STATE OF ARIZONA

ARIZONA INDEPENDENT REDISTRICTING COMMISSION

PUBLIC

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PUBLIC SESSION

Phoenix, Arizona
February 3, 2004
9:25 a.m.

CERTIFIED

TRANSCRIPT

COPY

PREPARED FOR:

ARIZONA INDEPENDENT REDISTRICTING COMMISSION

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Redistricting Commission convened in Open Public Session
on February 3, 2004, at 9:00 o'clock a.m., at the Hilton
Garden Inn Phoenix, Midtown, 4000 North Central, Phoenix,
Arizona, 85012, in the presence of:

APPEARANCES:

CHAIRMAN STEVEN W. LYNN
VICE CHAIRMAN ANDI MINKOFF
COMMISSIONER JAMES R. HUNTWORK
COMMISSIONER JOSHUA M. HALL
(Present As Indicated)
ADDITIONAL APPEARANCES:

LISA T. HAUSER, Commission Counsel
JOSE de JESUS RIVERA, Commission Counsel
ADOLFO ECHEVESTE, IRC Executive Director
LOU JONES, IRC Staff
KRISTINA GOMEZ, IRC Staff
FLORENCE ADAMS, Ph.D., NDC, Consultant
DOUG JOHNSON, NDC, Consultant
MARGUERITE LEONI, NDC Counsel
LISA A. NANCE, RPR, CCR, Court Reporter
SPEAKERS FROM THE PUBLIC:

Paul Eckstein, Arizona Minority Coalition

Michael Mandell, Arizonans for Fair Redistricting

Mike Flannery, Prescott Valley Council Member, Prescott Tri City Area.

Mayor Rowie P. Simmons, City of Prescott.
   (Via Letter Submission, Comments Included Herein)

Mayor Joseph Donaldson, City of Flagstaff

Mitch Strohman, Government Affairs Manager, Flagstaff Chamber of Commerce

James Palmer, Chairman, Board of Supervisors, Graham County

Senator Pete Rios, State Senator District 23 Arizona Minority Coalition

Alberto Gutier, Government & Media Relations Political Consulting Representing Himself

Ann Eschinger, League of Women Voters of Arizona
INDEX CONT'D

PAGE

Mark Herrington, Graham County Supervisor 77
Jim Hartdegen, Pinal County Governmental Alliance & Casa Grande Cafe 79
Neil Vincent Wake, Attorney, Arizonans For Fair and Legal Redistricting, Inc. 221
David Cantelme, Lawyer, City of Flagstaff 230
Ronald Lehman, Lawyer, Santa Cruz County

PRESENTATION BY NDC: Florence Adams, Ph.D. 89
Doug Johnson
Marguerite Leoni

MOTIONS BY THE COMMISSION: 82, 119, 177, 180, 196, 220, 265, 268, 273, 276, 276, 283

REPORT OF EXECUTIVE DIRECTOR:
Adolfo Echeveste

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<table>
<thead>
<tr>
<th>NO.</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2-2-04 Letter from City of Prescott, Mayor Rowie P. Simmons to Independent Redistricting Commission.</td>
</tr>
<tr>
<td>2</td>
<td>2002 Election Results Sorted 2002 AQD Ascending Submitted by Neil Wake and 2002 Election Results Sorted Judge-It Ascending.</td>
</tr>
<tr>
<td>3</td>
<td>2-3-04 Letter Submitted by Ronald M. Lehman, Gabroy, Rollman &amp; Bosse, re Santa Cruz County, To Arizona Independent Redistricting Commission, Steven W. Lynn, Chairman.</td>
</tr>
<tr>
<td>5</td>
<td>Talking Points of Senator Peter Rios.</td>
</tr>
<tr>
<td>7</td>
<td>Key Definitions Submitted by Paul Eckstein.</td>
</tr>
<tr>
<td>8</td>
<td>Paul Eckstein Speaker Slip.</td>
</tr>
<tr>
<td>9</td>
<td>Mike Flannery Speaker Slip.</td>
</tr>
<tr>
<td>10</td>
<td>Joseph Donaldson Speaker Slip.</td>
</tr>
<tr>
<td>11</td>
<td>Mitch Strohman Speaker Slip.</td>
</tr>
<tr>
<td>12</td>
<td>James Palmer Speaker Slip.</td>
</tr>
<tr>
<td>13</td>
<td>Senator Pete Rios Speaker Slip.</td>
</tr>
<tr>
<td>NO.</td>
<td>DESCRIPTION</td>
</tr>
<tr>
<td>-----</td>
<td>---------------------------</td>
</tr>
<tr>
<td>14</td>
<td>Alberto Gutierrez Speaker Slip.</td>
</tr>
<tr>
<td>15</td>
<td>Ann Eschinger Speaker Slip.</td>
</tr>
<tr>
<td>16</td>
<td>Mark Herrington Speaker Slip.</td>
</tr>
<tr>
<td>17</td>
<td>Jim Hartdegen Speaker Slip.</td>
</tr>
<tr>
<td>18</td>
<td>Neil Wake Speaker Slip.</td>
</tr>
</tbody>
</table>
Public Session
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PROCEDINGS

CHAIRMAN LYNN: I'd like to call the
meeting of the IRC to order.
We'll start with a roll call for the
record.

Ms. Minkoff?

COMMISSIONER ELDER: Present.

CHAIRMAN LYNN: Mr. Huntwork?

COMMISSIONER HUNTWORK: Present.

CHAIRMAN LYNN: Mr. Hall?

COMMISSIONER HALL: Present.

CHAIRMAN LYNN: Chairman is present.

Mr. Elder is excused and will join us a
little later this morning.

In the interest of deference to our guests,
I want to take public comment first. And then just for
scheduling purposes, and so that everybody knows, we will
probably have a brief Executive Session following the
public comment and then go forward from there with the
rest of the agenda.

Without objection, Item III.
This is the time for consideration and comments and complaints from the public. Those wishing to address the Commission shall request in advance by filling out a speaker slip.

If you've not done so, there are speaker slips outside on the table.

And the action taken as a result of the public comment will be limited to directing staff to study the matter, rescheduling the matter for further consideration and decision at later date unless the subject is already on the agenda as published.

I will try to get through these as expeditiously as possible.

I would ask that those who are making public comment today to please be as concise as you can be. We have an awful lot of work to get done today. We want to hear from you, but we want to take that information and use it as we move forward.

I would ask Mr. Paul Eckstein representing the Arizona Minority Coalition to speak first, please.

Mr. Eckstein, good morning.

MR. ECKSTEIN: Mr. Chairman, Members of the Commission, good morning.

I'm appearing on behalf of the Arizona Minority Coalition. Senator Pete Rios is here, and he
will speak as well.

It's not easy for me to tell exactly what is going to be considered by the Commission today, but in anticipation of the Commission considering the adoption of definitions to comply with Judge Fields' order, I have prepared and circulated to the Members of the Commission and counsel some thoughts that I have with respect to key definitions. And I have tried to define and explain three terms, three terms that I think Judge Fields had in mind need to be agreed upon, defined, explained before any mapping is done. And those three terms are the term competitive, the term community of interest, and the term significant detriment, all used in Article IV, Part 2, Section 1, Clause 14.

I have in offer for your consideration defined competitive the way your expert Dr. Michael McDonald defined it. If I haven't defined it precisely like he defined it, I certainly intended to do that, and that is to use Judge-It as the measurement and to use a seven percent spread.

Now I realize, as Dr. McDonald testified at the trial, that once one gets closer to zero it becomes more competitive. And once one gets above seven percent, it becomes less competitive. I accept Dr. McDonald's statement that a -- the difference between a 6.9 and a
7.1 is not that significant. But the difference between
a 6.9 and 8.8 is that significant. And if my memory
serves me correct that the only district that, on your
map that was adopted in August of 2002, that was over
seven and less than 10, was one district at 8.8. I could
be wrong on that. And to me that seemed like a
significant difference. Whatever measurement was used,
the Hall-Minkoff Map and its various iterations was more
competitive than any map that was -- than the map that
was adopted by the Commission on August, in August of
2002. And, therefore, we recommend that map to you as
modified by Mr. Sissons.

The modifications made by Mr. Sissons are
reflected in the record, but essentially they were to
bring the population deviations down from Hall-Minkoff to
exactly the same as in the adopted 2002 plan, i.e. 4.22
percent deviation from top to bottom, and to consolidate
the Isaac School District into one Legislative District,
District 14.

I think the initial iteration of
Hall-Minkoff had split a part of the Isaac School
District off.

I understand that you will be considering
all kinds of options. I certainly think you have the
right to do that. I would suggest to you that if you are
going to have a map that is going to be put in place for
the 2004 election, and if it is going to be precleared,
given your previous consideration of a Hall-Minkoff Map
and understanding of it, that is at least a good place to
start. With the understanding of that map, lest anyone
think one party or another is advantaged by that map, the
evidence at the trial made clear, and the record is
absolutely clear, that four districts are primarily
affected, two in Pima County, 26 and 28, and while a
number are affected in Maricopa County, the two that
change are 15 and 6. 28 is a Democratic district that
would become competitive under the Hall-Minkoff Map and
26 is a Republican district that would become competitive
under the Hall-Minkoff Map. 15 is Republican, would
become competitive, and 6 is Republican that would become
competitive. What you would have if you adopt that map,
which we urge you to do, is create four competitive
districts. And it would affect the two major parties
equally. They would lose two districts and you would
have four competitive districts. Moreover, you would not
face, in my judgment, any question from the Department of
Justice, because minority-majority districts are not
impacted by the Hall-Minkoff Map.

The biggest change is in one district, and
I can't remember which, it may be 14, in which the
Hispanic voting age population drops from 55.2 percent to
55 percent, well above what even the Justice Department
required before the Georgia vs. Ashcroft decision.

With respect to community of interest in
terms of the definition, I've laid it out and I'm happy
to answer any questions. But primarily the idea is that
the Commission would identify communities of interest
before maps are created by looking at common and
identifiable cultural, social, and socioeconomic
interests and taking into account the history and
importance of the interests of the community that
actually have been asserted before the Legislative or
Congressional -- before the Legislature and before
Congress. I think that gives you something objective to
hang your hat on, and then to define the geographic
boundaries of that community of interest.

I suggest that while statements from the
community are important and you certainly are to be
commended for listening carefully to what the community
has to say, we all understand how comments can be ginned
up. And you should listen to those comments, but they
should not be determinative. And I've included that in
the definition as well.

With respect to significant detriment, I
have provided a definition and given some examples of
what would not, in my judgment, constitute significant
detriment. One could come up, I think, with a larger
list, but the key here is whether the change in favoring
competitiveness in a particular district would cause
significant detriment by significantly undermining the
ability of citizens in a particular district to advocate
effective representation in the Legislature.

Let's look at the Isaac School District. I
think that's a classic example. The Isaac School
District has 44,000 people in it. Under the Hall-Minkoff
Map, almost all of that district, I think something like
42,000 people were in District 14 and 2,000 people were
in District 13. In my judgment, having 44,000 people in
one district does not undermine the ability of those, of
the people in that District, to have effective
representation in the Legislature. Indeed, I think the
argument the other way makes more sense, that the people
in that district will have four representatives. 42,000
people out of 170,000 is a significant block. Removing
2,000 people is not significant in that the 42,000 people
who are in District 14 have significant influence and
will be able to exercise significant influence. 2,000
people in District 13 can't be ignored, either.

I provide as an example here dividing
cities. When you have a city like City of Phoenix or
Tucson divided into multiple districts, Phoenix, actually, I think, divided into 12 or more, dividing it into one more district doesn't cause significant detriment. When you look at the examples that you have before you, I think you can come up with others.

I think it would be important and I would suggest to you to try to come up with as many examples before the mapping process. I have one on the compactness. If you have the option to use various measurements in compactness, you in fact did look at and measure the districts under the Polsby-Popper and the perimeter test. And I suggest a measurement on Polsby-Popper, that below that would not constitute significant detriment.

So I think with that term, with the term significant detriment, it would be important to come up with as many examples as you can.

Finally let me say a word about Ashcroft v. Georgia. We had argued before, and I know I had, not on behalf of the Minority Coalition but on behalf of the Democratic Party, that there was such a thing as minority influence districts. And while they had not been recognized by the Supreme Court at that time, there were court opinions that had recognized minority influence districts. In the law -- a lot has been settled now that
you have the option, you don't have the obligation but
you have the option to create minority influence
districts.

Pete Rios, Senator Pete Rios will tell you, and I think the record supports this, that the Coalition 2 Map that was submitted in September 2001 was based on the assumption that a majority of minority-majority districts were districts in which minorities, and the majority of those cases Hispanics, could elect representatives of their choice. They might not be Hispanics. The majority of those districts, including Senator Rios' district, District 23, are minority
districts.

You can do a better job than the Hall-Minkoff Map did in creating minority-majority districts if you adopt percentages adopted by the Coalition in September 2001 in compliance with the Georgia vs. Ashcroft opinion.

You cannot, one thing you can't do, is use the crutch of well, we've got to put more minorities into these districts as an explanation for not creating more competitive districts.

I know your counsel will, if they haven't already, advised you as to the flexibility that the Georgia vs. Ashcroft opinion allows. And I invite you to
accept the challenge of Georgia vs. Ashcroft. And you
can do that by taking the districts that were proposed by
the Minority Coalition in September 2001, taking those
numbers and roughly those lines, and moving them as you
see fit.

With that, I probably overextended my
welcome.

I'll be happy to answer any questions you
have.

CHAIRMAN LYNN: I think there may be some
questions, Mr. Eckstein.

Ms. Hauser, let me start on that side and
move around.

MS. HAUSER: Mr. Eckstein, one thing you
said.

CHAIRMAN LYNN: Microphone.

MS. HAUSER: One thing you said in
connection with Georgia, I don't disagree with your
reading on Georgia, but I am not sure your reading of
that is consistent with the court's order. You indicated
that the Commission has a choice of going with the two
options set forth under Georgia. And in the court's
order I think the trial court made it very clear, using
the language that you requested, that the Commission does
not have the option but must choose the substantive
The trial court’s reading of Proposition 106 tells us that in order to favor competitiveness we must choose the approach that provides for influence districts rather than safe districts.

I just want to make sure that we have your understanding of what the order says in that regard: no choice.

MR. ECKSTEIN: Mr. Chairman, Ms. Hauser, I think you've stated it more accurately than I have. If, in fact, you can create more competitive districts by creating minority influence districts in compliance with Ashcroft v. Georgia, then, yes, putting Ashcroft v. Georgia together with the Voting Rights Act of '65 with the Arizona Constitution, then, yes, that is what you should do. It's not required by Georgia vs. Ashcroft, but it's by the combination of those, and particularly the Court's finding, and we believe our reading, that since competitiveness must be favored, one must do what one constitutionally can do.

MS. HAUSER: One additional comment. With respect to your significant detriment proposed definition, lines three, four of that definition, it indicates significant detriment is to be determined before the consideration of any particular map or plan.
The examples that you gave are with respect to the kinds of things that can be quantified more easily in terms of splits or in terms of compactness measurement.

In terms -- I just want to make sure that we are clear in understanding your approach to that definition when it comes to communities of interest. The Commission is going to be adopting definitions today before specific communities of interest have even been recognized. So I'm uncertain as to what you mean with respect to adopting a definition of significant detriment to communities of interest prior to knowing what the communities of interest are. I'm just confused by that.

MR. ECKSTEIN: Mr. Chairman, Ms. Hauser, I recognize that's difficult. Key words in here, favoring competitiveness in a particular district would significantly undermine the ability of citizens in a particular district to achieve effective representation. Key words I recognize gave an amount of subjectivity in that. That's why I suggest coming up with as many examples as you can so you don't get into a fight later on with me or someone else.

MS. HAUSER: One last question with regard to definitions.

Community of interest, your definition talks about interests actually asserted before the
Legislature or Congress. Are you making a distinction there between evidence that has been presented in other legislative bodies versus this legislative body?

MR. ECKSTEIN: Well, Mr. Chairman, and Ms. Hauser, since what we are trying to do is determine whether a group of people will be adversely affected by the creation of a certain district, let's take a Legislative District as an example, it seems to me the most relevant evidence is how that group has coalesced on issues before a legislative body. And that's why I use the term actually asserted before the Legislature in the case of Legislative Districts, or Congress, in the case of Congressional Districts.

I don't know that I'm answering your question.

MS. HAUSER: I think I understand what you meant now.

MR. ECKSTEIN: Let me say, Mr. Chairman, Ms. Hauser, I suppose it could be conceivable there would be issues combined in a social group, cultural group together that haven't come before the Legislature so you wouldn't have that experience. I think that is probably pretty rare. And people who have testified, for example the people in the Tri-City area in Yavapai County have talked about the common interest in ground water issues.
And those issues actually have, I think, some objective
evidence that they have commonly asserted those issues
before the Legislature. So I think that is the kind of
thing I was trying to get at.

MS. HAUSER: Okay. Thank you.

CHAIRMAN LYNN: Ms. Minkoff.

COMMISSIONER MINKOFF: Thank you,

Mr. Chairman.

Can you hear me?

Mr. Eckstein, I have a few questions. One
is technical, involves page two of the information that
you handed out to us.

I'm trying to find out whether this is a
typo or whether I don't understand the measures of
compactness because we never really used them.

You talked about a change of less than
one-tenth of one percent. Is that supposed to be a 10th
of a percent or really one-tenth of one percent?

MR. ECKSTEIN: I'm not sure, because with

Polsby-Popper, a perfectly compact district is a circle,
and that is one.

COMMISSIONER MINKOFF: Okay.

MR. ECKSTEIN: .1 percent.

COMMISSIONER MINKOFF: Not really a

percent.
MR. ECKSTEIN: Not a percent is right.

COMMISSIONER MINKOFF: Okay.

MR. ECKSTEIN: Since measurement of a perfectly compact district is one, I'm saying anything that is a 10th of a percent or less is perfect.

Maybe Mike can get it, my expert.

CHAIRMAN LYNN: Mr. Mandell, state your name for the record. We don't have a slip.

MR. MANDELL: Michael Mandell, law firm of Brown and Bain, representing Arizonans for Fair Redistricting.

The information, .10 percent, under the Polsby-Popper measure, represented .23, .44 as measures the districts. That's the measure it uses. So the reason we put .10 is just to put in an example if a district went from .34 to .24, that would be the reduction of .10 percent.

COMMISSIONER MINKOFF: Is it a percent or just a number on the Polsby-Popper scale? I'm not sure that's really a percent.

MR. ECKSTEIN: This example was drafted by Mr. Mandell. My interpretation was that the percent should come off and it's .1 as a decimal point.

COMMISSIONER MINKOFF: Right.

MR. ECKSTEIN: .10 percent.
COMMISSIONER MINKOFF: Right. If changing 1 to .9, it's not a 10th of a percent; it's under a 10th of a percent.

MR. ECKSTEIN: It's not mine, it's Michael's definition. Under 10 percent, would be a 10th of a percent difference. You pick whatever you want. That was my intention.

CHAIRMAN LYNN: Speak up. Because on this point, one more clarifying question, you or Mr. Mandell. Because they are relative terms, talking about a change. A change from what to what?

MR. ECKSTEIN: That needs to be flushed out. Really comparing one map with another.

CHAIRMAN LYNN: So among choices.

MR. ECKSTEIN: Among choices. Say you have a map, take the Polsby-Popper test that has its compactness, and everything else is equal, and the XYZ map that is presented to you. And the XYZ map is .09 percent, in other words, nine percent, nine percent less than, less compact than the map that you have; that would not be considered, using this definition, significant detriment. If it were .1 unit, it could be considered significant detriment.

CHAIRMAN LYNN: Talking about either an aggregate number or average number for that map.
Compactness is district by district.

MR. ECKSTEIN: To me the measurement is aggregate and they didn't put it in. One can find districts on a variety of maps that are different, and to me it's the aggregate number that is important.

CHAIRMAN LYNN: Okay.

MR. ECKSTEIN: That needs to be clarified as well.

CHAIRMAN LYNN: Ms. Minkoff.

COMMISSIONER MINKOFF: A few other questions.

When you talk about community of interest and talk about our identifying geographic boundaries, in some instances that's very easy to do if a school district, the Tri-City area in the Yavapai area you mentioned, an ethnic minority may be identified by Census information. But I'm wondering how you define the boundaries of communities of interests that really aren't defined by geographic boundaries.

MR. ECKSTEIN: Such as Latinos.

COMMISSIONER MINKOFF: Latinos show up in Census tract information.

MR. ECKSTEIN: I think they also show up as protected under Voting Rights information.

COMMISSIONER MINKOFF: Other voting rights,
Arcadia, for instance, came in and talked to us, said they had some interests. Arcadia isn't a specific geographic area. It's just kind of a general area.

How do you define something like that? Is it arbitrary, decide to draw lines here rather than there when people over there may consider themselves part of Arcadia as well, or North Central Phoenix, or Moon Valley, or something?

MR. ECKSTEIN: Mr. Chairman, Ms. Minkoff. Arcadia, that one is pretty easily definable. There may be people that live on the other side of Camelback that somehow want to be identified with Arcadia. I think Arcadia, Camelback is the northern boundary of Arcadia. There may be some issue where the southern boundary, whether it is Indian School or below that. I don't think it would be arbitrary.

I think you would look at the Arcadia High School District, it may give you some indication, and you would ask the people who appeared: What are the boundaries? Is there an Arcadia neighborhood association? To whom do they mail? You may not be able to do it perfect. No one is saying it has to be done perfectly, but some objective way to create boundaries I
think is terribly important.

COMMISSIONER MINKOFF: Okay. A couple of
other things.

When you talk about significant detriment,
and you talk about making a determination before the
consideration of maps, of particular legislative or
Congressional maps we have to determine what would be a
significant detriment to this particular population, and
yet your examples all refer to what might be
hypothetically maps. So -- I'm trying to reconcile the
inconsistency there. If I want to consider whether
there's significant detriment to divide Phoenix in 12 or
14 Legislative Districts, really I'm going to make that
consideration, am I not, when I look at map A and map B
and try to decide which one to adopt?

