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STATE OF ARIZONA

ARIZONA INDEPENDENT REDISTRICTING COMMISSION

PUBLIC

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PUBLIC SESSION

Phoenix, Arizona
October 8, 2003
1:38 p.m.

ARIZONA INDEPENDENT
REDISTRICTING COMMISSION

LISA A. NANCE, RPR, CCR
Certified Court Reporter
Certificate No. 50349

1 The State of Arizona Independent
2 Redistricting Commission convened in Public Session on
3 October 8, 2003, at 1:38 o'clock p.m., at the Offices of
4 the Arizona Redistricting Commission, Suite B-1, 1400
5 West Washington, Phoenix, Arizona, in the presence of:

6

7 APPEARANCES:

8

CHAIRMAN STEVEN W. LYNN

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VICE CHAIRMAN ANDI MINKOFF

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COMMISSIONER JAMES R. HUNTWORK

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COMMISSIONER DANIEL R. ELDER

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COMMISSIONER JOSHUA M. HALL

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ADDITIONAL APPEARANCES:

- LISA T. HAUSER, Commission Counsel
- JOSE de JESUS RIVERA, Commission Counsel
- ADOLFO ECHEVESTE, IRC Executive Director
- LISA A. NANCE, RPR, CCR, Court Reporter

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PROCEEDINGS

CHAIRMAN LYNN: We'll call the Independent Redistricting Commission to order.

Let's do a roll call. We'll add to the roll as we proceed.

Mr. Elder.

COMMISSIONER ELDER: Here.

CHAIRMAN LYNN: Mr. Hall?

COMMISSIONER HALL: Here.

CHAIRMAN LYNN: Ms. Minkoff.

COMMISSIONER MINKOFF: Here.

CHAIRMAN LYNN: Mr. Chairman is present.

We're expecting Mr. Huntwork. We'll note that when he arrives.

We're also represented by both counsel and by our Executive Director and staff.

Item one. That was item one.

Item two, call to the public. This is the time for consideration and discussion of comments and complaints from the public. Those wishing to address the

1 Commission shall request permission in advance by filling
2 out a speaker slip. Action taken as a result of public
3 comment will be limited to directing staff to study the
4 matter or scheduling the matter for further consideration
5 and decision at a later date unless it is the subject of
6 an item already on the agenda.

7 I have in my possession one speaker slip.
8 I'd ask Ann Eschinger representing the League of Women
9 Voters of Arizona to come forward.

10 I think the end of table. The microphone
11 picks up comments. The end, anywhere there.

12 This is what is recording, so --

13 Thank you.

14 MS. ESCHINGER: They didn't tell me how
15 you do things. Didn't you want to have my comment
16 afterwards?

17 CHAIRMAN LYNN: No. This is the time for
18 it.

19 MS. ESCHINGER: Okay.

20 MS. HAUSER: You can rearrange the items in
21 the agenda any way you want, if you prefer to wait.

22 CHAIRMAN LYNN: If you would like to wait,
23 I'll be happy to take it.

24 MS. ESCHINGER: I'd prefer to hear the most
25 up-to-date information.

1 CHAIRMAN LYNN: Let's do that. My
2 pleasure.

3 Let us suspend item two for the moment to
4 go to item three.

5 Item three will be carried out by myself,
6 by counsel, by staff, and there may be others who wish to
7 weigh in on the subject, but the primary reason, reason
8 today, is that we are at a juncture in our work that
9 necessitates some decisions being made regarding how we
10 will continue to do what we're going to do and the
11 finances around those issues.

12 The work of the Commission could be divided
13 into three sections, in general terms. We have map
14 drawing, we have Department of Justice review, which is a
15 requirement, and then we have litigation.

16 Let the record show Mr. Huntwork has joined
17 us.

18 And those three tasks that we had in front
19 of us when we were sworn in in 2001, I don't think anyone
20 expected, would take quite as long as they have.

21 However, because this was a new constitutional amendment
22 and because the language had not heretofore been
23 litigated, there was no reason to believe there wouldn't
24 be litigative challenges at some point in the process.

25 I should point out that the initial maps

1 were drawn in compliance with the Constitution and
2 submitted to the Department of Justice for a little less
3 than half of the original allocation that was originally
4 appropriated. And since that time, the subsequent
5 Department of Justice denial of the Legislative, or
6 objection, filed objection to the Legislative map, the
7 subsequent lawsuit, and in federal court, and redrawing
8 of the Legislative map, resubmission to Department of
9 Justice, and their ultimate approval of that map, or
10 filing no objection to the Legislative map, as well as
11 the suits filed in court by multiple plaintiffs and the
12 fact that those court cases have been heard or parts of
13 them have been heard in multiple courts, we are at a
14 position now where we have expended the vast majority of
15 the initial allocation that has been given to us. And
16 we'll talk about some of that in a little more detail.
17 But the fact of the matter is that at the moment, the
18 Commission has less than a hundred thousand dollars left,
19 more appropriately, about \$75,000, that is either
20 unencumbered or unexpended at this point. We also have
21 ongoing expenses of the office to keep the office open,
22 the website, other activities that the office provides of
23 roughly 24, 25 thousand dollars per month. So
24 essentially we have a three-month operating budget
25 contained within the balance that we have. This is not

