

ARIZONA INDEPENDENT REDISTRICTING COMMISSION

PUBLIC MEETING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona

November 17, 2006
1:06 p.m.

REPORTED BY:
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Certified Reporter
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PREPARED FOR:
THE COMMISSION

COPY



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1 A TRANSCRIPT OF PROCEEDINGS was taken at 1:06
2 p.m. on Friday, November 17, 2006, at the Independent
3 Redistricting Commission, 1044 West Washington Street,
4 Phoenix, Arizona, before Diane Donoho, a Certified Reporter,
5 Certificate No. 50691, in and for the State of Arizona.

6
7 COMMISSIONERS:

8 Steven W. Lynn - Chairman
9 Andrea Minkoff
10 Daniel R. Elder
11 Joshua M. Hall (telephonically)
12 James R. Huntwork (telephonically)

13 Adolpho Echeveste - Executive Director

14 COUNSEL APPEARING:

15 ON BEHALF OF INDEPENDENT REDISTRICTING COMMISSION.

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1 Phoenix, Arizona
2 November 17, 2006
3 1:06 p.m.

4 CHAIRMAN LYNN: We will call the meeting to
5 order. For the record, a roll call. Miss Minkoff?

6 MS. MINKOFF: Here.

7 CHAIRMAN LYNN: Mr. Elder?

8 MR. ELDER: Here.

9 CHAIRMAN LYNN: Mr. Huntwork?

10 MR. HUNTWORK: Present.

11 CHAIRMAN LYNN: Mr. Hall?

12 MR. HALL: Here.

13 CHAIRMAN LYNN: All five commissioners being
14 present along with counsel and with Commission staff.

15 Item 2, call to the public. We have several
16 slips from individuals who wish to be heard this afternoon.
17 If you wish to be heard and have not yet filled out a slip,
18 we'd ask you to do so. Just a reminder that information
19 coming to us through call to the public, unless it is
20 germane to an item that is already on the agenda, it may not
21 be able to be discussed at today's meetings based on the
22 tenets of the Open Meeting Law. So it is not that aren't
23 interested in what you have to say. It is not that we
24 are constrained in some fashion about discussing those items
25 at today's meeting if they're not otherwise on the agenda.

1 So with that having been said, let me first call
2 on Esther Duran Lunn, who is a plaintiff with the Minority
3 Coalition for Fair Redistricting. Ms. Lunn, good afternoon.

4 MS. LUNN: Thank you, members of the Commission.
5 I'm here today as a member of the Minority Coalition for
6 Fair Redistricting, but I'm also here as a representative of
7 the Arizona Hispanic Community Forum, a statewide advocacy
8 organization. The reason that I'm here is I'm here to urge
9 you to work with the coalition in perhaps trying to end this
10 and draw some competitive maps so that we can get on with
11 the business of fair redistricting.

12 I urge you to do that because I know that the
13 Minority Coalition submitted some maps which we felt were
14 competitive, and I think that using that as a base is
15 certainly the opportunity to work with you, perhaps tweaking
16 those maps or coming up with something similar that would
17 make it competitive and that we could stop all of this other
18 delay and be ready for the next election.

19 I ask you that, as a member of the Coalition, but
20 also I ask you that, putting on my other hat, and that's
21 simply as of a taxpayer. As a taxpayer, I regret, as I'm
22 sure many of our Arizona citizens would, any kind of
23 spending of money needlessly. Now, this has already gone
24 twice to the judge, and twice they have ruled in our favor,
25 and it's been appealed. So I urge as a taxpayer, let's not

1 waste taxpayer dollars anymore, especially when we're
2 willing to sit down and work with you to make these maps
3 competitive and get on with the business of having fair
4 elections -- fair districts for the next elections. Thank
5 you.

6 CHAIRMAN LYNN: Thank you. Next to address the
7 Commission is Bruce Murchison. Bruce Murchison is a
8 resident of legislative District 29 in Tucson. If you
9 would, please, if you have a handout, we would be happy to
10 take it. Thank you.

11 MR. MURCHISON: You want some for the other
12 commissioners as well, and counsel?

13 CHAIRMAN LYNN: Yes, please, and counsel if you
14 would.

15 MR. MURCHISON: Thank you for very much,
16 Chairman, Commissioners. I'll try and be brief because I
17 know of a lot of work to do. I understand that you have a
18 tremendous job here. It's so hard. You can't please
19 everybody. Somebody is going to be upset, and certainly you
20 know I've been upset for the last six years. So I'm no
21 different.

22 What I'm trying to do, ladies and gentlemen, is
23 trying to bring attention to the problem in District 29,
24 which is south and southeast Tucson. We have two distinct
25 communities of interest, South Tucson, which is primarily

1 Hispanic, and East Tucson, which is not. And when you put
2 those two together, the high density of population in 29, it
3 does not matter who East Tucson chooses as their
4 representative. They're overruled. For the last three
5 elections -- and again, the election that just happened, I
6 have to get the numbers to provide proof of this, but I'm
7 certain it's true from Swan East, for those who know Tucson,
8 Swan's at the midway point in District 29 -- you have
9 entirely different results than from Swan West. And
10 unfortunately the maps I gave you doesn't show the current
11 map but the three maps that you've already considered which
12 were considered fairly competitive for Tucson. And I'll get
13 to those real quick.

14 What happens is, because of the density of South
15 Tucson, all three representatives, the senator and both
16 representatives, all live within a matter of three miles of
17 each other. In fact, they live within the first two miles
18 of a 13-mile span going across 29. So figuratively, nobody
19 on the east side of Tucson has any say in who's representing
20 them.

21 Now, again, how are you going to redraw this and
22 make it competitive? When I came up here a couple years ago
23 and addressed the commission, you basically agreed that it
24 wasn't competitive. However, the map I proposed at the time
25 took away part of the representation of South Tucson, which

1 was a concern of the Voter Rights Act. So I understand why
2 there's a problem there. What I've done is I researched
3 your own maps, which I put before you along with the
4 breakdown of Republican, Democrat, minority, non-minority,
5 and shown that any of these three maps would give you at
6 least three competitive districts in and around Tucson,
7 including 29.

