**Ohio Redistricting Commission 3-22-2022.mp4**

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**Co-Chair Sen. Vernon Sykes** [00:00:01] Like to call the Ohio Redistricting Commission to order would the staff, please call the roll

**staff** [00:00:09] Speaker Co-Chair Cupp (present), Senator Co-Chair Sykes (present), Governor DeWine (here) Auditor Faber (yes), President Huffman (here), Secretary LaRose (here) and Leader Russo (here). Mr Co-Chair all members are present.

**Co-Chair Sen. Vernon Sykes** [00:00:25] All present a quorum is established and will meet as a full commission, the minutes are in the folders. Are there any discussion about the minutes, any additions?

**Co-Chair Speaker Robert Cupp** [00:00:40] I'll move the minutes to be approved. (second)

**Co-Chair Sen. Vernon Sykes** [00:00:43] Are there any changes or any further discussion about the minutes? Any objections to the minutes? Seeing and hearing none we will accept the minutes as presented. Is there any further business to be brought before the commission today? We have discussed finalizing a schedule for meetings for the next few days. We have two versions of the schedule that's been distributed, and let's have some discussion about, about the schedule. Yes?

**Senate President Sen. Matt Huffman** [00:01:31] Well, Mr. Co-Chair, since you asked,

**Co-Chair Sen. Vernon Sykes** [00:01:34] Yes.

**Senate President Sen. Matt Huffman** [00:01:35] And as I mentioned,

**Co-Chair Sen. Vernon Sykes** [00:01:37] I didn't mean for you to answer,

**Senate President Sen. Matt Huffman** [00:01:38] Oh, OK. Thank you [group laughter] It's about 10 years of that. We've been doing this right back and forth. Well, what I was going to say, Mr. Co-Chair is and as as I mentioned, I'm available with the exception of an event this afternoon, which obviously won't conflict in the State of State other days. I'm not sure if there's value in the Thursday meeting. If were, as I understand it, There are two new individuals involved are going to be here tomorrow evening and they're we're going to have discussion over parameters of various kinds if they're going to be able to make any kind of significant report on Thursday. And you know, you had mentioned just before the meeting virtual meetings, which which I'm fine with, but, and I know Auditor Faber had brought that up a couple of meetings ago. So that's generally what I would suggest that we not have a meeting Thursday or if we do, we have it earlier in the day, it might, think that we had suggested one o'clock versus four o'clock. That way there can be a go back to your hometown and take care of the things you've got to take care of in your hometown on Thursday. Come back on Friday.

**Co-Chair Sen. Vernon Sykes** [00:03:07] OK.

**Senate President Sen. Matt Huffman** [00:03:09] Those are those would be my that's my input, but obviously go with the will of the group.

**Co-Chair Sen. Vernon Sykes** [00:03:15] Additional comments? Leader Russo,

**Minority Leader Rep. Allison Russo** [00:03:23] Thank you, Mr. Co-Chair. I, you know, I'm flexible, I think, on Thursday. Do you think that it's important that we meet every day. I think that the virtual option, if we consider that and put that back on the table, I think makes much of this daily schedule probably more doable for many of us and a little bit more flexible with some of the times. But also, I think, gives us some good ability in terms of having a more dynamic interaction with the map makers, as well as the commission as a commission as a whole.

**Co-Chair Sen. Vernon Sykes** [00:04:07] Additional comments? Well, let's look at the schedule itself in the two versions of Wednesday is the same on Thursday. We have a difference of one o'clock being proposed as opposed to four o'clock. In the rationale for the four o'clock was to, is that to allow more time?

**Senate President Sen. Matt Huffman** [00:04:41] [inaudible]

**Co-Chair Sen. Vernon Sykes** [00:04:43] OK, ok.

**Co-Chair Speaker Robert Cupp** [00:04:51] Maybe we should identify which schedule we're looking at and working from that might be helpful. There's one that has the heading the Ohio Redistricting Commission, and maybe we could be work off of that one and see if there's any changes to that one would be my suggestion.

**Co-Chair Sen. Vernon Sykes** [00:05:07] OK.

**Co-Chair Speaker Robert Cupp** [00:05:07] And I am available any of those times.

**Co-Chair Sen. Vernon Sykes** [00:05:15] Are there any objections to one o'clock on Thursday.

**Minority Leader Rep. Allison Russo** [00:05:25] Mr. Chairman?

**Co-Chair Sen. Vernon Sykes** [00:05:25] Yes

**Minority Leader Rep. Allison Russo** [00:05:27] My only concern about one o'clock, I think, you know, recognizing what Senator Huffman, President Huffman has said is that, you know, one o'clock, I think four o'clock, one o'clock doesn't give the mapmakers as much time once they arrive on Wednesday to be able and get some of our input Wednesday evening, maybe to have made as much progress by one o'clock. I think four o'clock is probably that additional three hours will be more fruitful. That said, again, you know, recognizing some of the concerns of some of the commission members who maybe want to go back to their districts if there is a virtual option, I think that may make that more doable.