1 somehow a -- an uncovered crisis that last week raised
2 it's ugly head. Obviously we've all been monitoring the
3 amounts of money that have been left in the accounts.
4 And several months ago Members of the Commission and
5 staff and attorneys had talked with a number of
6 individuals in state government about this issue. And
7 let me just recount some of the meetings that were held.
8 We had a meeting with Legislative leadership, including
9 speaker of the house { *} Mr. Flay, president of the
10 Senate Mr. Bennett, and members of the JLBC staff as well
11 as their own staffs from their offices several months ago
12 to discuss the possibility that the Commission might need
13 supplemental funds to complete its work. We also met
14 with the Governor's staff and briefed them on the
15 circumstance. Subsequent to that I met with the Governor
16 in an informal meeting earlier this week and told her of
17 the situation that we were going to consider today. We
18 also met with minority leadership in the legislature on
19 various occasions including this morning when we briefed
20 Representative Lorado, and we have also met with the
21 State Treasurer. And I'll talk about that meeting in a
22 moment. So it isn't as if this is news to anyone. This
23 has been an ongoing issue. And the issue really boils
24 down to, I think, one very important concept.

25 This Commission was established through

1 constitutional amendment to be independent, the first
2 word in our name is independent, and there are things in
3 the Constitutional language which set up a degree of
4 independence not enjoyed by any other branch of
5 government, quite honestly. Our constitutional
6 responsibility, while it is legislative in nature, is
7 designed to insure that legislative, administrative, or
8 other influences on our work product are minimized, at
9 worst, and absent, at best. And so we were given not
10 only our own allocation of funds but also the ability to
11 sue the state, if necessary, to get additional funds
12 should they be required to complete our tasks.

13 I've always viewed, personally, the ability
14 to sue the state to get additional funds as somewhat of a
15 last resort. I didn't think that should be necessary,
16 and I still don't think it should be necessary. However,
17 the discussions to date have not produced a remedy to the
18 situation that we face today. We are in a position now
19 with a court date of November 12th for the four suits
20 that remain of not being able to go forward with a
21 vigorous defense because we simply don't have the funds
22 and we are prohibited from incurring debt beyond our
23 allocation by a variety of statutes which I'll ask
24 counsel to brief us on in a moment. I want those clear
25 because the actions we take today will be designed to

1 avoid any violation of state statute that may impact on
2 our ability to continue to expend or incur expenses at
3 this point in time.

4 There are several remedies that are still
5 out there for us. I think those ought to be put on the
6 record as well. First and foremost, we have approached
7 the risk management department of the state on more than
8 one occasion, and we have asked them to cover both legal
9 expenses that have already been incurred and legal
10 expenses that we anticipate incurring in defense of the
11 suits that have been filed. Clearly, if any of those
12 litigants who are plaintiffs in the suit against us were
13 to prevail and be awarded legal fees, those would come
14 out of the risk management fund. There is no doubt about
15 that. There is, however, a reluctance on the part of
16 risk management to cover our legal fees which my personal
17 judgment, again, I find curious if not offensive.

18 At any rate, we have asked them on more
19 than one occasion, and others have asked them, to cover
20 those fees and so far the answer has been no. They
21 decline to do so. I had a conversation this week with
22 the Governor and asked her again to address risk
23 management on the issue. She gave me her agreement she
24 would do so. I have no idea what the outcome of that
25 will be. Another remedy we are pursuing, because it is

1 open to us, is because of previous precedent, we perform
2 a constitutional duty which should not be bridged by
3 other parts of the state government. There is case law
4 to suggest constitutional duties that are self-executing,
5 as ours is in the constitutional language, and can
6 receive what is known as constitutional appropriation
7 separate and apart from a Legislative appropriation
8 during either a regular or special session. That was the
9 subject of the meeting with the state treasurer this
10 morning. And we have briefed the treasurer and his legal
11 staff as well as his office staff on that particular
12 method of solving the problem. And we have been assured
13 by the treasurer that we will have an answer as to
14 whether or not he would be willing to authorize
15 constitutional appropriation within 24 hours. That does
16 not help us this afternoon, but it does weigh into the
17 discussions that we may have later today. I have no
18 reason to believe that that alone will solve our problem.
19 We were informed by the staff that their preliminary
20 discussions with the Department of Administration suggest
21 that even if the treasurer were to authorize the
22 expenditure of funds, as you know, warrants are actually
23 issued by the Department of Administration, and the
24 Department of Administration has indicated preliminarily
25 those warrants would not be issued except on orders from

1 the Governor. So we are at every turn influenced by
2 other branches of government in a manner that was not
3 considered by either the authors of the constitutional
4 amendment nor by the Commission during its work.

5 I can tell you today that from my
6 perspective and my review of the expenses of the
7 Commission since our inception that not only have the
8 decisions of the Commission been wise and fair from the
9 beginning, for example, the decision of the Commission to
10 hire outside counsel that is bipartisan rather than
11 specifically partisan, rather than relying on a partisan
12 elected position of Attorney General and the Attorney
13 General's staff, I still believe was and is a good
14 decision. It was a unanimous decision of the Commission.
15 I also believe the decision of the Commission to hold a
16 second set of hearings not required by law but certainly
17 required in terms of our definition of fairness to
18 determine what communities of fairness definition really
19 exists in the state were not only a appropriate
20 expenditure but certainly an expenditure that we found
21 useful, informative, and helped us to make decisions as
22 we moved ahead. Lastly, I would say if you look at all
23 of the legal expenses, including not limited to attorney
24 fees, but all of the expenses around litigation and
25 potential litigation, defense of our maps with the

1 Department of Justice, submissions to the Department of
2 Justice, as well as ongoing legal advice to the
3 Commission, that we have had by all accounts not fair
4 treatment but bargain treatment in terms of legal
5 expenses. We have spent less than half of what the state
6 spent to prosecute Jim Ervin, or to defend Jim Ervin,
7 pardon me, defend Jim Ervin in his lawsuit that will
8 ultimately cost the state millions of dollars and, by the
9 way, will be paid for out of the risk management pool.
10 And we have, at every turn, taken steps to minimize the
11 costs of operating the Commission when when it was
12 appropriate do so. We reduced staff first after we had
13 our rounds of hearings which we no longer needed outreach
14 people to do those hearings. We again reduced staff when
15 we finished with the mapping process and maintain, today,
16 only the most talented but the least number of our staff
17 from the beginning of this process. I think on audit, or
18 on review, I think certainly on any fair review of any
19 fair expenditure, we have done a very, very appropriate
20 job of managing the allocations.