MR. ECKSTEIN: Mr. Chair, Ms. Minkoff, upon
rethinking that, I think the words "to the extent
practicable" should be inserted before, before
"consideration of particular Legislative or Congressional
maps or plans to the extent practicable based upon
objective evidence;" because some of these things I think
can be done. To the extent they can be done before the
actual map is looked at, one can make those
determinations. One can come up with findings, one can
come up with examples beforehand. The more you do that,
the more objective the process will be and less subject to influence by the particular district.

COMMISSIONER MINKOFF: Then my final question is about Georgia vs. Ashcroft. And you and Ms. Hauser had a discussion which probably went over the head of many of us sitting around the table. Maybe Mr. Huntwork understood. I have a question because I've been trying to get a handle on how that affects what we're going to be doing here. Is it the law that was created in Georgia vs. Ashcroft, does that say we would be in compliance with the Voting Rights Act if we created minority influence districts and not majority-minority districts in sufficient number to equal the last maps where there wasn't any reservation? In other words, if we had seven majority-minority districts in the prior map, if going forward we create seven districts that are either majority-minority or minority influence, would we be okay under Georgia vs. Ashcroft or would we be in violation of the Voting Rights Act?

MR. ECKSTEIN: Mr. Chairman, Ms. Minkoff, in my reading you would be in compliance doing that. If someone could demonstrate intent to dilute minority vote in creating influence districts, I think there could be a problem there. The mere creation of influence districts, that is taking them and calling them majority-minority
districts so that minorities have the ability to elect representatives of their choice as opposed to the ability to influence an election done for the purpose, for example, of complying with the Arizona Constitutional provision would not produce the bad intent that would in other circumstances prohibit one from doing that.

COMMISSIONER MINKOFF: And were there any agendas, scenarios set out in Georgia v. Ashcroft of what a minority-majority district would be?

MR. ECKSTEIN: I don't recall.

Let me just, Mr. Chairman, Ms. Minkoff, I think a district that didn't quite meet the benchmark numbers, for example, the districts that you adopted in October and then confirmed in November of 2001, would at least be majority influence districts.

Remember the Justice Department came in May of 2002 and they said they didn't exceed the benchmark or meet the benchmark and, therefore, they didn't comply with the Voting Rights Act as they read it at the time. So just by way of example, I would say those districts that you created and the districts that were advocated by the Minority Coalition which were a little bit, numbers were a little bit lower, would constitute minority influence districts.

We did have a significant difference of
opinion on District 23. And I would say whatever you do,
don't return District 23 to the way you had it in
October, November of 2001, because that was never a
minority-majority district. It was a minority influence
district.

CHAIRMAN LYNN: Mr. Hall?

COMMISSIONER HALL: Mr. Eckstein, you had a
comment the Commission should start with Hall-Minkoff, I
thought that's what you said. Given the scope and
breadth of the judge's order and how in reverse he
intends to send us, would you reconcile the statement of
start with that to what I read as the judge's order
basically sending us back to the grid?

MR. ECKSTEIN: Mr. Chairman, Mr. Hall, I
suggested you start with Hall-Minkoff because that is the
measurement for whatever you are going to do. Secondly,
I suggested you start with that because you at least
considered it for a day or so in June of 2002, and you
know that. If I were in your position, I would feel
comfortable ending with that based on what I know, but I
don't think I know everything you know. So by suggesting
you start with it, I think it is a good starting point.

You, number one, are not impacting the
districts outside of Pima and Maricopa County. And you
think you can create more competitive districts and
consistent with the other goals outside of Maricopa and Pima County, then you'll want to throw the Hall Map on the table and try to do that. I'm not sure -- I'm not sure you can.

COMMISSIONER HALL: I guess my question is it's not a matter of what we want to do. I'm asking you. Don't you agree that the judge has required, pursuant to his order, that we go back and do definitions and start at the grid again?

MR. ECKSTEIN: Mr. Chairman, Mr. Hall, the Judge ordered you to do definitions and come up with a map that is at least as competitive as the Hall-Minkoff Map. I don't agree he ordered to you to start at the grid and go to Hall-Minkoff.

CHAIRMAN LYNN: Part of the order, I'm not an attorney and defer to your training reading court orders, in part of the order he talked about the process the Commission used to develop maps, not only the one that was adopted as the final map but Hall-Minkoff as a map that came out of the same process. What he has said, as I read it, is competitiveness needs to be considered first as the mapping process proceeds and the starting point for that is the grid. So my reading of the order would be that once you have a grid, you then must apply competitiveness first and then worry about the other
criteria to create a map. As we both know, I believe, depending on where you start and how you start, the number of ultimate choices you have and maps you might create is almost infinite, based on the application of various criteria at various times along with whatever testimony you heard.

MR. ECKSTEIN: Mr. Chairman, I don't agree that the Judge has ordered you to consider competitiveness first. He has ordered you to favor competitiveness as the Constitution requires.

CHAIRMAN LYNN: Mr. Hall?

COMMISSIONER HALL: Well, I'm not trying to beat a dead horse here. I'm just confused.

Pursuant to what Mr. Lynn said, that -- I think a lot of your argument, in the case, was at what time in the process competitiveness was considered. And in order for us to go back and consider earlier in the process I think takes us back to the beginning, which for us just to start at Hall-Minkoff would really contradict the whole idea that we didn't consider competitiveness early enough in the process and somehow that affected the end result.

MR. ECKSTEIN: Mr. Chairman, Mr. Hall, I think it did affect the end result. By suggesting you start with Hall-Minkoff, I am not suggesting you don't
1 take into account everything that you feel you would have
2 taken into account had you considered competitiveness
3 earlier rather than later.

4 CHAIRMAN LYNN: Ms. Hauser.

5 MR. ECKSTEIN: Let me say, Mr. Chairman,

6 Mr. Hall, one could view the Hall-Minkoff Map as a map
7 that clearly has taken competitiveness into account and
8 one that is the surrogate for the final draft map that
9 you adopted in August of 2001 and start the process at
10 that point.

11 CHAIRMAN LYNN: Ms. Hauser.

12 MS. HAUSER: Mr. Eckstein, I've heard your
13 answers to the Chairman and to Commissioner Hall. And
14 with respect to the breadth of the order, I would like to
15 direct your attention to paragraph 13 of the conclusions
16 of law and also to the trial court's order that says
17 three things that we are to do. We are to reconvene and
18 adopt within 45 days a Legislative plan consistent with
19 these findings of fact and conclusions of law which, as
20 you know, because you wrote most of them, are extensive.
21 Those findings and conclusions must be complied with.
22 And favoring competitiveness is part of that. And the
23 Legislative plan has to be at least as competitive as
24 Hall-Minkoff or Hall Modified. So it would appear to be
25 sort of the benchmark with respect to competitiveness we
need to look at. And we have to deal with the definition
issue, which you made some suggestions about today.

It's the findings of fact and conclusions
of law part of this causes me to want you to take a look
at paragraph 13 of the conclusions of law which says the
Commission was required to adjust the grid map created in
its phase of mapping to accommodate all the goals in
Article 4, Part 2, Section 114, including
competitiveness. It failed to do so when it specifically
excluded adjustment from adjustment of maps created for
public comment.

I appreciate your view about how the
Commission might easily start with Hall-Minkoff, but I
don't see how you could have asked the court for that
language and stand here today and tell them to ignore it,
which is what you just said. They are told that they
need to start with the grid and make adjustments for all
of those things. And I would just, I think the
Commission deserves your answer to that question with
respect to what you asked the court to order them to do.

MR. ECKSTEIN: Mr. Chairman, Ms. Hauser,
thank you for scolding me. I think the last time I was
scolded like that was by my first grade teacher.

What paragraph 13 does is say that you were
required to adjust the grid map to accommodate all the
goals. In my judgment, and maybe you come to a different
conclusion, Hall-Minkoff is a map that was created taking
into account and accommodating all the goals. If you
conclude differently, then you can't start with
Hall-Minkoff. And what you would do is you would start
with the Hall-Minkoff, make adjustments as you saw fit,
that would take into account competitiveness, and then
you would send it out for comment. The purpose of that
paragraph was to make sure that the map that was created
had competitiveness taken into account before it was sent
out for public comment. That was never done. If you do
what I suggest, that is start with Hall-Minkoff -- you
have to start with some map -- make whatever adjustments
internally you feel are appropriate, send it out for
comment, you will have done what paragraph 13 requires.

CHAIRMAN LYNN: I know Ms. Minkoff has a
follow-up on that same point. Let's go to Ms. Minkoff
and then Mr. Hall has another question as does
Mr. Huntwork.

COMMISSIONER MINKOFF: Thank you,
Mr. Chairman.

Mr. Eckstein, you were also scolded by the
faculty advisor of your high school newspaper, but that's
another point.

MR. ECKSTEIN: Reprimanded.
COMMISSIONER MINKOFF: A wonderful story.

Maybe if they coax me hard enough, I'll tell them.

I had a question about you alluded to public comment in prior maps we've done, we've sent out for 30 days of public comment. We don't have 30 days until we have to get a finished map back to the court to comply with their order. How do we reconcile that?

MR. ECKSTEIN: We start, here we are 18 days after the order was entered. You'll have to go to the court, say here's what we've done. We have a map, we're sending it out for comment in the community, and ask the court for additional time. The problem is we're 18 days into the 45 days.

COMMISSIONER MINKOFF: Well, if we had started on day one, knowing how long it's taken us in the past to create maps, I doubt we'd have a map within 30 days of the final day of the deadline anyway. Is it your understanding any map this Commission develops to comply with the judge's order has to be sent out to the public for 30 days of public comment?

MR. ECKSTEIN: There's a question in my mind whether the judge intended that. But I do think, and I think I've been consistent on this, if one is going to get the public input that is required by Proposition 106, one ought to get full public comment. And one of
our criticisms of your process before was that you had
sent out a final draft map that did not take
competitiveness into account and that was in addition to
the grid map the only map that you took around the state.
As Dr. Adams said, from that point on, competitiveness
would only be done around the edges. And that proved to
be true. So I think it is important to make sure that
whatever map you adopt is given to the public, that they
have every opportunity to comment on it, and that would
be in compliance with paragraph 13 of the findings of
fact.

CHAIRMAN LYNN: Ms. Hauser.

MS. HAUSER: Mr. Eckstein you see there's a
question about how to comply with the 30 days of public
comment. I guess, as you know, we went back to the trial
court to seek some clarification of this order. One of
the things we asked for clarification about was the 30
days requirement. And you responded, not you
specifically, I believe Mr. Halloran filed the response
with the trial court, said, "No clarification is
necessary; the order is perfectly clear." I guess now
I'm confused. On the one hand, on the one hand it's
perfectly clear when we want clarification from the trial
court. Now you are not exactly sure how we're to comply
with the 30-day requirement. That's one question.
Second question: If we were to go back to the trial court when we come up with a map and ask for the time for 30 days of public comment, is that something that you would support?

MR. ECKSTEIN: Mr. Chair, Ms. Hauser, you have created your own problem here. You are 18 days into the process. And it was feasible to get this done had you complied with the judge's order. You have created the problem that exists now. I don't know what we will do. And certainly if there is significant progress that has been made, if you have adopted definitions, and if you have a map that you have provisionally adopted and have it out for circulation in compliance with your reading of Proposition 106, that will be something for us to take into consideration. And I'm sure the judge will take that into consideration. Keep in mind this is not a problem we created. This is a problem you, yourselves, created.

MS. HAUSER: I'm sorry. You didn't answer my question about clarification.

MR. ECKSTEIN: I did. Here we are on the 18th day finding it difficult to comply with time requirements. It wasn't when you filed the motion.

MS. HAUSER: Certainly we filed the motion immediately, objected. You said there is no need for
clarification. As of the time you filed your response, no need for clarification, what was your understanding about the 30-day requirement at that point? How is that incorporated?

MR. ECKSTEIN: It was my belief at the time we responded, had you done so promptly, you could have fully complied with the judge's order and Proposition 106. I recognize you have gotten yourselves into a box by waiting until today to even begin this consideration.

CHAIRMAN LYNN: Mr. Hall.

COMMISSIONER HALL: Mr. Eckstein, for the record, we didn't wait until today. The Commission met some time ago.

I'm just trying to understand, and a couple of points, one is, sir, I don't want to hang-up on the grid process: Are you saying you are willing to stipulate to the court you guys agree we shouldn't have to go back to the grid to start drawing?

MR. ECKSTEIN: Mr. Chairman, Mr. Hall, I'm willing to stipulate you don't need to do the grid again, don't need to repeat the steps done by Dr. Heslop in the summer of 2001, but that you need to come up with a map that takes all the goals into account, including competitiveness.

COMMISSIONER HALL: Okay. With respect
to -- you mentioned the map that the Commission first
submitted to Department of Justice for preclearance and
which did not receive support from the Hispanic Coalition
and other members of the Hispanic community. I think
that was an influential factor in DOJ objecting to that
map. And then -- so -- but I think it's very clear,
also, that that map is more competitive even than the
Hall-Minkoff or any plan proposed throughout the trial
process.

So my question is you alluded to District
23 and absent maybe issues of District 23 and given your
position with the Georgia v Ashcroft on minority
percentages, is it your opinion that that first map
submitted to the Department of Justice would be in
compliance with the judge's order?

MR. ECKSTEIN: Mr. Chairman, Mr. Hall, no,
it didn't take competitiveness into account.

COMMISSIONER HALL: It's more competitive
than Hall-Minkoff.

MR. ECKSTEIN: Absolutely not.

COMMISSIONER HALL: How do you think that?

Percentages are in the range, are they not?

MR. ECKSTEIN: No. You are absolutely
mistaken.

COMMISSIONER HALL: Okay.
MR. ECKSTEIN: Mr. Chairman, Mr. Hall, that map you adopted is certainly -- the map you adopted in 2001 is more competitive than the map adopted in 2002, not more competitive than Hall-Minkoff. Maybe what you are confusing is the Coalition 2 map which is a map that is -- was more competitive than the map that was adopted either in 2001 or 2002.

COMMISSIONER HALL: Let me put it this way. If that original map was adjusted to make it more competitive than the Hall-Minkoff, is it your opinion that would be in compliance with the judge's order?

MR. ECKSTEIN: Mr. Chairman, Mr. Hall, I think so. But I think you have to comply with the process requirements as well.

COMMISSIONER HALL: Thank you.

CHAIRMAN LYNN: And therein is the confusion, Mr. Eckstein. You mentioned in your comments three maps, Hall-Minkoff, Hall Modified, or the 2001 map. All maps are a product of the same process, different stages, a product of the same process. Now I hear you making a distinction between the first two and last one being products of different processes; therefore, Hall-Minkoff, Hall Modified, might be a good starting place; 2001 might not. If I misheard you, correct me.

MR. ECKSTEIN: You start at a starting
place. The starting place is not the ending place. The
starting place map you create to get public comment on.
And the problem with the maps you adopted were they were
never adjusted to favor competitiveness. That's what the
judge found. If you start with Hall-Minkoff and adjust
that, and you adjust in good faith to favor
competitiveness, that will be a good and fair starting
point.

CHAIRMAN LYNN: 2001 would not because --

MR. ECKSTEIN: Mr. Chairman, the 2001 map
was sent out on August 17th without any consideration of
competitiveness whatsoever.

CHAIRMAN LYNN: In your opinion.

MR. ECKSTEIN: Not in my opinion. Your
lawyers can tell you that they advised you not to take
competitiveness into account when the final draft map
went out.

CHAIRMAN LYNN: Well -- and I guess -- I
guess we may be hung up on semantics as to which map
we're talking about. I certainly don't want to replay a
five-week trial this morning. I think it would be in no
one's best interests to do that.

Mr. Huntwork, you've been very patient.

Thank you.

COMMISSIONER HUNTWORK: Mr. Chairman, you
were just asking the question I just asked. To clarify it, you were talking not about our draft map, the adopted map.

CHAIRMAN LYNN: 2001 adopted.

COMMISSIONER HUNTWORK: It did follow a process of considering competitiveness.

MR. ECKSTEIN: Mr. Chairman, Mr. Huntwork, number one, I beg to differ. The evidence showed it didn't follow the process. You certainly didn't start with a map that was circulated statewide that took, even took competitiveness into account, let alone favored competitiveness.

The map you started in August of 2001 did not take competitiveness into account at all. That was the map you started with. And you -- you sent that around the state. You got comments, you made significant changes. And in fact, what the record shows is that every time you considered the map, it became less competitive, not more competitive. The map you adopted in October and November of 2001 was less competitive than the map, the draft map which was less competitive than even the grid map where you didn't even try to create competitiveness at all. You had four competitive districts on the grid map and all of those were less competitive than the maps people were complaining about
in the 1990s that had, according to Dr. McDonald, seven competitive districts. So each time you touched a map, it became less competitive. If that's favoring competitiveness, then I live in a different world.

COMMISSIONER HUNTWORK: Mr. Chairman, Mr. Eckstein, I want to have you focus on a different point, if you would.

The maps that we adopted in 2003 were also, however, grew out of that same process. So that is the question. What happened in between to change the nature or character of those maps? We didn't -- you said yourself the only map we sent around for comment throughout the state was the 2001 test map. So -- I mean, was there a change in time that allows us to start with final adopted maps as opposed to maps we considered earlier in the process or -- where was the change in kind, a change in the nature of the maps that allows us to start at one place rather than another?


COMMISSIONER HUNTWORK: I stand corrected.

MR. ECKSTEIN: One resulted in the Justice Department 2002 map.

COMMISSIONER HUNTWORK: Clarify how many questions I asked, which ones they were, and attempt to
answer all of them, please.

MR. ECKSTEIN: I don't think I'm that good.

COMMISSIONER HUNTWORK: I'm not that good.

I had a serious question.

MR. ECKSTEIN: So many.

COMMISSIONER HUNTWORK: What is it? Tell me what the principal reason is why we can start with the final map but not with the 2001 adopted map.

MR. ECKSTEIN: I'm not suggesting you start with a final map. I'm suggesting you start with a test map that was created by your consultant, Doug Johnson; because I believe that map was a map which favored competitiveness. And if you start with that map as the first map you consider, make whatever adjustments, ask Mr. Johnson to make whatever adjustments he would make, taking into account your comments, that is as logical a place to start as I can imagine, particularly because the judge says that is your benchmark in terms of creating competitive districts.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Mr. Chairman, I apologize. Mr. Eckstein, I misspoke.

MR. ECKSTEIN: "Eckstein."

I'm trying to understand something very important to me. If you bear with me, hopefully we can get there.

The Hall-Minkoff Test Map then, if you will, was simply a variation of a set of maps. We changed a couple of districts from a set of maps that grew out of a set of maps. And I'm trying to put my finger on what you believe to be the point, the point in principle where that map was redeemed from the original sin, if you will, of the failure to take competitiveness into account at the very early stages of the map drawing. How did that transubstantiation take place?

MR. ECKSTEIN: Mr. Chairman, Mr. Huntwork, as you know, I'm not an expert on transubstantiation. It is a map that favored competitiveness. You must start somewhere in this process.

If you want to start on a tabular raza, you can do that. My suggestion is start with the Hall-Minkoff Map because you are going to have to get public comment on whatever you do. And it is true that you can't completely erase all of the "original sins that were committed by this Commission," I'll use that, put that in quotes. One can't totally wipe out that history. So we have to deal with reality here.

Reality is that you need to start with a
map if you are going to comply with this process. The
fact is the judge found that at least your consultants
knew the addresses of incumbents. That can never be
erased. That fact exists.

I think starting with this map, the
Hall-Minkoff Map, Hall Modified, modified by Sissons,
gives you a good starting point. If you want to start
with a completely new set of maps, you are certainly
entitled to do that. There is nothing in the judge's
order that prevents you from doing that.

COMMISSIONER HUNTWORK: Thank you.
CHAIRMAN LYNN: Mr. Hall.
COMMISSIONER HALL: For the record,
Mr. Minkoff, this Commission did not -- I'm sorry.
For the record, Mr. Eckstein, this
Commission did not --

MR. ECKSTEIN: It would be Dr. Minkoff
then.

COMMISSIONER HALL: That's true, and he's
packing his bags as we speak.

CHAIRMAN LYNN: I'm not sure who makes out
worse on that one, Paul or Sherman, but having said that.

COMMISSIONER HALL: I -- the Commission did
not consider nor were they aware of addresses of
incumbents, contrary to any opinion to the contrary.
But my question for you: Is Hall-Minkoff Modified, which is a product of your staff, et cetera, has that map considered the addresses of incumbents?

MR. ECKSTEIN: Mr. Chairman, Mr. Hall, the answer to that is absolutely not. Hall-Minkoff is not a product of my staff. Hall-Minkoff is a product of your consultant, Doug Johnson. Hall-Minkoff --

COMMISSIONER HALL: I misspoke. Hall Modified. Has Hall Modified considered addresses of consultants?

MR. ECKSTEIN: I said no, will say no a couple hundred times if you'd like me to. All Hall-Minkoff, Hall Modified, Sissons modified of it, did reiterations that reduced population deviations to get down to 4.22. Sissons' iteration of that, as demonstrated in court, combined all of the Isaac School District.

COMMISSIONER HALL: Mr. Eckstein, thank you for your patience.

CHAIRMAN LYNN: Mr. Eckstein, I too want to thank you. I think you can tell from the questions and number of questions and the characterization of the questions that the Commission is intending to try to figure out how to comply with the Court's order. And even though we had requested specifically some
clarifications in order to assist us in doing that, those
were not forthcoming. We're operating from what is on
the written page and whatever we can fashion from written
clues how to comply with the court's order.

We appreciate your comments and
conclusions.

We'll take your definitions into account as
we proceed and thank you for joining us this morning.

MR. ECKSTEIN: Thank you, Mr. Chairman.

CHAIRMAN LYNN: Come back as often as you
can or need to during the process.

MR. ECKSTEIN: I have to be somewhere else
this afternoon or would stick around.

Let me make a point, and I think I made to
Commissioner Huntwork: You are not obligated to start
with Hall-Minkoff. What you are obligated to do is have
a map at least as competitive as the Hall-Minkoff Map.
If you feel that the process was so tainted that you
cannot correct it by starting with Hall-Minkoff and
putting that map out, forward, and doing all that you
would do in terms of adjustment, I recommend to you that
you start on a tabular raza.

CHAIRMAN LYNN: I understand.

Since Commission unanimously agrees to
appeal the court's decision, the Commission doesn't agree
the process was as tainted. We'll look at the process
and comply with the order as best we can.

I appreciate the indulgence of the rest of
the public that wish to address the Commission.