**State Auditor Keith Faber** [00:06:16] Mr. Chairman?

**Co-Chair Sen. Vernon Sykes** [00:06:17] Yes,

**State Auditor Keith Faber** [00:06:18] As far as Thursday, the later Thursday, the better for me

**Co-Chair Sen. Vernon Sykes** [00:06:28] 7 o'clock?

**unidentified** [00:06:32] [inaudible]

**Co-Chair Sen. Vernon Sykes** [00:06:32] It's been a suggestion to say at seven o'clock that would give them more time, in fact, and availability may be even more open, so seven o'clock?

**State Auditor Keith Faber** [00:06:43] Can I make a suggestion, maybe, that that compromises on Thursday between not having it and just scheduling it right now as an as needed? And then we can decide on Wednesday? I also would suggest following up on the co-chair suggestion and to my suggestion earlier in the week that if we can, if we can get the virtual technology in place again, I have no idea what Cap Square and or OG T can do virtually. I would imagine it's doable because again, I've done virtual meetings out of my office with many more people. The technology in this building is different, however, that the Thursday evening might be a good virtual meeting to have with our map drawers to have to see their first cut for Franklin County or Cuyahoga County or whatever they're working on. I just think that wherever we're going to meet, once we start looking at maps needs to be a place to where we all have individual screens and or have large screens for the room. If that's doable, I don't know what the technology is. I don't know who's taking over the technology for this commission. I presume it's the legislators and the legislative, I forget what the name of the entity that does legislative IT is, but they're very good, and I remember that from my days, LIS. And they are very good and have access to wonderful technology in this building, usually not wanting in that capacity. But that might alleviate the need for us being physically present on Thursday if if Thursday is actually necessary, if they have something meaningful for us to review.

**Co-Chair Sen. Vernon Sykes** [00:08:27] I would suggest that we try to keep our schedule daily schedule. I think seven o'clock would be a better time to allow more progress on map drawing. And I think the consideration for that meeting being possibly virtual, I think will address all the issues.

**Senate President Sen. Matt Huffman** [00:08:45] So, Mr. Co-Chair I'm going to make a motion that we scheduled the Thursday meeting at seven o'clock as needed at the call of the chairs. They probably would get input from the map makers as to whether there'd be significant need for that meeting with a virtual option, if possible, as needed, if possible. How about that one motion

**Co-Chair Sen. Vernon Sykes** [00:09:09] Second? All those in favor. Any discussion about the motion?

**Minority Leader Rep. Allison Russo** [00:09:15] Mr. Chair. I just the friendly amendment to remove that as needed. I think, you know, we're at the point where we're less than a week away that these maps are due every single day will be needed. And that's my only concern about that motion. But otherwise, I'm fully supportive of potentially having a virtual option

**Co-Chair Sen. Vernon Sykes** [00:09:35] if you would consider it a friendly amendment. We always had the option to cancel the meeting.

**Senate President Sen. Matt Huffman** [00:09:41] Yeah. Well, yeah, right. And I if if the map makers look at the two of you and say, we don't have anything to report, we're just learning the rules. And for all of us to assemble here again, you know, we're we're all on salary, so it's no extra charge for us all to be here. But yeah, that's if that's what the co-chairs want to do. That's fine.

**Co-Chair Sen. Vernon Sykes** [00:10:01] OK. All right. Are there any objections to that motion?

**Secretary of State Frank LaRose** [00:10:06] Yes. I'm not going to be able to be here Thursday at 7:00, but if it's virtual, then I should be able to find a way to make it work.

**Co-Chair Sen. Vernon Sykes** [00:10:14] I think the motion would accommodate the virtual presentation. So, yeah, OK. Any other objections? If not, then we will accept seven o'clock being a virtual meeting. On Friday we were two o'clock or 10 a.m. was proposed by us and our side any discussion about Friday?

**Co-Chair Speaker Robert Cupp** [00:10:43] Mr. Co-Chair, I say, if we are meeting at seven o'clock on Thursday, 10 p.m., it's probably not as much time for any progress to be made by those who are drawing the map. So to so two o'clock was probably more realistic than 10.

**Co-Chair Sen. Vernon Sykes** [00:11:06] Any additional comments?

**Secretary of State Frank LaRose** [00:11:11] Friday morning is better for me, but yeah.

**unidentified** [00:11:15] [inaudible] [group laughter]

**unidentified** [00:11:15] [inaudible]

**Co-Chair Sen. Vernon Sykes** [00:11:25] Well, by then, we should have the virtual down, so at least attendance could be by virtual. So there's no objections will go, with two o'clock. Then on Saturday, one time proposes at four p.m., the other is that one. No problems? I guess giving more time, maybe the 4:00 p.m.? 4:00 p.m.? OK. It seems we have consensus on four p.m. So now,

**Co-Chair Speaker Robert Cupp** [00:12:21] well let's mark that, we have a consensus

**group** [00:12:21] [laughter]

**Co-Chair Sen. Vernon Sykes** [00:12:24] So we have approval of our schedule at this point, and we will work post haste to make sure that we have the technology to do virtual meetings as well.