21 So we find ourselves in a position today
22 where we have to make some choices about the future based
23 not on our best judgment, at this point, but on our
24 financial circumstance. And that financial circumstance,
25 I believe, is being exacerbated by the other branches of

1 government and their circumstance at the moment. And I
2 will just comment briefly on that.

3 I apologize on the length of the opening
4 comments, but I think it's fair to bring this into
5 perspective. Clearly the special session that has been
6 called for October 20th has enough on the plate,
7 certainly, to occupy both the Legislature and the
8 Governor in terms of the amount of money that is being
9 asked for. Our appropriation to continue what we need to
10 do until the end of what we believe to be the worst case
11 scenario in front of us pales in comparison by the
12 request to revise Child Protective Services and certainly
13 to fund expansion of prisons. However, at this point, we
14 don't believe that the Governor will include us in the
15 call for a special session, and that's unfortunate from
16 the standpoint that there is a special session coming; it
17 would happen at a time when relatively quick relief could
18 be offered. But we don't believe that will be the case,
19 based on preliminary discussions that we've had. That
20 could change. We actually hope it does, if that's the
21 appropriate and perhaps the only way to get additional
22 funding.

23 As I said, Mr. Pederson will be back to us
24 within 24 hours with an answer with respect to
25 constitutional provision of funds.

1 That would, in our opinion, and I would ask
2 Mr. Rivera and Ms. Hauser to comment on this when they
3 review legal aspects of incurring costs, that would
4 probably liberate us from any liability in terms of
5 ongoing expenses if the treasurer were to make a
6 constitutional appropriation; however, it still doesn't
7 solve the problem how we get the bills paid through the
8 Department of Administration.

9 So one of the options that still remains
10 for us, because we have standing in the Constitution, is
11 to actually file a lawsuit against the state, name those
12 entities who could provide us with relief, and seek a
13 judgment in very quick terms about -- to get additional
14 funds so we could proceed with our work.

15 To give you a quick estimate of what it
16 looks like going forward, we believe, to get through the
17 initial phase of litigation and appeal that might or most
18 likely would be filed regardless of who prevailed in
19 State Superior Court, that appeal to the State Supreme
20 Court would probably be in the order of \$2 million, give
21 or take. And to complete all of our work, figuring the
22 worst case scenario, that is a judgment against appeal
23 that upholds the judgment, remapping based on the Court's
24 direction, refiling with the Department of Justice and
25 defending that refiling, and getting through the review

1 process, we might be talking as much as \$4.2 million.
2 Those are the estimates to completion of that part of the
3 task.

4 Let me ask Ms. Hauser and Mr. Rivera to
5 comment on those aspects of the law that overall affect
6 our decisions today and then we have a couple of options.
7 What I do want to do, I want to get back to call to the
8 public. I know some of the issues we may wish to and
9 should appropriately address in public session.

10 MS. HAUSER: You each have the Title 35
11 statutes, Title 35 being the statute that governs state
12 finances.

13 Let me cover a couple of them. Most
14 important for discussion today, 35-154 provides basically
15 that no vote to incur any obligation against the State
16 for any expenditure can occur if that expenditure is not
17 authorized by a submission of appropriation and no person
18 is supposed to incur expenditures under those
19 circumstances. An obligation incurred in violation of
20 that section is not binding on the state, is null and
21 void by the terms of the statute, and incapable of
22 ratification later.

23 One of -- Jose and I have been talking
24 about some solutions for going forward, you know, I mean,
25 obviously up to and including could we work, ourselves,

1 continue working without billing the Commission. Even if
2 we were to do that in terms of attorneys' fees, there are
3 costs and other expenses including our expert witness
4 fees that are just going to make that an unworkable
5 solution.

6 We still, even if we were to eat our fees,
7 it just would not get us there. We've inquired as to
8 whether or not, you know, our rather plain reading of the
9 statute precludes us from incurring expenses on behalf of
10 the Commission, holding the bills and submitting them
11 later. It appears this section would preclude that.

12 We talked to the Attorney General's office
13 about that this morning. Unless somebody comes in and
14 rides in on a white horse and says yeah, you are okay
15 there, it would appear this statute is going to preclude
16 that. In fact, there's a statute that speaks in terms of
17 using any kind of connivance to get around this. It felt
18 a bit like -- 35-211 talks about approving, or
19 conniving, approving claims not authorized by law. We're
20 quite sensitive to that. That particular section speaks
21 to people approved for expenditure and people that
22 receive it are personally liable for the repayment plus
23 20 percent plus interest from date of payment.

24 You would also want to know that 35, let's
25 see, where is it, 35-196 makes an illegal expenditure,

1 you know, subject to repayment plus 20 percent penalty.
2 That could make you all personally liable. And 35-197
3 makes it a class one misdemeanor.

