is if we have a position, an unfilled position, on our staff, that we could just hire him in and then promote him when the position is finished?

CHAIR KENNEDY: Commissioner Fernandez?

COMMISSIONER FERNANDEZ: Well, how about an interagency agreement with the other agency?

CHAIR KENNEDY: Director Claypool?

EXECUTIVE DIRECTOR CLAYPOOL: It will -- again, to put this delicately, I don't know how much this individual's current organization knows regarding the possibility that he may be leaving. And if he hasn't got a place to land, then this individual will probably not be willing to disclose this plan, not knowing that it's a done deal. That's all.

CHAIR KENNEDY: Commissioner Fernandez, and then Commissioner Le Mons.

COMMISSIONER FERNANDEZ: Well, maybe we could call him and ask him if his agency -- I could call and ask this person, just to see like where we are. I mean, I'm --

EXECUTIVE DIRECTOR CLAYPOOL: As long as -- so you're talking about calling our individual?
COMMISSIONER SADHWANI:  Exactly.

EXECUTIVE DIRECTOR CLAYPOOOL:  Well, by all means, if he -- if this individual is willing to make that disclosure and to take that leap, then I would welcome, you know, welcome the suggestion. Then possibly that, the interagency, is a possibility. I just know personally that if I were in that position myself, that might be a little bit dicey for me. That's all.

CHAIR KENNEDY:  Thank you.

Commissioner Le Mons?

VICE CHAIR LE MONS:  Thank you for that, Commissioner Fernandez. I was going to say, I think we are having weekly updates with this person, so we sort of have a relationship, we're dating. So let's up the ante. And then the second piece to that is -- I forgot the second piece. Okay. I'll have to think about it. I tickled myself there.

COMMISSIONER FERNANDEZ:  (Indiscernible) --

CHAIR KENNEDY:  Commissioner Turner?

COMMISSIONER TURNER:  So my question is a little bit off of that, so -- but, basically, on the plan, on the phases, I was going to ask, under the inform, when we go out to do the education, is there a pre phase that we can enter in where we're actually receiving from some of the groups that came and presented here that told us that
they would give us tips on strategy and how to present to
the people?

CHAIR KENNEDY: Commissioner Le Mons?

VICE CHAIR LE MONS: So I did remember the other
question. And then I also wanted to respond to
Commissioner Turner.

So my understanding is that this is just an
administrative process. And I don't know if you were
just being very conservative, Director Claypool, in your
responses but I want to make sure that I didn't hear that
this is risky. Like is this just a matter of something
going through the process or we're not sure that it
actual can happen? So that's important clarification.

And then I have a response to Commissioner Turner.

CHAIR KENNEDY: Director Claypool?

EXECUTIVE DIRECTOR CLAYPOOL: So with all things, as
we've spoken about so many things, in the state you hope
for things to go the length of time they're supposed to
go and you hope to have the outcome you're supposed to
get. But I can't tell you that this outcome will be
timely. I am almost positive it will be done, I just
don't know what timely is, particularly when you're
dealing with the Department of General Services.

I have to tell you that when we had the
conversation, and I actually met this individual through
a Zoom call and we had a discussion, so Commissioners Fernandez and Ahmad said, "So tell him what's going on."
And I said, "Well, you know, the Department of General Services," and he rolled his eyes and he smiled. So he knows that it's problematic rolling through this rather bureaucratic org.

We're pushing all the buttons we can. We have a couple more to push. But do I believe that he will, eventually, come aboard? Ninety-nine percent positive.

VICE CHAIR LE MONS: Okay.

EXECUTIVE DIRECTOR CLAYPOOL: Can I tell you that he will come aboard in two weeks? I'm hopeful.

VICE CHAIR LE MONS: Yeah. I was clear on the timing part.

EXECUTIVE DIRECTOR CLAYPOOL: Okay.

VICE CHAIR LE MONS: I know that there's no guarantee. It was really more of whether it was in jeopardy of it being able to be done, like was there some question that, at some point along this process, it might fall out, like not -- we can't do what we're trying to do in terms of creating this role, but it doesn't sound like that's an issue. So that was the part I was asking.

EXECUTIVE DIRECTOR CLAYPOOL: Okay.