**group** [00:12:43] [inaudible chatter]

**Co-Chair Sen. Vernon Sykes** [00:12:59] Yes. We will send out an update, will publish an update on our website as well, so that everyone will know of our intended schedule. And. We'll move now to another item, we have a mediation mediator to try to make a decision on. There has been some names that have been circulated and as well the United States Court of Appeals, the Sixth District of the chief magistrate, has in fact given approval to use the mediation component of the court. And we have some representatives here today to try to to explain and make a presentation on the possible option. Can you come forward, please? Could you introduce yourselves?

**Catherine Geyer, Chief Circuit Mediator** [00:14:12] Certainly. Good morning, everyone. My name is Cathy Geyer. I'm the Chief Circuit Mediator for the United States Sixth Circuit Court of Appeals.

**Scott Coburn, Mediator** [00:14:19] Good morning, everyone. I'm Scott Coburn and I'm one of the staff mediators with the Sixth Circuit Court of Appeals.

**Co-Chair Sen. Vernon Sykes** [00:14:27] Please, at your leisure, please give us a presentation.

**Catherine Geyer, Chief Circuit Mediator** [00:14:31] OK, so we are here as part of the Sixth Circuit under, Chief Judge Jeff Sutton has given the approval basically to provide our services in whatever way the commission may find helpful. We have been one of the longest standing mediation programs in the United States. We just celebrated our 40th anniversary and our circuit program and other circuits across the country have modeled theirs around the Sixth Circuit. We have Ohio, Kentucky, Tennessee and Michigan in our jurisdiction. And we mediate about 600 cases a year from any case, any case type, fully counsel cases, typically bankruptcy, civil rights and employment discrimination, you name it. We have four circuit mediators and we are we follow a facilitative model. We work with the with the courts and parties in whatever way is needed. We typically follow a process that is a staged process where there's free mediation communications, perspective shared by the parties and solutions generated. But I think the key for mediation is that the mediators are neutral third parties. We don't have any stake in the outcome. And our goal is as mediators is not to determine who's right or wrong is not to render a verdict or a judge judgment as a court or a jury would do. It's not to impose solutions on anyone. It's many people say mediators manage the process and the parties manage the solution. So that's one way to think of it in terms of mediation in this particular situation, the Ohio Mediation Act, I think, would would provide good guidance. Mediation is a process where a mediator facilitates communication and negotiation among parties to assist you in reaching a voluntary result. I think it's important to make that distinction about the parties. So in mediation under the Uniform Mediation Act, the parties are the individuals whose agreement is necessary to reach a resolution. There's also a defined term called nonparty participants, and those are individuals who who the parties may rely on to assist you. And I think it's important to make that distinction because in this situation, it does certainly seem like there are many nonparty participants from whom you would be seeking advice and counsel and making decisions upon and from the perspective of the mediators, it's always helpful to make sure that the parties are lockstep with whatever the nonparty participants are suggesting or advising, so that the mediators don't get too far down the road with a conversation with non parties, only to find out that the parties are making the decision may or may not be in agreement with that conversation. Anything you'd like to add?

**Scott Coburn, Mediator** [00:17:22] We see our primary role as problem solving with parties. And we're not solving the problem. It's you solving the problem. So we engage with the participants in order to determine what are the what is the goal or what are the goals? What are the obstacles to getting there? And then and a process of guided conversation back and forth, you know, expressed sometimes emotional concerns, practical concerns, legal concerns. We navigate all of that water together in trying to find the right way to accomplish the goal. I think the advantage you have in this scenario, we work in litigation and often people are working at very opposite goals here. There's the advantage of everyone trying to get to a goal and it's a shared process. So that would would seem to help guide the conversation forward pretty significantly because everybody's trying to get to the same place is just how we get there in the mediation process. That's exactly what we work with is how to get there.

**Catherine Geyer, Chief Circuit Mediator** [00:18:28] We thought we'd tell you a little bit about ourselves. As I mentioned, moment with the Sixth Circuit Court of Appeals, prior to that, I was a mediator for the Supreme Court of Ohio for five and a half years. And not only mediated the cases before the Supreme Court, but also ran a program called the Government Conflict Resolution Services Program, which some of you may recall as the Government Assistance Program or Gap program. It started in 1991 by an agency called the Ohio Conflict Dispute Resolution Conflict Management Program, and it was made up of a commission of 12 individuals for each from each of the three branches of government. And it was formed to help public officials resolve disputes between and among themselves. So we typically would mediate cases with county or local officials, but it is a program that it was designed, recognize that you, as public officials, have as part of your daily responsibilities, that conflict is just a normal part of that. So the GCRS program or the Government Conflict Resolution Program was part of my responsibilities at Supreme Court of Ohio. Prior to that, I was in private practice with a Fortune 100 company managing litigation and litigator at a law firm.