8 Now, part of South Tucson, which currently is 29
9 now, on the first map, I believe -- and I'll look real
10 quick -- you have it's T, and it would not take away any
11 representation. In fact, T and X currently are 29 and 27 on
12 the current map and it would retain its representation. So
13 there's no problem with violating the VRA. But if you look
14 over there at W, that takes East Tucson and puts it along
15 with Vale and other subdivisions that are going out towards
16 the east, allowing a more contiguous voice for that part of
17 the community.

18 The second one deals with Competitive Map B-1,
19 which again came from your February 5 through 9 hearings in
20 2004, and that shows, again, several maps that would be
21 competitive. Especially, we see L, taking all of East
22 Tucson and putting them together. That is very, very good
23 for Tucson, at least, and again, does not take away any
24 representation from the Hispanic community. Very important
25 to be consistent with the VRA.

1 And then the third one -- and this is the last
2 one I'll talk about -- once again, you see that X and T,
3 again, keep the Hispanic community intact. It gives them
4 two different districts and also allows competitiveness in
5 W, V, and U. So there are three maps there that you have
6 already considered and for whatever reason decided not to
7 use. Right now according to your own maps, there's only one
8 competitive district in Tucson, and that's 28. And I'll be
9 honest with you. It's not competitive. I've looked at the
10 voting records over the last three elections, and there's no
11 way that's competitive. So these at least will give you
12 three, according to your own numbers, and I would urge you
13 to at least consider that in redrawing these lines.

14 Are there any questions from the Commission?

15 MS. MINKOFF: Just one. You said that in the
16 third map w, V, and U were competitive. Can you tell us
17 which would be competitive districts in the other two maps
18 according to your analysis.

19 CHAIRMAN LYNN: According to what I've seen, I
20 believe that in the first map, which is Competitive A-1, it
21 would have been W, V, I think U, if I'm not mistaken. I
22 don't know the breakdown for you on the second sheet.
23 You'll notice that I took the analysis from your website
24 along with -- unfortunately U is not on this one, but it is
25 Competitive Test A under your February 5 through 9 hearings

1 from 2004.

2 And then on B, Competitive B-1, it would be L --
3 it would be almost 50/50 split on that one -- K. That would
4 be a slight Democrat but still competitive within reason --
5 and I believe it was one as well. J and M would continue to
6 be primarily Hispanic representation, mostly Democrat. So
7 in all three of those, at least two of the three would be
8 competitive districts. The other one, possibly two, I
9 believe it's three.

10 MS. MINKOFF: Thank you.

11 CHAIRMAN LYNN: Thank you, Mr. Murchison. Let us
12 have it if it's an extra copy, and we'll make sure.

13 MR. MURCHISON: Thank you very much.

14 CHAIRMAN LYNN: Thank you very much for appearing
15 here. Next to speak is Paul Eckstein. Paul represents --
16 Mr. Eckstein represents the Arizona Minority Coalition.
17 Mr. Eckstein, good afternoon.

18 MR. ECKSTEIN: Thank you. Mr. Chairman, Members
19 of the Commission. My name is Paul Eckstein. I do
20 represent the Arizona Minority Coalition. We have been
21 visiting with one another since 2001 and been litigating
22 against one another since the spring of 2002. You all, I'm
23 sure, have had an opportunity to read Judge Fields' latest
24 findings of fact and conclusions of law and make your own
25 judgments as to whether that is an opinion that will

1 withstand an appeal. We believe it will. We believe it
2 doesn't make any new law. We believe the law that was made
3 in the Court of Appeals' opinion that came down in October
4 of 2005 is clear. It's not interfered with by this opinion
5 and this opinion complies with the October 2005 opinion of
6 the Arizona Court of Appeals. And while you certainly have
7 the right to appeal and take this up, if you do, you know
8 that we will be there, and I don't think anyone can predict
9 with great certainty what will happen. We believe it will
10 be affirmed, and we will have spent a lot of money and
11 wasted a fair amount of time if we go that route.

12 The Coalition met several days ago, and after the
13 Coalition met, the lawyers were authorized and directed to
14 meet with your lawyers, and we did yesterday. And we
15 discussed, in rather broad terms, the outlines of the
16 settlement. Here we are in 2006. We know that the only
17 elections that can be affected by any kind of settlement or
18 whatever happens in the court are the 2008 and 2010
19 elections. I regret that the 2004 and '06 elections have
20 happened and that the map has been less competitive than it
21 should have been. But that is water under the bridge. We
22 can't change that. But we can, I think, with as Ms. Lunn
23 said, whether it's tinkering or some minor modifications,
24 create a competitive map that the Coalition is prepared to
25 endorse and to work with you to create.

1 Specifically what we said to your lawyers
2 yesterday was the Coalition would work with you to create
3 two competitive -- two more competitive districts that, we
4 believe, can be created from a current map without violating
5 the Voting Rights Act restrictions, without causing
6 heartburn in Northern Arizona, and without violating Eco,
7 without any significant change, particularly given the
8 population movements that have occurred since the 2000
9 census. Now, we understand that you have to use the 2000
10 census data, but we can all understand where the population
11 has moved to create competitive districts on this map.

12 So very simply, we're here to tell you that we
13 are prepared to meet with your lawyers with you to sit down,
14 roll up our sleeves, to make every effort to create a map
15 that would create two more competitive districts that we
16 assume your voting rights law expert Ms -- Dr. Hanley will
17 say is in compliance with the Voting Rights Act and that we
18 will for once go arm in arm to the Justice Department and to
19 the judge and say that this is what we think ought to be in
20 place for the next two years.

21 I'm here to answer any questions that you may
22 have about this proposal. One of the things you may ask is,
23 you know, what districts do we have in mind? I've really
24 come with an open mind, but there's some obvious districts,
25 District 26, being one that is quite close to being quite

1 competitive on the AQD and the judge's scale that, by virtue
2 of the last election, one can see is close to competitive.
3 11 may be another district in Phoenix, and I think those
4 changes to those two districts -- and I'm not advocating
5 changes specifically to those two districts, but just to
6 pick them out -- could be done without any significant
7 movement of minority population and, therefore, leaving in
8 place the Voting Rights approval that you received in 2003
9 now, I realize it would still have to go back to the Justice
10 Department, but I don't think even this Justice Department
11 would have the nerve to not approve a map that didn't move
12 any minority at all.