VICE CHAIR LE MONS: What I was going to say is actually a recommendation to Mr. Ceja based on
Commissioner Turner's comment. I was thinking yesterday, after the -- as the presenters were presenting, and then reflecting on some of our previous presentations, and I think that there are multiple sources of individuals that had some really clear ideas around strategy, communication strategy, outreach strategy.

And I don't know whether or not the Subcommittee has already addressed this or put together some kind of informal loosely-defined advisory group or group of people who are willing to lend their thoughts to it. But it might be worthwhile to reach out to some of them who have at least come and presented. And as you're developing your plan, you could take into some of those things.

I know some of them you've heard, but then some of them, you know, have been a while back, so however you want to structure that, that just might be a good way to incorporate some of their thoughts in that strategy.

CHAIR KENNEDY: turn?

COMMISSIONER TURNER: Thank you. And the other piece is that I just wanted to name that the groups that I spoke with, as well, they are already -- they went into census with the idea that they would be participating with redistricting. So they're not waiting to begin to create things, and so that we're not creating something
that might -- I can't imagine it conflicts, but make sure
that it works in concert with what they're already doing.
A lot of the groups are already reaching out. They're
already trying to come up with educational material and
what have you. So I just would want to make sure we're
correctly syncing up on that.

CHAIR KENNEDY: Very good.

Commissioner Toledo?

COMMISSIONER TOLEDO: Just given that the deputy
executive director is such an important role for this, I
was just wondering if there's any advocacy that the
Commission can do or anything with the legislature or
with others to allow us to move this forward quicker, or
any suggestions you might have, Director Claypool, in our
ability to move this forward?

CHAIR KENNEDY: Director Claypool?

EXECUTIVE DIRECTOR CLAYPOOL: So that is one of the
things we're going to touch on next. So right now, we're
still trying to do it. We're at the ends, actually, of
our patience with doing it where we're -- with the
standard people that we've been working with this
morning.

And I really have to apologize. This morning our
chief counsel, Ms. Marshall, was talking to two deputy
directors and the chief counsel of the Department of
General Services about this very subject. I mean, we've elevated it that far. We're getting -- the next one would be to go to the director. Past that, we have some ability to go to the legislature ourselves, and so that would be the next thing. All of these things during this week and early next week. After that, then we would call on people who seem to be very well connected in this Commission to reach out and do the same.

But that's the trajectory of this. It's ramping up fairly quickly. That's why I'm confident we'll get the position. I'm hopeful for a more rapid termination of the process. But if we need you all to get in on that, then we will come back to you, but we also have some other available means that we're going to try to tap first.

CHAIR KENNEDY: Very good. Thank you.

Commissioner Sadhwani?

COMMISSIONER SADHWANI: Sure. Thank you.

And Director Claypool, I very much appreciate that. And I just recall, like from interviews with you, with Mr. Ceja and others, I think one of our questions had been about utilizing your ability to utilize your contacts. I know, I remember, you know, that you bring with you a wealth of experience and many years of a career in state service. So I would certainly implore
any of our staff who have contacts there that can begin
to move mountains to do so. We have been waiting for
quite some time already.

So I think if there are contacts that can be called
upon -- I don't have contacts at DGSS. You know, that's
not really ever been something I've done. But I would
certainly hope that the new folks that we've brought into
our staff could call on those networks to get this moving
for us.

CHAIR KENNEDY: Thank you, Commissioner Sadhwani.

MR. CEJA: Can you hear me now? Okay.

So just to reiterate what Director Claypool was
saying, we're using the olive branch first. And if that
doesn't help, then we will move to making those phone
calls to the low-hanging fruit of legislators that we
know to get the ball rolling. But it's at the top of our
priority.

CHAIR KENNEDY: Commissioner Sinay?

COMMISSIONER SINAY: I was just going to go back to
the plan and just see if we're all okay with kind of --
as Commissioner Vasquez, this is really -- and as you
know, we keep saying, this is kid of our opportunity to
hand something over to, at the moment it's Mr. Ceja, but
to staff and just with some ideas of what we've all been
thinking about and saying. And then the actions, really
to give them parameters so that they could understand,
you know, have specific marching orders.

