ARIZONA INDEPENDENT REDISTRICTING COMMISSION

PUBLIC MEETING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona

November 17, 2006
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REPORTED BY:
DIANE DONOHO, RPR
Certified Reporter
Certificate No. 50691

PREPARED FOR:
THE COMMISSION

COPY
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COMMISSIONERS:

Steven W. Lynn – Chairman
Andrea Minkoff
Daniel R. Elder
Joshua M. Hall (telephonically)
James R. Huntwork (telephonically)
Adolpho Echeveste – Executive Director

COUNSEL APPEARING:

ON BEHALF OF INDEPENDENT REDISTRICTING COMMISSION.

GAMMAGE & BURNHAM, P.L.C.
By: Lisa T. Hauser and Michella Abner
Two North Central Avenue, 18th Floor
Phoenix, Arizona 85004

HARALSON, MILLER, PITT, FELDMAN & McANALLY, P.L.C.
By: Jose Rivera
2800 N. Central Ave #840
Phoenix, AZ 85004
CHAIRMAN LYNN: We will call the meeting to order. For the record, a roll call. Miss Minkoff?

MS. MINKOFF: Here.

CHAIRMAN LYNN: Mr. Elder?

MR. ELDER: Here.

CHAIRMAN LYNN: Mr. Huntwork?

MR. HUNTWORK: Present.

CHAIRMAN LYNN: Mr. Hall?

MR. HALL: Here.

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

Item 2, call to the public. We have several slips from individuals who wish to be heard this afternoon. If you wish to be heard and have not yet filled out a slip, we'd ask you to do so. Just a reminder that information coming to us through call to the public, unless it is germane to an item that is already on the agenda, it may not be able to be discussed at today's meetings based on the tenets of the Open Meeting Law. So it is not that aren't interested it in what you have to say. It is not that we are constrained in some fashion about discussing those items at today's meeting if they're not otherwise on the agenda.
So with that having been said, let me first call on Esther Duran Lunn, who is a plaintiff with the Minority Coalition for Fair Redistricting. Ms. Lunn, good afternoon.

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

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

I ask you that, as a member of the Coalition, but also I ask you that, putting on my other hat, and that's simply as of a taxpayer. As a taxpayer, I regret, as I'm sure many of our Arizona citizens would, any kind of spending of money needlessly. Now, this has already gone twice to the judge, and twice they have ruled in our favor, and it's been appealed. So I urge as a taxpayer, let's not
waste taxpayer dollars anymore, especially when we're willing to sit down and work with you to make these maps competitive and get on with the business of having fair elections -- fair districts for the next elections. Thank you.

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

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

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

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

What I'm trying to do, ladies and gentlemen, is trying to bring attention to the problem in District 29, which is south and southeast Tucson. We have two distinct communities of interest, South Tucson, which is primarily
Hispanic, and East Tucson, which is not. And when you put those two together, the high density of population in 29, it does not matter who East Tucson chooses as their representative. They're overruled. For the last three elections -- and again, the election that just happened, I have to get the numbers to provide proof of this, but I'm certain it's true from Swan East, for those who know Tucson, Swan's at the midway point in District 29 -- you have entirely different results than from Swan West. And unfortunately the maps I gave you doesn't show the current map but the three maps that you've already considered which were considered fairly competitive for Tucson. And I'll get to those real quick.

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

Now, again, how are you going to redraw this and make it competitive? When I came up here a couple years ago and addressed the commission, you basically agreed that it wasn't competitive. However, the map I proposed at the time took away part of the representation of South Tucson, which
was a concern of the Voter Rights Act. So I understand why there's a problem there. What I've done is I researched your own maps, which I put before you along with the breakdown of Republican, Democrat, minority, non-minority, and shown that any of these three maps would give you at least three competitive districts in and around Tucson, including 29.

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

The second one deals with Competitive Map B-1, which again came from your February 5 through 9 hearings in 2004, and that shows, again, several maps that would be competitive. Especially, we see L, taking all of East Tucson and putting them together. That is very, very good for Tucson, at least, and again, does not take away any representation from the Hispanic community. Very important to be consistent with the VRA.
And then the third one -- and this is the last one I'll talk about -- once again, you see that X and T, again, keep the Hispanic community intact. It gives them two different districts and also allows competitiveness in W, V, and U. So there are three maps there that you have already considered and for whatever reason decided not to use. Right now according to your own maps, there's only one competitive district in Tucson, and that's 28. And I'll be honest with you. It's not competitive. I've looked at the voting records over the last three elections, and there's no way that's competitive. So these at least will give you three, according to your own numbers, and I would urge you to at least consider that in redrawing these lines.