**Scott Coburn, Mediator** [00:19:43] And I've been a mediator for 17 years. I've been with the Sixth Circuit Mediation Office since 2020. Prior to that, I was a mediator with the Kentucky Court of Appeals for about five years, and prior to that, I was engaged in private practice. Did a lot of my practice in real estate construction, banking and business law.

**Catherine Geyer, Chief Circuit Mediator** [00:20:08] We're happy to take any questions if you have any or engage in any conversation or discussion that you'd like.

**Co-Chair Sen. Vernon Sykes** [00:20:14] One question I have it. How much does it cost to have your service?

**Catherine Geyer, Chief Circuit Mediator** [00:20:19] We're on loan from the court. We're the best bargain you have.

**Co-Chair Sen. Vernon Sykes** [00:20:26] Does that mean we don't have to pay you anything?

**Catherine Geyer, Chief Circuit Mediator** [00:20:29] That is correct.

**Co-Chair Sen. Vernon Sykes** [00:20:30] OK. All right. Questions?

**Co-Chair Speaker Robert Cupp** [00:20:36] Mr. Co-Chairman,

**Co-Chair Sen. Vernon Sykes** [00:20:37] Yes,

**Co-Chair Speaker Robert Cupp** [00:20:38] I have a question about the confidentiality in this process, and maybe it's because this is not an actual case in the court. Maybe you could help give us a little parameters of how that would work. Obviously, one concern this whole process has been any time anybody says something to anybody else that ends up in litigation in. And so how what what would what should we know about the confidentiality of the process?

**Catherine Geyer, Chief Circuit Mediator** [00:21:12] Well, I think you'll be pleased to know that the Sunshine Laws apply in mediation and we take those seriously. We do understand that with public bodies that they're important. It's important to both protect the confidentiality of mediation conversations, but to do so within the context of the laws that govern. So if there is a as it is a public meeting, we don't have an ability to go around that if it's necessary to have individual conversations or caucus conversations privately, that doesn't constitute a public meeting. That's certainly very helpful in mediation to be able to have those kinds of conversations. Under the Uniform Mediation Act there ism there are three different kinds of privilege that apply, but that's in terms of testifying down the road at a proceeding. So the privilege is separate from the confidentiality.

**Co-Chair Speaker Robert Cupp** [00:22:08] And maybe you could discuss the privilege a little bit since this is a litigious process.

**Catherine Geyer, Chief Circuit Mediator** [00:22:14] OK, so privilege under the Ohio Uniform Mediation Act allows parties to refuse to disclose and to prevent others from disclosing commun- mediation communications that occur during mediation. And that disclosure is a privilege against testifying in a future proceeding, and a proceeding could be a court hearing, it could be a legislative hearing, it could be discovery down the road. It doesn't, the privilege does not prevent someone from posting on social media or talking with family or friends or, you know, talking in a restaurant with folks. But it's a specifically a privilege against sharing mediation communication in a future proceeding, and mediation parties have the broadest privilege. Mediators also have a privilege, and mediators can prevent others from sharing mediation communications of the mediators and the nonparty participants can also prevent others from testifying about what the non party participants say in a future proceeding, so the parties have the broadest privilege under Ohio's UMA.

**Co-Chair Speaker Robert Cupp** [00:23:33] Mr. Co-Chair, in our current configuration here is a redistricting body who would, would each of us be considered parties and who would non-parties likely be?

**Catherine Geyer, Chief Circuit Mediator** [00:23:48] From my understanding at each of the commission members has a decision making authority. And so I think, you know, certainly that would be subject to conversation if anyone thinks otherwise. But from my understanding, each one of the commission members would be considered a party, a mediation party under the UMA

**Co-Chair Speaker Robert Cupp** [00:24:11] And non-parties would be staff or interest, interested groups or individuals that wish to influence the decision of the redistricting commission?

**Catherine Geyer, Chief Circuit Mediator** [00:24:25] Right. Nonparty participants might be the independent map, map makers that you bring in or consultants that you might bring in. I think the the question of whether staff constitute nonparty participants is more of a question that maybe under the commentary of the UMA is up for grabs. But I would say that it would be like a law office if a lawyer is consulting with an administrator, administrative professional or someone else in the law firm that I think most might say that the attorney client privilege would still apply to that. So I think that I think it would be important to just establish what the expectations are around everyone in terms of where does that privilege apply? Who's the party? Who's a nonparty participant?

**Scott Coburn, Mediator** [00:25:15] I think it would need to be at the very outset, a period of time spent discussing process. Much of what we do is create environment and the questions you're asking. I think we would need to delve into and flesh out and have a very clear plan on who's participating, how and what opportunities there might need to be to have a private side, confidential conversation in order to, you know, accurately express a concern, interest, need, something of that sort. So I think we would need to start out with that kind of process conversation and make sure we're very clear on and make sure that we're very clear on the privilege and legal parameters.