4 No warrant from DOA can be issued without
5 an adequate appropriation, which is something that Steve
6 mentioned.

7 And certainly our question to treasurer is
8 because we believe there is authority under the
9 constitution for the treasurer to make payments and cover
10 our expenses as those bills are presented and otherwise
11 approved by DOA, in terms of does it exceed the contract
12 amount, or exceed per diem, or whatever the rules are
13 that apply to that particular bill, would DOA in fact
14 honor the treasurer saying I will make an adequate
15 appropriation every time one of those bills comes in.

16 We were told in the meeting this morning,
17 at least initially, according to DOA, they are not going
18 to, it would appear, honor that request from the
19 treasurer without specific approval from the Governor.

20 I think the last section I would mention is
21 that where the law recognizes a claim for money owed
22 against the state, and I guess there's a question about
23 what that means, but no appropriation is made, then DOA
24 audits the claim and reports it to the next session of
25 the Legislature. One possible theory there is that the

1 argument could be made that the constitutional
2 appropriation itself authorizes or recognizes a claim
3 against the state that then, you know, we just go ahead
4 and keep doing our thing, the bills pile up, and we
5 present them to DOA and say no appropriation for this,
6 you give it to Legislature at the next regular session.

7 The obvious problem with that is that
8 particular section was never interpreted in connection
9 with this interpretation and we run the risk knowing that
10 it wasn't authorized, a not authorized expenditure, to go
11 back to the statutes and go back to the section makes
12 people personally liable. I mention something that
13 exists as it has not been tested under these
14 circumstances and it might be quite risky for you.

15 I think that pretty much covers it.

16 The basic thing is you can't go beyond your
17 appropriation. And unless Legislative or Constitutional
18 appropriation is made, we appear to be stuck for the
19 moment.

20 COMMISSIONER ELDER: Mr. Chairman.

21 CHAIRMAN LYNN: Mr. Elder.

22 COMMISSIONER ELDER: I have a request for
23 Ms. Hauser, or anybody.

24 What role does DOA play? It appears as
25 though they are making rules and regulations, not

1 administering the responsibilities and roles of the
2 government. It appears as though if the State Treasurer
3 says: Yes, I can fund and appropriate on a
4 constitutional basis, then why or how does the Department
5 of Administration have any role to play other than to
6 process in a timely manner the funds?

7 CHAIRMAN LYNN: Our understanding is that,
8 that because things have changed, we're arguing a
9 precedent that was formulated some years ago. And the
10 systems that the State has developed for tracking funds
11 and accounting for funds have become more sophisticated,
12 it's almost as if, to simplify it, the state now requires
13 two signatures for a check because of auditing
14 requirements. What they are saying is that the treasurer
15 could tell them the money is there or money would be
16 there, but they have a system which requires tying every
17 warrant issued to a specific expenditure source,
18 allocation. Until that allegation is in evidence, the
19 feeling is they would not issue a warrant, pay a bill.

20 I know it's not a good answer to your
21 question. I'm trying to be very thorough in what they
22 told us this morning.

23 What they said was the only way the
24 Department of Administration would not do that would be
25 at the direction of the Governor. It would effectively

1 take direction of the Governor in order for them not to
2 have that procedure place.

3 I don't know what gives them that
4 authority. That's the answer we were given.

5 Ms. Minkoff.

6 COMMISSIONER MINKOFF: If, in fact, this is
7 a constitutional appropriation, if the treasurer says
8 that is their interpretation of the law, why isn't that
9 the source of the money for the Department of
10 Administration?

11 CHAIRMAN LYNN: We'd like to think it would
12 be. And we would press that issue, clearly, if we got a
13 favorable ruling from the treasury.

14 CHAIRMAN LYNN: Mr. Huntwork.

15 COMMISSIONER HUNTWORK: I suspect they'd be
16 worried about same thing we would be, 154.

17 They have procedures, they have rules, and
18 they are trying to tie disbursement to an appropriation.
19 They may be concerned if they authorize it without
20 appropriation. They, themselves, might be personally
21 liable. I think everybody involved in this situation, I
22 think it's appropriate for everybody involved to exercise
23 caution, including, I might add, the Governor. I don't
24 see any exemption from, for the Governor, from this. We
25 have quite a dilemma here and have to do the best we can.

1 I don't think raling at the DOA is going to
2 get us anywhere, even if they deserve it, and they have
3 for previous things they've done to us, that's for sure.

4 CHAIRMAN LYNN: I don't think the answer is
5 raling at anybody. I think what we're trying to do, I
6 want to get back to this concept, we are trying to do the
7 job we were given to do. The job we were given to do was
8 carefully crafted to maintain our independence. Any
9 decisions by any branch of government that impacts that
10 independence is really in contravention to the intent, my
11 reading, certainly, of the intent of the constitutional
12 amendment, which is if we were to be truly independent of
13 these influences, we had to have money necessary to do
14 job. As I said, our job is three parts. We're in the
15 third part. It is still part of our job to defend the
16 maps against the suit filed.

17 I want to make mention Vice Chairman
18 Minkoff has been very helpful, made herself available to
19 join us at a number of meetings, and I really appreciate
20 that. We pursued it, basically, as best we can.

21 Unless there are other comments from the
22 Commission at this point, I know there will be questions
23 probably more appropriate for an executive session, I
24 wonder if we might hear from the public; and then I would
25 entertain a motion for Executive Session.

1 Ms. Eschinger, if you are prepared at this
2 point. I don't know how enlightening any of that was.

3 MS. ESCHINGER: For the record, I guess,
4 I'm Ann Eschinger representing not only the League of
5 Women Voters of Arizona but also the former Common Cause
6 of Arizona, specifically, Dennis Burke and Bart Turner.
7 The two organizations were the drafters of Proposition
8 106.