13 CHAIRMAN LYNN: Ms. Minkoff.

14 MS. MINKOFF: Yes. Mr. Eckstein, is there
15 something magic about the number 2? I wondered why you say
16 you can help us create two competitive districts rather than
17 one or ten or some other number.

18 MR. ECKSTEIN: Well, I think, when we came to you
19 in the past, we said that there were three and perhaps four
20 that could be created. I think that two is achievable with
21 very little movement of population. So if there's magic to
22 "two," that's why we picked two. I understand that, if we
23 went to three, at least you decided the last time around,
24 that you had to go to Northern Arizona, and we saw the
25 issues that that created, and we want to work with you to

1 avoid that. If I were sitting in your chairs, I might make
2 a different decision and say no, the map ought to be redrawn
3 in Northern Arizona. But I understand the difficulty of
4 doing that. And so I think one can create two competitive
5 districts without messing with the map in Northern Arizona.
6 And you can maybe pick two in Tucson or Pima County or maybe
7 two in Maricopa County. But I think the easiest thing to do
8 would probably pick one in each.

9 CHAIRMAN LYNN: Any questions for Mr. Eckstein?

10 MR. HUNTWORK: Mr. Chairman, I have concerns
11 about the process that has been suggested. I've been
12 concerned about it all along. I understand that our
13 Commission can receive input from any member of the public.
14 But we can't -- I don't think we can sit down and cut a deal
15 even in the context of litigation. We have to -- we can't
16 sit down and, you know, cut deals with each other outside of
17 an open meeting, and we can't do it with any interest group
18 in the public as far as I can see. It would seem to me
19 that, if Mr. Eckstein has ideas about how we can create
20 competitive districts without doing detriment to any of the
21 other mapping criteria, that he is always welcome to submit
22 those as did the gentleman before him. And we are -- you
23 know, we can consider them as we would from any other member
24 of the public.

25 But I don't see how we can -- I thought

1 Proposition 106 was supposed to set up a procedure where we
2 don't sit down and cut deals. So I guess that's the
3 question, but I'd be willing to or interested in a response
4 to that.

5 MR. ECKSTEIN: Mr. Huntwork, if my recollection
6 is accurate, in May of 2002 the Independent Redistricting
7 Commission sat down with information from the Minority
8 Coalition and perhaps others and created an interim map as a
9 result of the Federal District court litigation. I don't
10 consider that, quote, cutting a deal. I consider that
11 soliciting and receiving information from, in that case, the
12 Minority Coalition, meeting with your consultants, creating
13 a map, showing the map to the Independent -- the Coalition,
14 and getting the Coalition's views on that map. And that's
15 what I have in mind. So this is --

16 CHAIRMAN LYNN: To do it at a public meeting
17 where any member of the public also has the right to attend
18 and provide input at the same time?

19 MR. ECKSTEIN: Sure. Whatever discussions that
20 could be, could be done. We didn't anticipate being done in
21 public. Whatever give and take there was would be done in
22 public and certainly the votes would be done in public.
23 That's what I think the process contemplates. In fact, you
24 did in the Fall of 2001 listen to and solicit input from the
25 Coalition, and while you didn't accept the Coalition's

1 proposal, you came back. I would think now with fewer
2 districts to talk about the chance of your coming up with a
3 map that the Coalition found acceptable would be a lot
4 higher than they were when you're dealing with a tabula
5 rasa.

6 CHAIRMAN LYNN: Miss Minkoff.

7 MS. MINKOFF: Are you through, Mr. Huntwork?

8 MR. HUNTWORK: No. I was just thinking out loud
9 about the comment about fewer districts to consider. It
10 seems to me if we're going to remap, we have 30 districts to
11 consider.

12 MR. ECKSTEIN: You can make this difficult if you
13 want, and you can drag this out for months. Or you can make
14 it easier, if you want, as well. And I do think by virtue
15 of the Court of Appeals' opinion, you have to start with a
16 grid map, and you can start with a grid map that you started
17 with in 2004 and then quickly move to a couple of districts
18 that you want to focus on.

19 The one thing you have here is a lot more freedom
20 than you had under the previous opinion. Judge Fields did
21 not give you any direction to create definitions or to
22 create X number of more competitive districts or to create
23 more competitive districts in the Hall/Minkoff map. All he
24 did -- of course, I don't want to minimize it -- what he did
25 was enjoin the use of the map that you adopted in

1 August 2002 for any further elections all to take place
2 after 120 days. So that gives you a whole lot of freedom.
3 If you want to start over and just begin from scratch, I
4 guess you can do that. But --

5 MR. HUNTWORK: One more question -- and I
6 apologize, Mr. Chairman. I do have one more question. This
7 is very important and interesting, and I need to get this
8 input. I would very much like to have this input. One of
9 the reasons that Judge Fields entered that injection, as I'm
10 reading his opinion, was that we failed to take public input
11 on competitiveness at the very first step following the
12 creation of the grid and that we then proceeded to create
13 additional maps which did not take competitiveness into
14 consideration. How, in your opinion, can we comply with his
15 order without going back to that stage and starting from
16 scratch at that stage?

17 MR. ECKSTEIN: I think, as I said, that's where
18 you begin. You begin with the grid map, you put the grid
19 map on the table, and you take into evidence before you
20 information with respect to competitiveness and all the
21 other goals. What I'm saying, though, is you do not -- once
22 you have taken that into account, unless you receive
23 information that greatly changes your view of the world,
24 start with a completely different map.

25 MR. HUNTWORK: Isn't the point of that discussion

1 that we might get that information. If it makes no
2 difference if we're not going to do anything significantly
3 different, then why would that be a basis for overturning
4 when we ultimately did?

5 MR. ECKSTEIN: Well, the Court of Appeals
6 determined that in their opinion. This was not Judge Fields
7 on an adventure on his own. The Court of Appeals said you
8 erred when you did not take competitiveness into account
9 immediately after the grid maps were created. So all he was
10 doing was following the Court of Appeals.