**Co-Chair Speaker Robert Cupp** [00:26:05] We are a partisan body. We are all elected individually in partisan elections. But in trying to make decisions, we need neutrality. We need nonpartisan mediators or mediation. And what is your experience on this? What's your reputation on the issue of neutrality and partisanship?

**Catherine Geyer, Chief Circuit Mediator** [00:26:37] Mediators, by definition, are neutral third parties, so if we're not neutral, then we're not, you know, it's not we're not competent to serve in the role. Our behavior is guided by the model standards of conduct for mediators stopped by the American [inaudible] Association, American Bar Association and neutrality, self-determination, is all part of our responsibility. If there is a conflict of interest that we become aware of, we will share it with you. We will disclose that, and then it will be up to you to determine whether or not you wanted to waive that conflict of interest or whether you wanted to excuse us as mediators.

**Co-Chair Speaker Robert Cupp** [00:27:22] Leader Russo,

**Minority Leader Rep. Allison Russo** [00:27:24] Thank you, chair. I just have a question about, you know, how would this process began? We're on a very tight timeframe here in less than a week. We have some independent map makers coming in that I think will begin work at least initially tomorrow. So this is going to be very quick, very rapid. The role of a mediator, is this something that begins immediately? Just talk to me a little bit about how you envision this process working.

**Scott Coburn, Mediator** [00:27:59] Thank you Leaders Russo, and I think that's I hate to give a maybe answer, it's a terrible lawyer answer, but it it will depend on what's going to fit best here. Once you've gotten to the point where the commission feels like it needs to plug the mediators in, whether we plug in at a point that got some preliminary map identified and have identified some specific concerns and just want to address those concerns, that would be one way to approach. We've, of course, done mediations where it's a blank slate and we start from the very beginning and just guide the whole conversation. I don't know necessarily because this is, you know, fairly complex situation that that's where you want to plug the mediator in, you know, from the very beginning blank slate phase, it might make more sense to do so when you've started to identify some areas of conflict, and then that's where we come into the conversation.

**Co-Chair Speaker Robert Cupp** [00:29:01] Question? Governor?

**Governor Mike DeWine** [00:29:05] Mr. Chairman. Well, first of all, thank you both for being here. Thank you for your willingness to do this. Thanks to Judge Sutton for offering you up to us to do this. We appreciate it very much. This is different for us as it is different for you. And I want to maybe just kind of explore a couple of things. I'm not sure. I fully understood some of your some of the answers, and that's my fault, not yours. But we have numerous lawsuits that are swirling around and there may be more, we don't know. But ultimately there's only seven people, at least at this stage, that are making a decision. So I guess the way I look at it is we've got two, two independent mapmakers coming in. We've got each one of us has staff. We're used to working legislators, governors are used to working through their staff. So we're not always the direct participants. But you know, people who when you talk to them or basically you're basically talking to the principal. But in some, so in some respects, this is just different, I think, than a normal case. But in other, it strikes me that in other ways, it is similar in that you have people with divergent views, maybe divergent interests, and you're trying to find as the neutral party third party, you're trying to find a place where everyone can settle. So I guess I want to see if, is that your, is anything that I said disturbing to you or that you would disagree with as we all are kind of working our way through that because no no one knows how this is going to work. But we ultimately the goal is we've got the two mapmakers, we've got, we also have four partisan mapmakers. Republicans have two, Democrats have two who also can be valuable as this discussion goes on. But ultimately, it's the people you see up here who are the principals, and it becomes even more complicated than, I assume, the normal civil case when you have two two parties. Now you got seven. I know some cases you may have multiple parties, but so it's just it's just unique. It's just different. But I think we think at least I speak for myself. I think that you can be very valuable in this in this exercise.

**Catherine Geyer, Chief Circuit Mediator** [00:31:53] So there's nothing troubling about what you said. I think the challenge from my perspective and thinking about this is that that, you know, typically you would want to have all of the parties in the room when there's decisions being made. And I don't think there's any delegation of decision making or delegable duty here. So if each of the commission members is the only one who can make the decision, I think access to the decision makers would be the most important thing from the mediator's perspective because of course, we're used to working with others, maybe it's if it's a structured settlement or bringing in an accountant or a specialist or subject matter expert or something like that. That's important. But if if the decision makers are, you know, not available to to reach, that would be, I think, a challenge because as I mentioned, we might kind of get headed down a particular path only to find that that one of you is not, you know, in agreement with that. And it's hard to weigh in on a decision that you weren't part of developing. So I think that would be, I think, what probably the challenge in terms of I know that your schedules are all busy and we'd want to make sure we have the right issues lined up. So we would typically meet with you individually with the parties and find out what is the most compelling or important issue to each one of you. And that may be different. And then we would set an agenda for that and say these seem to be the five or three or six or 10 issues that are important that need to be resolved. And that list may not be the same for each of you, but we would want to establish an agenda and then get agreement on the agenda if we address these issues. Does that satisfy the commission and do you feel like there's anything else that we would have to address in order for the commission's ability to feel that you could make a decision.