Are there any questions from the Commission?

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

CHAIRMAN LYNN: According to what I've seen, I believe that in the first map, which is Competitive A-1, it would have been W, V, I think U, if I'm not mistaken. I don't know the breakdown for you on the second sheet. You'll notice that I took the analysis from your website along with -- unfortunately U is not on this one, but it is Competitive Test A under your February 5 through 9 hearings
from 2004.

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

MS. MINKOFF: Thank you.

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

MR. MURCHISON: Thank you very much.

CHAIRMAN LYNN: Thank you very much for appearing here. Next to speak is Paul Eckstein. Paul represents -- Mr. Eckstein represents the Arizona Minority Coalition.

Mr. Eckstein, good afternoon.

MR. ECKSTEIN: Thank you. Mr. Chairman, Members of the Commission. My name is Paul Eckstein. I do represent the Arizona Minority Coalition. We have been visiting with one another since 2001 and been litigating against one another since the spring of 2002. You all, I'm sure, have had an opportunity to read Judge Fields' latest findings of fact and conclusions of law and make your own judgments as to whether that is an opinion that will
withstand an appeal. We believe it will. We believe it doesn't make any new law. We believe the law that was made in the Court of Appeals' opinion that came down in October of 2005 is clear. It's not interfered with by this opinion and this opinion complies with the October 2005 opinion of the Arizona Court of Appeals. And while you certainly have the right to appeal and take this up, if you do, you know that we will be there, and I don't think anyone can predict with great certainty what will happen. We believe it will be affirmed, and we will have spent a lot of money and wasted a fair amount of time if we go that route.

The Coalition met several days ago, and after the Coalition met, the lawyers were authorized and directed to meet with your lawyers, and we did yesterday. And we discussed, in rather broad terms, the outlines of the settlement. Here we are in 2006. We know that the only elections that can be affected by any kind of settlement or whatever happens in the court are the 2008 and 2010 elections. I regret that the 2004 and '06 elections have happened and that the map has been less competitive than it should have been. But that is water under the bridge. We can't change that. But we can, I think, with as Ms. Lunn said, whether it's tinkering or some minor modifications, create a competitive map that the Coalition is prepared to endorse and to work with you to create.
Specifically what we said to your lawyers yesterday was the Coalition would work with you to create two competitive -- two more competitive districts that, we believe, can be created from a current map without violating the Voting Rights Act restrictions, without causing heartburn in Northern Arizona, and without violating Eco, without any significant change, particularly given the population movements that have occurred since the 2000 census. Now, we understand that you have to use the 2000 census data, but we can all understand where the population has moved to create competitive districts on this map.

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

I'm here to answer any questions that you may have about this proposal. One of the things you may ask is, you know, what districts do we have in mind? I've really come with an open mind, but there's some obvious districts, District 26, being one that is quite close to being quite
competitive on the AQD and the judge's scale that, by virtue of the last election, one can see is close to competitive. It may be another district in Phoenix, and I think those changes to those two districts -- and I'm not advocating changes specifically to those two districts, but just to pick them out -- could be done without any significant movement of minority population and, therefore, leaving in place the Voting Rights approval that you received in 2003 now, I realize it would still have to go back to the Justice Department, but I don't think even this Justice Department would have the nerve to not approve a map that didn't move any minority at all.

CHAIRMAN LYNN: Ms. Minkoff.

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

MR. ECKSTEIN: Well, I think, when we came to you in the past, we said that there were three and perhaps four that could be created. I think that two is achievable with very little movement of population. So if there's magic to "two," that's why we picked two. I understand that, if we went to three, at least you decided the last time around, that you had to go to Northern Arizona, and we saw the issues that that created, and we want to work with you to
avoid that. If I were sitting in your chairs, I might make
a different decision and say no, the map ought to be redrawn
in Northern Arizona. But I understand the difficulty of
doing that. And so I think one can create two competitive
districts without messing with the map in Northern Arizona.
And you can maybe pick two in Tucson or Pima County or maybe
two in Maricopa County. But I think the easiest thing to do
would probably pick one in each.

CHAIRMAN LYNN: Any questions for Mr. Eckstein?

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

But I don't see how we can -- I thought
Proposition 106 was supposed to set up a procedure where we
don't sit down and cut deals. So I guess that's the
question, but I'd be willing to or interested in a response
to that.