One thing I heard from Commissioner Turner that I've
been really worried about, as well, is groups are hungry
for the information. I mean, groups shouldn't be
creating their own information on this. We should be
creating information, you know, that collateral, for lack
of a better, you know, the sheets, for them. And I'm not
saying it in a -- I'm not saying it to put down the great
effort that they're doing but just they are so busy that,
you know -- so there's just different -- there's just so
many priorities right now.

The other piece I wanted to make sure is, you know,
one of the areas that's still missing, and it's not on
here but it did come up yesterday, and we didn't know
that this is what it was called, but Commissioner Vasquez
and I were looking at the sectors and how to do outreach
to the sectors. We had first focused on the communities
of interest. And that also worked well with the
access -- Global Access Subcommittee. But we are
looking -- we were looking at how do we do outreach to
the economics, you know, some of the other sectors'
business and such, whatnot?

I did want to propose, my strength is in design and
kind of bringing everything to a place like here and then handing it off. That's the joy of being a consultant, sometimes, is you get to walk away. And I do love implementing. But Commissioner Le Mons has said on several occasions that this is what he's been waiting for. And so I'm willing to step back now from this Subcommittee, so we do have the different parties on the Subcommittee, as well as the expertise that's need for implementation to support staff as they're looking at all of this.

CHAIR KENNEDY: I have been deferring for, I don't know, two or three columns of initials to comment on a couple of things, so let me take a moment and comment on two things.

One, Commissioner Sinay, you just made a comment about partners shouldn't have to be developing their own materials. We should be doing that. And that's certainly one way to do it. And I certainly, you know, don't want partners to feel burdened with having to develop their own materials because we're not yet in a place to do it.

But I also don't want them to feel like, you know -- well, I've seen this done two ways. I've seen it done where the body in our position develops the materials and then everybody else is just a distribution
channel. And then I've seen it done where that's a possibility, so the body in our position can and does produce the materials, but partners are also welcome to produce materials. And what I generally do in those situations is invite the partners to share their materials with the group for review.

I mean, the worst thing that can happen in a situation like this is that, for any reason at all, misinformation gets out. Once misinformation gets out it is enormously difficult to, you know, even with retractions and corrections and whatever, there are impressions left, there are, you know, minute channels where the misinformation has just taken root. And no matter what you do it spreads and spreads and spreads.

So I do like to invite partners to share materials so that, you know, we can all work together to make sure that there are no factual errors, that it's not any -- it's not an issue of our trying to exercise control or style or anything else, but just working together to try to ensure that there is no misinformation out there, so I just want to put that on the table.

The second, and this goes well back in the conversation -- as I said, I've been deferring to others -- I feel very strongly that we are or we would be best off with an arms-length relationship to anyone who
is receiving funding out of this outreach pot. You know, my experience, and perhaps not directly relevant, but when the Mexican Government funded the Election Commission to pass through funding to domestic observer organizations, the Election Commission had the good sense and said, well, you know, it's going to look really bad if we fund the groups that are going to be observing our work.

So they came to the United Nations and said, could you please help us? And so the United Nations ended up administering those funds, you know, and there was a committee that oversaw the process and so forth.

I just think that the potential damage to our reputation, were we to be granting funds directly to groups that are going to be, you know, providing a large amount of the input to us, to me, the dangers there are just too great, so I'll leave it at that.

And anyone else, I'm happy to recognize. I see a coffee mug but no hands.

Commissioner Fornaciari?

COMMISSIONER FORNACIARI: Thanks. I just want to thank the Subcommittee for putting this together. And it's really been helpful for me to kind of understand what you had in mind or what the thoughts are and where we're going.
I guess my question is, I'm looking at the first phase, and it's public education, and so I guess Mr. Ceja is getting that ball rolling kind of already because of its launch on January 11th, kind of thing, but is that what we're doing at this point? I mean, are we moving forward with that? Or do you need -- I mean, I guess my question is are you looking to the Commission to bless this and then move forward or where do we go from here?

COMMISSIONER VASQUEZ: I mean, the hope was that everyone is onboard, more or less, with, again, the orientation to this work, the direction and the, I guess, speed, although that is also flexible and not always in our control.

I think as I've -- I'll bring it back to what I opened up with, is that everything in the background section is sort of up for -- is in flux based on things we can control or our staff can control and things we can't control, particularly timelines and, you know, potential partners, and even potential tools.