9 And certainly, Chairman Lynn, you are
10 correct, it was the drafters' intention that you be
11 independent.

12 It is clear in the Constitution that that
13 was our intention.

14 And, yes, we did certainly do some research
15 into the six-million-dollar figure, both here and in
16 Arizona, both here and out of Arizona, and other states.

17 Yes, we certainly did take into account
18 litigation. You know, it's one of reasons, for example,
19 your term wasn't finite, it was extended, because there
20 may -- you may very well have been in court for a very
21 long time.

22 So, yes, we did take all that into account.

23 And that was the reason for the number we chose.

24 We believe, certainly, at this point that
25 the Commission has been wise in its expenditures and a

1 wise use of money. While we did not ask for the second
2 round of hearings, for example, we certainly applauded it
3 when we heard about them and were pleased. And we are,
4 at this moment, disappointed with your report today and
5 the failure of cooperation from various government
6 officials in resolving your funding questions of the
7 moment. And we --

8 Well, that's it.

9 CHAIRMAN LYNN: All right.

10 Ms. Hauser.

11 MS. HAUSER: Just a question. In terms of
12 the drafting of 106, there is a provision that gives the
13 Commission standing to challenge the adequacy of its
14 resources in the constitutional provision.

15 MS. ESCHINGER: Okay. I'm not remembering
16 that section right now, but okay.

17 MS. HAUSER: Maybe you won't be able to
18 answer the question. Six million dollars, what we're
19 referring to as the initial appropriation, was intended
20 to go a certain distance. And I guess I was just going
21 to ask you about the provision that, let me tell you
22 where it is, it's in paragraph, what is it in, 20, The
23 Independent Redistricting Commission shall have standing
24 in legal actions regarding the redistricting plan and
25 adequacy of resources provided for representation of the

1 Redistricting Commission.

2 MS. ESCHINGER: I remember that now.

3 MS. HAUSER: In terms of the appropriation
4 itself, when that sort of question has come up in our
5 meeting with other elected officials, and one question I
6 guess is whether or not that provision was put in there
7 four just that circumstance.

8 MS. ESCHINGER: Yes.

9 MR. RIVERA: Nice, easy answer.

10 CHAIRMAN LYNN: Thank you.

11 COMMISSIONER HUNTWORK: Thank you.

12 CHAIRMAN LYNN: Any other members of the
13 public that wish to be heard?

14 At this time we'll close public comment.

15 Is there a motion pursuant to A.R.S.
16 38-431.03(A)(3) and/or A.R.S. 38888-431.03(A)(4) for an
17 Executive Session?

18 COMMISSIONER MINKOFF: So moved.

19 CHAIRMAN LYNN: Is there a second?

20 COMMISSIONER ELDER: Second.

21 CHAIRMAN LYNN: Second.

22 Discussion on the motion?

23 All those in favor, say "Aye."

24 COMMISSIONER HALL: "Aye."

25 COMMISSIONER HUNTWORK: "Aye."

1 COMMISSIONER MINKOFF: "Aye."

2 COMMISSIONER ELDER: "Aye."

3 CHAIRMAN LYNN: Motion carries.

4 Ladies and gentlemen, there is no way to
5 estimate how long the Executive Session may last. I
6 would guesstimate it to be a half hour to 45 minutes, but
7 that's just a guess. So your choices are to hang out or
8 hang up, but we'll be back in public session as soon as
9 we are finished.

10 MS. ESCHINGER: I'll try hanging out.

11 We'll see.

12 (Recess taken from 2:13 to 2:50 p.m. while
13 the Commission convenes in Executive
14 Session.)

15 CHAIRMAN LYNN: The Redistricting
16 Commission will reconvene in regular session.

17 The next item is discussion and possible
18 decision or adoption of resolutions or motions related to
19 the Commission's finances, continued operation, or future
20 litigation.

21 What is the pleasure of the Commission?

22 Ms. Minkoff.

23 COMMISSIONER MINKOFF: Mr. Chairman, it
24 appears that the biggest issue before us right now is we
25 don't have money to fulfill the responsibility that we

1 are constitutionally authorized and ordered to fulfill.
2 And, at the present time, since the approaches we've
3 tried up until now have so far been unsuccessful, I would
4 like to move that counsel be authorized to file an action
5 against the State Treasurer, against the Department of
6 Administration, and whomever else they believe would be
7 appropriate defendants in this action, to secure a
8 constitutional appropriation for the Commission, and that
9 they are authorized to be paid through the award of
10 attorney fees only if the Commission prevails in this
11 action.

12 CHAIRMAN LYNN: Is there a second to that
13 motion?

14 COMMISSIONER HUNTWORK: Second.

15 CHAIRMAN LYNN: It has been moved and
16 seconded.

17 Is there discussion?

18 Mr. Huntwork.

19 COMMISSIONER HUNTWORK: Mr. Chairman, where
20 would this lawsuit be brought?

21 CHAIRMAN LYNN: Ms. Hauser.

22 MS. HAUSER: It would be our recommendation
23 to direct file in the Supreme Court.

24 COMMISSIONER MINKOFF: May I amend my
25 motion and add that to the motion, the action be filed in

1 the Supreme Court of the State of Arizona?

2 CHAIRMAN LYNN: Is that acceptable to the
3 second?

4 COMMISSIONER HUNTWORK: Yes, it is.

5 CHAIRMAN LYNN: So amended.

6 Other discussion on the motion?

7 If not, all those in favor of the motion

8 signify by saying "Aye."