CHAIRMAN LYNN: I want to check with the
court reporter.

Could you take a few more comments?

THE REPORTER: Yes.

CHAIRMAN LYNN: Next slip, Mike Flannery,

Prescott Tri-City areas.

Is Mr. Flannery present?

MR. FLANNERY: Yes, sir.

Good morning, Mr. Chairman, Commissioners.

I will be as brief as I can. Let me first start by
saying that I am representing the Tri-City Areas. As
such, Mayor Rowie Simmons asked me to deliver a letter.
For the expedience of time, if I could, I'd enter that
into the record as read.

(Letter submitted, the text of which is
contained after Mr. Flannery's comments.)

MR. FLANNERY: The Tri-City areas back in
June 2001 received a wake-up call when you floated a test
map which split the Tri-City areas into three Legislative
Districts. From that time on, the communities got
together. We welcomed you with a meeting up there. I
think you all remember that meeting.

        VOICES:  Yeah.

        CHAIRMAN LYNN:  Very well, Mr. Flannery.

        MR. FLANNERY:  Our message has been pretty
loud and clear since that point.  We've been persistent
and consistent.  That is our community of interest is a
very strong community of interest and that we know you
are going to go through making a definition today, or at
some time -- now or in the future.  We would like to know
that -- or we would like you to know that we feel that
we, despite whatever you come up with, still have a
strong community of interest; that we would like to have
you understand that we still stand united in our cause;
that we will be persistent; and that we would like for
the Tri-City area and Central Yavapai to still remain in
one Legislative District.

        So with that, I think I've been just as
brief and to the point as possible.

        CHAIRMAN LYNN:  I appreciate that,

        Mr. Flannery.

        Mr. Hall has a question for you.

        COMMISSIONER HALL:  So just to summarize:

        In your opinion, if we were to split Yavapai County,

        would that cause significant detriment to your community

        of interest?
MR. FLANNERY: We might invite you back up for another meeting.

COMMISSIONER HALL: Is the answer yes?

MR. FLANNERY: The answer is yes.

CHAIRMAN LYNN: Thank you, Mr. Flannery, very much.

(The following is a letter transmitted by Mr. Flannery to the Commission on behalf of Mayor Rowie P. Simmons for inclusion in the record as if read:

"From Mayor Rowie P. Simmons, City of Prescott, February 2, 2004, to the Independent Redistricting Commission.

"It is my understanding that the Commission will be meeting on February 3, 2004, and possibly again on February 4, 2004, to consider redrawing State Legislative Districts as a result of Judge Fields' recent order. In light of the short notice and due to conflicting scheduling commitments, it will be impossible for me to be at the Commission's meeting.

"However, I would like to reiterate to the Commission the strong desire of the City of Prescott for Central Yavapai County to remain in one Legislative District. Both Prescott City Council Members, as well as numerous other elected officials and members of the public, were extremely active in the Commission's initial
hearings on Legislative Districts. The almost unanimous consensus of the testimony previously given to the Commission was that Prescott, Prescott Valley, Chino Valley, and all of Central Yavapai County, including those communities in the Verde Valley, all had a common community of interest which supported retaining Central Yavapai County in one single State Legislative District.

"I realize your time is limited, and rather than go into great detail in this letter, I would refer the Commission to the voluminous testimony which was previously given to the Commission regarding Central Yavapai County, as well as the testimony of myself, Mayor Killingsworth from Prescott Valley, and former Mayor Dan Main of Chino Valley, which was elicited during the multi-week trial contesting the drawing of the current map, during which, I would remind the Commission, the Tri-City area maintained an active role in attempting to have the court uphold the Commission's current state legislative map. The previous Commission hearings as well as the testimony at the trial set forth in great detail the common community of interest which is shared by all of Central Yavapai County.

"On behalf of the people of the City of Prescott, I would urge you to retain Central Yavapai County in one single State Legislative District."
"Sincerely, Mayor Rowie P. Simmons.")

CHAIRMAN LYNN: The next speaker slip I have, Mayor Joseph Donaldson, Mayor of the City of Flagstaff.

Mayor Donaldson, good to see you, as always.

MAYOR DONALDSON: I'd like to hand in my comments.

Good morning, Chairman, Commissioners. I am Joseph Donaldson, Mayor of Flagstaff.

Again, I thank you for this opportunity to speak on behalf of the Flagstaff community before the Commission. I ask that in accordance with Judge Fields' order, the Commission, one, hold public hearings to review definitions of the key in Proposition 106 including competitiveness, community of interest, to the extent practicable, and significant detriment; draft the most competitive plan possible consistent with additional Proposition 106 criteria and using the Commission adopted definitions of key terms; and, third, allow interested parties the opportunity to present testimony on these first two items.

As you may consider today, or at a time in the future, the various definitions of key terms, I ask you to consider the definition of the term community of
interest. I understand that the term communities of interest has been defined in legal cases for some time as distinctive units which share common concerns with respect to one or more identifiable features such as geography, demography, ethnicity, culture, socioeconomic status, or trade. I believe application of this definition will help the Commission in its task.

Again, I recognize the complex nature of the discussions and the difficult task before you. Please know that I wish to support the Commission in addressing this difficult task.

Thank you.

CHAIRMAN LYNN: Thank you, Mr. Mayor.

Comments or questions?

Ms. Minkoff.

COMMISSIONER MINKOFF: Yes, Mr. Chairman.

Not specifically of Mr. Donaldson. The last two speakers have presented written comments. Could those be copied during breaks so we have them before us?

CHAIRMAN LYNN: We'll attempt to do that.

We'll attempt to do that. There's a business center.

Next speaker, Mr. Mitch Strohman,

Government Affairs Manager, Flagstaff Chamber of Commerce.

MR. STROHMAN: Thank you very much for the
opportunity to speak with you briefly this morning.

The Flagstaff Chamber of Commerce and
nearly 1,100 members want to go on the record this
morning in support of Mayor Joe Donaldson's remarks just
a moment ago. And we especially have concerns in regard
to the issue of definitions as has been laid out in the
judge's ruling and order. We would call your attention
specifically to the definition of communities of
interest. Using the definition that was offered a few
moments ago this morning by the esteemed Mr. Eckstein,
any reasonable analysis of the Flagstaff Metropolitan
Area reveals a metropolitan base that has a long and
solid track record of commonly asserted issues before the
Legislature.

After defining what communities of interest
are, the Flagstaff Chamber of Commerce and its nearly
1,100 members are hopeful that the Commission will give a
second look at the Flagstaff metropolitan area and
reconsider its placement as a whole community of interest
in a district that has other communities of interest.
Presently we believe that is not the case.

Bottom line, the Flagstaff Chamber is very
thankful and respectful of the very challenging and
difficult task that is laid before you and for your hard
work and efforts that you've already put into this
process and effort and work that you will be putting into
this process in the coming weeks and months. We are very
respectful of that and we recognize the difficulty of the
task before you. The Chamber of Commerce of Flagstaff
looks forward in the coming weeks to being intimately
involved in the process which has enormous, wide-ranging
impact on all Arizonans, not just those living in
Maricopa and Pima Counties.

Chairman Lynn, Members of the Commission,
thank you very much for the opportunity to speak before
you this morning.

CHAIRMAN LYNN: Thank you, Mr. Strohman.
Comments or questions?
Thank you.
Let's take one or two more comments and
then we'll need to take a break so the court reporter can
stretch.

Mr. James Palmer, Chairman of the Board of
Supervisors, Graham County.

MR. PALMER: Thank you. It's a pleasure to
be here with you.
I'd like to begin by thanking each of you
for the diligent work that has gone into the process, the
tiring, thankless job, at times difficult task before
you.
I'm happy to say Graham County and its citizens have been part of the process since its infancy, have been there since the early hearings right up to the end of the process. We've made our voice heard and we've been appreciative of our citizens for their involvement in this. We've been very pleased that District 5 came out as it did. It accomplished many things. It has a community of interest, strong community of interest, five counties organized into an organization which share many not only geographic but socioeconomic issues, many things in common. We have appreciated the fact that district was created. We also understand this issue of competitiveness has become an overriding issue. And as you look at the numbers in Legislative District 5, the current district that was adopted that is now being under the map being challenged we are one of the most competitive districts in the state. And we are happy to say that we are. We hope that as you consider, however this map is altered or changed, you will recognize the fact we are very competitive, we do share a community of interest factor that we think is very strong, and we end hope the ripple effect of trying to create more competitive districts in the Maricopa and Pima County areas will not disrupt what we have which is very competitive, which does share a very strong community of
interest factor; and we hope you will leave us intact.

We know this is very early in this process, we'd like our voice to be heard in that. We feel our voice has been heard not just at the end of this process but throughout this process. We want to reiterate that.

Once again, we want to thank for all the work you've done. And anything we can do from Graham County, from the eastern part of the state to help your process and help this difficult job you have, we'd offer to you.

CHAIRMAN LYNN: Thank you, Mr. Chairman.

In the interest of time, I know other commitments are pressing, I'd like to take Senator Pete Rios at this time. I know Senator Rios has to be elsewhere. I want to be sure he's heard on the record.

Without objection, Senator Rios representing District 23.

SENATOR RIOS: Thank you for consideration.

Senator Pete Rios. I represent State Legislative District 23, which, as you all know, is primarily Pinal County, the southern tip of Gila County, Maricopa County, and four Indian tribes.

For purposes of keeping this brief, I'll read a written statement, something I usually don't do, but for purposes of being brief, I'll do.

The Minority Coalition, Mr. Chairman,
Members of the Commission, remains ready to help the Commission to help districts in creating districts that fully comply with the Arizona Constitution. Protection of minority voting rights remains our top priority.

However, the Coalition stated in September of 2001 the creation of competitive districts and the protection of minority voting rights are not mutually exclusive. The Commission's Hall-Minkoff plan is a good example and shows that the majority-minority districts can still be created while still creating a competitive map. In addition, the Commission now has the Georgia v. Ashcroft decision which allows it to reduce the minority voting percentages in certain districts by spreading out minority voters across more districts to create more minority influence districts. The Commission can create additional competitive districts or make some districts, like 10, Legislative District 12, even more competitive.

The creation of competitive districts is very important to minority voters.

I guess I have to be a little bit brutally honest and say that in my 20 years of being a State Senator, I have learned that Republican legislators are not supportive of most Hispanic issues. Having more districts that give Democrats a chance to be elected increases the likelihood that minority issues will be
addressed. And there's a lot of issues that have come before us having to do with English learners, English only, issues having to do with immigration that I can point to as examples of what I just stated, but for the sake of time I won't go into detail.

The United States Supreme Court said in Georgia v. Ashcroft that the -- and the Court said that states could choose either to create certain safe districts in which it is likely that minority voters will be able to elect the candidate of their choice or to create districts in which it is likely, although perhaps not quite as likely under the benchmark plan, that minority voters will be able to elect their candidates. Judge Fields used similar language in his ruling. He also stated the choice for Arizona was made by the voters in enacting Proposition 106. Because the Arizona Constitution requires the Commission to favor the creation of competitive Legislative Districts rather than creating super safe minority districts, the Commission should create districts in which it is likely that minority voters will be able to elect their candidates.

I want to thank you for your time. And I'm happy to offer the assistance of the Coalition and its lawyers in drawing new maps.

CHAIRMAN LYNN: Senator Rios, may we have a
copy of your prepared statements for the record?

SENATOR RIOS: I wrote all over it, but

I'll see if I can get you a clean copy.

CHAIRMAN LYNN: I have one question. I'll defer to Commissioner Minkoff, if you have time.

COMMISSIONER MINKOFF: Senator Rios, I just have one question about the wishes of the Minority Coalition.

If you recall earlier in the process, you and I and other leaders of the Minority Coalition had conversations about what their wishes were for minority districts going through the process. We were told at that time that the Minority Coalition felt very, very strongly that the merging of voters in those district had to be high because they were very concerned about making sure that they were able to elect representatives of their choosing. Are you saying now that the Minority Coalition will support districts that this Commission might create that have population or percentages of minority voters that fall below the benchmark, below 50 percent? Will they support that kind of map at this point?

SENATOR RIOS: I think if we look at the Coalition 2 map, I think it was, I think that will give you a clear indication the Minority Coalition was
supportive of competitive districts and lower
percentages.

Personally, I come from a minority
influence district. I always have represented a minority
influence district. I'm a great believer that a lot of a
person's ability to get elected is based on the person's
qualification, because I don't believe that minorities
cannot get a crossover vote, white crossover vote. I
think in my case I've been able to do it for 20 years. I
think there are many members of the Coalition that
believe the same.

CHAIRMAN LYNN: Senator Rios, one question,
if I may. You mention the Georgia v. Ashcroft decision,
which, as you know, occurred subsequent to the beginning
of the process and is relatively new as a standard in
election law.

Are you aware of any redistricting
submissions to the Department of Justice that were
created under Georgia v. Ashcroft that the Department of
Justice has ruled on to this date?

SENATOR RIOS: Not to my knowledge. I am
not aware of any. I've had conversations with people at
the Justice Department, and that was never an issue that
we discussed or that was raised.

CHAIRMAN LYNN: So is it fair then to
suggest that neither the Coalition nor we, at this moment, know how the Department of Justice might view such a map?

SENATOR RIOS: Well, and again, I would imagine that if this is something that came from the courts, I mean clearly it is something that the Justice Department has to take into consideration. Because at the end of the day it's going to be the courts that make those types of decisions.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Mr. Chairman, Senator Rios, when you look back into the reasons for the creation of the Civil Rights Act, in particular the preclearance process for districts, historically, it was designed to make sure that minority groups really would have the opportunity to have -- to elect minority candidates knowing that in the deep south the Democrats would have, in those days, liked nothing better than to be able to divide the pockets of black population and keep control of those votes but prevent the black citizens from electing people of color to actually hold public office. Now I understand that the Supreme Court has taken a somewhat broader view of the process in its most recent ruling. At the same time, as I read it, it was a very measured step and it did not throw the doors
open to simply disregard that original consideration. And as I read it, it's going to be an evolutionary process. And I don't believe that the courts or the Justice Department or this Commission or the -- or the Minority Coalition would want us to lose track of the underlying reality that the ability to divide is potentially one way of depriving minorities of representation.

Would you agree with that statement?

SENATOR RIOS: I guess there's a couple of ways of looking at that, Mr. Chairman, Mr. Huntwork. I always look at the end result. And if I'm looking at the Legislature, because I'm very familiar with the Legislature, if I'm looking to promote legislation that is going to benefit racial and ethnic minorities in the State of Arizona, then I have to also look at party affiliation. Because it doesn't do me -- doesn't do the minority people in the State of Arizona any good to have five Latino State Senators, to have three Native American State Senators, two African American State Senators, and two white Democratic State Senators, because there are 30 senators and they only end up with 12 and there's 18 of the other side. So for us to be able to promote legislation to benefit racial ethnic minorities, we need people sensitive to the issues.
So in the minority world, the people that we sometimes elect don't happen to be of the same ethnic or racial makeup. We have white people that represent some minority-majority districts that do an excellent job. And that's what people at the end of the day are looking at, who is going to represent my concerns and my issues. If it happens to be from a Latino district and happens to be a Latino State Senator, great. If it happens to be a white State Senator and he or she is representing the interest, that's what the community is looking for. So I don't know that this court decision necessarily takes away or does any detrimental harm to the minority communities in the state, in my opinion. But I'm not an attorney.

COMMISSIONER HUNTWORK: Senator Rios, could you summarize what benefit you feel that the minorities would then have from the continuing application of the Federal Civil Rights Act through the preclearance process here in the State of Arizona if we as a state that has in fact gotten to the point where ethnicity of candidates is no longer an issue?

SENATOR RIOS: The issue of ethnicity of candidates is a sad issue. When I was a student in grade school, I could not speak English. Some people wish I still couldn't. In our school, if we spoke Spanish on
the school grounds, we were hit with rulers on the hands, smacked across the face, because it was not permitted. There is a case in the Year of Our Lord 2004 in Scottsdale, Arizona, where that is still happening. So that is the protection that being a preclearance state still affords minorities in this state, because we still have not arrived to a level where people can say we are equal and we are being treated as equal across the board. So there are still many advantages to the Voting Rights Act and the fact that Arizona is still a preclearance state. And there are a lot of examples Native Americans can raise and a lot of examples African Americans can raise on this issue.

COMMISSIONER HALL: Senator Rios, thank you for coming.
For me, I'm more of a practical kind of guy. As we heard this morning, attorneys can disagree. Bring in 10, and you can get 10 different opinions. For me it's a confusing process with respect to the Hispanic Coalition. At times there's been unity relative to a position, relative to a position relating to percentages on minority-majority issues, and at times, my perception, disunity, or reverse opinion. I guess my opinion is would it be possible, in your opinion, given how far we've come -- personally, I concur
with you and agree with you it is more beneficial to have
like party representatives in addition to minority
representatives to forward issues relative to the
minority communities.

Would it be possible to have a written
letter from a broad group of leadership in the Hispanic
community and minority communities to the Commission
representing a specific position relative to percentages
that they would be willing to support with this
Commission to the Department of Justice?

SENATOR RIOS: Let me just give you a
little example of a diverse Latino community, one that is
not homogeneous.

You have to remember that the Latino
community is as old as the Incas, Mayas, Conquistadors,
and the new Latinos that come across the borders. We
differ in time and spatial. We differ whether we cross
the border or whether the border crossed us. So for you
to ask me to unify people that are so diverse, you know,
you have to remember some of us only speak Spanish,
nothing else. Some only speak English, nothing else. So
for me to get all these diverse groups together: Okay,
guys, this is what we are going to do, you all sign on
the dotted line, I'm not sure. I mean I can get you the
leaders of the organization, but to say that we're going
to get every single member and every person we speak
for --

COMMISSIONER HALL: Right.

SENATOR RIOS: -- ain't going to happen.

COMMISSIONER HALL: Obviously the more the
better. And maybe I'm crediting your leadership. It
seems to me a valuable tool and resource for this
Commission.

SENATOR RIOS: We'd credit that.

MR. RIVERA: If you look at Ashcroft, one
of the decisions, Ashcroft decided to go, rather than
influence, than influence, majority issues in the state,
if you want the Commission to go with a fresh look at
Ashcroft, approaching that approach, we need support of
the minority leadership, not only support of the minority
leadership, active support of the minority leadership,
what numbers are viable, or we'll be in trouble with
Department of Justice all over again.

I know you and I are both minorities and
mutually speak Spanish. You speak Spanish better than I.
If you would get the leadership to come in with a letter
such as the one presented by the Minority Coalition last
time, it would be very helpful to the Commission.

SENATOR RIOS: You have to keep something
in mind: Part of leadership, elected officials to the
Legislature, if I had a district that is a safe reelection District for me of 70 percent Latino and you are going to ask me to give up my safe district and sign this district, well, I don't think you are going to get too much cooperation from that legislator. Bear that in mind as well.

MR. RIVERA: My only thought, having litigated that 10 years ago, Congressman Pastor did that, too, signed that. He did come in and give something like that.

CHAIRMAN LYNN: Ms. Hauser.

MS. HAUSER: Certainly one of the things for us all to keep in mind at this point, we are here because we are implementing a court order. And that court order is a result of litigation brought by the Minority Coalition. So with respect to Mr. Hall's question, you know, trying to assemble a large group of people, I think what we're asking: Assemble the Coalition. We fully expect we'll hear from the Coalition in court as to whether or not we complied with Georgia v. Ashcroft as to -- I'm assuming that the Coalition will have something to say to the Department of Justice. I think if you can get it together to say something to the court or to Department of Justice, it's incumbent upon you to get organized to the extent that you can make
statements to the Commission that they can consider.

   All too often it's happened that, you know, somebody brings in something later that the -- and advocates it to the court, and the Commission never had an opportunity to consider it.

   I think it's a very fair request. And we ask that you go back and consult with counsel and tell us the kinds of numbers -- Mr. Eckstein did intimate, I think you said the same thing, the numbers in Coalition 2 are something that we should take a look at. And as you know, numbers that we had, percentages that were slightly higher than that, were rejected by Department of Justice. So we view, you know, we know for a fact that no state has taken a Georgia v. Ashcroft plan through DOJ at this point. So, you know, if we are to use that as a tool to favor competitiveness, and we think the court order requires us to do that, then we really do need to have some kind of input from you all so that we have any chance at all of getting that plan through the preclearance process.

SENATOR RIOS: Okay.

MS. HAUSER: It would be very helpful.

SENATOR RIOS: I understand that as well.

When Justice rejected even higher numbers in some minority-majority districts, that was before the
new court decision.

MS. HAUSER: Right.

SENATOR RIOS: Now they do have to take it into consideration.

I'll certainly make that attempt. I make no promises. Like I said, we're a very diverse population.

CHAIRMAN LYNN: Senator Rios, if there are no other questions, I want to, on the record, publicly thank you for your input, not just today but throughout the process, and also want to thank you publicly for your support of the Commission's supplemental funding request.

Please be aware that we are going to be talking with Leadership fairly soon about additional funding to complete the process and we would hope for your continued support.

I do want to thank you for your past support.

SENATOR RIOS: Okay.

CHAIRMAN LYNN: The Commission will recess for -- try to keep it to 10 minutes. I'd like to get through public comment before we have to break for noon.

(Recess taken at 11:04 a.m.)

CHAIRMAN LYNN: The Commission will come to order.
For the record, Commissioners Minkoff, Huntwork, and Hall are present. Commissioner Elder is still excused.

We have four members of the public that are yet to be heard. I'd like to take those members of the public now.

The first one I would call on is Mr. Alberto Gutier who is representing himself.

MR. GUTIER: Mr. Chairman, members of the Commission, I'm Alberto Gutier. I live on 14th Avenue in Phoenix, have lived in the same house for 36 years, and have enjoyed living in a compact, competitive district.