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

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

MR. ECKSTEIN: Sure. Whatever discussions that
could be, could be done. We didn't anticipate being done in
public. Whatever give and take there was would be done in
public and certainly the votes would be done in public.
That's what I think the process contemplates. In fact, you
did in the Fall of 2001 listen to and solicit input from the
Coalition, and while you didn't accept the Coalition's
proposal, you came back. I would think now with fewer
districts to talk about the chance of your coming up with a
map that the Coalition found acceptable would be a lot
higher than they were when you're dealing with a tabula
rasa.

CHAIRMAN LYNN: Miss Minkoff.

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

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

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

The one thing you have here is a lot more freedom
than you had under the previous opinion. Judge Fields did
not give you any direction to create definitions or to
create X number of more competitive districts or to create
more competitive districts in the Hall/Minkoff map. All he
did -- of course, I don't want to minimize it -- what he did
was enjoin the use of the map that you adopted in
August 2002 for any further elections all to take place
after 120 days. So that gives you a whole lot of freedom.
If you want to start over and just begin from scratch, I
guess you can do that. But --

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

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

MR. HUNTWORK: Isn't the point of that discussion
that we might get that information. If it makes no
difference if we're not going to do anything significantly
different, then why would that be a basis for overturning
when we ultimately did?

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

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

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

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

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

CHAIRMAN LYNN: But I appreciate the question.

Ms. Minkoff.

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

MR. ECKSTEIN: Right.

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

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

The third solution is to do an appeal, stipulate with the parties to stay the briefing on appeal -- the notice of appeal is a one-page piece of paper -- and explain
that the Commission and the parties are attempting to see if a solution can be found. So those are the three options I see that you have. You need not -- you can file your appeal, which is something that is not waivable and, then proceed to negotiate and, if the negotiations fall through, crank up the briefing.

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

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

The one thing I would say about -- we'll call it Option 2, the middle course -- is that, while that is available -- and I think we worked the Court of Appeals on behalf of the Commission and on behalf of the Coalition, I would think that the lawyers on behalf of the Commission don't want to let a whole lot of time go by because we don't want to create the kind of rush that we've had in the even years, in 2002 and 2004. So this is something that would
have to be done in relatively short order, say on the order of two or three months.

MS. MINKOFF: You mean the remapping?

MR. ECKSTEIN: Yes. Yeah.

MS. MINKOFF: Thank you.

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

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

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

I understand that this might be distasteful to the Commission and that you don't agree with any of it. But
one thing we can agree on is that enough taxpayer money has
been spent on lawyers. It's time to draft legislative maps
that adhere to all the Constitutional goals, including
competitiveness. The April 12, 2005, map that was created
by the Commission, I believe, is a good starting point.

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

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

And as a Plaintiff in this, I'm willing to sit
down, you know, with you all or whoever in public hearings
or whatever it takes, to try to work something out, and I
thank you for listening to me.

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

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

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

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

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

CHAIRMAN LYNN: Of Mr. Rios or in general?

MR. HALL: Of Mr. Rios.

CHAIRMAN LYNN: Certainly, Mr. Hall.

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

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

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

MR. HALL: I guess my question was, Mr. Rios -- and I haven't looked at the detailed analysis of the elections, but the reporting was that in District 9 that
Sheri Van Horsen made a pretty good run as a Democrat. My understanding is in District 11 it did elect a Democratic member of the House. District 26 elected a Democratic member of the House, and district 11, I understood, had some -- well, I guess it wasn't that close. But on those other three districts is it your opinion that those were not pretty competitive races?

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

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

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

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

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

MR. HALL: Correct.

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

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

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

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

MS. MINKOFF: So moved.

MR. ELDER: Second.

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

MR. ELDER: Aye.

MS. MINKOFF: Aye.

MR. HALL: Aye.

MR. HUNTWORK: Aye.

CHAIRMAN LYNN: Chair votes aye. Opposed say no. Motion carries unanimously and is so ordered.
Ladies and gentlemen, for I don't know how many
years now I've been asked how long these will last. I have
never once been correct in my estimate. Therefore, I shall
refrain from estimating how long this might last, but if you
are interested in any other public comment that we may have
afterward, I invite you to hang around, and when we're
finished, we'll get back to you as soon as we can. Thank
you all very much for being here. We'll take a short
recess.

(Whereupon the Commission conducts an Executive
Session from 1:49 pm to 3:07 p.m.)
COMMISSIONER LYNN: We're back on the record.

Item 4.

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

MR. HALL: Yes.

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

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

COMMISSIONER LYNN: Is there a second to the motion.