11 MR. HUNTWORK: Whichever court said that, the
12 question is precisely the same. If it's not a significant
13 factor, why would that be a basis for overturning our
14 decision. And if it is, don't we have to go back and take
15 that point very seriously.

16 Mr. Chairman, that's, I suppose, a rhetorical
17 question. That's fine. Thank you.

18 CHAIRMAN LYNN: Rhetorical in the sense of
19 discussing it out loud, and I think ultimately some court
20 somewhere will settle that issue. It won't be settled this
21 afternoon with Mr. Eckstein, I don't believe.

22 MR. HUNTWORK: Thank you. That's what I meant.

23 CHAIRMAN LYNN: But I appreciate the question.

24 Ms. Minkoff.

25 MS. MINKOFF: Mr. Eckstein, I'm certainly not an

1 attorney. There are plenty of them here, but I'm asking
2 you: I understand that there is a time limit during which
3 you can file an appeal so that, if the Commission does not
4 appeal Judge Fields' ruling by a certain date, we will have
5 waived that right.

6 MR. ECKSTEIN: Right.

7 MS. MINKOFF: If we decide not to appeal and we
8 take input from the Coalition as well as other people around
9 the State who may have ideas of how we can improve the map
10 in terms of competitiveness and we decide on a map, and the
11 Minority Coalition doesn't like it, what happens? Do we
12 start the process of litigation all over again, or do we
13 just go back to Judge Fields and ask him?

14 MR. ECKSTEIN: You have three options, I think:
15 Number 1, to appeal and try to persuade the trial court and
16 then the Court of Appeals to stay Judge Fields' order and
17 not do any mapping and say that any discussions are not
18 likely to result in a favorable creation of new districts.
19 That's one option. The second option at the other end is to
20 not appeal, to try to work with the parties, and if you get
21 a solution, fine. If you don't, you waive your right to
22 appeal.

23 The third solution is to do an appeal, stipulate
24 with the parties to stay the briefing on appeal -- the
25 notice of appeal is a one-page piece of paper -- and explain

1 that the Commission and the parties are attempting to see if
2 a solution can be found. So those are the three options I
3 see that you have. You need not -- you can file your
4 appeal, which is something that is not waivable and, then
5 proceed to negotiate and, if the negotiations fall through,
6 crank up the briefing.

7 MS. MINKOFF: And if we were to choose either
8 Option 2 or Option 3 -- in other words, either waiving
9 appeal or filing an appeal and postponing briefing -- what
10 options then are available to the minority coalition if you
11 don't like the map we come up with?

12 MR. ECKSTEIN: Well, if you don't like the map
13 that -- if we don't like the map that has been put in front
14 of us, we say we don't like it, and you can then decide
15 whether you dismiss the appeal or whether you prosecute the
16 appeal. And prosecuting the appeal means full briefing and
17 argument.

18 The one thing I would say about -- we'll call it
19 Option 2, the middle course -- is that, while that is
20 available -- and I think we worked the Court of Appeals on
21 behalf of the Commission and on behalf of the Coalition, I
22 would think that the lawyers on behalf of the Commission
23 don't want to let a whole lot of time go by because we don't
24 want to create the kind of rush that we've had in the even
25 years, in 2002 and 2004. So this is something that would

1 have to be done in relatively short order, say on the order
2 of two or three months.

3 MS. MINKOFF: You mean the remapping?

4 MR. ECKSTEIN: Yes. Yeah.

5 MS. MINKOFF: Thank you.

6 CHAIRMAN LYNN: Any other questions for
7 Mr. Eckstein. Mr. Eckstein, thank you. We appreciate your
8 being here.

9 Next speaker is the Honorable Pete Rios,
10 representative from legislative Direct 23.

11 MR. RIOS: Thank you, Mr. Chairman. And I will
12 read a prepared statement. That way I won't keep going on
13 like most politicians do. So, Mr. Chairman, Members of the
14 Commission, I think it's past time that we end our
15 redistricting dispute. Nearly six years ago this Commission
16 was established and began its work. Three legislative
17 cycles have come and gone, and nearly \$10 million of
18 taxpayer money has been spent. So far only the lawyers and
19 the consultants have been the winners in this process. The
20 law in this area has been set. The Court of Appeal has
21 established the guidance needed to further redistrict or to
22 future -- I'm sorry -- Redistricting Commissions. There is
23 no need to appeal the trial court's November 7 ruling.

24 I understand that this might be distasteful to
25 the Commission and that you don't agree with any of it. But

1 one thing we can agree on is that enough taxpayer money has
2 been spent on lawyers. It's time to draft legislative maps
3 that adhere to all the Constitutional goals, including
4 competitiveness. The April 12, 2005, map that was created
5 by the Commission, I believe, is a good starting point.

6 Now, I know that some of you may say, based on
7 the results of this past election, that there are plenty of
8 competitive districts. But don't be fooled. District 9 and
9 District 21 are not competitive. Nor are District 11 and
10 26, though these two districts are closer to being
11 competitive than most.

12 And that is the point, that these two districts,
13 along with a few others, could be made more competitive
14 without causing significant detriment. And that is what the
15 Court of Appeals said. If the commission can draw more
16 competitive districts without causing significant detriment,
17 then it must do so. The April 12 map or something similar
18 would do that. So rather than spending a lot more money on
19 my friend Jose or Lisa and making them richer, I think that
20 we need to work together. Let's work together on a
21 legislative map that fosters competition and gives voters a
22 choice in as many districts as possible.

23 And as a Plaintiff in this, I'm willing to sit
24 down, you know, with you all or whoever in public hearings
25 or whatever it takes, to try to work something out, and I

1 thank you for listening to me.