**Governor Mike DeWine** [00:34:09] And none of that bothers me the access. You know, I think you'll you will have access. I think that, you know, as far as immediate access, sometimes that access will come through staff, but ultimately it's not staff who makes the decisions. We have to make those decisions, but you also have the other situation where, you know, we've had three court decisions that we have to follow. We have a constitution that we have to follow. We all bring our own other interests into into this. And then you have. Two new people are coming in Wednesday who are going to try to at our direction, come up with something that everyone can agree on, or at least we can get enough votes to pass. So you've got another group over here. So it's it's a it's unique, a unique situation. But I still, you know, I still believe that your your skill sets and your talents can be very, you know, can be very helpful

**Catherine Geyer, Chief Circuit Mediator** [00:35:18] From a process perspective of going back to Leader Russo's question. I think it would be helpful to have an individual conversation to get an idea where there's overlap and where there's not in terms of what's agreed upon and what's not. And that would give us a basis for kind of getting oriented to the framework and getting up to speed on the legal issues, constitutional issues and then also the practical issues in in the timeframe that you need. And then I think once we have an initial conversation, we can suggest possible ways to use our services or, you know, we're kind of coming into a dispute that's been around for a while. So you may say this is we're going to go. Everything is going along fine. Oh, we had a snag. Let's use the mediators here to facilitate this particular conversation is troublesome. Get over that hurdle. Go along and just kind of use us on an ad hoc basis. Really, it's I think, you know, the goal would be to be as flexible as possible so that, you know, this facilitates your resolution in a timely manner.

**Governor Mike DeWine** [00:36:31] Well, I think if I could ask one more question, Mr. Chairman, I think it would be helpful for you to have discussions with the seven members one at a time and do that. And so I think that might give you a framework of where everybody is starting from. Anyway, thank you very much. Thank you, Mr. Chairman.

**Co-Chair Sen. Vernon Sykes** [00:36:55] Senator Huffman,

**Senate President Sen. Matt Huffman** [00:36:57] thank you, Mr. Co-Chair. And so my experience in mediations in the past few decades, I it's based on that and of course, you know, the settlement discussions are not evidence in cases. We know that. And you talked a little bit about the privilege extending to the seven members of the commission. And there are, I guess, three groups of people that besides the commission, the first four, if you will, are the four map makers who have been intimately involved in this for six or eight months. And frankly, in my opinion, I think know more about this than anyone else. Those are not, those are individual either employees or contract employees of different commission members. Are you telling me that the privilege would extend to them, much like it would be an accountant or an expert witness or structured settlement analyst?

**Catherine Geyer, Chief Circuit Mediator** [00:38:02] That would be my interpretation of 27-10. Yes.

**Senate President Sen. Matt Huffman** [00:38:05] OK

**Catherine Geyer, Chief Circuit Mediator** [00:38:06] As nonparty participants, they can refuse to disclose and prevent others from disclosing their own mediation communications. But they couldn't disclose the mediation communications of the parties so as to the parties. You would have the ability to not only prevent others from disclosing what you or any of your mediation communications, but you would also be able to prevent the non party participants from disclosing mediation communications

**Senate President Sen. Matt Huffman** [00:38:38] Ok and the nonparty participants conversations with others can be disclosed if they talked to each other or some outside person who's otherwise not involved.

**Catherine Geyer, Chief Circuit Mediator** [00:38:53] Well, they would, since the privilege is just a privilege against disclosing in future proceeding, then it wouldn't prevent any conversations outside of a proceeding. So they could go to lunch together and talk about it, but they couldn't be subpoenaed to testify.

**Senate President Sen. Matt Huffman** [00:39:12] I see. Yeah, sure, sure. And then the second group of people would be other staff that are regularly involved in this attorneys or other folks. And I assume that's treated similarly to these four in-house map makers.

**Catherine Geyer, Chief Circuit Mediator** [00:39:27] Yes.

**Senate President Sen. Matt Huffman** [00:39:28] OK. And then the next group are the the newly or newly or nearly newly hired map makers who are employees or contractors of the commission. And does that privilege apply to them in a similar fashion? Yes.

**Catherine Geyer, Chief Circuit Mediator** [00:39:50] Yes, nonparty participant privilege.

**Senate President Sen. Matt Huffman** [00:39:51] OK. So I'd like to just read part of it from the Supreme Court's order and ask you to see how this lines up with with the privileges that we just talked about. So the Supreme Court has ordered that the drafting maps, the drafting shall occur in public. And does that affect in any way your ability to communicate know that we have to do this, and I think all of us are struggling a little bit with exactly how that works. You know, the seven of us sitting here with the mouse, moving it around like a Ouija board, you know, kind of thing or exactly how that works. So can you just talk a little bit about how drafting shall occur in public lines up with these negotiations are not public or conversations, whatever they may be.