9 COMMISSIONER ELDER: "Aye."

10 COMMISSIONER HALL: "Aye."

11 COMMISSIONER HUNTWORK: "Aye."

12 COMMISSIONER MINKOFF: "Aye."

13 CHAIRMAN LYNN: Chair votes "Aye."

14 Motion carries unanimously.

15 Ms. Minkoff, any further motions?

16 Mr. Huntwork.

17 COMMISSIONER HUNTWORK: Mr. Chairman, I

18 would like to say that, you know, the districts that we

19 have created following the constitutional rules that were

20 given to us are no longer our districts at this point. I

21 believe they are the people's districts. We have run out

22 of the money that was provided to us through the

23 Constitution, initial appropriation in the Constitution,

24 and we no longer have any money. And without money, we

25 cannot proceed. It is actually illegal and violative of

1 other laws for us to proceed. Therefore, I make the
2 motion that we authorize and instruct our attorneys to,
3 firstly, move for a stay of the current proceedings
4 pending in the Superior Court and, secondly, discontinue
5 all other activity on behalf of the Commission until such
6 time as we receive additional funding from some source.

7 CHAIRMAN LYNN: I'll assume that that
8 motion is to be, make it consistent with the motion
9 Ms. Minkoff just indicated, to discontinue, other than
10 the filing in the Supreme Court.

11 COMMISSIONER HUNTWORK: Obviously other
12 than motion we just approved.

13 CHAIRMAN LYNN: Second?

14 COMMISSIONER ELDER: Second.

15 CHAIRMAN LYNN: Moved and second.

16 MS. HAUSER: May I clarify something for
17 the record?

18 CHAIRMAN LYNN: Ms. Hauser.

19 MS. HAUSER: The differentiation being a
20 differentiation from the mandamus action where the
21 Commission is guaranteed to receive it's attorneys' fees
22 and costs if it prevailed.

23 CHAIRMAN LYNN: It's not obligated if it
24 doesn't.

25 MS. HAUSER: It's not obligated if it

1 doesn't.

2 We'd proceed to do that action, certainly,
3 in the hope we prevail, not just so the Commission could
4 receive appropriation, if we do it's work, so the
5 attorneys could be paid; otherwise if it doesn't prevail,
6 we'd not be paid for our efforts; therefore, the
7 Commission would not receive appropriation for its
8 efforts in violation of state law.

9 CHAIRMAN LYNN: Other discussion on the
10 motion?

11 Ms. Minkoff?

12 COMMISSIONER MINKOFF: I have a question.

13 I support Mr. Huntwork's motion in concept.
14 However, if counsel is successful in the mandamus action,
15 or funds become available through the Legislature, or
16 authorization by the Treasury Department, et cetera, I'd
17 like to know the process we'd follow to authorize our
18 attorneys to gear up and begin to proceed in preparation
19 for the lawsuit.

20 CHAIRMAN LYNN: I wonder if the motion
21 might be worded in a way to direct they cease all work
22 until funds become appropriately available, until funds
23 become available.

24 COMMISSIONER HUNTWORK: It was.

25 CHAIRMAN LYNN: How do we know that?

1 Hands, and start back up.

2 COMMISSIONER MINKOFF: How do we notify
3 them, give the Chairman authority of that?

4 CHAIRMAN LYNN: You could, and I'd act on
5 your behalf.

6 COMMISSIONER MINKOFF: Add that to the
7 motion.

8 MS. HAUSER: On call of the Chairman? If
9 you want to.

10 COMMISSIONER HUNTWORK: I think that -- I
11 would certainly add to the motion to recommence at the
12 direction of the Chairman upon advice of counsel.

13 CHAIRMAN LYNN: Sufficient, counsel?

14 COMMISSIONER MINKOFF: Advice of counsel
15 that isn't being paid.

16 COMMISSIONER HUNTWORK: When funds are
17 available to pay them.

18 CHAIRMAN LYNN: Check and balance.

19 MS. HAUSER: I guess, a question I have,
20 with respect to your motion which said to cease working,
21 are we authorized, if directed by the court, to appear on
22 your behalf outside of asking for the stay or not?

23 COMMISSIONER HUNTWORK: Let me ask you a
24 question: The sense of my motion is no, you are not
25 authorized. I said you are not authorized. The reason

1 is that I believe our fee arrangement is that we would
2 still owe you money even if we didn't have authority to
3 pay it. And --

4 CHAIRMAN LYNN: If you appeared.

5 COMMISSIONER HUNTWORK: If you appear and
6 continue on our behalf.

7 MS. HAUSER: That is true. Although more
8 importantly, our concern would be that if we were still
9 authorized to appear, if a stay were not granted, if told
10 to show up, we'd have no witnesses. That would be
11 certainly prejudicial to the Commission. That is the
12 reason for the clarification.

13 COMMISSIONER ELDER: Should that be a
14 separate motion or amendment to this motion? Because I
15 would propose we pull their authorization to appear on
16 our behalf just to make it very clear and go from that
17 point rather than put that into this motion.