So even if we don't take specific action, because it seems like we don't always need to have approved actions to direct staff to do something, our hope is that folks are generally onboard with this strategy map going forward. And we'll be looking for staff in the next few weeks to have a more baked out plan based on some of the
priorities and strategies we've laid out here.

CHAIR KENNEDY: Commissioner Ahmad?

COMMISSIONER AHMAD: Thank you. Would it be -- it's up to you, Chair, but I would be interested in hearing public comment about this item, if that is something that is on the agenda.

CHAIR KENNEDY: Yes. We do generally take public comment before the end of the day. And unless there are other Commissioners wanting to weigh in at this point, I will ask Katy to -- Commissioner Le Mons?

VICE CHAIR LE MONS: I have a question for Mr. Ceja. I don't know.

First, I guess I'd ask, have you had a chance to review what the Subcommittee has presented? And based -- yeah?

MR. CEJA: Yes.

VICE CHAIR LE MONS: And so based upon your review it might be helpful for us to hear just some high-level thoughts that you have about what's been presented and kind of what you need and what you're thinking in terms of how you take what's been presented to you and this discussion and maybe help give us some sense of your strategy, what you're planning to do at this kind of pass-off, quote/unquote, unofficial, not completely, has happened?
MR. CEJA: Yeah. So I think we're having a conversation with the Commission chairs over the weekend to discuss just that, what the transition would look like.

What I've gathered so far is that it's a great starting point. The fear I have is if a lot of this outreach is going to go viral due to COVID-19, how is that going to affect our plans now and the structure that we have set in place? And is this plan -- will this plan be amendable to change in the future if the directives from the Governor's office are that we cannot do in-person meetings or do data collection in that sense.

Commissioner Sinay?

COMMISSIONER SINAY: Most of our thinking behind this was that it was virtual, so it was more the other way around, the other way around meaning all of a sudden there's a vaccine, we've all gotten it, and we can -- you know? So no, it was all -- that whole thinking behind this was virtual.

The piece, I think, that's still missing is on the final kind of the line drawing and how we're going to do that. And I think part of that is we keep hoping we find better tools so that we can engage folks with that.

CHAIR KENNEDY: And I'm a bit of a broken record on this but I hope that we can have a robust element of this
introducing the Commission and the legal framework,
understanding we don't want to get into the weeds on the
legal framework, but we do need people to understand who
we are and the constraints within which we are going to
be getting this done.

Mr. Ceja, was that a hand up?

MR. CEJA: I was just going to say that, yes, as far
as outreach to the general community, that was -- our
priority was to let everyone know who we are, what we do,
and what our purpose is, and then delve into the process
as it rolls out.

CHAIR KENNEDY: Very good.

Katy, would you please read the instructions for
public comment?

PUBLIC COMMENT MODERATOR: In order to maximize
transparency and public participation in our process, the
Commissioners will be taking public comment by phone. To
call in, dial the telephone number provided on the
livestream feed. The telephone number is (877) 853-5247.
When prompted, enter the meeting I.D. number provided on
the livestream feed. It is 91505532099 for this week's
meeting. When prompted to enter a participant I.D.,
simply press the pound key.

Once you have dialed in you will be placed in a
queue from which a moderator will begin un-muting callers
to submit their comment. You will also hear an automatic
message to press star 9. Please do this to raise your
hand, indicating you wish to comment. When it is your
turn to speak the moderator will unmute you and you will
hear an automatic message that says, "The host would like
you to talk and to press star 6 to speak." Please make
sure to mute your computer or livestream audio to prevent
any feedback or distortion during your call.

Once you are waiting in the queue, be alert for when
it is your turn to speak and again, please turn down the
livestream volume while you are in the queue and on your
call.

These instruction are also located on the website.

The Commission is taking public comment on -- I
don't know how we're describing this.

CHAIR KENNEDY: Well, we're taking public comment on
both the outreach strategy document that we've been
discussing but, also, any general comments.

PUBLIC COMMENT MODERATOR: Okay. So we're doing
general comment and the specific? Okay.

We do have someone in the queue.

CHAIR KENNEDY: Could you invite them to join us
please?

PUBLIC COMMENT MODERATOR: I will do that.

Please state and spell your name for the
Commission -- or for the Court Reporter?


PUBLIC COMMENT MODERATOR: The floor is yours.