For the last 36 years I have been involved in politics and other things. Also, for the record, I'd like to clarify, during the trial a letter I wrote in 2001 in which I was promoting the idea of District 18 being together at that time, 18 being composed of Sunnyslope, North Central Phoenix, where I live, and Moon Valley, my idea for the letter was strictly for keeping a compact District 18. I am very comfortable. The leadership in our Legislature took care of Sunnyslope, a minority commuter. At the same time, the intention of the letter, at the same time, the judge used it in the trial as we needed more minority representation on it, which was totally incorrect, not how the letter was
intended. I am very comfortable with District 11 created
by this Commission and also think the Commission did a
great job in very difficult times and in the time frame
they had to create very competitive, compact districts
which are working and work very well in this 2002
election. I don't think there are any problems. I have
never been represented by minorities. I'm definitely a
minority, a Latino immigrant, second minority from
someplace, am comfortable with the maps. They are great
maps. I'm comfortable with the maps. It's a shame the
courts tried to change that. I think it's important you
be given the proper time to do the job right by the
judge. I'd like to say to you, at the same time, there
is nothing wrong with maps as they are.

I'd answer any questions.

CHAIRMAN LYNN: Thank you, Mr. Gutier.

Ms. Minkoff.

COMMISSIONER MINKOFF: Mr. Gutier, you're
talking about my old neighborhood until two months ago.
I lived in what was District 18, now Legislative District
11, and lived there for 35 years. Are you suggesting
that either District 18 as it used to be or District 11
now are competitive districts? I believe in both the
prior map or this map they are strong Republican
districts and --
MR. GUTIER: Mr. Chairman, Commissioner Minkoff, I'm comfortable. Moved 24, 25, 26, 18 together in some form, the district organized. I know my party side. The district is perfectly working, and we have a lot of new involvement, people not involved before. And the map is perfectly fine, District 11, as is.

COMMISSIONER MINKOFF: You are not characterizing it as a competitive district, are you? I think if you look at registration, it's a strongly Republican district as was District 18. And Republicans, I think, are very well represented in that area, although a strong Republican district.

MR. GUTIER: A Republican district now, a Republican district, elected to my post a number of times. There's nothing wrong with District 11 as it is.

CHAIRMAN LYNN: To be clear, you are not an elected official in the Legislature, have not held that office?

MR. GUTIER: Have never held that office.

CHAIRMAN LYNN: I'd hate to tell you.

MR. GUTIER: 17845, happy where I am, no intention of selling my house.

CHAIRMAN LYNN: Nor running for office.

MR. GUTIER: Not running for office.

CHAIRMAN LYNN: Next speaker, Ann
Eschinger, League of Women Voters.

Ann, good morning. Good to see you.

MS. ESCHINGER: Good morning. I'm happy to see you.

Ann Eschinger representing the drafters of Proposition 106.

These remarks address Agenda Item VI, definitions of Constitutional terms.

It would not be contrary to the intent of the framers if the Commission developed some guidelines and outlined the factors that generally govern your decision making. This could be useful and helpful to citizens, but we urge caution.

Redistricting is an organic, subjective process. It is a conflict of competing truths and values. The framers created a balanced panel of responsible citizens to make determinations among competing truths and values in a landscape of ever shifting political wants and needs. The Commission should not diminish its power by writing hard and fast rules, confining definitions, and mathematical formulas that are unconstitutional, restrictive of the framers' intent of a Commission making wise but subjective decisions among an infinite variety of plans. A system of narrowly defined constraints would itself be a
political process forcing a particular outcome.

The drafters understood there would be an infinite variety of possible outcomes, any of which could be challenged by another interpretation of political truth. The drafters understood as well redistricting does not belong alone to Democrats, Republicans, but also to Independents, Green Party members, Libertarians, and others.

We applauded the Commission's decision to conduct public hearings early in the process and we encourage you to give considerable weight to the testimony at those hearings in any definition of community of interest.

And we believe the Heisenburg Uncertainty Principle applies, the more closely you measure one aspect of political fairness, the less possible it is to measure other truths.

CHAIRMAN LYNN: Thank you, Ms. Eschinger.

If those comments are in writing, we'd appreciate having those.

MS. HAUSER: If I can ask.

CHAIRMAN LYNN: Ms. Hauser has a question.

MS. ESCHINGER: Sure.

MS. HAUSER: What if any role did you play in connection with the drafting of 106?
MS. ESCHINGER: I didn't hear that.

MS. HAUSER: What, if any, role did you play in the drafting of Proposition 106?

MS. ESCHINGER: I co-chaired the Drafting Committee of the League of Women Voters at that time.

MS. HAUSER: Thank you.

CHAIRMAN LYNN: Thank you, Ms. Eschinger.

Next speaker, Mark Herrington.

Mr. Herrington is a member of the Graham County Board of Supervisors.

Mr. Herrington, good morning.

MR. HERRINGTON: I would like to thank the Commission, Mr. Chairman, Commission Members, for your hard work, and just would tell you we stand in support of what you've done and stand in support of you now and appreciate all your efforts.

I'm just going to reiterate a little bit. I feel like I can talk. I'm Vice Chairman of EACO. I had an opportunity to go to the trial and testify in it, which I might tell you I really enjoyed. I got off on that. And I never testified in court before. I don't know what I expected, but I really enjoyed myself. I had a great time. I'll just tell you. I had a great time doing it.

CHAIRMAN LYNN: Somebody did, glad it was
MR. HERRINGTON: All I had to do was say the truth and what I had in my heart. I could do it, easy.

As far as our -- in court I learned what the Fifth District, Fifth Legislative District is called in Arizona, never knew until I went to court, that is the EACO District.

I'm also Vice Chairman of the Eastern Counties Organization.

I'll tell you we are in fact a community of interest. And as far as the Legislature goes, strongly that way, we share all kinds of interest. And I want to reiterate that today and would reiterate also what the Chairman said about the fairness issue. As far as our district goes, the competitiveness of it really is good as a district. I believe the judge even said that.

Anyway, I appreciate being here today, again reiterate, for all you folks did, thank you.

CHAIRMAN LYNN: Thank you, Mr. Herrington.

The last speaker slip I have for this session, although I want to make it clear that we will certainly entertain public comment throughout the process, is from Jim Hartdegen representing the Pinal County Governmental Alliance and Casa Grande Chamber of
Mr. Hartdegen, it wouldn't be a Commission meeting without your smiling face in front of us. And we appreciate you in front of us.

MR. HARTDEGEN: I was feeling depressed and had to start taking drugs, heard you were kicking up and the drugs are now gone.

COMMISSIONER HALL: We don't, for the record.

MR. HARTDEGEN: Jim Hartdegen, representing the Pinal County Governmental Alliance, for your remembrance, a group of cities, towns, and utilities in Southern Arizona and cities, towns, that have gone into other things, the Casa Grande Chamber.

First of all, you guys did a great job.

This is a personal comment right now. I was against 106. But I have become a believer in 106. I guess a born-again believer, whatever.

I think this group, with the right people at the right time, I applaud your hard work. I think you've come up with a good deal. No one can accuse you of not trying to cover the state in hearings. If people didn't show up to hearings, that's their problem. You guys made a good effort to get input from citizens in all different type of ways.
I went through a couple processes in my legislative life, and it was all done in the basement. One thing 106, I understand, tried to do, is take politics out of this process. And I think you guys tried to keep politics out of the process. I guess it just moved from the basement of the Legislature into the chambers of the judge, I guess.

You guys are required to have blinders, of not knowing where incumbents live. And I really believe you did a good job. I think anyone who brings maps in to you should have to follow the same guidelines. I think those people ought to have blinders on, also. It's very hard for a group to bring maps in here for you to look at if they don't follow the same rules.

But we're happy. We don't want to be split up.

Now if you want to go back to the map that you presented to the Department of Justice, we'd be even a little happier. I'm not sure that's going to happen, but if it happened, we'd be a little happier.

We're very satisfied with District 23 the way it is. But again, if you want to go back to the one you gave the Department of Justice, we'd be just as happy with that map, also. We just don't want to be, in our location, the area that makes up for maybe some
short-comings in the Metropolitan Phoenix and Tucson areas.

And if I didn't mention this, I'm sorry. I usually don't write things down. I'm sorry.

Definitions. Whatever definitions you come up with, they have to be applied equally, whether it's in Metropolitan Phoenix or Tucson, in the city areas, or in the rural areas. And I know that is tougher to do sometimes in the rural areas, but we do have community of interest, we do have school boundaries, and we have everything in the rural areas that they have in the metropolitan areas. So whatever definitions you come up with, and I think that is going to be somewhat of a task, we'd like to have those definitions applied across the board equally. But -- I'm here to help you. I'm not here to try to hinder your decisions. It's just too bad you have to be back here in 10 years, or whenever your term limit is up. Probably there will be nobody applying for the job.

Anyway, if there are any questions, I'm more than happy to answer them. Otherwise, I'll be around.

CHAIRMAN LYNN: Thank you, Mr. Hartdegen, very much.

Are there other members of the public that
wish to be heard at this time? If not, we'll close
public comment.

And I believe in terms of getting through
the agenda as expeditiously as we can, I would ask that
under A.R.S. 38-431.03(A)(3) and A.R.S. 38-431.03(A)(4),
I'd request a motion for an Executive Session.

COMMISSIONER MINKOFF: So moved.

CHAIRMAN LYNN: Second?

COMMISSIONER HALL: Second.

CHAIRMAN LYNN: Discussion?

All those in favor, signify by saying "Aye."

COMMISSIONER HUNTWORK: "Aye."

COMMISSIONER HALL: "Aye."

COMMISSIONER MINKOFF: "Aye."

CHAIRMAN LYNN: Motion carries.

The commission will move to Executive
Session.

Ladies and gentlemen, I have no way of
knowing how long this Executive Session will take, but we
will certainly try to notify people who are in the
general area when we move from Executive Session back
into Public Session. So if you are interested in the
remainder of our deliberations today, I would say
probably somewhere between 45 minutes and an hour and a
half is probably a good barometer for this Executive Session.

So thank you all, and we'll notify you when we are back in Public Session.

(Whereupon, the Commission recessed Open Public Session at 11:35 a.m. and convened in Executive Session at 11:44 a.m. until 12:44 p.m. at which time the lunch recess was taken. Open Public Session resumed at 1:27 p.m.)

CHAIRMAN LYNN: The Commission will reconvene in Open Session.

For the record, Mr. Huntwork, Mr. Hall, and Ms. Minkoff, and the Chair are present. Mr. Elder will join us at some point this afternoon.

As we move along this afternoon, there are some things we might want to keep in perspective. I'd ask the indulgence of my fellow Commissioners. Let me try to frame where we are and what I think we're about to embark upon. As most of you know, beginning in February of 2001, this Commission worked for 19 months, held 42 citizen input hearings and a number of other public meetings all over the State of Arizona.

As Proposition 106 intended, we are five very different people drawn from various parts of the
state with differing allegiance in terms of political
affiliations, different backgrounds, different ideas, all
brought to bear on the task of redistricting. We
actually heard this morning the framers of Proposition
106 actually intended that to be the case.

Sometimes we disagreed, mostly on minor,
sometimes on major issues, but we try to achieve
consensus. We tried to work for compromise on those
issues without compromising or sacrificing principles,
and we also recorded all of our votes publicly for
everyone to see. On some matters we were in agreement
from the beginning. We were unanimous about our desire
to listen carefully to the citizens of Arizona from
communities all over the state. We were also unanimous
in our, in our belief that the process that we used
should be fully transparent in the sense that our line
drawing would take place in public. We were unanimous,
as the mapping went forward, that we should take into
account the reactions of every group and seek to
accommodate and compromise among their views to achieve
the goals established. We were sure that this is what
the people wanted when they wrote Proposition 106 and
when they voted for it, a process that was supposed to be
immune from tampering by political power elites and a
process that would reconcile competing aspirations.
At the end of the process we were united by several factors, even though the ultimate vote was not unanimous. We were united by respect for one another. We were united by the realization that each of us had acted out of conviction in pursuit of goals honestly held and openly expressed. And we reject categorically and with disdain any implication that we improperly used knowledge of specific locations of incumbents or candidates in our deliberations or our decision making. I know I speak for every member of the Commission in expressing pride in the integrity of our process.

This is a legislative body representing the people of Arizona in a vital governmental role and responsible for making law in compliance with both the Federal and the State Constitution. And I have some considerable personal experience in working with legislative bodies, both here and in Washington. And I know that none of them can match this body in terms of care, in terms of openness, and in terms of probity. Nevertheless, the trial court disagreed with our decisions, and now it is our duty to comply with the order of the trial court while we await the decision to stay that order.

Because of the time constraints imposed by
the court we are proceeding today to comply with the
court's order even as we appeal it.

We do so, we proceed today, under protest
and with grave concern about the court's order that has
not yet been precleared by the US Department of Justice
and with the belief that we may be violating the United
States Voting Rights Act by doing so.

Now having made these statements I want to
give other Members of the Commission an opportunity to
add their comments on the record.

Mr. Huntwork?

COMMISSIONER HUNTWORK: Mr. Chairman, thank
you.

There is something I want to add as a
member of the Bar of the State of Arizona that places
where we are in, I believe, the proper perspective.

I have written this down and will, like
Senator Rios this morning, I will read my statement,
which is uncharacteristic for me, which means I have to
try to read my own handwriting, so please bear with me.

The Independent Redistricting Commission
recognizes that it is one participant in a broader legal
process. In the broadest sense, the plaintiffs in the
lawsuit against us should not be viewed as our opponents
but our partners in this process, as are parties that
supported our maps, and as is the trial court that ruled against us.

The end result of the process, of course, will be creating districts, but it will also include resolving the rules under which the Commission's decisions are made. The trial court clearly understood this, and we do not take its rulings as a defeat for the Commission. The judge repeatedly noted that whatever he decided would be appealed. And his judgment and order clearly identified a number of vitally important issues for consideration by the appellate courts.

We have appealed the trial court's order for several reasons.

First, of course, the court came to different conclusions on many of these legal issues than we did as we and our learned counsel wrestled with them over a period of many months, and we would like the appellate courts to reconsider our arguments.

Secondly, we believe that it is important to the process for the appellate courts, including the Arizona Supreme Court, to provide definitive rulings on these legal issues so that we and future Commissioners can proceed with a clear understanding of our task. Whether or not you, the public, agree with our decisions to date, I hope you believe that we have
honestly followed the rules as we understood them and
will willingly and enthusiastically follow the rules as
they may be clarified by the courts.

In this spirit, I would like to state
unequivocally that, although we respectfully disagree
with the trial court, we will do our utmost to comply
with the court's order within the limited time provided.

Thank you, Mr. Chairman.

CHAIRMAN LYNN: Thank you, Mr. Huntwork.

Other members of the Commission?

Mrs. Minkoff?

COMMISSIONER MINKOFF: Mr. Chairman, a very
quick comment.

You stated earlier the decision to go
forward with an appeal was unanimous, and it was. People
asked me why since I was the one that voted to go against
the map I decided to go forward with an appeal. I did
and still do.

As we went through this process, we were
wrestling with a lot of things in Proposition 106 and
trying our very, very best to comply with the
Constitution of the State of Arizona. We in this
Commission had different viewpoints as to what was the
proper way to go, which is why some of our votes were
divided. In six years another Commission is going to be
appointed, and they will have the task for the next
redistricting that we have had for this one. We owe it
to them. We owe it to the people of Arizona to make sure
what Proposition 106 really means. And so that is why I
feel, along with my fellow Commissioners, that it is
absolutely essential that this go to an appellate court,
that we have a determination of some of the ambiguous
points of the Constitution of the State of Arizona
regarding redistricting, so that we can go forward and do
the job right and so that our successor Commission can do
the job right. We owe the people of Arizona no less.

CHAIRMAN LYNN: Thank you, Ms. Minkoff.

Any other comments by Commissioners?

Comments by counsel?

Item VI. I think that's where we are on
the agenda. Let's see if I'm right.

Item VI, possible presentation, discussion,
and decision concerning definition of constitutional
terms.

For that we turn to NDC for a presentation.

Dr. Adams, Mr. Johnson, and Ms. Leoni are
here representing NDC.

So, Dr. Adams, are you are going to begin?

DR. ADAMS: Mr. Chairman, Members of the
Commission, I am indeed here representing National
Demographics Corporation along with Marguerite Leoni and Doug Johnson. We, as your consultants, are here to assist you in whatever way you direct to carry out the trial court's order.

We have a Power Point presentation which is divided into three sections. The first section is on the court's order. The second section is on the process. And the third section is on definitions.

I would like to ask Marguerite Leoni to begin the Power Point by discussing the section on the court's order. And we would be happy to answer questions as we go along.

CHAIRMAN LYNN: As we go.

MS. LEONI: Thank you, Florence. Chairman Lynn, Members of the Commission, I'm pleased to be speaking to you today.

The court's order is nearly 53 pages long with 120 plus findings and a substantial number of conclusions of law. It is not our intent today here today to be comprehensive. There is going to be much that is going to come up of the discussion of compliance of that order. I'm also quite well aware that the Commissioners here, as are its counsel, have studied this decision and are very familiar with it. So the high points I'm hitting are more for the benefit of the public.
to get an idea of some of the key high notes of that
ing order to introduce the following sections of
the Power Point.

Excuse me. Do you all have a handout copy
of this?

COMMISSIONER MINKOFF: No.

DR. ADAMS: They are here.

MS. LEONI: Chairman Lynn, guide us back to
the Power Point.

In a nutshell, the trial court ordered that
this Commission adopt a new plan in 45 days that complies
with the court's findings of fact, 120 some of them, and
conclusions of law. But the high points are including
creating and applying uniform definitions and standards
for constitutionally significant terms. The court
defines other terms in a constitutionally significant
range. We'll discuss those a bit later with you.

The second high point is to favor
competitiveness. This is by creating a plan at least as
competitive in terms of number of districts as the
Hall-Minkoff Plan or Hall Modified Plan. We'll talk more
about that later on in the Power Point.

A couple of key holdings in terms of some
of the discussion that was held here today. The court
did find the creation of the grid was the initial mapping
phase. That is a phrase from Proposition 106. And the
court also held that the grid itself was the first draft
map.

The conclusion of the court was that the
IRC was required to favor competitiveness when it
adjusted the grid.

The court key holding then front and center
during this morning's center is a need for definitions.
The court ruled that the IRC is required to
adopt essential definitions, definitions of essential
constitutional terms. Ones listed by the court:
significant detriment, communities of interest, to the
extent practicable, competitive districts. We also have
others: compactness, contiguity. We'll work with you to
look at terms in the broad sense.

The court addressed the very broad issue of
the Voting Rights Act in light of the new Supreme Court
decision in the Ashcroft case and the mandate of
Proposition 106 to favor competitiveness. What the court
held is that the Commission failed to favor
competitiveness by creating majority districts with
Hispanic voting populations in excess of what was
necessary to meet your preclearance obligation and create
a nonretrogressive plan. That's another issue that needs
to be wrestled with by this Commission.
In a nutshell, the court held that the Commission was required to create fewer, quote, "safe districts" or "benchmark majority-minority districts." And as we will see later on when we discuss the Ashcroft decision, these are districts where a minority candidate is virtually assured election.

What the court held is the Commission should have created majority-minority districts with Hispanic voting age percentages that were not safe but made it likely minority voters will be able to elect candidates of their choice, not necessarily minority candidates but candidates of their choice, while at the same time favoring competitiveness.

On the crucial issue of communities of interest, the court set forth three crucial limitations of the Commission's discretion: the Commission's limited competitiveness clause in Prop 106 placing an entire community within the boundaries of a Legislative District; number two, with regard to communities of interest, the Commission was not entitled to create homogeneous districts comprised of like-minded yet distinct communities of interest at the expense of creating competitive districts; and the last holding on the communities of interest is that boundaries were -- should have been adopted for the communities of interest.
in terms of identifying the issue of significant
detriment.

And with that --

Yes?

COMMISSIONER MINKOFF: Go back to the last
slide. There was something -- it looks like you are
saying, that first point, that we are required to place
an entire community of interest within the boundaries of
a single district?

MS. LEONI: No. What the court said in
terms of protecting a community of interest, Andi,
Commissioner Minkoff, we know many communities of
interest cannot fit in a single district, obviously.

COMMISSIONER MINKOFF: Right.

MS. LEONI: But the Commission's discretion
to protect a community of interest was limited by Prop
106. The limitation was protection went to the extent of
including a community of interest insofar as it could be
included in a single district.

COMMISSIONER MINKOFF: I'm still not sure.

CHAIRMAN LYNN: Microphone.

COMMISSIONER MINKOFF: We had an example
earlier in public comment of the Isaac School District.
Should that issue come up again in a map, are you saying
that we would have to put the entire school district
within a single district or could we put a substantial
portion of it in a single district?

MS. LEONI: Commissioner Minkoff and
Chairman Lynn, with your permission, in deference to your
attorneys, limitations to protect it are to include it in
a single district. That does not speak to the issue of
significant detriment.

CHAIRMAN LYNN: Ms. Hauser.

MS. HAUSER: Ms. Minkoff, this particular
portion of the ruling is on this slide to contrast it
with what the court has said about homogeneous districts.
And what the court was critical of was a respecting of
communities of interest by placing like communities of
interest together in the same district. This is not
intended to speak to how you respect a community of
interest as you are balancing it against other criteria
and those kind of things. What he was saying is in terms
of respecting a community of interest, you are making it
harder to make -- one, constitutionally harder to make
districts competitive, if you are determined, or like
communities of interest together.

COMMISSIONER MINKOFF: A single community
of interest could either be in one district --

MS. HAUSER: Right.

COMMISSIONER MINKOFF: -- if necessary,
more than one?

MS. HAUSER: If you choose to respect a community of interest, and maybe -- with some communities splitting off a little part of it isn't going to cause a huge problem to that community of interest. If you choose to respect a community of interest, basically it stops how far you can go, at least insofar as competitiveness is concerned, is to keep it together not to be putting it together with other communities of interest.

COMMISSIONER MINKOFF: Okay.

CHAIRMAN LYNN: Okay. Florence.

Other questions or comments from Ms. Leoni before we move ahead?

Okay. Thank you.

Dr. Adams?

DR. ADAMS: Mr. Chairman, Members of the Commission, the next portion of the Power Point speaks to process. And I think it, I need to make it clear that there are many ways, as you well know and from your discussion this morning, you realize there are a number of ways to approach the process. What we have here is simply one possible way of a number of ways to approach it. So what we would like to do is share that with you now.
We think that the first step possibly in process would be to adopt definitions. That would be one beginning point. After we adopt definitions, after the Commission adopts definitions and gives us guidance on that, the next step in the process would be to map communities of interest and then bring those back to you and --

CHAIRMAN LYNN:  Dr. Adams, let me interrupt you. I want to be clear. When you say "map communities of interest," I understand you to mean identify them and geographically define them rather than placing them in a map.