**Catherine Geyer, Chief Circuit Mediator** [00:40:46] The most similar analogy, I would say, is when we mediate, when I used to mediate with public officials and they were boards or commissions or agencies or or, you know, had multiple individuals, they would meet in an executive session to have conversations. But any kind of decision making that would be made would be made in public. So there would be an opportunity through executive session to have conversations and but not any decision making. So if that that seems like that is the starting point, at least, you know, off the top of my head on on that is that if there's going to be a decision making mapmaking drawing, that sounds like that's the expectation is that happens in public.

**Senate President Sen. Matt Huffman** [00:41:34] Right, Yeah, yeah, I mean, that's the order so,

**Catherine Geyer, Chief Circuit Mediator** [00:41:35] The conversations leading up to that map making or drawing wouldn't necessarily at least as I understand what you just read, be, mean that every conversation that's ever had by anyone about this process is the same as the mapmaking.

**Senate President Sen. Matt Huffman** [00:41:56] Okay. If you haven't had a chance to look at the court's order, that would be helpful. Just make sure we're going down the right path. I would suggest so. Thank you, Mr. Co-Chair.

**Co-Chair Sen. Vernon Sykes** [00:42:07] Is there any additional questions or comments?

**Co-Chair Speaker Robert Cupp** [00:42:15] I would have one. Have you ever mediated a redistricting issue matter before?

**Catherine Geyer, Chief Circuit Mediator** [00:42:22] No.

**Co-Chair Sen. Vernon Sykes** [00:42:23] You're blessed. Any additional comments, Leader Russo,

**Minority Leader Rep. Allison Russo** [00:42:37] Thank you. Thank you, Mr. Chair. I guess my other question would be to the two of you, and I'm not sure who would be available for mediation, but what is your availability throughout the rest of this process? The court has ordered us to complete this task by next Monday on the 28th

**Catherine Geyer, Chief Circuit Mediator** [00:42:57] between the two of us. We have ability availability throughout. Scott has availability through the duration and I have availability through Thursday at noon. I'm going to Europe in the afternoon, so. But Scott will be available through as long as you need him.

**Co-Chair Sen. Vernon Sykes** [00:43:19] Hearing and seeing no, oh,

**Senate President Sen. Matt Huffman** [00:43:22] yeah, I was just reminded here by counsel that he's wrote the privilege law regarding redistricting for the NCSL, National Conference of State Legislators, and he's suggesting that the federal law will trump the state law as it relates to privilege. And I guess that's a new twist for me. I would ask you that you get with all counsel, but particularly Mr. Stigari, who's kind of a national expert in terms of redistricting and advises state legislators. And in the NCSL on these things to see whether, in fact, the privilege that we're talking about is in place. And the answer is it may not be and we have to go forward anyway, especially in light of the court's specific ruling. So,.

**Catherine Geyer, Chief Circuit Mediator** [00:44:17] OK, thank you.

**Senate President Sen. Matt Huffman** [00:44:18] Thank you.

**Co-Chair Sen. Vernon Sykes** [00:44:19] Thank you very much. We appreciate it. We'll get back with you.

**Catherine Geyer, Chief Circuit Mediator** [00:44:24] Thank you.

**Catherine Geyer, Chief Circuit Mediator** [00:44:24] Thank you very much.

**Co-Chair Sen. Vernon Sykes** [00:44:31] Is there any other mediators that you'd like to present at this particular time, or we're going to have a discussion about just the pre previous presentation?

**State Auditor Keith Faber** [00:44:52] I was just going to make a motion that we accept the generous offer of the Sixth Circuit to have them be our mediators and get this show on the road.

**Co-Chair Sen. Vernon Sykes** [00:45:05] This any further discussion?

**Senate President Sen. Matt Huffman** [00:45:10] Mr Mr. Chair, the only thing I would say is I think we need to the rules need to be clear that if in fact one of us sits down and says a whole variety of things to the mediator and we believe it's privileged. But in fact, it's not, we should know that. So I think that needs to be. And I know that's a rather complex legal question at this point. But that's I think that's important.

**Co-Chair Sen. Vernon Sykes** [00:45:39] We can be sure to do the legal research, so we'll have a memo on that. Any objections to the motion? Hearing and seeing none it is so ordered. Is there any further business to be brought before the commission at this time? Leader Russo,

**Minority Leader Rep. Allison Russo** [00:46:05] Mr. Chair I do want to go back to we had some discussion last night about the scope of the map makers agreement with the commission and I know that, and we can pass out just a very skeletal draft, but I do think that it is important for us to be very clear, at least through a formal notion that that we want to make sure that these map makers are following the Constitution. The Supreme Court orders. I know that there will be a lot of direction and parameters that we put around them. But I do want to make sure that is clear. So I would like to formally make a motion that the hired redistricting commissions independent mapmaking consultants and commission's member's permanent staff, follow the Ohio Constitution and orders from this Supreme Court of Ohio State legislative redistricting decisions.