2 CHAIRMAN LYNN: Thank you, Representative Rios.
3 Is it possible to get a copy of the written statement. If
4 it's in good shape, fine. If not, that's okay. I just
5 wanted the reporter to have the verbatim copy so that we
6 don't miss any --

7 MR. RIOS: I didn't write any nasty notes on
8 this.

9 CHAIRMAN LYNN: I appreciate that. I didn't
10 think you did.

11 Are there other members of the public who wish to
12 be heard at this time?

13 MR. HALL: I just have one question,
14 Mr. Chairman.

15 CHAIRMAN LYNN: Of Mr. Rios or in general?

16 MR. HALL: Of Mr. Rios.

17 CHAIRMAN LYNN: Certainly, Mr. Hall.

18 MR. HALL: Did he say -- I just can't hear very
19 well. Did he say District 9 and 21?

20 CHAIRMAN LYNN: Yes, 9 and 21 and 11 and 26.

21 MR. RIOS: 11 and 26 is the ones that I said were
22 probably at this point more competitive.

23 MR. HALL: I guess my question was, Mr. Rios --
24 and I haven't looked at the detailed analysis of the
25 elections, but the reporting was that in District 9 that

1 Sheri Van Horsen made a pretty good run as a Democrat. My
2 understanding is in District 11 it did elect a Democratic
3 member of the House. District 26 elected a Democratic
4 member of the House, and district 11, I understood, had
5 some -- well, I guess it wasn't that close. But on those
6 other three districts is it your opinion that those were not
7 pretty competitive races?

8 MR. RIOS: It depends on how we measure
9 competitiveness, and I'm using the measurement of
10 competitiveness based on what I call in my mind standard
11 deviation between the number of registered Democrats and
12 Republicans. If we're looking at that, clearly they were
13 not competitive. If they were competitive, because --
14 again, I'm sorry. But if Republicans had a lousy candidate
15 and Democrats had a good one -- in that respect, yes, it was
16 competitive. But if you look at registration, no, they're
17 not.

18
19 MR. HALL: Wouldn't you agree that it highlights
20 the point that sheer numbers alone don't determine whether
21 or not a district is competitive, that there's multiple
22 variables that this Commission has held along including but
23 not limited to the numbers, but the quality of the
24 candidates, the type of the campaign, and other issues. In
25 fact, it could be argued that your district in 23 was a

1 pretty competitive race.

2 MR. RIOS: And I've always argued that, that a
3 lot of it depends on the candidate. But again, in most
4 districts the determining factor is the registration numbers
5 of these Ds versus Rs, regardless of the caliber of the
6 candidates because very rarely do you find a candidate in a,
7 you know, lopsided Republican district, the Democratic
8 candidate that can rise to the level. Those are the
9 exceptions to the rule and I wish it would happen more often
10 but it hasn't.

11 MR. HALL: But isn't that exactly what happened
12 in District 11 that now has a Democratic member of the House
13 and in District 26?

14 MR. RIOS: DeSimone is, I think, 11 that you're
15 referring to?

16 MR. HALL: Correct.

17 MR. RIOS: He ran a good campaign, but there were
18 other factors. He was also chairman of the proposition on
19 Yes on 206. So I think he may have benefited from that.

20 MR. HALL: It just seems to me that the ultimate
21 determination of whether or not a district is competitive is
22 who they elect, and if the districts elected one Republican
23 and one Democrat, it's difficult to argue it wasn't
24 competitive.

25 MR. RIOS: But I think what you're going to find

1 in the elections two years from now, a Presidential year,
2 you're going to find that a lot of those folk that voted for
3 the person that's not part of the majority party in that
4 district are going to come back to the fold. That's why I
5 believe it's very important that we get those registration
6 numbers between Republicans and Democrats as close as
7 possible. That is what I believe makes a district
8 competitive.

9 CHAIRMAN LYNN: Mr. Rios, thank you again very
10 much for being here. Other members of the public who wish
11 to be heard? If not, we'll close public comment. Item 3 on
12 the agenda this afternoon is a potential Executive Session
13 under ARS 8-431.03(A)(3) and ARS 8-431.03(A)(4). Is there a
14 motion for an Executive Session?

15 MS. MINKOFF: So moved.

16 MR. ELDER: Second.

17 CHAIRMAN LYNN: Moved and seconded discussion on
18 the motion. All those this favor of the motion signify by
19 saying aye.

20 MR. ELDER: Aye.

21 MS. MINKOFF: Aye.

22 MR. HALL: Aye.

23 MR. HUNTWORK: Aye.

24 CHAIRMAN LYNN: Chair votes aye. Opposed say no.

25 Motion carries unanimously and is so ordered.

1 Ladies and gentlemen, for I don't know how many
2 years now I've been asked how long these will last. I have
3 never once been correct in my estimate. Therefore, I shall
4 refrain from estimating how long this might last, but if you
5 are interested in any other public comment that we may have
6 afterward, I invite you to hang around, and when we're
7 finished, we'll get back to you as soon as we can. Thank
8 you all very much for being here. We'll take a short
9 recess.

10 (Whereupon the Commission conducts an Executive
11 Session from 1:49 pm to 3:07 p.m.)

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1 Phoenix, Arizona
2 November 17, 2006
3 3:17 p.m.

4 COMMISSIONER LYNN: We're back on the record.

5 Item 4.

6 MS. HAUSER: Is Josh there? Yeah, Josh is still
7 there. Yes, Joshua?

8 MR. HALL: Yes.

9 CHAIRMAN LYNN: For the record, all five
10 Commissioners are present either in person or
11 electronically, and Counsel and staff present as well. Back
12 in public session. Item 4, Possible Discussion, Decision
13 and/or Instructions to Counsel. What's the pleasure of the
14 Commission? Mr. Elder?

15 MR. ELDER: I'd like to make a motion. Motion is
16 that we direct the attorneys for -- or counsel for the
17 Commission to file appeal and associated motions to perfect
18 that appeal.

19 COMMISSIONER LYNN: Is there a second to the
20 motion.

21 MR. HUNTWORK: Second.

22 CHAIRMAN LYNN: Motion to appeal moved and
23 seconded. Discussion?

24 MR. HUNTWORK: I said this. I've made this part
25 the speech before, and I'll probably make it again, but one

1 of the primary reasons that I wanted to be a Commissioner,
2 in case anybody is wondering, is because of the desire to be
3 a steward of the process. You know, I recognize that as a
4 lawyer, and I think it didn't take a lot to recognize this.
5 There were a lot of issues, some ambiguities in the
6 Constitutional Amendment and a lot of issues that would need
7 careful consideration and ultimately would need to be
8 resolved by the courts. As we've gone along, I feel very
9 strongly that the Commission -- and I haven't always agreed
10 with all the decisions we've made, but I feel they've all
11 been made with the utmost of good faith and the utmost of
12 sense of stewardship for this law that the people adopted
13 and for successive commissions and, you know, for the people
14 of Arizona.