MS. CAMACHO: Thank you. I just had two recommendations as a resident. Having gone through this census decennial, and having been very active in my own community as a Complete Count Committee chair, I wanted to make just two recommendations.

One, Mr. Kennedy, I wanted to provide some support for the message you had, Commissioner Kennedy, for the continuity of the information being disseminated through the outreach that is going to be conducted. Yeah, it was seen that there were some pieces of information that were -- sometimes when it is allowed for other entities to modify the message to meet certain criteria to engage a community, sometimes the message is either lost or some misinformation is produced. And at no fault, of course, of anybody. I mean, it's never done intentionally. But Mr. Kennedy, Commissioner Kennedy, is very correct. Once that gets out there, sometimes it is very, very difficult to rein that back and to bring it back into focus to the correct information.

So I would make that recommendation, that the continuity of the information be protected and maintained
with the Commission, and that the Commission be directly
involved in that so that the continuity is maintained.
That is one of my recommendations.

The other recommendation I would make is, having
been in the public sector for many, many years and
contracting out to private entities, private nonprofits
and private regulation for-profit companies, I would just
make the recommendation, and I don't know, I didn't hear
it coming up at all in this meeting, when you hire
more -- how can I say this? If it is overseen by the
Commission, the distribution of this funding, there is
more funding available to distribute. If there is a
hiring of an agency to do that for the Commission, of
course, then that overhead has to be paid.

So I just wanted to bring that to the table and
provide that as information. I'm sure most of you
already know this but I didn't hear it discussed, so I
just wanted to outline that. But obviously, as a
consultant is hired to put together this plan or
disburse the funding, that funding, of course, has
cost overhead. That process is going to cause overhead
and so, therefore, a lower amount of money will be
disseminated to the local efforts for outreach and
engagement. So I have seen that through my personal
experience. I just wanted to bring that to the table.
Thank you very much.

CHAIR KENNEDY: Thank you, Ms. Camacho.

Katy, do we have any other callers?

PUBLIC COMMENT MODERATOR: That was it.

CHAIR KENNEDY: Okay.

Any other Commissioners at this point? Commissioner Turner?

COMMISSIONER TURNER: Thank you, Chair. And thanks. I appreciate the comments from Ms. Camacho. I couple of things I wanted to lift for that.

I still want us to balance any potential administrative fee that would be charged if, indeed, there was a fiscal sponsor with, perhaps, litigation that we may have if, indeed, we have unfairness issues that we have to deal with later based on how the grants are, you know, distributed, number 1.

And then, also, on the input and the consistency of documents, we took comment from several organizations to ensure that they help us be able to reach out. I'm thinking even of NALEO that talked about allowing to see themselves and participate in different ways. I still am a strong advocate to ensure that we hear that and allow flexibility. Frequently, being in the field, if we receive information that is so vanilla or so technical, we will always change it anyway by the time it comes out.
We always hone it to make sure that it is something that we believe will reach the people that we are trying to reach.

And so I don't know that we could ever be totally in control of what goes out whichever way we do it. I just think that if we engage the organizations up front and get their input and use their input to create the material to begin with, that may give us a better opportunity to have it look like we want when it's disseminated.

CHAIR KENNEDY: Thank you. And I think that also goes to the point that was made earlier today that, you know, having a coordinating -- a communications coordination group would be important in this situ, because that could certainly help ensure that, you know, groups have adequate flexibility while also ensuring the quality control over the factual correctness of the material that goes out.

CHAIR KENNEDY: Commissioner Le Mons, was that your hand?

VICE CHAIR LE MONS: Yeah. I just wanted to concur with Commissioner Turner. I think we have to balance between the two and give flexibility.

I'm hoping that we're -- you know, our basic who we are, there's no flexibility in that. We are who we are,
right? But in terms of how -- what we're asking from the
community is communicated, I'm hoping we're going to come
up with frameworks and templates that really give space
to the communities.

And when I say that I'm really talking about those
that aren't your mainstreamed organizations and groups
that are used to dealing with and utilizing information
that comes out from the state. We've been acclimated to
that. We're talking about the hard-to-reach communities.
We're talking about communities that have trust issues
with government. We're talking about all of those kinds
of groups. And we have to give them the latitude because
to come in heavy-handed will only reinforce all of those
barriers that we're trying to actually get beyond, so I
think we're going to have a mix.