**Co-Chair Sen. Vernon Sykes** [00:47:02] I second.

**Secretary of State Frank LaRose** [00:47:04] Discussion?

**Co-Chair Sen. Vernon Sykes** [00:47:08] Secretary LaRose,

**Secretary of State Frank LaRose** [00:47:09] Yeah, I I guess it kind of goes without saying that the final product that we pass has to abide by the Constitution, but the mapmakers, I think, shouldn't be necessarily constrained in putting some creative ideas down for us to decide whether we think those are constitutional or not. It feels like this just kind of ties the hands of these folks that are trying to come up with a very difficult solution to a complex problem for us. And why not tell them that those should be the guiding principles, but not sort of constrain them? It's up to us to decide what we can accept and vote for.

**State Auditor Keith Faber** [00:47:48] Sorry, echoing comments I'm hearing from my fellow commissioners down this end of the table. We already did this. We did this when we agreed to give everybody involved the directions that we were going to follow the Constitution and the opinions of the Supreme Court. So it's it's it's I would argue this is moot.

**Senate President Sen. Matt Huffman** [00:48:12] You know, Mr. Co-Chair, I would just add, I think we have to follow the Constitution and as interpreted by the court. So I appreciate what Secretary LaRose is saying that, you know, the problem, one of the problems is that there are decisions to be made that are not in the Constitution and not in the court's orders. There's still discretion that needs to be exercised. There's a whole variety of things. You know, there's this issue about asymmetry, the court said. But that's we don't like that. But they didn't say what else they didn't like. There's there's not an upper parameter or lower parameter or things like that. So I think to Secretary LaRose point, there are multiple decisions that are not part of these in the Constitution are specified in here that they need to make. But as it relates to this, I think it's true. And I put it in my motion that Saturday night and Saturday night that this was part point one of my five point motion that I made.

**Minority Leader Rep. Allison Russo** [00:49:23] So, Mr. Chair, just in quick response, and we can get some clarification, certainly, but I'm not sure that the motion at the time addressed our independent mapmakers that we voted on last evening. So I think it is important to make sure that that direction covers them as well. Also, I will note that the language of this motion does not exclude the ability of both the commission and map makers and staff, where appropriate, to use some discretion. But this simply, I think, puts forward in a formal way that's important that we are giving direction not just to our staff and the commission, which I believe what what was done in your motion on Saturday. I'm losing track of our days here, but this also extends to the new independent map makers as well.

**Senate President Sen. Matt Huffman** [00:50:26] Mr. Chair,

**Co-Chair Sen. Vernon Sykes** [00:50:26] Yes.

**Senate President Sen. Matt Huffman** [00:50:27] I also think it might be helpful for us if there's some additional constraint, that needs to be a clarification. However, it is described that we talk about this with the mapmakers. I mean, they may get here tomorrow night and there may be a variety of things that we talk about that they say, Well, I'm I wasn't prepared to do that, in fact when I talked with the map makers that Attorney General Yost suggested in our conversation Sunday afternoon, as we talked about it, they said, Well, one of them said I'm not coming to Ohio, so that made it difficult. So I think I'm not in favor of this motion, at least until we can get some, some further clarification and be helpful with the map makers to understand what their what their parameters are also.

**Co-Chair Sen. Vernon Sykes** [00:51:26] Is there a willingness to withdraw the motion? With the indication that this has been addressed in the previous motion and that if we need to expound upon it, we can at our next meeting that we have with the map drawers to make clarifications.

**Minority Leader Rep. Allison Russo** [00:51:55] Mr. Speaker, if if we need to hold this until we have that conversation tomorrow, I'm willing to consider that. But again, you know, I would assert that the motion that we put forward on Sunday evening did not cover independent map makers at the time, and that is my concern.

**Co-Chair Sen. Vernon Sykes** [00:52:26] Is it any willingness to approve to move forward with this motion at this time to make sure it includes the map drawers?

**Senate President Sen. Matt Huffman** [00:52:35] Can we just wait till tomorrow night?

**Co-Chair Sen. Vernon Sykes** [00:52:37] Wait till tomorrow night. We will wait until tomorrow night.

**Senate President Sen. Matt Huffman** [00:52:42] All right. OK.

**Co-Chair Sen. Vernon Sykes** [00:52:44] Are there any other items that we need to come before us today?

**Co-Chair Speaker Robert Cupp** [00:52:50] Mr. Chairman, I don't I don't think for today, but when we meet again. We had discussed what how we're going to proceed and what sort of directions we're going to give to the map makers. And so it may be better to hold that, but can think about how how we're going to do that. What instructions are we going to give to them in terms of how they how they proceed, what steps they do? Talked about, you know, just they're presenting a whole map or we just how how they're going to begin their work. So I don't think we can do that now, but I think we do need to think and be ready with some ideas when the when when we talk to the map makers.

**Co-Chair Sen. Vernon Sykes** [00:53:34] It sounds like a homework assignment.

**Co-Chair Speaker Robert Cupp** [00:53:36] [talking simultaneously with Co-Chair Sykes] That does. I can see if I could assign it to you

**Co-Chair Sen. Vernon Sykes** [00:53:37] we can put on, as the first item next agenda. The first item on the next agenda. If there are no further items to be brought before us today. We are adjourned