MR. HUNTWORK: Second.

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

MR. HUNTWORK: I said this. I've made this part the speech before, and I'll probably make it again, but one
of the primary reasons that I wanted to be a Commissioner,
in case anybody is wondering, is because of the desire to be
a steward of the process. You know, I recognize that as a
lawyer, and I think it didn't take a lot to recognize this.
There were a lot of issues, some ambiguities in the
Constitutional Amendment and a lot of issues that would need
careful consideration and ultimately would need to be
resolved by the courts. As we've gone along, I feel very
strongly that the Commission -- and I haven't always agreed
with all the decisions we've made, but I feel they've all
been made with the utmost of good faith and the utmost of
sense of stewardship for this law that the people adopted
and for successive commissions and, you know, for the people
of Arizona.

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

One of the issues is what manner of discretion
does the Commission have? I could go into, you know,
details about my thoughts on these subjects, but that's not
the point of this, but that will all be done in the
appellate briefs. But the point I would simply make is we
need to -- it is essential that we continue this legal
process to the point where we can feel satisfied that these
issues have been addressed in a way that we can understand
ourselves and be satisfied with and that we can leave a
clear process or a clearer process for those who will come
after us. So those are my reasons for feeling very strongly
that we must proceed with an appeal.

COMMISSIONER LYNN: Thank you, Mr. Huntwork.

Ms. Minkoff.

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

On the other hand, I think I'm going to abstain
from this motion, because I cannot -- I don't want to vote
against appealing because I think there are very sound
reasons for appealing, but I cannot in good conscience vote
for an appeal unless we agree as a parallel course to also
look at the map and begin to remap and begin to get input
from the Minority Coalition and from anybody else in the
state who wants to bring it to us to create a more
competitive map. From my reading of the Appellate Courts' opinion, it is very, very clear that we have an obligation to the people of Arizona, to the voters of Arizona to do that.

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

COMMISSIONER LYNN: Further discussion on the motion?

MR. HUNTWORK: Mr. Chairman.

CHAIRMAN LYNN: Mr. Huntwork.

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

MS. MINKOFF: I understand that.

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

MS. MINKOFF: And I understand that, Mr. Huntwork. It's just that I believe it would be a serious mistake for us only to appeal and not also to remap. And that's why I don't feel comfortable voting for one without the other.
COMMISSIONER LYNN: Further discussion on the motion? I would only add my comment to that of Mr. Huntwork's in indicating that, from my perspective, that I felt from the beginning that the Commission had done its work in a reasonable manner and within the bounds of the Constitution, and I still believe that. I believe that the Constitution allows us the kind of discretion that we used in developing the maps that were created. I believe those maps have been, in general, effective in the state of Arizona, and I don't share Ms. Minkoff's concern in terms of the decisions that have already been reached. I certainly do share her concerns about issues that are unresolved as a matter of law and believe that an appeal is appropriate and we should follow that course of action irrespective of other decisions we may make with respect to future actions of the Commission.

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

MR. ELDER: Aye.
MR. HALL: Aye.
MR. HUNTWORK: Aye.
CHAIRMAN LYNN: Chair votes aye. Opposed say no. Motion carries unanimously, and Ms. Minkoff, the record will record one abstention.

By a vote of four to zero with one abstention,
the motion is passed.

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

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

COMMISSIONER LYNN: Is there a second to the motion?

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

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

MR. HALL: With respect to competitiveness, Mr. Chairman, and related to earlier comments, there are multiple variables that obviously come into play as to whether or not a district is competitive, and I think that all of those -- many of those variables that may not be to
the forefront in some cases certainly were in the 2006 elections. And while there's a variety of opinions, many of which are based upon 2000 data, as to whether or not a district was competitive, it seems clear to me that many, many districts are competitive that have not been cited as such by the experts.

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

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

So I think that it highlights the fact that much
of the discussion and litigation and the costs that's been spent has been, in my opinion, misplaced.

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

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

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


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

We also felt that District 1 was competitive, and although only one party has won each election since its
creation, the voting behavior of the district still
indicates that it is a competitive district. The
congressional map is not at issue here. It's the
legislative map.

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

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

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

COMMISSIONER LYNN: Mr. Elder.

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

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

I think all in all that the process we used was valid. I don't want to get into a position or feel we should get into the position that we're going in and
negotiating any kind of a map change with the Plaintiffs.
You know, that sets a precedence that would haunt future
Commissions all the way through. If we agree to go forward
with this, we need to go forward on the basis of the process
that we had before and, you know, accept, I guess, accept
maps, accept discussion, comments from the public just like
we would on any other process in the current process and go
forward with that.