15 I feel we are still in the midst of that process.
16 The current decision by the trial court is a very useful
17 part of the process but certainly not the final word. It
18 raises additional issues. I think we're narrowing them
19 down, but I think some of the critical issues are still very
20 much on the table. One of the critical issues is, of
21 course, precisely the question of when in the process we
22 have to consider or start considering competitiveness.

23 One of the issues is what manner of discretion
24 does the Commission have? I could go into, you know,
25 details about my thoughts on these subjects, but that's not

1 the point of this, but that will all be done in the
2 appellate briefs. But the point I would simply make is we
3 need to -- it is essential that we continue this legal
4 process to the point where we can feel satisfied that these
5 issues have been addressed in a way that we can understand
6 ourselves and be satisfied with and that we can leave a
7 clear process or a clearer process for those who will come
8 after us. So those are my reasons for feeling very strongly
9 that we must proceed with an appeal.

10 COMMISSIONER LYNN: Thank you, Mr. Huntwork.
11 Ms. Minkoff.

12 MS. MINKOFF: Mr. Chairman. I agree with
13 Mr. Huntwork that there are serious issues that still need
14 to be decided, not so much for the work of this Commission
15 but especially because in 2011, which is closer than we
16 could imagine, there will be a new Commission and they need
17 that kind of direction.

18 On the other hand, I think I'm going to abstain
19 from this motion, because I cannot -- I don't want to vote
20 against appealing because I think there are very sound
21 reasons for appealing, but I cannot in good conscience vote
22 for an appeal unless we agree as a parallel course to also
23 look at the map and begin to remap and begin to get input
24 from the Minority Coalition and from anybody else in the
25 state who wants to bring it to us to create a more

1 competitive map. From my reading of the Appellate Courts'
2 opinion, it is very, very clear that we have an obligation
3 to the people of Arizona, to the voters of Arizona to do
4 that.

5 So I'm not comfortable voting for this appeal
6 until the other issue is decided. And since this is the
7 motion on the table before us at the time, I am probably
8 going to abstain from it.

9 COMMISSIONER LYNN: Further discussion on the
10 motion?

11 MR. HUNTWORK: Mr. Chairman.

12 CHAIRMAN LYNN: Mr. Huntwork.

13 MR. HUNTWORK: As the seconder of the motion, I
14 just want to say for the record that I don't believe this
15 motion addresses in any manner what we do about remapping.
16 It certainly is not intended to preclude that.

17 MS. MINKOFF: I understand that.

18 MR. HUNTWORK: It's just to say that this motion
19 deals only with the decision as to whether to appeal or not.
20 And I, again, strongly favor that.

21 MS. MINKOFF: And I understand that,
22 Mr. Huntwork. It's just that I believe it would be a
23 serious mistake for us only to appeal and not also to remap.
24 And that's why I don't feel comfortable voting for one
25 without the other.

1 COMMISSIONER LYNN: Further discussion on the
2 motion? I would only add my comment to that of
3 Mr. Huntwork's in indicating that, from my perspective, that
4 I felt from the beginning that the Commission had done its
5 work in a reasonable manner and within the bounds of the
6 Constitution, and I still believe that. I believe that the
7 Constitution allows us the kind of discretion that we used
8 in developing the maps that were created. I believe those
9 maps have been, in general, effective in the state of
10 Arizona, and I don't share Ms. Minkoff's concern in terms of
11 the decisions that have already been reached. I certainly
12 do share her concerns about issues that are unresolved as a
13 matter of law and believe that an appeal is appropriate and
14 we should follow that course of action irrespective of other
15 decisions we may make with respect to future actions of the
16 Commission.

17 Further discussion. If not, all those in favor
18 of the motion signify by saying aye.

19 MR. ELDER: Aye.

20 MR. HALL: Aye.

21 MR. HUNTWORK: Aye.

22 CHAIRMAN LYNN: Chair votes aye. Opposed say no.
23 Motion carries unanimously, and Ms. Minkoff, the record will
24 record one abstention.

25 By a vote of four to zero with one abstention,

1 the motion is passed.

2 Is there further business to come before the
3 Commission under Item 4 on the agenda? Ms. Minkoff.

4 MS. MINKOFF: Mr. Chairman, as I stated earlier
5 and as I have stated since we began this process, I believe
6 that the Court of Appeals said that competitiveness should
7 have been an earlier part of the process, and the
8 implication is that by doing that we may well have come up
9 with a more competitive map. So I would like to move that
10 we examine our existing map and determine if there is a way
11 that it can be made more competitiveness either by
12 adjustments to that map or by significant changes in order
13 to create more competitive districts for the people of
14 Arizona.

15 COMMISSIONER LYNN: Is there a second to the
16 motion?

17 MR. HALL: I'll second that for the purpose of
18 discussion.

19 CHAIRMAN LYNN: Moved and seconded. Discussion
20 on the motion?

21 MR. HALL: With respect to competitiveness,
22 Mr. Chairman, and related to earlier comments, there are
23 multiple variables that obviously come into play as to
24 whether or not a district is competitive, and I think that
25 all of those -- many of those variables that may not be to

1 the forefront in some cases certainly were in the 2006
2 elections. And while there's a variety of opinions, many of
3 which are based upon 2000 data, as to whether or not a
4 district was competitive, it seems clear to me that many,
5 many districts are competitive that have not been cited as
6 such by the experts.

7 You know, it's clear that in District 26, which
8 was cited by Mr. Eckstein, that we now have a Republican and
9 a Democratic representative. It would be difficult to argue
10 that that isn't a competitive district. And the same would
11 apply to similar districts, such as a 17 that was supposedly
12 a competitive Republican district and now has two Democratic
13 representatives. Or we have a competitive Democratic
14 district that has a Republican representative, and we have
15 Districts 10 and 11 that have both Republican and Democratic
16 representative.

17 So I think, if we look at the election, we see
18 that there was tremendous competitiveness. While there were
19 other variables that came into play, that is the case in any
20 election, and if you look at the congressional districts
21 without stating the obvious, here we now have four
22 Republican and four Democratic congressmen that represent
23 the state of Arizona. I think it's difficult to get more
24 evenly competitive and balanced than that.