18 COMMISSIONER MINKOFF: It's probably
19 cleaner as a separate motion.

20 CHAIRMAN LYNN: Do it separately.

21 COMMISSIONER HUNTWORK: My motion was to
22 discontinue.

23 COMMISSIONER HALL: Rather than
24 discontinuing, I wonder if it could be read back,
25 Mr. Chairman.

1 CHAIRMAN LYNN: Lisa, read Mr. Huntwork's
2 motion to us, as originally made.
3 (Motion in record read.)
4 COMMISSIONER MINKOFF: Does the wording of
5 that motion, then, prohibit you from going into court to
6 continue representing us, even if you are ordered by the
7 judge to do so, unless funds become available?
8 MR. RIVERA: I think I would clarify it.
9 COMMISSIONER HUNTWORK: I think that the
10 last point is somewhat different and that we should have
11 a separate motion.
12 CHAIRMAN LYNN: Then the motion on the
13 floor is further, direction of counsel to act only as far
14 as the stay concerned and --
15 COMMISSIONER MINKOFF: -- and mandamus.
16 CHAIRMAN LYNN: Consistent with the
17 mandamus previously moved and passed.
18 Discussion on the motion?
19 All those in favor of the motion signify by
20 saying "Aye."
21 CHAIRMAN LYNN: Motion carries unanimously.
22 It is so ordered.
23 Clarification of responsibilities?
24 Mr. Elder.
25 COMMISSIONER ELDER: I would like to

1 rescind the pull of authorization of attorneys to appear
2 on our behalf. I don't know whether we need to have
3 anything further than that or not.

4 MS. HAUSER: Until appropriation becomes
5 available except for filing a stay and -- I mean --

6 COMMISSIONER ELDER: Okay. Let me amend
7 that then.

8 Pull or rescind authorization to appear on
9 our behalf except for the processing.

10 Is that the term you wish --

11 COMMISSIONER HUNTWORK: Can we make it just
12 on our behalf in the Superior Court proceeding?

13 COMMISSIONER MINKOFF: The stay is the
14 court proceeding. We need them to do that.

15 Say pull their authorization to appear on
16 our behalf except for filing of the mandamus action and
17 request for stays in Superior Court until funding becomes
18 available.

19 COMMISSIONER ELDER: Okay. To then augment
20 or supplement that with the exception of filing the
21 mandamus in the Supreme Court.

22 CHAIRMAN LYNN: Supreme Court.

23 COMMISSIONER ELDER: Mandamus in the
24 Supreme Court and filing a motion to stay in the Superior
25 Court.

1 COMMISSIONER MINKOFF: Until funding
2 becomes available.

3 COMMISSIONER ELDER: Until funding becomes
4 available.

5 CHAIRMAN LYNN: Is there a second?

6 COMMISSIONER HUNTWORK: Second.

7 CHAIRMAN LYNN: Moved and seconded.

8 To be very clear on the record, what the
9 intent of this motion is is to make it very clear that
10 legal counsel does not have the Commission's
11 authorization to appear or to conduct work on our behalf
12 beyond those things that have specifically been ordered
13 today by the Commission, one being the mandamus action in
14 State Supreme Court and, two, filing the stay in the four
15 cases in Superior Court.

16 Discussion on the motion?

17 All those favor --

18 Mr. Huntwork.

19 COMMISSIONER HUNTWORK: I would just like
20 to say that this is -- I consider this to be a serious
21 addition to the previous motion, one that we need to
22 focus on and discuss the reasons for.

23 Specifically, I think it would be a
24 violation of law to fail to take this extra action.
25 That's the reason we need to go to this extraordinary

1 length to clarify this. Ordinarily the Superior Court
2 would have more, I think, more say about how this type of
3 a scenario would play out. But here we face specifically
4 the prohibitions of Title 35, including specifically
5 35-154 and other provisions which make it violative of
6 civil and criminal law for us to expend funds we do not
7 have; to proceed, to make it possible to proceed, to
8 leave any possibility of proceeding would create the risk
9 of an inadvertent violation of these very serious
10 statutory provisions; and, therefore, for that reason we
11 have to take this extraordinary step.

12 CHAIRMAN LYNN: Thank you.

13 Further discussion on the motion.

14 Mr. Hall?

15 COMMISSIONER HALL: I just wanted -- I'm
16 personally concerned about the language "shall be liable
17 for any funds procured in such manner plus 20 percent
18 plus legal interest for any amount per the date."
19 Spending much of my life helping one or another to
20 encumber one another, that's very disconcerting,
21 considering the amount of pay we're receiving. I just
22 think it's a commentary and concerns me we're thus far in
23 this process, we've volunteered to do this, and it never
24 ceases to amaze me how in many cases politics takes
25 precedence over the people and principles.

1 It's unfortunate, nevertheless I'm proud of
2 the districts we have in their place, approved by the
3 Department of Justice. And we can do what we're allowed
4 to do by law. Unfortunately we're not allowed to finish,
5 at this point, the work we're chartered to do. Hopefully
6 a wiser, wiser minds will prevail at some point and allow
7 us to do what we've been asked to do.

8 CHAIRMAN LYNN: Further discussion on the
9 motion?

10 The Chair would only add some of the
11 comments I made in my initial report I gave the
12 Commission.

13 I think the action taken today is
14 regrettable but necessary. I don't think any of us
15 wanted it to come to this. I think our concern from the
16 beginning was that we do as the constitution directed us
17 to do, which was to conduct our work in an independent
18 fashion not influenced by either branches of government
19 or political process, to the extent possible. Even
20 though no process that deals with the process is
21 completely free of political influence, we certainly were
22 given opportunities to keep it free of those influences,
23 as free as we could. We find ourselves in a situation
24 where, because of circumstances of extended litigation,
25 we're not able to do this in a timely fashion. I'd hate

1 for anyone to think this is for any reason other than to
2 fulfill our Constitutional responsibility. It's not a
3 matter of delay, not a matter of trying to slow the
4 process down.