And what Commissioner Kennedy just said about having
this group that can advise and support, I think, will
mitigate some of the frustration and blowback that we'll
get, because we are going to get it. That's just -- we
think the maps are going to be challenged. We've
accepted that. But trust me, when you begin to talk
about the kind of outreach enterprise we're trying to put
together and achieve, we're going to get blowback from
the community because we're going to do our very best but
it will be what it's going to be. So I'm glad we're
having this. I've been looking forward to the discussion today.

And I still am of the belief, personally, that there's some key outcomes that we want that I look forward to us addressing in our next meeting from community. And I'm not clear, I have ideas, but I'm not clear as to the Commission on that yet, what those outputs are that we're expecting from them. We know about the education we want to give them but it's in service of something. And I'm leaving that open intentionally. I think that that's a discussion that we should definitely have in our next meeting at that time, so that's other outreach to discuss.

And I guess in my mind I kind of think of this whole thing like a puzzle. And all of the communities across the state have a piece. And we're wanting to understand their piece of the puzzle and plug it in. And like, in my head, that's sort of a very simplified idea. But I think we have to come up with some kind of simplified idea to communicate to the community what we are wanting to get from them. Because when you think about a community of interest, we all know that that could mean a lot of on-the-ground, kind of, what does that mean, you know?

And then the other thing is to be able to then
translate that community of interest into a map. I think we've got to come up with those very simple mechanisms that allows community to be able to do that. Because, yes, I can tell you all about me and my community and all of that, but that doesn't mean that I can then translate that into something that is absolutely useable by the Commission in its process. So if we could help solve that, either through community groups helping us, or we have ideas about how we solve that in that real simple one-two-three kind of idea that makes I easy, I think it will be helpful to really get useable feedback.

Yeah. So thank you.

CHAIR KENNEDY: Thank you.

Commissioner Sadhwani, and then Commissioner Akutagawa.

COMMISSIONER SADHWANI: Very briefly.

I agree with all of the comments that have been said, particularly about the caution that we should take, and I agree with that.

And I just wanted to also put out there, this is uncharted territory. This morning we spent a lot of time talking about the maps being litigated under VRA compliance. I would hate, however we proceed with utilizing these funds, I would really hate to see the maps undergo litigation for VRA compliance and have it
based on how we have put out these funds or who we have contracted with, what kinds of communities we have contracted with.

So I just want to offer that. I don't know that that would be the case. But because it's uncharted territory, I'll leave it at that.

CHAIR KENNEDY: Okay. Thank you.

Commissioner Akutagawa?

COMMISSIONER AKUTAGAWA: I just want to say I appreciate this conversation a lot. It's been really interesting in just hearing all the various perspectives that come up. And I know I may have thought about one thing one way but I think, as I've heard the conversations, I've really come around to, perhaps, maybe going back to where I originally was, for various reasons. And one of them is what Commissioner Le Mons just brought up about hard-to-reach communities and communities with trust issues.

I guess I am kind of curious. Something that Commissioner Le Mons just said got me thinking about something else that was on the document that the Outreach and Engagement Committee put together around Commission-identified goals. And he asked about -- or what I heard him say is about, you know, how do we get the maps? I mean, how do we reach especially communities that not
only are just hard to reach but, you know, how do you help them explain, you know, explaining there are communities of interest?

And again, I go back to the presenter yesterday and one of the things he said about is it better to get one map that includes the input of fifty people who came together at a meeting or virtually that a community organization organized versus fifty separate maps but we're talking about a one-street difference. And I don't see it reflected here. I don't know if that's something that needs to be reflected in the goals that I think -- what I'm seeing here.

And Commissioner Le Mons, I'm not sure if these are the goals that you were thinking about or if you're thinking about something different? It's on the --

VICE CHAIR LE MONS: I wasn't aware -- yeah, I wasn't aware of those goals when I made the goals' statement yesterday. Now that we have been made aware of those goals, I still don't feel like -- I think those goals are a subset of -- it's not that those aren't the goals, but that's not an exhaustive list of the goals. I think that's an aspect.

COMMISSIONER AKUTAGAWA: Okay.