DR. ADAMS:  We would identify them and geographically define them, but we would probably use visual tools, such as a map, to assist us with that.

CHAIRMAN LYNN:  Would "map" be a complete map of all districts or "map" be a map of a community of interest?

DR. ADAMS:  Map would be a map of community of interest.

COMMISSIONER HUNTWORK:  Mr. Chairman.

CHAIRMAN LYNN:  Mr. Huntwork.

COMMISSIONER HUNTWORK:  Did you include the adoption of communities of interest by the Commission before you mapped them or are you going to recommend,
provide us with maps that are -- that show communities
that you are going to recommend we adopt? Or what order
do you intend, do you suggest?

DR. ADAMS: Commissioner Huntwork,
Mr. Chairman, one way to approach it would be identify
communities of interest that are already in the record
and to provide you with the geographic boundaries of
those communities of interest, bring them back to you,
and then you could view them and make decisions about
whether you are going to adopt them as a community of
interest as a Commission.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Clearly that would
save some time, and time is going to be of the essence.
But I also am concerned about anything that we have done
in the past to define communities of interest. My
concern is raised by other provisions of the court order
that aren't -- haven't been summarized here. But, you
know, we -- we listened to months of citizen input, but
it was all anecdotal. It wasn't legal evidence, in a
sense. And in order to winnow through it and define
communities of interest, we had to exercise our own
judgment and apply our own knowledge to separate the
wheat from the chaff, so to speak. And the -- and I
thought I read in the court's order that we needed to
limit ourselves to other types of evidence, that is
perhaps, you know, expert testimony or consultant review.
I don't know what types of evidence there might be, but
the communities we identified in the past, I think, may
have arisen from a process that the trial court disagreed
with.

CHAIRMAN LYNN: Let's ask the -- ask
counsel. I'm not sure I have that same take on what the
trial court said.

Ms. Hauser?

MS. HAUSER: Let me suggest that what NDC
is proposing to do is to at least with respect to the
communities of interest, that you -- at some point in the
process that has already taken place, mentioned, in some
way, is to simply map them, define their boundaries.
Definitions will be adopted and then you will be able to
determine whether or not they fit those definitions based
on -- again, you haven't adopted a definition, yet we
don't know exactly which ones are going to comply. Some
of that will depend on the evidence or level of testimony
you believe is necessary, you know, to get you to a
determination that something fits a definition. I don't
think you are there yet. That is a question kind of in
the abstract.

COMMISSIONER HUNTWORK: Thank you.
CHAIRMAN LYNN: Dr. Adams.

DR. ADAMS: Okay. The proposal we make here, again, it's simply a suggestion, is to start from the grid, to adjust, to create contiguous, competitive districts of equal population with the assistance of a competitiveness expert. Once we've created those maps, we would adjust the maps to comply with the Voting Rights Act, at your direction. And the compliance with the Voting Rights Act would be as defined by the court. And you are going to hear this probably several times. You heard it from Ms. Leoni, but the Commission should have, this is the court speaking, should have created majority-minority districts with Hispanic voting age percentages that made it likely that minority voters will be able to elect candidates of their choice, not necessarily minority candidates, while at the same time favoring competitive districts. Once that is done, our suggestion would be to adjust with respect the communities of interest that you adopted, you have defined and adopted, but to favor competitiveness if there was no significant detriment, again based on a definition that was adopted by the Commission.

Then, to continue following with the Proposition 106 criteria, to meet the adopted standard for geographic compactness. That was discussed some this
morning. We have further information and slides on that to show you in the next slide show.

Favor competitiveness, again, if no significant detriment, as defined.

And then, again, based on the criteria in Proposition 106, to adjust to use visible geographic features, city, town, county boundaries. But again, favoring competitiveness if there is no significant detriment, again, as defined by the Commission.

So that is one possible way to approach the process and we are -- we would welcome suggestions, other possible ways to approach.

Ms. Minkoff.

COMMISSIONER MINKOFF: Question, Dr. Adams.

CHAIRMAN LYNN: Microphone.

COMMISSIONER MINKOFF: Okay. The process that you are recommending is that we start from the grid and create competitive districts based on equal population and none of the other criteria, initially.

DR. ADAMS: Except for contiguity, that is correct.

COMMISSIONER MINKOFF: As you go through all the other criteria and you suggest that we adjust to comply, certainly logically it makes sense that the next one is the Voting Rights Act, because that really trumps
everything else. But then you go into communities of interest, geographic compactness, and visible geographic features. And what I'm wondering is if you reverse the order of these or change them in any way if it would significantly impact what the final map was. In other words, instead of doing communities of interest next, if you did geographic features next and then communities of interest, you know, if you mix up the order of these, does it change the map significantly enough and, if so, then I believe that is something we need to weigh in on in terms of which comes next, which comes next, and which comes last.

DR. ADAMS: I am going to say indeed it probably could affect the outcome. I'm going to turn to Doug who does a lot more line drawing than I do and ask him to address the question.

CHAIRMAN LYNN: Yes. For the record, name --

MR. JOHNSON: For the record, Doug Johnson, National Demographics.

The order would affect, significantly affect a map. One thing we'll do is come back with different options to alleviate that impact showing different paths taken.

COMMISSIONER MINKOFF: You could do any of
various orders of those three, could be organized to show
us different options.

MR. JOHNSON: Yes, we could do different
versions in different orders, just a simple fact of
having multiple maps, even if done in the same order, to
show you different paths.

COMMISSIONER MINKOFF: The thing I'm
concerned about is maybe opening up a legal can of worms.
All these are listed equally on Prop 106. If we make a
decision one is more important than the other, I'm
wondering if --

I guess I'm asking for a legal opinion. I
guess this isn't the place to ask for it.

CHAIRMAN LYNN: You can defer the answer,
if you choose -- it's a great -- it's a great question
from the standpoint that the court has made a
determination about one of the criterion in terms of when
it should be applied. I -- as I understand the ruling, I
think the Court was pretty much silent on the remainder
in terms of an order of application but rather that the
others should in turn be applied in some order. And as
long as you were favoring competitiveness, the court's
position was you would be okay.

Ms. Hauser.

MS. HAUSER: I think that's basically
right. Listing them here doesn't necessarily imply one
is going to come before another. We will get back to you
with some further advice on that if it becomes an issue.
But it would appear that just from the standpoint of
quickly implementing the order, it's probably easier to
adjust, we're assuming easier to adjust based on, you
know, one at a time kind of thing. But that may not be
the case. I guess we're just going to kind of -- we
didn't do it this way before. We're going to feel our
way along and see what is most expeditious, not intended
to place one criteria over any other except to favor
competitiveness.

COMMISSIONER HALL: Is there any merit to
the order listed in Proposition 106?

MS. HAUSER: Voting Rights Act lines in the
US Constitution, mandatory, others must be considered to
the extent practicable?

COMMISSIONER HALL: They are listed in a
sequential order.

MS. HAUSER: Well, we are not -- I'm
asking.

MS. HAUSER: We'll get back to you with
some additional information how, what order they should
be applied.

CHAIRMAN LYNN: Ms. Minkoff.
COMMISSIONER MINKOFF: What I'm wondering, when we initially created a grid, if you remember, there were four quadrants where we could start and we randomly picked where we were going to start and then we randomly picked clockwise versus counterclockwise. I'm wondering after competitiveness, which clearly the court placed first, and after the Voting Rights Act, which clearly the United States Constitution placed first, we could do something arbitrary, if it's easier to do one after another. What I'm concerned about, it shouldn't be seen as favoring one above another, if we do some other random selection in terms of order in which to be adjusted.

MS. HAUSER: Can we take that question under advisement at this point?

CHAIRMAN LYNN: Or another possibility, should we consider doing them simultaneously so it isn't a layer upon layer but rather doing it in chunks, the first chunk being competitiveness; the next chunk, voting rights and equal population; next chunk being -- know what I'm saying? Look at it several ways.

Mr. Huntwork.

COMMISSIONER HUNTWORK: Mr. Chairman, I would just ask, think further about his answer -- Doug, think further about his answer to the question. It isn't obvious to me when you put two
criteria down side by side, say I'm going to weigh them equally, that the one you do first has the higher priority, if -- regardless of which one you start with, if you weigh fully, evenly, you end up with the same result, just as a logical matter. I would ask you to consider that. But if the answer truly is that it matters what you start with, then I think we have to start with the Voting Rights Act, not with -- I mean the first map we draw has to be Voting Rights Act, it has the highest priority, and everything else is clearly below that, so if we stumble on the first step, if your answer holds, yet we consider competitiveness first.

CHAIRMAN LYNN: Mr. Johnson.

MR. JOHNSON: I just want to clarify one thing. Commissioner Minkoff raised a good thing, grid one, the map that came back, that decision, which way to go, was very influential on how that final map ended up. There is an impact on the final maps given how you implement these. But it's once I come back with multiple plans you'll see essentially what would happen with different versions. As long as I'm coming back with multiple versions, the impact of which one you start with is greatly reduced, balance is greatly reduced.

COMMISSIONER HUNTWORK: Reduced or eliminated?
MR. JOHNSON: Reduced. Could also do a balanced effect as well.

The point is also correct it's not necessarily best to be first or last. I haven't thought that through.

COMMISSIONER HUNTWORK: Would you do that?

MR. JOHNSON: Sure.

COMMISSIONER HUNTWORK: It's critical to what we do, critical to subsequent review, you'll be absolute with it. We need your absolute definitive answer to that question before we proceed.

CHAIRMAN LYNN: Mr. Hall.

COMMISSIONER HALL: Well, following up on Mr. Huntwork's comment, I mean -- in light of the fact the Voting Rights Act related issues are trump, I think that is indisputable, why are we doing that -- why are we making competitive districts before we implement voting rights related issues? Is that our interpretation of the court order?

DR. ADAMS: I would have to let attorneys speak finally to that. I would simply say that to begin with favoring competitiveness and then adjusting for the Voting Rights Act may make sense because favoring competitiveness is very obviously at the top of the court's mind. I'll let Ms. Leoni speak to that.
MS. LEONI: One way, Commissioner Hall, to look at the court's order is to realize that the holdings with regard to the Voting Rights Act are colored significantly by the need to favor competitiveness. And from one point of view, starting with a map based on factors indicating competitiveness lets you know how creating the Voting Rights Act, districts, and that, you must comply with what impact it has on that particular map. So it is simply a way of viewing them at the same time in that process, trying to implement both 106 and Ashcroft. It's not the only way. You can certainly proceed with your Voting Rights Act districts first.

COMMISSIONER HALL: Thank you, Mr. Chairman.

So wouldn't it make more sense, we have spent a significant amount of time with respect to the majority-minority and minority influence districts. Wouldn't it make more sense to basically put those on the table and then determine if favoring competitiveness in those districts causes significant detriment to voting rights related issues versus, versus putting a competitive district out there then overlaying a voting rights district which you already know you'll have to be in a certain range?

We're debating over margins, but it's
percentages we're talking about.

I'm asking logically why invert that when it seems to me to just be a perfunctory exercise.

MR. RIVERA: If I can chime in a little bit, what you are doing, remember, the Voting Rights Act, it's an absolute. It doesn't to go significant detriment. Significant detriment does not go into the voting rights issue. You can't apply whether there is significant detriment to a voting rights issue.

Applying Ashcroft, Ashcroft says you don't have the old minority-majority issues. You have to temper it with Ashcroft. It says not necessarily what is the more likely scenario. What you have to do is have competitiveness first, have to see whether you have competitive districts. Then after you draw that, you create districts that are competitive but also likely to elect under Ashcroft as opposed to the old standard. You can't set the first standard without being able to do the competitiveness analysis.

If you are going to create influence districts, you don't want to go out and create a whole bunch of influence districts. The court says only create influence districts where you can create competitiveness.

So what you want to do, if you create, just go out and create influence districts, you may create
influence districts. Simply the fact you create influence districts is not to have competitiveness. Overlay competitiveness, then overlay competitiveness to see if influence districts can become more competitive. You can’t do it any other way.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Mr. Chairman, this conundrum may go away after our experts think about it a little bit further. The reason I say that, the more I think about it, the more it seems to me that the criteria goes second, it’s equally plausible to argue criteria that goes second has the advantage, because you are going to fully act -- you take competitiveness first, and then you adjust it to fully satisfy the Voting Rights Act concern. So which one has the advantage, and then apply that to each of the other criteria that we do.

Now I think the mathematical conclusion of all of this is, I think, that it really doesn’t matter if you are thorough in the process. But what Doug is describing coming back about with multiple approaches, we’ll consider everything we possibly can, whichever order we consider.

CHAIRMAN LYNN: I tend to agree. The only thing I suggest when Mr. Rivera makes comment starting with competitiveness, it seems to me just on the basis of
logical explanation to the court that you would be better
off telling the court that you began with that criterion
as the court suggested and even to the extent of the
Voting Rights Act determine whether or not those
districts could, that were once created as competitive,
could continue to stand in light of all the other
criteria being applied and either found to be significant
detriment or not.

  But what you have begun with is the,

essentially, the most competitive map you could possibly
draw which is the one that not only favors
competitiveness but isolates it as a criterion for map
drawing right from the beginning, and you would have the
most competitive map, theoretically, that you could put
on paper, because nothing else was competing with it at
the time.

  As you apply each of the other criteria
from the proposition, you would make a determination as
to whether or not the application of that criterion
caused any significant detriment to it. If it didn't,
those competitive districts would continue to stand in
the map. I mean that's sort of the way I'm hearing this
process would work.

  We may be splitting hairs. You may be
absolutely right, it could go either way from the
standpoint we're assuring it attempting to comply with
the court's order. We're attempting to comply with
competitiveness.

MR. RIVERA: I think you are correct when
looking to voting rights, not looking at significant
detriment.

CHAIRMAN LYNN: Whether they meet the test.

MR. RIVERA: Whether you create districts
that meet competitiveness --

CHAIRMAN LYNN: The standard is different.
The theory I'm espousing is essentially the same.

MR. RIVERA: Right.

CHAIRMAN LYNN: That's to be determined by
us which way we go. For discussion purposes, I think
your point is well-taken, it could go either way.

COMMISSIONER HUNTWORK: If thorough, my
point is if thorough, it doesn't matter which order we
take things in.

CHAIRMAN LYNN: Well, I'd have to --

COMMISSIONER HUNTWORK: Therefore, I'm
willing to start with competitiveness and proceed as
indicated.

CHAIRMAN LYNN: Oh. Okay. Thank you.

Dr. Adams.

DR. ADAMS: Mr. Chairman, Members of the
Commission, that concludes that part of the presentation.

I don't know if at this point you want to continue discussing process and make a decision on it or continue on to the next as we continue on to the next. It's the first part of --

CHAIRMAN LYNN: The process.

DR. ADAMS: The process.

CHAIRMAN LYNN: I think we ought to start here.

Please, fellow Commissioners, let me know. My suggestion would be, having heard a suggested method of proceeding, let's come to some conclusion, if we can, about that methodology or other we might want to impose ourselves and agree on that. And it seems to me the next logical step would be to begin with a definition of process, I think the first stage of any process we adopt.

That's my opinion, but it seems pretty logical that's where we have to begin.

I'd entertain discussion or comments on the suggested methodology.

Mr. Hall.

COMMISSIONER HALL: Mr. Chairman,

Mr. Huntwork may well be right, and you have been before, on occasion, so -- I'm just wondering if we were to do the competitiveness first, Voting Rights Act second.
There's some question regarding the other remaining criteria. Pursuant to Ms. Minkoff's suggestion, why not just randomly pick those so there would be no indication? I think there's some merit to the argument if completely thorough of analysis of all variables, in the end it's academic, anyway. As a matter there wasn't some hidden agenda in order, maybe just randomly pick the latter criteria. I think that the procedure that has been proposed by NDC is logical. I would move that we progress in that fashion.

CHAIRMAN LYNN: I understand I have a motion to accept the suggested process.

Is there a second?

COMMISSIONER MINKOFF: I'll second it.

CHAIRMAN LYNN: Thank you.

Discussion on the motion?

Ms. Minkoff?

COMMISSIONER MINKOFF: I'd like to point out --

CHAIRMAN LYNN: Microphone.

COMMISSIONER MINKOFF: -- obviously if we don't comply with the Voting Rights Act, the whole map gets thrown out at one point or another. However, as long as we comply with the Voting Rights Act, I don't think it matters which stage in the process we comply
with that process since we specifically have been told to comply with competitiveness by the state court. I think that's what we have to do. Department of Justice isn't going to care when we get around to complying with the Voting Rights Act as long as we do ultimately comply with it.

I'm also in favor in terms of an arbitrary decision about the other criteria. I think it's important to do that because I think that this process has to be seen as not favoring any particular outcome other than complying with the requirements of the United States and Arizona Constitution. And if we were to decide to favor one of these other criteria above another, I think it might legitimately lead to challenges of the map. There will be challenges to the map anyway, but as long as we are neutral in terms of how we apply these criteria, I think that is one challenge that would be unsuccessful. That's why I believe we should develop some random process for order in which other criteria should be complied with.

CHAIRMAN LYNN: Other criteria, as you are stating, communities of interest, geographic, compactness.

COMMISSIONER MINKOFF: And visible boundaries, political and geographic boundaries.
CHAIRMAN LYNN: Mr. Huntwork --

COMMISSIONER HALL: To clarify, accept a process; first, competitiveness; second, voting rights issues; and third, other issues, random application.

CHAIRMAN LYNN: I am in support.

Mr. Huntwork, on the motion.

COMMISSIONER HUNTWORK: Mr. Chairman, I thought the court implied at least one point, communities of interest, would prevail over mere geometric considerations. And I would like legal advice on that question. Again, maybe not here, but when the court said we had an obligation to the extent possible to present communities of interest in a district, that, I thought that created a -- because communities don't -- they aren't looking at compactness criteria, necessarily, when we decide, people decide where to buy a house and where to live. So I just -- again, I want to make sure we're bending over backwards to fully comply. I want to make sure there was not an indication of that type in the court's decision.

CHAIRMAN LYNN: Does legal counsel want to venture an opinion at this juncture whether there was inference in that part of the ruling?

MR. RIVERA: I think we'll hold that in abeyance, also.
CHAIRMAN LYNN: Okay.

MS. HAUSER: If I make sure I understand the question, your question is, again?

COMMISSIONER HUNTWORK: Did the Court explicitly or implicitly suggest that the communities of interest might have priority over geometric factors?

MS. HAUSER: Okay.

COMMISSIONER HUNTWORK: Or geologic factors.

CHAIRMAN LYNN: Or political boundary factors.

MS. HAUSER: Okay.

CHAIRMAN LYNN: Any further discussion on the motion? I want to point out, just to be clear, that there is something in here, that because it hasn't been discussed, I don't want to be overlooked. That is in the suggested process, there is a specific starting point called the grid. And as of this morning's discussion with members of the public, that was not necessarily a given in terms of that discussion. But it is a given in terms of the motion that is on the floor. I just want to be clear and point out that the motion suggests, or the motion says we will begin with the grid that was adopted by the Commission.

Mr. Huntwork.
COMMISSIONER HUNTWORK: Mr. Chairman, I am well aware that's what the motion said and I agree with that. It seems to me that, you know, we are indeed all participants in the process. Now that the court has rendered its decision, the decision is not what the plaintiffs wanted or what we wanted. The decision speaks for itself. And it seems to me that the decision clearly indicates that the process was that we were to start with the grid and at that point begin to consider competitiveness. So there is no way to fully comply with the order of the court without doing so, or at least as far as I can tell.

CHAIRMAN LYNN: Mr. Hall?

COMMISSIONER HALL: I just assume, Mr. Chairman, by the fact that all three attorneys on our side are nodding that they concur with that assessment or do you not want to concur here?

MR. RIVERA: I think you can take my nod as concurring.

COMMISSIONER HALL: Okay.

CHAIRMAN LYNN: I didn't want it to be ambiguous we hadn't discussed it, we weren't clear on it and didn't have agreement that was an appropriate starting point. As we read the rule, I'm certainly in agreement your assessment of what the court was telling
us is accurate. I believe that's what they are telling us.

Any further discussion on the motion?

Are you ready for the question?

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

COMMISSIONER MINKOFF: "Aye."

COMMISSIONER HUNTWORK: "Aye."

COMMISSIONER HALL: "Aye."

CHAIRMAN LYNN: Chair votes "Aye."

By a vote of four to zero, we have adopted a process which will begin with the grid, which will apply competitiveness first, voting rights second, and then a determined application of the remaining parts of Proposition 106 based on subsequent recommendations of counsel and from consultants.

Is that an accurate representation?

COMMISSIONER MINKOFF: Mr. Chairman, also that absent a recommendation from counsel --

CHAIRMAN LYNN: It would be random.

COMMISSIONER MINKOFF: -- it would be random.

CHAIRMAN LYNN: Absolutely.

COMMISSIONER HUNTWORK: That is an accurate summary of the motion.
I'd also like to point out the court order also orders us to come out to a certain minimum result. I believe that is a different process. In my own mind, at least, I do not believe that compliance with the court order is a single track exercise but rather parallel. When we follow a principled analysis we may or may not come up with the number of competitive districts that the court has ordered us to achieve. So, therefore, I think we have to supplement the process by saying -- and I suppose we can cross this bridge when we come to it. If the result of that process is not a sufficient number of competitive districts, in order to comply, we are going to have to simply make some districts more competitive whether they -- whether that satisfies their definitions or procedures or not.

CHAIRMAN LYNN: Well, I would suggest that as we move forward to adopt definitions, that within the definition category of competitiveness we might also put something on the record as to recognizing that the court has set, if you will, a benchmark of its own for the number of competitive districts that are required to satisfy the court's ruling and that that become a part of that definitional process so that it is included in the thought process behind the evolution of the maps that we
just talked about. There are several other ways to do it, but the point is we know any map submitted in court or presume any map submitted to the court does not at least equal the benchmark cited by the court will be found lacking.

COMMISSIONER HUNTWORK: Well, I guess we can cross that bridge when we come to it. But I don't believe that, at least I can't think of how it would be appropriate to -- even possible to include in the definition, you know, an outcome or to include an application --

CHAIRMAN LYNN: Maybe it wasn't in the definitions but perhaps in the instructions to NDC. I mean to deal with it in such a way -- or you may be right. It's just a matter of we all know it when we see it because it's in the order.