MS. MINKOFF: I agree with you.

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

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

COMMISSIONER LYNX: One at a time. Mr. Huntwork.

MR. HUNTWORK: I guess one of the things that
Commissioner Minkoff stated, just the accuracy of it. It
certainly is not consistent with my experience or my
recolletion of what occurred. Number one, I felt that we
took competitiveness into account as soon as we could. As
soon as we could begin to make judgments about whether
competitiveness would have a significant detriment on any of
the other criteria, not one moment went by, in my judgment. We began immediately to take it into consideration, in my judgment.

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

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

I also think that there is a fundamental question which we need -- we do need guidance on from the Court of Appeals and hopefully the Supreme Court of Arizona as to precisely where in the -- what I would like to call the factual process, where in the process do you start taking competitiveness into consideration and precisely how? It's not a simple question. And it's not a simple question as to whether we gave it less impact or more impact by taking it into consideration when we did. It was certainly my intention to give it at least as much impact as it could possibly have consistently with the Constitution.
The only constraint that I ever placed on competitiveness was that it can't have a significant detriment on the other criteria. I mean, other than what the Constitution said in plain words, as far as I was concerned, it was fully in play at all times. And I simply do not agree with any other characterization of the process.

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

COMMISSIONER LYNN: Further discussion on the motion?

MS. MINKOFF: Mr. Chairman.

COMMISSIONER LYNN: Ms. Minkoff.

MS. MINKOFF: The process, as I recall it, is that we prepared a grid according to the requirements of the Constitutional Amendment. We then went out for a series of public hearings. Up to this point there's no disagreement. The process was correct. The courts have agreed that the process was correct up to that point.
We then entered Phase 2, which was to prepare a
draft map. We did not consider competitiveness in the
preparation of that draft map. We considered all of the
other criteria. We did not consider competitiveness. I
recall asking, when we were meeting in Tucson -- and this is
part of the record -- where I said that I would like to
consider competitiveness before we send this map out for
public comment. I was voted down. Dr. Adams, one of our
consultants, said at that point that the only way that we
would deal with competitiveness was to tinker around the
edges of the draft map districts that we had just created.
I challenged her on that, and I was the only commissioner
who challenged her on that.

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

We sent the map out for a second round of public
hearings. And at that time we heard overwhelming response
saying, "You have created a map that is not competitive.
Please create a more competitive map." And when we came
back after that second round of public hearings and
attempted to create more competitive districts, I remember
there was a proposal to create a competitive 6, but because
there was a mountain that would have been on the edge of the
district instead of the middle of District 10, where it
later resided, we didn't create a competitive district
there. There were other areas where we looked at creating
competitive districts, and every single one of them was
voted down. We created no more competitive districts that
were a part of the draft map, and the Court of Appeals has
told us that we were in error by not considering
competitiveness prior to the publication of the draft map.
And that's the basis on which I believe that we need to go
back and we need to relook at competitiveness.

COMMISSIONER LYNN: Further discussion on the
motion?

MR. HALL: Well, Mr. Chairman --

CHAIRMAN LYNN: Mr. Hall.

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

Secondly, with respect to competitive maps, the
most competitive map that was created or has been created,
based on my recollection, was the very first map this
Commission created and submitted to the Department of Justice. And we responded full force to all of the input to create the most competitive map.

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

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

With respect to the current conclusion, I guess I'm reminded of the comment that we're entitled to our own opinions but we're not entitled to our own facts. The facts are, as far as this election, is that many, many districts were competitive, and we can try and explain it based on a national trend or other issues. But in reality there were Democratic districts that were very close by a Republican candidate, for example, in District 24. So I think that while we may offer different opinions and explanations or try and say this or that, the facts are that we have more competitive districts this election than we have in the
COMMISSIONER LYNN: Further discussion on the motion? If not, we're ready for the question. All those in favor of the motion, signify by saying aye.

MS. MINKOFF: Aye.

MR. HUNTWORK: Aye. I said it wrong.

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

MS. MINKOFF: Aye.

CHAIRMAN LYNN: Opposed say no.

MR. ELDER: No.

MR. HALL: No.

MR. HUNTWORK: No.

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

Further business for the Commission under Item 4. Hearing none, Item 5, Possible Administrative Report by the executive director. Mr. Echeveste, other than the budget reported which has been circulated and transmitted, do you have further report.

MR. ECHEVESTE: No, I don't.

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

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