VICE CHAIR LE MONS: And I think that's the conversation that we need as to what do we hope to get?
Like, we've talked a lot about the output in terms of the education and helping people understand why this is an important process and why it's important to participate. There's also got to be education around how you participate and it's sort of going more in that direction. We won't have trouble saying how. But we've got to figure out how to say how in a very easy way that delivers us an output that we can actually use.

And I think that that part right there, for me, is a still a question mark. And not that I'm confused, I just don't think that we have gotten to that point yet to define that. And that's going to be really, really, really important because, at the end of the day, whatever route we take to the fund disbursement -- and I think we're going to probably have to some more discussions around that, as well -- I'm hoping that what's available to us will really shape and narrow that discussion so it won't be as -- go in as many potential directions as it can go at this point, so I won't focus on that.

But whatever we ultimately decide to use as a mechanism to get our message out to the ground level of community to get their input, we have got to be able to be asking for an output from them that we want and can use. And I know that the Subcommittee that's looking at processing the data, like we thought about this from this
idea, we're going to be getting input in all these different ways and we want to find a group that can take this information and translate it for us, that's yet to be seen. Like what are those ways? How is that going to be tracked? And again, this is where we're trying to figure all this stuff out.

But at the end of the day, in order to send an of these groups out and say, okay, this is what we need you to come back with and that's what you've demonstrated, by coming back with that thing, you've demonstrated what we wanted you to demonstrate for those resources. And I think if we can make a clear line to that, and we can show that that's nonpartisan, and we can show that that was based on a certain amount of reaching all of that, I think a lot of the concerns that people have about how we can be influenced and affected can be mitigated. But again, we can't begin to even have a risk conversation around this until we have more information.

I hope that answers your question, Commissioner Akutagawa.

CHAIR KENNEDY: Thank you, Commissioner Le Mons.

We have a caller. And then after the caller, I have Commissioner Turner.

PUBLIC COMMENT MODERATOR: If you'll please state and spell your name for the Court Reporter?
Hi. This is Rosalind Gold, R-O-S-A-L-I-N-D, and the last name is Gold, G-O-L-D. And I'm with the NALEO Educational Fund. And I just wanted to ask for some clarification on an idea that was mentioned earlier, and I may not be understanding it correctly, so my sincere apologies if I'm not understanding it correctly. But it has to do with what is the role of the Commission and community groups vis-a-vis producing outreach and education materials? There's actually a role for both.

We feel that the thing that the Commission can do best is to produce sort of templates and high-level materials that emphasize why redistricting is important for all Californians, some basic education about the process, some basic education about what happens at a meeting, some basic education about the criteria.

But there is a partnership role for community groups to provide materials that are very specific to our communities and that reach people with specifics about like, okay, these are the kinds of things you should be thinking about when you submit community of interest testimony. Here's the kind of reasons, you know, giving some real specific examples of why, for our particular community, redistricting is important. Certainly, making sure that there is good accessible language.
And so it's a difference between what I call high-level and deep-dive materials. I don't think that there's necessarily duplication in that sense. But I do think there is a role for both, like I said, for a partnership in this regard. And you know, again, I think we had talked about having a Language Access Advisory Committee. That is another role for that Committee in looking over the materials that the Commission comes up with.

Thank you so much.

CHAIR KENNEDY: Thank you, Ms. Gold. I would say that, you know, that very much reflects what I'm hearing from the Commission, that we want this to be a partnership. And we do not want to get in the way of partners putting out, developing, and disseminating information that is developed to have the greatest impact possible in the various communities throughout the state.

COMMISSIONER SINAY: I want to apologize because I didn't mean to should anybody when I made my comment. My thought was exactly what you are saying, Ms. Gold, that I felt like that the community needs kind of those templates and some of that basic -- the basic piece from us so that they could make it. I wasn't trying to say anything negative about the community creating materials.
And I know I used the should word and I shouldn't have, so I -- I used it twice. So thank you.

MS. GOLD: I just wanted to get the clarification. No worries. Thank you all for again being so thoughtful and responsive as you think about all of these issues.

CHAIR KENNEDY: You're welcome. And thank you for calling us.

Commissioner Turner?

COMMISSIONER TURNER: Yes. Thank you.