COMMISSIONER HUNTWORK: When we come down to the bottom line, I would like to have the opportunity at least to see, we have the map we created before; and we have the Hall-Minkoff Modified Test that we never fully -- we ourseselves never fully considered but that we could start with from that plan to see what result, you know, how we get the requisite number of competitive districts starting with that plan. We will also have another process that fixes many of the other things the
judge found lacking, location of definitions, and
hopefully more consistent process may result in a
different map if it also doesn't achieve the requisite
number of competitiveness, too, it happens we don't have
the requisite number of competitive districts. But then
we'll have the option to decide which one we wish to
modify in order to meet the benchmark. I just -- I would
rather approach it that way where we don't come out of
the box with a result in mind but rather a principled
decision-making process and then see.

You know, I don't believe it was the
director's intent, honestly, to say when you follow, when
you and future commissions follow the process that I have
in mind, there's going to be a benchmark criteria. And I
and future courts are going to tell you how many you have
to come up with. Rather I think implicit in his decision
must have been the conclusion if we get to where
Hall-Minkoff was, we considered competitiveness enough
however we got to that point and so there -- I think
there may be two ways that we can satisfy the -- satisfy
the court's order in this instance, meet the benchmark
and also leave a light for future commissions, show here
is a principled decision-making process that leads to its
own result which in this year we will have to apparently
modify -- may have to modify in order to achieve a
specific number of competitive districts; but 10 years
from now our successors may not do that.

CHAIRMAN LYNN:  Ms. Minkoff.

COMMISSIONER MINKOFF:  Mr. Chairman, I
think we'll need a legal opinion relative to the
suggestion that Mr. Huntwork has made either now or in an
executive session, so make a note of this, guys. It
seems to me my understanding of the court's ruling is
that Hall-Minkoff isn't on the table anymore, that he --

CHAIRMAN LYNN:  As a map.

COMMISSIONER MINKOFF:  He outlined a
process that we are supposed to follow to get to an end
result that he has specified that is a map at least as
competitive as Hall-Minkoff but not Hall-Minkoff because
you can't get to Hall-Minkoff following the process that
he has laid out. So I would be very, very concerned if
we follow the process we just adopted, get to a map and
decide, you know, we like Hall-Minkoff better. Let's put
this one aside and let's proceed to tinker with
Hall-Minkoff. I think we leave ourselves open to getting
thrown out again because we followed the wrong process.
He told us our process was wrong. Until somebody else
tells us the judge was wrong, our process was wrong, we
have to adopt a new process.

CHAIRMAN LYNN:  Mr. Huntwork?
COMMISSIONER HUNTWORK: I will wait for
advice from counsel.

CHAIRMAN LYNN: Thank you.

Let's make a note of that one in terms of
future discussions.

All right. If we are then in agreement
with the process, as we have adopted it, the first order
of business would be to look at definitions, which I
think brings us to the third portion of your
presentation, Dr. Adams, which has something to do with
definitions.

DR. ADAMS: Mr. Chairman, Members of the
Commission, that is correct. In adopting definitions,
again, we are following the trial court's order. And
what the trial court said is that the IRC is required to
adopt definitions of essential constitutional terms and
apply them uniformly throughout the state. The trial
court said such as significant detriment, communities of
interest, extent practicable or competitive districts.
What we are going to do is look first at the competitive
measurement, if that is how you wish to proceed, although
we can take these in any order that you wish. We have
begun with competitiveness, which Mr. Johnson is going to
discuss. And then we follow that with the compliance
with the Voting Rights Act and Ms. Leoni will be talking
about that. I'll let one follow the other and I'll go

click slides.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: I apologize. I

know that I just said I would wait for advice from
counsel, but I -- how did the judge conclude that we were
constitutionally required to create seven or eight
competitive districts based on the Hall-Minkoff plan if
he did not implicitly approve that plan? If he doesn't
know whether that plan complies or not, then how can he
say that we have to achieve that many districts?

CHAIRMAN LYNN: Well, let -- I want to ask
counsel whether they want to answer that now or rather
answer that at some point in the future?

MS. HAUSER: I think the answer we can give
you at this point is that it is a question that we would
assume will be addressed on appeal but is not one that we
can do anything about in terms of complying with his
order other than to read the order for what it says, that
that number of districts is the floor that we are dealing
with.

COMMISSIONER HUNTWORK: Okay. Thank you.

COMMISSIONER HALL: My only problem,

Mr. Huntwork, is that I think that that is only one of
many perplexing issues in the order. I mean -- no
disrespect intended, I'm just saying there are many
things from my perspective that are very perplexing.
You've identified only one.

COMMISSIONER HUNTWORK: One presented by
this screen. I felt it was the appropriate time to raise
it.

CHAIRMAN LYNN: My nonlegal answer, as I
read it, was simply that was a different map from the one
we adopted, had more competitive districts than the map
that ultimately was adopted. The court concluded that
more competitive districts was at least possible and
chose that particular map as an example of the more that
could be created. Whether there is any more logic to it.
I have no idea.

COMMISSIONER HUNTWORK: But if the map
didn't comply, you can't conclude anything from it -- I'm
sorry.

CHAIRMAN LYNN: It is perplexing.

COMMISSIONER HALL: Put it on the shelf.

MS. HAUSER: Right.

MR. JOHNSON: Mr. Chairman, Members of the
Commission, it's a pleasure to be here. I want to thank
the staff for booking us at the Doubletree. You've
created deja vu.

COMMISSIONER HALL: You've been gone so
long, Doug, you've lost a bunch of hair.

MR. JOHNSON: Acquired a child somewhere along the way.

Starting with what we know from language of the order, competitiveness measurement, the Court says the new legislative plan shall be at least as competitive as the Hall-Minkoff or Hall Modified Plan, depending on which measurement you're using, JudgeIt, or seven by AQD.

Also from the order, we know that --

COMMISSIONER HALL: We're going to come back to the competitiveness measurement. I assume --

CHAIRMAN LYNN: Overview.

COMMISSIONER HALL: Flying over.

MR. JOHNSON: Each of the definitions, what we have is what we know from the order, what we gathered from the academic search, and we'll come back.

CHAIRMAN LYNN: Just for clarity's sake, what we're going to do, do a fly over of each, stop, go back and adopt, rather than fly over all of them.

COMMISSIONER HALL: Right.

CHAIRMAN LYNN: Keep the conversation on the one we're dealing with.

COMMISSIONER HALL: Right.

MR. JOHNSON: The other thing the order said was heterogeneous districts may be more competitive.
The court failed to include dissimilar communities of interest in the same district to create heterogeneous and competitive districts.

Then another thing said in the order on this definition issue is competitive -- cited both Chairman Lynn and Dr. McDonald saying competitive, which means that either party or other parties would have an opportunity to prevail in such an election.

Getting a little away from election and more to definition, Dr. McDonald, "Competitive district, one in which each major party has an equal chance of winning and in which we don't know before the election who will win."

Two theoretical definitions cited in the order.

In terms of measurement, the court referred to the competitiveness as measured by AQD, "A competitive district as being one that has an AQD spread under seven percent of competitive parties." The court cited testimony, "AQD under seven percent measure of competitiveness had an accuracy rate of nearly 99 percent."

COMMISSIONER HUNTWORK: Mr. Chairman --

COMMISSIONER HUNTWORK: What does that mean? Does that mean over seven percent, that the
minority party had no chance of winning, 99 percent of
time didn't win, or what does it mean?

MR. JOHNSON: I know I'm not going to touch
that.

CHAIRMAN LYNN: Ms. Hauser.

MR. JOHNSON: All I know is what the
wording said.

MS. HAUSER: Where did Mr. Rivera go?

COMMISSIONER MINKOFF: Right behind you.

MS. HAUSER: What the court is referring to
is, I believe, some testimony that compared how AQD
predicted, ultimately proved to be the predictor of
results based on 2002 elections. You'll see a similar
slide with respect to JudgeIt. It's really all I'm
prepared to say about that.

COMMISSIONER HUNTWORK: Does that mean then
exactly 50 percent of the cases where one party had a 6.9
percent advantage that the other party won? I mean what
does it mean?

MS. HAUSER: Can we come back to that?

CHAIRMAN LYNN: We can. We'll revisit that
as well.

COMMISSIONER HALL: Jim, we promise next
time we'll have another Executive Session, I promise.

I'll move for it.
COMMISSIONER HUNTWORK: Mr. Chairman, I don't want all things to be discussed in Executive Session, as you can well see. I think I want some to be discussed. I don't want to get legal advice here. It's fair to ask the questions in Public Session.

MS. HAUSER: I'm not saying necessarily when can we come back to that. I'm not necessarily saying something is for Executive Session versus some other presentation. But if you can appreciate the size of that record and the number of Exhibits that were involved, and just pulling together, we dare not in this forum paraphrase and misquote anything from that proceeding which led to him making this finding. So we will give you exactly what that testimony was in the trial. But we don't have that at our fingertips at the moment. We'll get that for you.

COMMISSIONER HUNTWORK: Thank you.

COMMISSIONER HALL: Maybe this question needs to be deferred to later. If so, I'm fine with that. But you said in here -- utilizing a quote from the court, I noticed in Mr. Eckstein's handout this morning he said that less than seven percent, I didn't know if -- it seems -- there seems to be a discrepancy there. This says -- so -- is it the same?

COMMISSIONER MINKOFF: It says under seven
percent.

MS. HAUSER: It's within seven percent,
plus or minus three and a half. I mean --
actually, Mr. Mandell is still here. So if there is a
disagreement with, you know, the fact we're all talking
about JudgeIt within the seven percent range plus or
minus three-and-a-half percent, I'm sure he will indicate
for the record.

COMMISSIONER HALL: Okay.

COMMISSIONER MINKOFF: I'm simply confused.
I think this slide illustrates even better than the last
one. How did JudgeIt predict results of the 2002
election based on -- obviously if more than seven percent
this district is going to elect Republicans or Democrats
depending on which side was seven percent. Although we
know there are unusual circumstances where that's not
always the case, Democrats elected in solidly Democratic
districts, and the reverse, because of other situations,
the alternative fules fiasco being a very good example a
where Republican was tossed out of a rock solid
Republican district because of involvement in that, that
always changes results.

What I don't understand is how did JudgeIt
predict the results of the election? Let's say you have
district X with a three percent spread. How did JudgeIt
predict the election?

MR. RIVERA: Mr. Chairman, before

Mr. Johnson answers that question, I guess it's
Marguerite that should advise her client not to answer
that question.

MR. JOHNSON: All I can tell you is --

MR. RIVERA: Ms. Minkoff, in response to
your question, we'll look at the record and tell you in
the record how the court determined how 99 percent --

COMMISSIONER MINKOFF: I don't see how we
can adopt a competitiveness definition until we have that
information.

MR. RIVERA: I do not --

COMMISSIONER HALL: Again, Andi, again
flying over --

COMMISSIONER MINKOFF: Okay.

COMMISSIONER HALL: Going over.

COMMISSIONER HALL: Quotes from the order.

Again, I think many things in the order are rather
perplexing.

COMMISSIONER MINKOFF: Our Chairman said
fly over then come back and adopt a competitive
definition then go on to the next term.

MS. HAUSER: You will see a recommended
definition coming up.
Again, just trying to --

COMMISSIONER HALL:  Hold on.

MS. HAUSER:  Briefly, what was said in the order about --

CHAIRMAN LYNN:  Let's see if we can get through the presentation on competitiveness and see if some of those questions may be answered or if other information is still required.

Mr. Johnson.

MR. JOHNSON:  Let me make a point:  Any quotes from NDC we'll be happy to discuss.  We'll not elaborate on other people.

MR. RIVERA:  That's fine.

COMMISSIONER HALL:  Are there any in here?

MR. JOHNSON:  The next slide in here about JudgeIt, the court says an accuracy rate of approximately 98 percent in predicting results of the 2002 election, that is a quote cited.

Then let me -- I was going to bring up --

To the extent practicable.  I'll keep going.  I guess that's the end of competitiveness.

CHAIRMAN LYNN:  Let me ask counsel how we're going to proceed on this.  I'm trying to get to a series of definitions today agreed to by the Commission.

At some point we will need to have a definition of
competitiveness. Shall we simply defer that one, move
on, see if there are more clear opportunities to adopt
and come back to that?

MR. RIVERA: Mr. Chairman, they are going
to give you what the court held and some proposed
definitions.

MS. HAUSER: That's there.

MR. RIVERA: However the Commission wishes
to do. You might be better off listening to the whole
presentation, coming back, and adopting definitions.

CHAIRMAN LYNN: We can try that one.

MR. RIVERA: Your choice.

COMMISSIONER HALL: I'm just saying in the
spirit of efficiency, which I am all about, it seems to
me that once we've kind of got this information right
here on this subject here, it seemed prudent to -- versus
to go all the way through, come back, refresh our
memories on what was discussed. I'm just asking --

MR. RIVERA: It's the Commission's
pleasure.

COMMISSIONER HALL: You don't care legally?

MR. RIVERA: I don't care.

COMMISSIONER HALL: Right.

CHAIRMAN LYNN: What I'm concerned about is
there are a couple questions raised about this particular
definition if left unanswered are going to render it
difficult if not impossible for the Commission to come to
a definition of competitiveness. I may be wrong about
it. I sense both Ms. Minkoff and Mr. Huntwork in their
minds may make it difficult to arrive at a consensus
unless questions are answered.

COMMISSIONER HUNTWORK: Mr. Chairman, may I
add, I didn't mean to ask a really complicated question.
I wanted to get the sense of what this is talking about,
not necessarily a technical, precise answer, just to make
sense of it. Does it mean anything outside of a
particular range? Is it 100 percent, or 98, 99 percent
predictive? Does it mean that at -- anything, even one
point above or below a zero point, by those standards,
was a hundred percent predictive? What does it mean?

COMMISSIONER HALL: Can I follow that up
with a question, Jim? While I think that that is an
interesting discussion, and certainly I think it's going
to be beneficial, what that answer is, how does that
affect what our definition is? Our -- I think our
mandate from the court, if I'm not wrong, we're going to
have to be less than seven percent. I think the
inference from the order is very clear that the
measurement of competitiveness is seven percent or less.
I think essentially the intent of what, for example,
Mr. Eckstein put on the table is a relatively accurate definition pursuant to the order of the court. Whether or not -- you know, your question, I think, is very valid. Andi's question, JudgeIt had an accuracy rate of 98 percent. I think that's a perplexing statement, the merits of which are subject, at best. Nevertheless, I don't think it affects what the definition is going to be. I mean that's my opinion.

COMMISSIONER HUNTWORK: Perhaps that's true.

CHAIRMAN LYNN: Ms. Minkoff.

COMMISSIONER MINKOFF: I respectfully disagree. We have been using seven percent up to this point, JudgeIt, AQD, and a third one.

MR. JOHNSON: Registration.

COMMISSIONER MINKOFF: Registration. We've been using those three. Basically, we've been told by the court that we have to adopt a definition of competitiveness. I assume that definition would be something like this is the standard we're going to use, JudgeIt, AQD, or registration, and this is the deviation, accept competitive district, one percent, seven percent, or 25 percent, we'll adopt something like that. For us to adopt that standard, we have to really understand it for it to be legally sustainable. We can't adopt a
standard that we don't understand because it's going to be meaningless.

If you want to propose a motion we'll use JudgeIt plus or minus seven percent, that sounds reasonable. That may be what we come back to. I really need to understand what accuracy of 98 percent in predicting an election means, what measurement of competitiveness of nearly 99 percent. If I don't understand it, how can I vote for?

CHAIRMAN LYNN: Mr. Rivera.

MR. RIVERA: Andi, you're looking at two different things, the definition of JudgeIt, how AQD or JudgeIt is run a number of times. AQD was given by NDC. Every time they ran a spread sheet, they told you AQD, JudgeIt, the same thing, the variety. From Dr. McDonald, he tells you how he defined the program he ran and the standard deviation from it and the accuracy, his confidence level within that. That is the definition.

That is a different question than what Commissioner Minkoff is asking, accuracy, how accurate. Although I don't want to go into that and don't think we can at this point in time because it's paraphrasing the record, the court determined the accuracy rate and then made a determination as how to judge whether accurate, 99 percent accurate or not.
What I would tell you is the court states and it's undisputed that you never look at these things through one election cycle. That's what you are looking at at this point, one election cycle, Commissioner Minkoff. Although one election cycle, however you define it, is an indication, nobody can tell you how these are accurate from one election cycle.

If you want a definition of JudgeIt, or AQD, it's in the record, pretty complete. We can pull out the record and show what you Dr. McDonald says, how it's run and how he has run it. Mr. Johnson, soon to be Dr. Johnson, hopefully can tell you how AQD is run in terms of how it was run.

If you want us to show whether accurate or not, that's something you have to glean from the court to determine that.

If that's something you need to make a determination whether you adopt this determination of AQD or JudgeIt, look at the record.

COMMISSIONER MINKOFF: Don't we need more than what we have on the table right now? It's been a long time since we met as a Commission and discussed competitiveness of proposed maps. I don't know about the rest of my fellow Commissioners, but I've certainly forgotten that definition other than it was plus or minus
seven percent. So --

COMMISSIONER HALL: I think plus or minus three and a half.

COMMISSIONER MINKOFF: The seven percent range. What I'm concerned about is I want to make sure in voting for a definition of competitiveness that it's a definition that -- a vote that will stand up, an informed vote we know what we are voting for. I don't need to know all of the complex methodology in coming to that decision. If I could do it, we wouldn't need Dr. McDonald. I do need to know the information that is before the Commission that allows us to vote on a definition is sufficient to sustain that definition.

CHAIRMAN LYNN: Mr. Hall and then Mr. Huntwork.

COMMISSIONER HALL: Mr. Chairman, I make a motion we accept Mr. Eckstein's definition as stated: A legislative or congressional district shall be deemed competitive if the difference in the JudgeIt scores between the two major parties in that district is less than seven percent.

CHAIRMAN LYNN: Is there a second?

Hearing none, Mr. Huntwork.

COMMISSIONER HUNTWORK: A couple things. I would be interested in the technical workings of the
equation and all of that for some nighttime bedtime reading, something like that. But what I really do need to know are what are the odds when you get outside the seven percent range or -- if there is, once outside that range, what this is telling me is there's a one percent chance of being elected, I might have to conclude the range is too big or if -- I have to know what the statistics mean, exactly what Commissioner Minkoff is saying. We don't necessarily have to understand differential calculus, but we do have to understand what it means in terms of getting elected and the likelihood of opposing candidates to run against each other.

CHAIRMAN LYNN: Mr. Rivera.

MR. RIVERA: I can tell you Dr. McDonald stated in terms of AQD, JudgeIt, the plus or minus 3.5, a 95 percent confidence interval, within that range, as racially competitive. He cannot -- it's a bell curve. He did a lot better job than I did. Once -- edges of the bell curve end in 95 percent. The further away you get from it, the further the confidence level goes down. I don't know if that -- it's strictly a mathematical calculation.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Even with that, it's 95 percent that either party can win, in other
words, one party has only a five percent advantage over
the other party; then my judgment would be the range is
too narrow, for a couple reasons: Number one, we're
trying to create as many competitive districts as
possible and, as we, you know, have to adjust them in
order to create some in a very narrow range, we impair
the ability for others to fall slightly outside the
range. And we're trying to get public debate, trying to
get candidates to run against each other, trying to get
accountability for candidates, all the things in
legislative districts from Proposition 106 that have been
articulated to us many times. If it's literally only a
five percent difference in electability, that is, in my
judgment, way too narrow a definition --

CHAIRMAN LYNN: I think there are two
issues at work here. I want to weigh in on those. The
business we're about today is trying to comply with the
court's order. And at the same time, I understand
Mr. Huntwork's concern: We are trying to make sure that
the methodology used in doing that is a methodology that
we can support and be -- and that will stand, that
will -- that is reasoned and makes sense.

What I can tell you, without being an
expert in anything, is we had several definitions we
talked about during the course of the process of what
competitiveness might be. What we did was apply three of them, which was voter registration, AQD, and JudgeIt, to those maps, fully tested, and evaluated on competitiveness as we went through the process. And the court in ruling used those same tests to determine its own target for competitiveness.

Now one of two things has to happen, in my judgment. Either we adopt JudgeIt, with a seven percent spread, plus or minus three-and-a-half percent, and apply it, because the court is familiar with that test and would recognize it as being an apples-to-apples comparison for competitiveness purposes between any map we submit and the ones the court has already reviewed; or in the alternative, if we're going to adopt a different definition, we would need to go back and apply that definition to the maps the court is already familiar with so as to give the court a benchmark against which to judge the map we'd ultimately submit. However, doing that doesn't insure in any way the court will accept that methodology. That would be subject to review.

What isn't subject to review, in my judgment, is applying JudgeIt, because the court has already heard that definition, accepted that definition in terms of the ruling that was made, and is fully prepared, I believe, to look at a new map we submit in
light of JudgeIt and make a determination as to whether
or not it meets the target or not.

COMMISSIONER HALL: Mr. Chairman, I agree
with you 100 percent. I think the maximum is 6.99 as
ordered by the court, is it not?

CHAIRMAN LYNN: I don't know whether 7.00
or 6.99, I think 7.00.

COMMISSIONER HALL: I think less than.

COMMISSIONER MINKOFF: Paul's language.

COMMISSIONER HALL: Paul's language. 6.99
or seven? 6.99 is safer. The point is: You nailed it
on the head. We're here to comply with the court order.
The court order is that. The definition is while all
academic discussion is interesting, is what it is, that's
what we got on how long all analysis thus far.
Essentially that's the range we've been working with to
evaluate whether or not a district is competitive.
Frankly, I'm confused why we're reinventing something
we've discussed numerous times.

CHAIRMAN LYNN: Mr. Huntwork, Ms. Minkoff.

COMMISSIONER HUNTWORK: Mr. Chairman, at
the appropriate time I'd like counsel to advise us
whether or not the court order did so order or not. I
read the order to say the court was ordering us to create
a definition; and whether a number was a theme in the
argument, in the order, and the extent to which that was
validly taken, or if going for its own internal purposes,
to seem to apply a definition, we need to apply it
consistently. That is what I was reading. I didn't read
the court to order that was the definition. We --
Obviously we need legal advice on this so
we'll comply. If that's the order, it was a moot point;
I'll comply.