25 So I think that it highlights the fact that much

1 of the discussion and litigation and the costs that's been
2 spent has been, in my opinion, misplaced.

3 Furthermore, I think it's important to note that
4 it highlights the fact that this Commission has done an
5 excellent job. And I agree with the comments that have been
6 made that we have made a responsible decision in an effort
7 to do the best for the voters of the state of Arizona, and I
8 think that the election results of 2006 highlighted that
9 fact.

10 CHAIRMAN LYNN: Thank you, Mr. Hall. Ms.
11 Minkoff.

12 MS. MINKOFF: Mr. Chairman, first of all, in
13 regard to the congressional map, I'd like to correct my
14 colleague. We have seven congressmen and one congresswoman.

15 MR. HALL: I stand corrected. Congressperson.

16 MS. MINKOFF: Secondly, we believed, when we
17 adopted the congressional map, I think all of us, that it
18 was competitive and that there were certain situations in a
19 couple of districts, one in particular in southeastern
20 Arizona where there a very popular incumbent would who have
21 been a Republican, a Democrat, an Independent, or whatever
22 and would have continued to be re-elected but that, once he
23 left Congress, that district would become competitive.

24 We also felt that District 1 was competitive, and
25 although only one party has won each election since its

1 creation, the voting behavior of the district still
2 indicates that it is a competitive district. The
3 congressional map is not at issue here. It's the
4 legislative map.

5 According to Dr. McDonald's analysis, we created
6 a legislative map with four competitive districts. And
7 surprise, surprise, in the 2004 election we had four
8 legislative districts that had representatives from both
9 political parties. This year we have more. But I believe
10 that Dr. McDonald will tell us that this was an usual
11 election as was the 1994 election and the fact that people
12 were elected from one party in a district that has
13 traditionally been solid for another party is not a
14 reflection of the competitiveness of the district but rather
15 of a very unusual election which occurs not very frequently.

16 By competitiveness standards, I believe that our
17 legislative map still does not measure up. The Court of
18 Appeals said that we should have considered competitiveness
19 earlier. I asked much earlier in the process to consider
20 competitiveness, and I was told that now is not the time and
21 that we would do it later in the process. But by the time
22 we got to it, our consultants informed us that all we could
23 do was tinker around the edges of the district, thereby
24 making it impossible to create a competitive map.

25 The Court of Appeals agreed that we didn't

1 consider it earlier, and I believe that it behooves us, as
2 commissioners, to go back and look at that map. The courts
3 have told us that we didn't do it right, regardless of how
4 we may pat ourselves on the back, and I believe that we must
5 begin to look at that map, that the voters of Arizona, the
6 comments at the meeting earlier today, the comments that we
7 got when we took hearings around the state -- one of the
8 most frequent comments that we got was please create
9 competitive districts. Please, we want competitive
10 districts. They told us that, and I believe we owe it to
11 them.

12 COMMISSIONER LYNN: Mr. Elder.

13 MR. ELDER: Well, it almost seem as though on the
14 one hand we say well, we got it right, and then they're
15 telling we got it wrong on the other hand. We used this
16 exact same process for both models and both processes. So
17 with that said, then we go back to the assertion that they
18 said we could only do it around the edges.

19 If we look at the process we used during the last
20 mapping sequence, there was, you know, total rotation
21 movement. There wasn't anything that said we are going to
22 go around the edges or the fringes.

23 I think all in all that the process we used was
24 valid. I don't want to get into a position or feel we
25 should get into the position that we're going in and

1 negotiating any kind of a map change with the Plaintiffs.
2 You know, that sets a precedence that would haunt future
3 Commissions all the way through. If we agree to go forward
4 with this, we need to go forward on the basis of the process
5 that we had before and, you know, accept, I guess, accept
6 maps, accept discussion, comments from the public just like
7 we would on any other process in the current process and go
8 forward with that.

9 MS. MINKOFF: I agree with you.

10 MR. ELDER: But with that said, I don't know
11 that, if we don't go back to the grid where you start off
12 with no competitiveness and you apply competitiveness at
13 that point, I don't feel that it is right or proper to go in
14 and take some interim map that occurred four or five years
15 later and say, Oh, yeah. Let's just work around the fringes
16 on that one to see if we can make it more competitive.

17 MS. MINKOFF: I'm not suggesting that --

18 COMMISSIONER LYNN: One at a time. Mr. Huntwork.

19 MR. HUNTWORK: I guess one of the things that
20 Commissioner Minkoff stated, just the accuracy of it. It
21 certainly is not consistent with my experience or my
22 recollection of what occurred. Number one, I felt that we
23 took competitiveness into account as soon as we could. As
24 soon as we could begin to make judgments about whether
25 competitiveness would have a significant detriment on any of

1 the other criteria, not one moment went by, in my judgment.
2 We began immediately to take it into consideration, in my
3 judgment.

4 Secondly, when we took it into consideration,
5 number 1, I was not told by any consultant or by any federal
6 commission or anyone else that I can recall and would
7 certainly have rejected the input if it had come, that we
8 could only work around the edges. That's unthinkable.
9 That's not what we did. That's not what I did. That is not
10 a factual statement of what I did as part of this process.

11 When I felt I had enough information to take
12 competitiveness into consideration, I undertook to take it
13 fully into consideration, and I believe that all of the
14 other commissioners did so as well.

15 I also think that there is a fundamental question
16 which we need -- we do need guidance on from the Court of
17 Appeals and hopefully the Supreme Court of Arizona as to
18 precisely where in the -- what I would like to call the
19 factual process, where in the process do you start taking
20 competitiveness into consideration and precisely how? It's
21 not a simple question. And it's not a simple question as to
22 whether we gave it less impact or more impact by taking it
23 into consideration when we did. It was certainly my
24 intention to give it at least as much impact as it could
25 possibly have consistently with the Constitution.

1 The only constraint that I ever placed on
2 competitiveness was that it can't have a significant
3 detriment on the other criteria. I mean, other than what
4 the Constitution said in plain words, as far as I was
5 concerned, it was fully in play at all times. And I simply
6 do not agree with any other characterization of the process.