The earlier conversation we were having about goals and stuff reminded me, kind of prompted me to another piece of the conversation when we were doing our outreach to the community groups, that ties in back to the grant amounts, irregardless of to whether we'll distribute them directly or if we use a third-party vendor.

The ask was for us to be very clear on what our measurables are for the community groups, what are their expected deliverables? Because based on what that is would kind of point to how much it would cost them to do the work. And if we're not really clear on what we're wanting them to do, to what degree, what the reach is, how many people, et cetera, we're throwing dollar amounts out that really don't mean anything or having nothing to attach to.

And so I just want to make sure that at some point
we provide our community groups some clear expectation of
what their deliverables would be for a grant amount of --
well, any grant amount.

CHAIR KENNEDY: Thank you for that.

Are there others at this point? We have eight
minutes until we would have to take a break. But if we
have pretty much exhausted our discussion, then we can
close and continue working in our Subcommittees and see
everybody on the 1st of December.

PUBLIC COMMENT MODERATOR: And Happy Thanksgiving.

COMMISSIONER AKUTAGAWA: Is there a caller waiting
to make a comment?

CHAIR KENNEDY: Katy, do we have anyone in queue?

MS. JOHNSTON: She says, "No."

CHAIR KENNEDY: Okay.

PUBLIC COMMENT MODERATOR: If they would like to
make another comment, they can raise their hand. But the
person in the queue has already spoke.

CHAIR KENNEDY: Okay.

PUBLIC COMMENT MODERATOR: So if you would like to
comment again, you may raise your hand in the queue by
pressing star 9. No, she's just listening.

CHAIR KENNEDY: Okay. Very good.

So I want to thank the Subcommittee for all your
work, for leading us through what I think has been a very
valuable discussion. And we certainly look forward to continuing it at the next meeting. It is still agenda item ten for the next meeting. And we're looking forward to continuing this discussion, by which time our communications director will have gotten together with the Outreach Subcommittee and we'll see if we're able to make progress on the hiring of our deputy executive director by then as well.

COMMISSIONER SADHWANI: And cell phones.

CHAIR KENNEDY: Raul has already written to confirm my mailing address, so I have a feeling that the phones are on their way or just about to be on their way.

Commissioner Akutagawa?

COMMISSIONER AKUTAGAWA: If there are -- if we have other comments or questions on the rest of the document on this communities of interest strategy map document, should we just email it to either the Commissioner directly or via staff?

CHAIR KENNEDY: I had been sending those sorts of comments through staff.

Director Claypool, are we good with that?

Or, Marian, how should we handle that?

MS. JOHNSTON: I would suggest you continue to do it through staff. Since this was a public discussion, any additions to that discussion should be done in a way that
promotes public exposure.

CHAIR KENNEDY: Very good. Thank you.

Commissioner Sinay?

COMMISSIONER SINAY: I just realized that we forgot the first part of this agenda item. But don't worry, we're not going to do it now. I not going to keep you all here. But you were supposed to give your regional reports so that we could see how things are going in the region, if there's any recommendations to split regions, and stuff like that. So please be ready at our next meeting to have that conversation.

CHAIR KENNEDY: I can say, I guess, as number 2 on the coastal region, that the reaction that we got from census folks was, well, you're going to get all you need from Director Katague. And thank you very much for reaching out.

So now that we've had Director Katague's presentation, we're going to reach out again and reiterate our request. And as lead on San Bernardino and Riverside, we were kind of aware that that might be the reaction that we got if we contacted them before Director Katague came and spoke. So now that she's don't that, we'll be in touch with the teams in San Bernardino and Riverside.

COMMISSIONER SINAY: They were the ones who were
leading the conversation here in San Diego today at the Census Legacy. And they have -- I didn't get it correctly, but just to think about the way they're looking at redistricting is kind of you counted, now let's count, and it's something around that way. So you counted as a number but now let's count politically.

So something to give to you, Mr. Ceja, to play with.

CHAIR KENNEDY: Good. Okay. Thanks everyone. Have a Happy Thanksgiving and look forward to seeing you on the 1st of December.

(Whereupon, the CRC Business Meeting adjourned at 5:04 p.m.)
CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript, to the best of my ability, of the videoconference recording of the provided by the California Citizens Redistricting Commission.

LORI RAHTES, CDLT-108

June 2, 2022
DATE