COMMISSIONER MINKOFF: I have a suggestion
to move along. We've been using JudgeIt seven percent
throughout all the proceedings. That was certainly a
standard the court was comfortable with. I don't have a
problem adopting it as the standard of competitiveness.
However, I want to make sure that we make sure we have
appropriate information in front of us before we adopt
it. What I would suggest is that we temporarily table
this. I think we can resolve it in five minutes after we
get the information, Jose, you said was available in
terms of a little bit more flushing out of JudgeIt, the
range of less than seven percent. I want to make sure
when we take this vote it cannot be challenged, that it
was an informed definition, we considered all of the
options and we came to this decision with full
understanding of what it meant. I don't think we have a
full understanding of what it meant except the court
liked it. That's why I suggest we put this aside, move
on, and get the definitions and go back and I think adopt
it very quickly.

CHAIRMAN LYNN: Mr. Hall.

COMMISSIONER HALL: And I don't think you
and I will ever have a full understanding of the JudgeIt
process, I don't think, of Dr. McDonald. I think it's an
ever-evolving issue. I'm confused. We discussed this
process and measurement tool for months, in fact, I think
we're on years now, and as a best measurement for
measuring competitiveness, right?

COMMISSIONER MINKOFF: Yep.

COMMISSIONER HALL: All the literature in
the world can't change that the court recognized this, as
Steve said, as a valid, accurate measurement. I think
plaintiffs recognize it, in that situation. We certainly
recognized it in the past. I don't know why binders of
information would change the fact this really is an
accurate measuring tool and why this Commission would be
unwilling to accept it.

The other fact of the matter is that we
have to come away with definitions from this today in
order for us to proceed through the process as we have
previously outlined it. And, quite frankly, I'm really
struggling with this whole deal. To me it seems to be
blatantly obvious. I could be dense. I've been called
that before. What am I missing?

COMMISSIONER MINKOFF: I'm not concerned
about this set of plaintiffs. I'm concerned about the
next set of plaintiffs.

COMMISSIONER HALL: Andi, if they win, the
next set of plaintiffs, win with an accurate measuring
tool, it's not a variable we can control. I think it's
the best out there.

CHAIRMAN LYNN: Ms. Hauser.

MS. HAUSER: Let me just remind the
Commission that you have reports from your
competitiveness expert in the past explaining to you how
JudgeIt works. You did use JudgeIt in the past. The
court, and the reason those quotes were pulled out from
the court, the court was very receptive to JudgeIt as a
measure, as a measuring tool with respect to
competitiveness. And I would also point out that the
plan that is our floor in this case is a plan that we can
take whatever you produce and compare it to that, apples
to apples, if we are using JudgeIt as the measure of
competitiveness.

You may also want to consider saying
something with respect to what, you know, what it means
to be competitive in a way that doesn't use a number. I
would almost suggest maybe there are two different
things. There is what is the concept of competitiveness
you are adopting and how are you going to go about
measuring that.

Two things go into adopting a definition.
Hopefully that will help you go about adopting that. The
information is all over the trial court record. You are
on safe ground going forward on that.

COMMISSIONER HUNTWORK: Mr. Chairman, one
moment to correct Mr. Hall's statement regarding the
record. When I -- when we first started talking about
JudgeIt, I got a copy of some articles from the
literature that explained the methodology. And I
attempted to use them and understand them. And there
were portions of it that, if I understood it, I wasn't
sure I agreed with. I was more than willing to use it
along with other information that we had. We had
JudgeIt, we had AQD, and we had the gross differences.
I'm also concerned that JudgeIt, as I recall it, had an
incumbency factor we are now prohibited from using. I
don't know whether JudgeIt even works without taking into
account the incumbency factor.

One of the main benefits of it as compared
to the much simpler method of AQD was it considered the
incumbency factor. So, finally, I recently made the
point throughout our earlier proceeding that -- it seemed to me that we were improperly constraining the full meaning of Proposition 106 if we were to say a competitive district is one with a seven percent spread under whatever criteria we use versus one district with a seven percent spread versus two districts with eight percent spreads, or whatever, and prove to me that is the best way to achieve an overall competitive map, you know, to achieve the purposes of Proposition 106.

If we had two districts where the opposing parties each had, you know, a 40 percent chance of being elected instead of a 45 percent chance versus one district with a 45 percent chance and one with a 30 percent chance, which map is truly more competitive?

Now, all those issues were open and were fully considered in our previous deliberations. At no time in our previous deliberations did the Commission narrow itself to a specific definition or a specific range. That is a mischaracterization of what we did. And to the extent that the court found that that is what we did, I would respectfully disagree. If you look at the whole record that is not in fact what we did. Even to that extent, I don't believe the court said this is the answer. The court just said you, whatever you do, you have to be logically consistent. It has -- and I
agree with that. It has to be a transparent process. People have to understand what we did and why. And I believe that is what the court was admonishing us to do in the creation of clearer rules and following them consistently.

I don't believe the court said you have to find, have you to use this, this measure, and you have to find seven percent. Otherwise they would have just said so.

COMMISSIONER HALL: Well, but Jim, okay, let's assume just for the sake of discussion what you just said was true. What do you propose?

COMMISSIONER HUNTWORK: Let's see what they are proposing.

COMMISSIONER HALL: No. This is what they -- I'm saying versus discuss in an academic fashion a variety of issues, propose a definition. If you don't want to use JudgeIt, less than seven percent, what are you proposing?

COMMISSIONER HUNTWORK: Be patient a few minutes.

COMMISSIONER HALL: This is the end of the discussion from NDC regarding competitiveness. What do you want to wait for?

COMMISSIONER HUNTWORK: Have I seen a
definition, a proposed definition?

CHAIRMAN LYNN: I don't think you will.

Language, but to see suggestions --

COMMISSIONER HALL: Can I make another motion? I'll stay out here --

MR. RIVERA: -- til the cows come home.

COMMISSIONER HALL: -- hell freezes over.

How about make it more trendy? How about competitive means, Mr. Chair, quoting from you, "That either party or other parties would have an opportunity to prevail in such an election, period. A Legislative or Congressional District shall be deemed competitive if the difference in the JudgeIt score between the two major parties in that district is less than seven percent"?

CHAIRMAN LYNN: Is there a second?

COMMISSIONER MINKOFF: I'll second it.

CHAIRMAN LYNN: Discussion on the motion?

Mr. Huntwork.

COMMISSIONER HUNTWORK: Mr. Chairman, I continue to be very concerned about whether JudgeIt actually works if you can't consider incumbency. I'd like to understand the difference between JudgeIt and AQD without incumbency being considered. I'm also concerned AQD, according to what the court found as a higher percentage of predictiveness, is certainly something done

LISA A. NANCE, RPR, CCR (623) 203-7525  150
more quickly, costs less to apply, you get results back immediately, and we can do it basically ourselves, don't have to wait for an expert to look at everything and come back to us.

I'd like to consider using AQD rather than JudgeIt as our standard benchmark regardless of what we do about a specific percentage.

Secondly, I would like to express it not in terms of this gap which I don't understand but in terms of what the model shows as the likelihood of a candidate from a minority party being elected.

It seems to me a district is competitive if somebody has a 40 percent chance of being elected. That's a pretty good chance. Get people to run, create public debate. I don't think you have to have 49 percent chance for a district to be competitive.

I don't know what this spread means in terms of likelihood of somebody being elected. I would like to know the answer to that before I vote on this motion.

MR. JOHNSON: Mr. Chairman, if I may.

CHAIRMAN LYNN: Mr. Johnson.

MR. JOHNSON: On that question, the AQD measurement can't give you the likelihood of an election. It simply looks at partisan leanings in essentially a
candidate approved race, the general leaning of a
district, not the likelihood to elect, a statistical
measurement you are talking about.

COMMISSIONER HUNTWORK: Does JudgeIt do it?

MR. RIVERA: What Dr. McDonald said is

there's some work done to do that is not part of the work
he's ever done in his commission. He could give much
more reason why. That was his answer, some theoretical
work out there. The JudgeIt itself, the district
perfectly balanced, three-and-a-half percent range either
side, comes from the statistical model. If within that
seven percent range, the statistical model says perfectly
balanced, not likelihood to elect.

CHAIRMAN LYNN: Ms. Minkoff.

COMMISSIONER MINKOFF: Mr. Chairman, the
reason I seconded the motion this time when I didn't the
last, I got some sense of assurance from Ms. Hauser that
an affirmative vote would be legally sustainable. I'm
not as concerned about the effective of incumbency.

Quite honestly, I believe in a competitive district if an
incumbent keeps on getting re-elected it's because that
individual appeals to both parties. We have a
Congressional District that we drew which I believe is a
competitive district and it has had the same
representative for a lot of years. And he'll probably be
there as long as he wants to be there, and it doesn't
make it an uncompetitive district. It means there is a
lot of crossover voting for this particular individual
because he is somewhat centrus and appeals to voters in
both parties. That to me is a competitive district.

What I said earlier is it screams

competitive district, competitive district, no matter
which party, you have to appeal to voters, have to appeal
to voters of the other party. What is happening in, is
it District 8 --

CHAIRMAN LYNN: 7 -- sorry, it is 8.

COMMISSIONER MINKOFF: I consider that a
competitive district even though there hasn't been a real
competitive district. I hate to say, one day he'll
retire and one day there will really be a competitive
district. I'm comfortable with it.

I like Chairman Lynn's definition much more
than Dr. McDonald's. Dr. McDonald talks about equal
chance. I don't think there has to be a 50-50, you just
need a chance. We've been assured by voting for JudgeIt
of less than that.

Seven percent is legally sustainable so,
therefore, I'm prepared to support it.

CHAIRMAN LYNN: Just for the record, you
paid a lot less for mine than his.

LISA A. NANCE, RPR, CCR (623) 203-7525 153
COMMISSIONER MINKOFF: Also true.

CHAIRMAN LYNN: On the record.

Mr. Huntwork.

COMMISSIONER HUNTWORK: I'd like to make the point there is a complete difference in philosophy and methodology in the methodology between your definition and Dr. McDonald's definition. And the JudgeIt program is not addressed to your definition at all. It is addressed toward Dr. McDonald's definition. What Doug just said basically is JudgeIt is a measure of statistical significance of a prediction when you have an exactly equal district. It's like a margin of error, almost, in a poll, as I understand, not predictive of who is going to get elected at all; if within this range, you can't say not exactly even. Now to me that's not what we are looking for. That to me that is not what Proposition 106 was intended to accomplish. It was intended to accomplish what you just said. It was intended to accomplish what Commissioner Minkoff just said. That does not mean our goal is to create to the extent possible given the limitations of statistical analysis and human understanding a fifty-fifty district.

COMMISSIONER MINKOFF: No.

COMMISSIONER HUNTWORK: That's what we're about to do.
COMMISSIONER HALL: That's seven percent.

COMMISSIONER MINKOFF: That's what Dr. McDonald said.

COMMISSIONER HALL: That's not my motion.

COMMISSIONER HUNTWORK: That's what we're about to do.

CHAIRMAN LYNN: Clearly, clearly on the record, part of the record, as discussions this Commission had about issues of competitiveness, I certainly am on the record, not only with this quote but with a number of other quotes, about my feeling about competitive -- the competitive concept and how it really works in real elections, not in some statistical model in some laboratory by some scientist. And the fact of the matter is I'm on the record saying competitive districts are ones in which good candidates run good elections and have good ideas and catch on with the public. In fact, I've also said the definition could be applied where the number of independent and third-party registrants exceeds the spread between two major parties. By definition, that could be a competitive district because there's enough swing voting available in that district to render whatever the advantage is of one of two major political voters moot by whatever voters of the two other major parties moot. I think a multitude of definitions could,
perhaps should apply to this.

However, I'm also dealing with this at a point in time, and with a specific standard being asked for, that makes that discussion interesting but not necessarily timely. The timely discussion I believe is the one that goes to the motion that is on the floor. And for the purposes of complying with the court's order, which is our purpose today, and to be consistent with that which we did in the past which is to assess maps as they were created when they had enough legitimacy in our minds to be tested, we tested them in a variety of ways using registration, AQD, and JudgeIt.

I believe JudgeIt is the strictest standard of the three. I also believe it's an unnecessarily strict standard. But for the purposes of complying with the court's order and because the court is used to that analysis and has in fact used it to set up the base, or the target, I'm willing to go along with the definition as proposed simply because if we present a map, analyzed using it, there won't be any ambiguity about what we did. It will be the same as was used when Hall Modified or Hall-Minkoff was analyzed at the point in time when those maps were created and, therefore, gives the court the assurance, forget about us for the moment, but gives the court the assurance that if it reviews our current work
in light of those scores, they, the court, can make an apples-to-apples comparison.

For that reason I'd be supportive of the motion.

Mr. Huntwork.

COMMISSIONER HUNTWORK: Mr. Chairman, as always, you make good points and impress them very well.

I am going to vote against the motion for the following reasons: Number one, because I do not believe that the court required us to adopt this particular definition; number two, because based on the comments by Commissioners, I don't believe that this definition reflects the true sense of the Commission as to what a competitive district is; and, number three, I do not believe, in any event, that this definition complies with the constitutional standards of Proposition 106.

CHAIRMAN LYNN: Mr. Hall.

COMMISSIONER HALL: Mr. Huntwork, before we call the question, before the Chair calls the question, my -- I am open to any alternative. I mean, I just haven't heard one yet. Everything that we put out there, Commissioner Huntwork, you have disagreed with, picked apart. But I have yet to hear an affirmative statement of what you would consider to be an accurate definition

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of competitiveness. If you have a better idea, and I agree with it, I'm willing to withdraw my motion. I'm just saying I haven't heard an alternative. I'm trying to get something on the table versus us having infinite academic discussion regarding this process.

What would you propose for an alternative definition of competitiveness?

COMMISSIONER HUNTWORK: I would certainly propose a definition that says that the first cut, I think the definition would end up being more complicated than this. The first cut would say a competitive district is a district in which the minority candidate has at least a 40 percent chance of being elected, all other things being equal.

COMMISSIONER HALL: How do you measure that?

COMMISSIONER HUNTWORK: That is an expert question, as is all of the formulas that we are talking about. I would propose that if we're serious about implementing for purposes of Proposition 106 we would seek to employ consultants who could attempt to give us a predictive measure based on the spread and the historical voting patterns in the State of Arizona or similar jurisdictions. I do not believe that that is a mathematically or socially possible standard to achieve,
but, you know, I think that is what we are really talking about.

I don't think that three percent either way deviation from perfect, you know, center of the bell curve is what the drafters of Proposition 106 had in mind when they were talking about creating competitive districts in the State of Arizona.

CHAIRMAN LYNN: Ms. Minkoff.

COMMISSIONER MINKOFF: Mr. Chairman, we have approximately four weeks to come up with a new plan and present it to the court. I submit that taking such a deliberate path to all deliberations would take four weeks to develop the definitions. I believe that practicality behooves us to come to something that we can agree with. This may not be perfect, but the court approves it. If it's going to stand legal scrutiny, I think we need to adopt it and move on. We have a lot of other work to do.

If I can, I'd like to call the question.

CHAIRMAN LYNN: The question is called for.

Any further discussion?

I mean I need to say one last thing. I'm certainly prepared to vote. I would prefer a motion, quite honestly, that was more reflective of the original process but was inclusive of JudgeIt, that is to say I
would like the new maps to be run on all three bases, have all three bases looked at, registration, once finished, AQD, and JudgeIt, and that the JudgeIt standard in my mind is not less than seven percent, it is seven percent, which is a full three-and-a-half percent up or down. I happen to think that is way too strict, in my own mind, but -- I don't even want to shave that another hundredth of a point and say less than Dr. McDonald said. If plus or minus three percent, three-and-a-half percent, a full seven-and-a-half percent range, he has a 95 percent confidence in that number performing as a competitive district.

COMMISSIONER MINKOFF: Mr. Chairman, if we adopt this motion, that does not preclude us from running the other tests, does it? They would be very informative.

CHAIRMAN LYNN: No, it doesn't.

COMMISSIONER MINKOFF: I don't see this as excluding the other tests. It is just saying, you know, we have to adopt a standard.

CHAIRMAN LYNN: That will be an instruction.

COMMISSIONER MINKOFF: We can't adopt three standards. Have to adopt one standard. If we adopt this standard, there's still one of the other motions.
MR. RIVERA: Run them. If you adopt a standard, you can't take the other into consideration.

COMMISSIONER MINKOFF: Can if looking at alternatives, each has the requisite number of competitive districts, according to the standards adopted.

MR. RIVERA: Just JudgeIt.

COMMISSIONER MINKOFF: Have a couple competing maps, seven, eight competitive districts, according to Judge It, one AQD measure is more competitive, adopt that map in favor of the other one, it still meets the standard we've adopted, also complies with additional information. They didn't say this is all we can use. They said we have to adopt a definition of competitiveness. We -- and as long as it meets that definition, we can choose from among alternatives based on other factors.

CHAIRMAN LYNN: Ms. Hauser.

MS. HAUSER: In doing the work, I think Ms. Minkoff is correct about this. In doing the work you can look at registration and other things.

I mean as Doug and others are mapping, they can look at those things they know will improve a JudgeIt score. If you approve this definition, you know if you narrowed a definition range, the JudgeIt score would
likely be also more narrow. So I think you can look at those things. But the ultimate -- if you adopt this definition, the ultimate determination of whether a district is competitive or not will be whether it falls within that JudgeIt range.

COMMISSIONER MINKOFF: Right.

COMMISSIONER HALL: Mr. Chairman, did I understand your comment saying that your preference would be to remove from the motion less than seven percent and just have it say seven -- the difference being seven percent?

COMMISSIONER MINKOFF: Seven percent or less.

CHAIRMAN LYNN: My preference.

COMMISSIONER HALL: I'd concur with that.

COMMISSIONER MINKOFF: Me too.

COMMISSIONER HALL: "In a district seven percent" rather than less than, remove the words "less than."

COMMISSIONER MINKOFF: Seven percent rather than seven percent or less.

CHAIRMAN LYNN: Acceptable to the second?

COMMISSIONER MINKOFF: Right.

COMMISSIONER HUNTWORK: Mr. Chairman.

In light of that comment, one more shot at
something. Another way to try to make this comply a little better with what I think is the purpose of why we're here, if we could, if we could expand the uncertainty factor. What would the range, if we say what we're looking for is a factor of 80 percent certainty that this is a perfectly competitive district as opposed to 95 percent certainty that this is a fifty-fifty district, that would more accurately reflect -- still give us a way of using the tools that we already have, we could apply those tools that we already have retroactively to maps we've already done, to what the judge has already looked at, at least show that we believe that the goal here is to not necessarily create some perfectly competitive districts but to create as many as possible reasonably competitive districts where opposing candidates will come out, where they will debate, where superior candidates do have a chance to get elected. That's what I think Proposition 106 was all about. This extremely narrow range I think does violence to the purpose that we're here to serve.

CHAIRMAN LYNN: I have to tell you philosophically I'm right with you. Practically I have to go the other direction. When we submit the map and submit it to the court, it meets the court's test, not ours, the court's test. I, you, or anyone else could
look at the map, apply the standards we believe are more reasonable, broader than seven percent, and come up with our own number. I happen to think the map we're currently looking at as adopted has as many as 10, 12 under the broader definition of competitive; but no one seems to share that opinion but me. For that reason I need to understand what the practical solution to the problem is. For that reason, I'm going to vote for the motion as it's been amended.

Ms. Minkoff?

COMMISSIONER MINKOFF: No.

CHAIRMAN LYNN: Any further discussion on the motion?

If not, let's do a roll call because it will be important on this issue.

On the motion, as amended, which is to adopt the definition as stated -- I wish we had the slide up.

COMMISSIONER MINKOFF: Read back.

CHAIRMAN LYNN: Stated, the definition as attributed to the Chairman, "Competitive, which means that either party or other parties would have an opportunity to prevail in such an election."

COMMISSIONER MINKOFF: I'd take out "such."

CHAIRMAN LYNN: Can't take it out. I said
COMMISSIONER MINKOFF: It's a definition. Take it out.

CHAIRMAN LYNN: Okay. "In an election," then. And then to determine whether or not a district is competitive we are using the JudgeIt methodology with a full seven percent range plus or minus three-and-a-half percent.

COMMISSIONER HALL: The legislative or congressional district shall be deemed competitive if the difference in JudgeIt scores in two the major parties in that district is seven percent or less.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Question: When you say without using the JudgeIt standard, without consideration of incumbency?

CHAIRMAN LYNN: You know, I think that qualifier -- I understand your point. And I just -- I think it's problematic to change anything at this point.

Roll call.

Mr. Huntwork?

COMMISSIONER HUNTWORK: "No."

CHAIRMAN LYNN: Mr. Hall?

COMMISSIONER HALL: "Yes."

CHAIRMAN LYNN: Ms. Minkoff?
COMMISSIONER MINKOFF: "Yes."

CHAIRMAN LYNN: Chair votes "Yes."

By a vote of three to one, that definition is accepted.

Why don't we take a break for the court reporter, a limited break. Please limit the break to 10 minutes and we'll try to get started on the next definition.

(Recess taken at 3:28 p.m.)

CHAIRMAN LYNN: Back to order.

For the record, Mr. Hall, Ms. Minkoff, Mr. Huntwork, and the Chairman and counsel are present.

COMMISSIONER HUNTWORK: Before we move on to the next definition, to make sense of the Commission in respect to the one just adopted, I just want to reaffirm my understanding that that was a definition that has been adopted under protest and for the purpose of complying with the order of the court; and it's not a definition that the Commission would have adopted other than for the purpose of complying with the definition of the court.

CHAIRMAN LYNN: Ms. Minkoff.

COMMISSIONER MINKOFF: Provided that Mr. Huntwork amend slightly that the Commission may or may not have adopted, then I have no problem adopting it.
COMMISSIONER HUNTWORK: Certainly.

CHAIRMAN LYNN: I think without objection, that would be the sense of the Commission. My opening comments this afternoon were to actions taken by the Commission were all under protest given the nature of the ruling and appeal process.

COMMISSIONER HUNTWORK: Very well. I will not continue to make this statement but just regard it as a continuing statement --

CHAIRMAN LYNN: Understood.