5 I think we can speak for all of us, to say
6 we'd like nothing better than speed this up to a
7 reasonable conclusion with our third area of
8 responsibility, litigation of the action we've taken.

9 With that, any further discussion?

10 All those in favor of the motion, signify
11 by saying "Aye."

12 COMMISSIONER ELDER: "Aye."

13 COMMISSIONER HALL: "Aye."

14 COMMISSIONER HUNTWORK: "Aye."

15 COMMISSIONER MINKOFF: "Aye."

16 CHAIRMAN LYNN: The chair votes "Aye."

17 Motion carries unanimously. It is so
18 ordered.

19 I'd also ask the Commission to authorize
20 the Chair and Mr. Hall, Mr. Hall has been acting in the
21 capacity as administrative review for the Commission with
22 respect to costs, and the two of us could, on a go
23 forward basis, try to minimize the ongoing expenses of
24 the Commission to the point that we will take the
25 resources we currently have and stretch them as far as we

1 think they can be stretched until relief is provided from
2 some source.

3 Is there a second?

4 COMMISSIONER ELDER: Second.

5 CHAIRMAN LYNN: Discussion on that more
6 motion?

7 All those in favor, say "Aye."

8 COMMISSIONER ELDER: "Aye."

9 COMMISSIONER HALL: "Aye."

10 COMMISSIONER HUNTWORK: "Aye."

11 COMMISSIONER MINKOFF: "Aye."

12 CHAIRMAN LYNN: Opposed?

13 (Motion carries.)

14 COMMISSIONER MINKOFF: I have a comment.

15 With respect to filing the special action
16 in Supreme Court, the mandamus action that should be
17 filed within the next day or two, if the Treasurer and
18 DOA are willing to go ahead and make and implement
19 Constitutional appropriation, that I assume that
20 authorization gives us some discretion to not file under
21 those circumstances.

22 CHAIRMAN LYNN: The Commission would be
23 comfortable with a decision on the attorneys' part.

24 It would actually constitute a solution to
25 our financial circumstance if those two entities agreed

1 to cover ongoing costs. They would be in violation, as
2 Mr. Huntwork indicated earlier, I think that's the
3 triggering point, anything that were to happen that would
4 assure we not be in violation of any state statute to be
5 able to meet our obligations.

6 CHAIRMAN LYNN: Mr. Huntwork.

7 COMMISSIONER HUNTWORK: Two motions.

8 Suspension of work, withdrawal of authority
9 until we receive funding. I think I would be comfortable
10 proceeding once we had that. If there is any
11 controversy, though, if somebody is challenging that, I
12 would still prefer to have us take initiative to bring
13 that action before the Arizona Supreme Court as
14 expeditiously as possible to determine, once and for all,
15 in the most direct route possible, whether or not we are
16 entitled to funding.

17 CHAIRMAN LYNN: If the answer is not clear
18 and compelling.

19 COMMISSIONER MINKOFF: Right.

20 CHAIRMAN LYNN: Mr. Elder?

21 COMMISSIONER ELDER: I'd add to that,
22 seeing what we've gone through with the verbiage back and
23 forth with various agencies and departments, we have
24 something very specific, preferably in writing.

25 MS. HAUSER: More blunt.

1 COMMISSIONER ELDER: I don't want to take
2 he said, she said, to go to court with it.

3 CHAIRMAN LYNN: Further business?

4 COMMISSIONER HUNTWORK: One more comment
5 about what we're doing now.

6 As a member of the Bar myself, I very much
7 believe in the legal process. I hate to see it come to
8 an abrupt end at such a critical point. If there was
9 anything humanly possible to avoid this interruption, no
10 one would want to do that more than I do. I think we owe
11 it to the people of the state and to the Commissions to
12 follow us to resolve these legal questions and to, you
13 know, act in accordance with the law. We knew from the
14 beginning that this was a new statute, a new
15 constitutional provision, that there were many novel
16 legal questions that have to be explored and resolved.
17 Part of the appeal to this process for me was to be
18 involved in that and see it through to the end. I
19 probably take it doubly hard we have to take these
20 extraordinary measures at this time.

21 CHAIRMAN LYNN: Thank you, Mr. Huntwork.

22 Mr. Elder.

23 COMMISSIONER ELDER: One last request of
24 the attorneys from my standpoint.

25 I'd like to make sure when we file, we file

1 with all departments relative to the process, that can be
2 if the Governor has to give permission to do this, the
3 Governor gets named. If we have to go to risk management
4 for some reason, be sure we have all players, make sure
5 there isn't somebody out here that says I can play games.

6 CHAIRMAN LYNN: Other commentss from the
7 Commission?

8 Further business?

9 Anything from staff?

10 If not, the Commission will stand

11 adjourned.

12 Thank you all very much.

13 (Whereupon, the hearing concluded at

14 approximately 3:14 p.m.)

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STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

BE IT KNOWN that the foregoing hearing was taken before me, LISA A. NANCE, RPR, CCR, Certified Court Reporter in and for the State of Arizona, Certificate Number 50349; that the proceedings were taken down by me in shorthand and thereafter reduced to typewriting under my direction; that the foregoing 42 pages constitute a true and accurate transcript of all proceedings had upon the taking of said hearing, all done to the best of my ability.

I FURTHER CERTIFY that I am in no way related to any of the parties hereto, nor am I in any way interested in the outcome hereof.

DATED at Phoenix, Arizona, this 9th day of September, 2003.

LISA A. NANCE, RPR, CCR
Certified Court Reporter
Certificate Number 50349