7 Having said that, what it says to me about the
8 motion is this: I understand completely why Commissioner
9 Minkoff would want to do this because of the original
10 disagreement that we've had all along about how the original
11 process worked. I don't believe -- I believe that what we
12 did was correct, and I wish we had those issues fully
13 considered before beginning to make decisions that would be
14 contrary or inconsistent with the actions that we took
15 previously. Thank you.

16 COMMISSIONER LYNN: Further discussion on the
17 motion?

18 MS. MINKOFF: Mr. Chairman.

19 COMMISSIONER LYNN: Ms. Minkoff.

20 MS. MINKOFF: The process, as I recall it, is
21 that we prepared a grid according to the requirements of the
22 Constitutional Amendment. We then went out for a series of
23 public hearings. Up to this point there's no disagreement.
24 The process was correct. The courts have agreed that the
25 process was correct up to that point.

1 We then entered Phase 2, which was to prepare a
2 draft map. We did not consider competitiveness in the
3 preparation of that draft map. We considered all of the
4 other criteria. We did not consider competitiveness. I
5 recall asking, when we were meeting in Tucson -- and this is
6 part of the record -- where I said that I would like to
7 consider competitiveness before we send this map out for
8 public comment. I was voted down. Dr. Adams, one of our
9 consultants, said at that point that the only way that we
10 would deal with competitiveness was to tinker around the
11 edges of the draft map districts that we had just created.
12 I challenged her on that, and I was the only commissioner
13 who challenged her on that.

14 We then sent the map out for a second series of
15 public hearings. The Court of Appeals has told us that that
16 process was flawed. It has told us that consideration of
17 competitiveness should have been part of Phase 2, the
18 preparation of the draft map. We did not do that, and they
19 have said that we should do that.

20 We sent the map out for a second round of public
21 hearings. And at that time we heard overwhelming response
22 saying, "You have created a map that is not competitive.
23 Please create a more competitive map." And when we came
24 back after that second round of public hearings and
25 attempted to create more competitive districts, I remember

1 there was a proposal to create a competitive 6, but because
2 there was a mountain that would have been on the edge of the
3 district instead of the middle of District 10, where it
4 later resided, we didn't create a competitive district
5 there. There were other areas where we looked at creating
6 competitive districts, and every single one of them was
7 voted down. We created no more competitive districts that
8 were a part of the draft map, and the Court of Appeals has
9 told us that we were in error by not considering
10 competitiveness prior to the publication of the draft map.
11 And that's the basis on which I believe that we need to go
12 back and we need to relook at competitiveness.

13 COMMISSIONER LYNN: Further discussion on the
14 motion?

15 MR. HALL: Well, Mr. Chairman --

16 CHAIRMAN LYNN: Mr. Hall.

17 MR. HALL: The issue that Mr. Elder alluded to, I
18 think, and one that's difficult for me to reconcile is how
19 does the same process that worked and seems to be
20 constitutional for the congressional map not be
21 constitutional for a legislative map? And that is yet to be
22 addressed or explained to me.

23 Secondly, with respect to competitive maps, the
24 most competitive map that was created or has been created,
25 based on my recollection, was the very first map this

1 Commission created and submitted to the Department of
2 Justice. And we responded full force to all of the input to
3 create the most competitive map.

4 You'll recall that we did not receive sufficient
5 support from special interest groups, and consequently that
6 map was denied by the Department of Justice. And we were
7 therefore ordered by them to create a less competitive map
8 to increase percentages in certain districts, one of which,
9 for example, would be in District 22, which was competitive
10 prior to DOJ's order.

11 I think the record needs to be clear, if we are
12 going back in history, that the most competitive map
13 submitted by any party was by this Commission but was
14 limited by reason of Department of Justice demands.

15 With respect to the current conclusion, I guess
16 I'm reminded of the comment that we're entitled to our own
17 opinions but we're not entitled to our own facts. The facts
18 are, as far as this election, is that many, many districts
19 were competitive, and we can try and explain it based on a
20 national trend or other issues. But in reality there were
21 Democratic districts that were very close by a Republican
22 candidate, for example, in District 24. So I think that
23 while we may offer different opinions and explanations or
24 try and say this or that, the facts are that we have more
25 competitive districts this election than we have in the

1 past.

2 COMMISSIONER LYNN: Further discussion on the
3 motion? If not, we're ready for the question. All those in
4 favor of the motion, signify by saying aye.

5 MS. MINKOFF: Aye.

6 MR. HUNTWORK: Aye. I said it wrong.

7 CHAIRMAN LYNN: Let me try it again, Mr.
8 Huntwork. All those in favor of the motion signify by
9 saying aye.

10 MS. MINKOFF: Aye.

11 CHAIRMAN LYNN: Opposed say no.

12 MR. ELDER: No.

13 MR. HALL: No.

14 MR. HUNTWORK: No.

15 CHAIRMAN LYNN: Chair votes no. The motion fails
16 one to four.

17 Further business for the Commission under Item 4.

18 Hearing none, Item 5, Possible Administrative
19 Report by the executive director. Mr. Echeveste, other than
20 the budget reported which has been circulated and
21 transmitted, do you have further report.

22 MR. ECHEVESTE: No, I don't.

23 CHAIRMAN LYNN: Thank you. Having completed the
24 agenda, we're at Item 6, which is adjournment. We will meet
25 at call of the Chair for future discussions at a later date.

1 We are adjourned.

2 (WHEREUPON the meeting concluded at 3:43 p.m.)

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STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

BE IT KNOWN that the foregoing deposition was taken before me, DIANE DONOHO, Certified Reporter, Certificate No. 50691, in and for the State of Arizona; that the witness before testifying was duly sworn to testify to the whole truth; that the questions propounded to the witness and the answers of the witness thereto were taken down by me in shorthand; that the witness will read and sign said deposition; that the foregoing pages are a true and correct transcript of all proceedings had upon the taking of said deposition, all done to the best of my skill and 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 thereof.

DATED at Phoenix, Arizona, this _____ day of _____, 2006.

Diane Donoho, RPR
Arizona Certified Reporter
Certificate No. 50691