COMMISSIONER HUNTWORK: -- we all have made as a group.

CHAIRMAN LYNN: For the record, that will apply to all deliberations of this process.

Mr. Johnson.

MR. JOHNSON: The next definition we wanted to present, or information we wanted to present leading to a definition, short, simple, one slide about equal population to the extent practicable.

What we relate on the slide, the standard applied so far in past work which we always draw maps to, "Precise equality plus or minus one person," then "justify each deviation away from that related to the other criteria."

COMMISSIONER MINKOFF: Need a motion?
CHAIRMAN LYNN: Need a motion.

COMMISSIONER MINKOFF: Then I would move that we adopt the definition that an equal population shall be precise equality in each district plus or minus one person with each deviation justified on the record.

COMMISSIONER HALL: I have a question.

CHAIRMAN LYNN: Mr. Hall.

COMMISSIONER HALL: Do we need the deviations on the record?

COMMISSIONER MINKOFF: I'd have a record.

Can never deviate more than one person, or deviate in voting rights of persons, or deviate for competitiveness purposes?

MS. HAUSER: You don't need to have the limitations on those justifications in the definition.

COMMISSIONER HALL: Thank you.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: My only concern is that we have coming up the possibility of a general definition of "equal population to the extent practicable." I'd like to -- basically I can go with this if we said justified in the record in light of the general definition to the extent practicable.

COMMISSIONER MINKOFF: My definition did not include to the extent practicable, just the extent
equal population is plus or minus one person per district
and any deviation is justified on the record. All these
include to the extent practicable. When we define that,
we'll apply all these, all these criteria. There can be
deviation to the extent practicable.

CHAIRMAN LYNN: Defining words, concepts,
we'll use Ms. Minkoff's explanation. It makes sense in
this instance, a working definition of equal population.
When we adopt to the extent practicable, that will be
applied to each of the definitions where it's
appropriate.

COMMISSIONER HUNTWORK: Then is the sense
of it, deviation will be justified on the record without
regard to the other criteria because that goes into the
extent practicable balance test? What, that phrase,
equal population means equal population plus or minus one
person deviation, to do this with the phrase to the
extent practicable?

COMMISSIONER MINKOFF: Mr. Chairman, the
only reason to deviate from equal population is to comply
with some other criteria, otherwise we have districts of
exactly equal population, but --

CHAIRMAN LYNN: If no impact to other
criteria, equal population is the standard.

COMMISSIONER MINKOFF: If we deviate from
equal population, it is to create a competitive district,
to comply with the Voting Rights Act creating
majority-minority districts. Those would be
justifications for deviating from equal population we'd
have to explain on the record.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: I guess -- you are
saying take Republicans out of a district and stick them
in another district so that there are more Republicans in
order to make a district competitive? Just take
Republicans out of it in order to make it more
competitive? I guess -- I mean -- to me, equal
population means equal population. It's that second one
I'm worried about.

COMMISSIONER HALL: That goes to my
question, Mr. Huntwork, is would it only be appropriate
to deviate in cases related to voting rights issues?
That's my question. Or is it appropriate to deviate to
accommodate some of the other goals?

COMMISSIONER MINKOFF: Mr. Chairman, as I
recall, we were given information that in the case of
Congressional Districts, the standard is really pretty
strict, that you have to come right there with equal
population; but in the case of legislative districts, the
courts have allowed deviation of about five percent. And
we have stayed -- we tried to stay well under that in the
maps that we have prepared up to this point. I hope we
can still continue to do that. But if we can't do that,
you know, in respecting geographic boundaries, we may
take three people of a city, stick them in another
district, have to have equal population, three people too
many. I don't think we want to do that if creating
competitive districts. We will be moving people from
various political parties from district to district,
otherwise you can't create competitive districts if
districts from more than one party than another
throughout the state need to create competitive
districts. The only way to do it is taking people from
parties and moving them between districts.

CHAIRMAN LYNN: Ms. Hauser.

MS. HAUSER: Maybe table the equal
population definition, go to the extent practicable
definition. That may help with this definition.

COMMISSIONER HUNTWORK: Mr. Chairman, just
define equal population, the way this will work, equal
population, we have, you know, we have communities of
interest, we have geographic boundaries, political
subdivisions, all qualified to this extent, to the extent
practicable. We need to define two different things, one
is what the basic standard is; the other is what you mean
by to the extent practicable.

CHAIRMAN LYNN: So in other words, either
we have one definition of to the extent practicable that
applies to each of them or we have a separate definition
for that phrase for each of the criteria.

COMMISSIONER HUNTWORK: Well, yes. That's
a possibility. I do think, especially with the emphasis
on consistency, I think we do need to be consistent how
we approach that. That is possible.

CHAIRMAN LYNN: Perhaps we take that
suggestion, talk about to the extent practicable first,
see what that definition might look like, definition or
definitions, then begin to apply it with equal population
being the first one.

Without objection, let's take a look at to
the extent practicable, see if that helps us get to an
answer.

Mr. Johnson or Ms. Leoni?

MS. LEONI: Commissioners, this is a common
phrase used in redistricting cases. The Commission
itself has cited a number of cases in these court
proceedings with regard to its motions for summary
judgment. All of them carry with it the idea of
flexibility and discussion.

The Brooklyn Heights Association case, a
redistricting case out of New York, "To the extent practicable contemplates the need for flexibility in carrying out an enormous task that necessarily involves many compromises and difficult choices." So it's an exercise in redefinition.

The second case is an Arizona case. I pulled it because it is an Arizona case, not a redistricting case. In this case it expresses a recognizing of competing issues and definition. That is a definition we were able to offer redistricting cases throughout the state, emphasize flexibility and discretion as a definition of to the extent practicable.

CHAIRMAN LYNN: Is there a motion?

Mr. Huntwork.

COMMISSIONER HUNTWORK: I think the language that has been quoted from these lawsuits is pretty good. I would suggest we consider adopting that language.

COMMISSIONER HALL: Both or one?

COMMISSIONER HUNTWORK: Both.

COMMISSIONER MINKOFF: I combined it.

COMMISSIONER HUNTWORK: With, however, the caveat in the definition of equal population that any, that we attempt to the -- that we attempt to explain our reasons for deviations on the record from any criteria.
COMMISSIONER MINKOFF: Can I give it a try?

CHAIRMAN LYNN: Ms. Minkoff.

CHAIRMAN LYNN: Is that a motion?

COMMISSIONER HUNTWORK: No.

CHAIRMAN LYNN: I want to be clear.

COMMISSIONER MINKOFF: I'll try to put it in the form of a statement so we can put it in the form of a motion. And I'm primarily actually using the second definition. I think it actually works better. But combining the key phrase in the first one, which I think is flexibility, that's the one missing in the second one, to say:

"To the extent practicable, expresses a recognition that flexibility will be required to reconcile competing considerations, interests, or goals," and we can say "competing considerations, criterion, interests, or goals." Let's get "criteria" in there and add to that that "any modifications in compliance with the various criteria of proposition 106 shall be justified on the record."

And please state that better than I did. That's the essence of what I wanted.

COMMISSIONER HUNTWORK: Before we state it, something important in the first definition, focus separately for a moment. The -- even in its analysis of
the fundamental right to vote, the United States Supreme Court has always taken into consideration the issue of administrative feasibility, what can be done. And some tasks are simply too enormous. For example, the disenfranchisement of convicted felons, is every felon automatically unqualified to vote or is it feasible for election boards to interview each one and consider their unique circumstances and background and decide which ones should be allowed to vote, which ones shouldn't? In cases like that you say no, you do what is administratively, are only required to do, even in the area of administrative rights, what is administratively feasible.

To me the word practicable is in essence the need to weigh things against each other, what is possible to do in the constraints of time, budget, human knowledge, understanding, and so forth.

So the first one that talks about the enormous task captures that and the second one alone, in my mind, does not.

COMMISSIONER HALL: Why don't we just combine them both?

CHAIRMAN LYNN: Adopt them both as is as standards that apply. I don't see anything in there too contradictory. They are complimentary.
COMMISSIONER MINKOFF: Based on Mr. Huntwork's concerns we also need to add something that says that, I'm searching for words here and they are not coming to me. I'm having a senior moment. Is that any deviation from any of the criteria will be explained and justified.

CHAIRMAN LYNN: On the record.

COMMISSIONER MINKOFF: Right.

CHAIRMAN LYNN: So may I take that as a motion?

COMMISSIONER MINKOFF: You may.

CHAIRMAN LYNN: That for the definition of to the extent practicable, we are adopting both citations from legal precedent as our definition and adding to that the concept of deviation from a standard which would need to be explained on the record.

COMMISSIONER MINKOFF: Uh-huh.

CHAIRMAN LYNN: Is that a motion?

COMMISSIONER MINKOFF: Yes. I'll make it.

CHAIRMAN LYNN: Is there a second?

COMMISSIONER HALL: Second.

CHAIRMAN LYNN: Discussion?

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

COMMISSIONER MINKOFF: "Aye."
COMMISSIONER HALL: "Aye."

COMMISSIONER HUNTWORK: "Aye."

CHAIRMAN LYNN: Motion carries.

It is so ordered.

Now let's return to the previous consideration. And with the understanding that we have now included within the definition of practicability the concept of deviation on the record, might we simply adopt as equal population the first half of the definition which is precise equality plus or minus one person?

COMMISSIONER MINKOFF: Mr. Chairman, because equal population is more likely to be deviated from more than any of the other criteria, because I sincerely doubt we're going to have equal Legislative Districts as we had equal Congressional Districts, can we just say that equal population shall be precise equality plus or minus one person to the extent practicable and just make sure that we state it in this criterion?

CHAIRMAN LYNN: I think that is what the law says.

COMMISSIONER MINKOFF: Uh-huh. Yeah. So we're essentially restating it.

CHAIRMAN LYNN: Well, let me pose that question. I have some puzzled looks around the table.

COMMISSIONER MINKOFF: I just think this is
one that is so obviously going to require deviation in
order to achieve the other goals that I'm just really
seeking to emphasize it. That's all.

CHAIRMAN LYNN: I think it's covered.

COMMISSIONER MINKOFF: It is.

CHAIRMAN LYNN: Covered by the other one we
just adopted.

COMMISSIONER MINKOFF: It is covered. If
other Commissioners don't want to, it's certainly not a
major issue with me. I just feel in this case we might
be justified to emphasize it.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Mr. Chairman, two
aspects I want to address. First, the simplest one is
that I think you could say, you know, equal population to
the extent practicable means precise equality to the
extent practicable. If you look at that as a
mathematical equation, to the extent practicable cancels
out and the equation remains the same. So logically
speaking, I think we could boil it down to equal
population means precise equality and leave it at that,
but then the second part of it is this, the essence of
democracy, the essence of redistricting, one man one
vote.

CHAIRMAN LYNN: One person.
COMMISSIONER MINKOFF: Thank you.

COMMISSIONER HUNTWORK: I do think that I would be fully as reluctant to support a deviation on population as I would any of the other criteria and quite possibly more so. It just seems to me that that is one of the most basic parts of this whole task we've undertaken.

COMMISSIONER MINKOFF: Mr. Chairman, one person one vote really only applies to those people eligible to vote. Children don't vote. People not citizens don't vote. Convicted felons don't vote. Many are in prison and count in population of a district. So equal population does not guarantee equality of voting rights because there will be different numbers of people eligible to vote in every one of those districts.

CHAIRMAN LYNN: Not to belabor the point, let me try the motion again, that in this essence we are defining equal population as precise equality plus or minus one person.

COMMISSIONER HALL: We have a motion and second, is that correct?

CHAIRMAN LYNN: Not yet.

COMMISSIONER HALL: I so move.

COMMISSIONER MINKOFF: Second.

CHAIRMAN LYNN: Discussion on the motion?
If not, all those in favor say "Aye."

COMMISSIONER HALL: "Aye."

COMMISSIONER MINKOFF: "Aye."

CHAIRMAN LYNN: Chair votes "Aye."

Motion carries. It is so ordered.


Talked extensively about the Georgia v. Ashcroft decision. There's not much guidance from legal citations. Four, five cases cited Ashcroft. It's cited, oddly enough, as Section Two. Ashcroft is a Section Five case. I don't know. The Justice Department has not developed guidelines. Georgia client is back to the District Court for reconsideration by that three-judge court.

What we do know is this, that the Supreme Court in Georgia v. Ashcroft expanded the ways that a state could prove its redistricting plan is nonretrogressive. The typical way before Georgia, the Supreme Court in Georgia got a hold of the issue, the preservation of the ability to elect districts. These were districts where they call it representational elections, where you really actually elected minority candidates. They didn't require you to keep a district super packed, but you had to keep it safe. If you had an
80 percent district, it would not have been retrogressive to reduce it so long as that ability to elect remained. What the Supreme Court did is said a state in its discretion can look at retrogression or propose a plan as nonretrogression in a different sense, that sense was termed substantive representation. It could be coalitional districts, interests of minorities are protected and minorities are likely to elect a candidate of choice, maybe not quite as likely as under safe districts. That's a lot of words.

If you look at the facts in Georgia and Ashcroft, I'm not sure how the next case is going to apply them. They are -- it is a -- we're in a little bit uncharted territory here.

So Georgia v. Ashcroft opened up two ways, at least two ways of approaching the nonretrogression standard.

We've already taken a look at what the Superior Court here in Arizona said. They seemed, the Superior Court said the competitiveness clause required the Commission to proceed under the substantive representational standard with coalitional districts.

COMMISSIONER HUNTWORK: Mr. Chairman, may I ask a question?

CHAIRMAN LYNN: Before you ask a question,
I'd ask at least one of counsel be at the table at all times. We have questions that need to be answered. So let's make sure we have either or both of our counsel at the table all the time.

Now ask your question, Mr. Huntwork.

COMMISSIONER HUNTWORK: Did the Supreme Court decision in Georgia vs. Ashcroft hold the proposed Georgia districts passed muster or did it send it back to the lower court for further proceedings in compliance with --

MS. LEONI: The latter, Jim, Commissioner Huntwork. Basically what the court said is the district court failed to take into consideration the totality of the circumstances and give due deference to certain matters in the record.

COMMISSIONER HUNTWORK: Right.

MS. LEONI: I think while this is a potential way to prove nonretrogression, we do not yet have a case that has been precleared under this theory.

CHAIRMAN LYNN: To that end I take the ruling of the court, and please correct me if I'm wrong, as essentially teeing it up for us to be the first test.

MS. LEONI: It could be looked at that way.

CHAIRMAN LYNN: I think that standard expressed in the ruling, since it has not been settled as
a matter of review by the Department of Justice, may very
well be reviewed on this case if we in fact get to the
place where we adopt a map, certify it, and submit it.

MS. LEONI: And I do want to point out that
that is precisely what the Superior Court said, that the
Commission was required to create fewer safe, or
benchmark majority-minority districts, and to proceed
with a coalitional approach where the percentages made it
likely that minority voters will be able to elect
candidates of their choice but at the same time diffusing
the political registration so that the districts would
hopefully become more competitive.

I think it's important, also, for us to
really understand that in the language of Ashcroft. So
your second slides are the Ashcroft slides that compares
precisely the proceeding with safe districts. On the one
hand a smaller number of safe districts may virtually
guarantee the election of a minority group's preferred
candidate to impair representation in different ways.
That's compared to the coalitional approach. Doug, next
slide. The state may choose, consistent with Section
Five, it's better to risk having fewer minority
representatives in order to achieve greater overall
representation. And I think we're obliged to proceed in
this manner and under the court's order, but it will be a
CHAIRMAN LYNN: Everybody wants in.

Mr. Rivera, let me let you go first.

MR. RIVERA: One of the reasons for the Ashcroft litigation, a significant number of minorities came in, advocated for these influence districts. What we have here is we have a court order saying we should take this right now with only some testimony from the minorities. I guess my comment to this is more to Minority Coalition -- are you listening, Mike Mandell -- that if they want to have any possibility of passing muster at the Department of Justice, there has to be a strong voice by the minority politicians saying they want to advocate this rather than just a state court advocating this.

CHAIRMAN LYNN: Thank you. Let's go around the horn here.

COMMISSIONER MINKOFF: I really have a question when wrestling with definitions here. I'm wondering if we need to define compliance with the Voting Rights Act. It seems to me compliance with the Voting Rights Act is compliance with the Voting Rights Act.

Judge Fields told us to use the standard substantive representation.

MS. LEONI: Right.
COMMISSIONER MINKOFF: He will not approve a plan that doesn't do that approach of creating competitive districts. I don't know what there is to define. It seems this isn't a definition.

MS. LEONI: Recognition.

COMMISSIONER MINKOFF: It's recognition we'll follow under protest the judge's definition.

CHAIRMAN LYNN: I apologize for the hypothetical. If incorrect or inappropriate, you'll tell me. To that very point, if the Commission were to submit to the court a map that met the other tests imposed by the court but chose to, and by that I mean the number of competitive districts the court is looking for, but chose to take the descriptive rather than the substantive approach, is it your opinion that the court would reject that map on the basis the other approach would likely have created even more competitive districts?

MS. HAUSER: Yes.

CHAIRMAN LYNN: With that understanding, I understand exactly what you are saying. The suggestion is we recognize this concept but not necessarily -- recognize it and attempt to apply it but not necessarily adopt it.

MS. LEONI: I agree, Chairman Lynn, and I need to definitely emphasize what your counsel has
stated, that the evidence in that case is what was important. There were superpacked districts in the case, 65 percent. No district was reduced below 50. And at the same time coalitional districts were increased. There was strong support by majority legislators and definite impact on what was going to happen in the legislature if the substantive approach were taken. I think we need to have, with the help of the minority community, a record to back up what we send to the Department of Justice on this issue.

CHAIRMAN LYNN: Thank you.

Mr. Hall, then Mr. Huntwork.

COMMISSIONER HALL: My question is does counsel agree we do not need to do a definition for voting rights compliance?

MR. RIVERA: Are you asking NDC or --

COMMISSIONER HALL: Our counsel.

MR. RIVERA: I think you do not need to have a definition for voting rights compliance. You are talking about -- I guess maybe Ms. Minkoff asked us to define what compliance, voting rights compliance is. That's different than this definition. I don't think you need to go into compliance with voting rights.

COMMISSIONER HALL: What about as generic, drawing out for discussion compliance with the Voting
Rights Act means compliance with Sections Five and
Sections Two of the Federal Voting Rights Act; in the
context of the Arizona Voting Act, compliance with
Section Five, and the substantive representative approach
set forth in Georgia v. Ashcroft? That's pretty general.

CHAIRMAN LYNN: The only thing I think
missing in that is relating it to the court's ruling.

COMMISSIONER HALL: Must be under a
substantive representative approach, Georgia v. Ashcroft.

CHAIRMAN LYNN: What you said is from the
Constitution, not a ruling from what the court said.

MS. HAUSER: That's what the court said.

CHAIRMAN LYNN: The court's interpretation
of the Constitution.

MS. HAUSER: What the trial court said,
Georgia v. Ashcroft offers two approaches, descriptive,
substantive. The descriptive one we previously followed.
And whereas most states have that as an option, that the
Arizona Constitution's competitiveness requirement in his
view means that you must use the substantive approach,
it's not a may, it's a shall.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Well, I think in
our definition, we need to make it clear that it is our
intent to follow the approach specifically ordered by the
court, not harken back to Sections Five and Section Two, simply that we are going to do our utmost to follow the exact approach to the word that was ordered by the trial court. So to me the definition, if we create one, would be to say we'll follow the interpretation ordered by the court or just quote the language directly out of the opinion.

COMMISSIONER HALL: Well --

MS. LEONI: If I could just make one comment on that. The court is really divided. There is no Supreme Court decision whether or not the substantive approach will satisfy Section Two. We're in the realm of Section Five.

COMMISSIONER HALL: Make it all inclusive, try to comply with all of them.

COMMISSIONER HUNTWORK: My point is -- I at least personally do not agree with the approach that is being ordered by the court. We have said before that we're doing this under protest and specifically for the purpose of complying fully and completely with the order of this court. And that's exactly what I want to do. I believe that in so doing we -- I think we are violating the Federal Voting Rights Act by complying with the order of this court, certainly violating the preclearance requirement of it, maybe violating the substantive
requirement of it, and find ourselves in the position of
being ordered by the court to take certain actions. And
it's my intention to take exactly those actions, not, you
know, not assert any position contrary to the order of
the court, no more and no less than exactly what the
court has ordered us to do.

COMMISSIONER HALL: Well, I guess, again
I'm just a little more practically minded. I understand
what you are saying. I'm just, just for the sake of
discussion, if we assume that no stay is granted and the
appeal is eternal, or whatever, or, you know, not
favorable, and we are bound by this order, it seems to me
that not only should we attempt to comply with what the
order says, which we're trying to do now, but in addition
we should comply with all law and -- I mean our ultimate
goal is to not only produce a map that is competitive
pursuant to the order we're currently under but also a
map that will preclear and ultimately comply with all the
laws.

CHAIRMAN LYNN: Part of the problem is
original deliberations of this Commission were done prior
to and without the benefit of the Georgia v. Ashcroft
decision and its implications. The court has ordered
that the application of that decision or parts of it
should be taken up by the Commission. And it may be
sufficient to simply say that compliance with the Voting
Rights Act has always meant and continues to mean
compliance with the Voting Rights Act as it's written.
And perhaps for the purposes of this portion of our
deliberation we should say to comply with the court's
order in addition to the definition we've always had full
compliance with the Voting Rights Act, we will take, I'm
using language on slide 32, as directed by the court to
take the substantive representation approach which --
well, it's -- but it really says that we may choose this
methodology.

MS. HAUSER: No.

CHAIRMAN LYNN: I mean the court is saying
we have to.

MS. HAUSER: Right.

CHAIRMAN LYNN: Georgia v. Ashcroft says a
state may. The court is saying not we may, we have to.

COMMISSIONER MINKOFF: That's what we have
to follow.

COMMISSIONER HALL: What I read I think
just said what you just read.

CHAIRMAN LYNN: I think the concern was
going back to a previous standard in including that.

I'm --

COMMISSIONER HUNTWORK: Mr. Chairman, let
me try to express my concern again. It's really very simple. I do not wish to say this in a way that is disrespectful of anyone involved in this difficult process we are all doing our best to work through, but my concern is if I believed that the order of the court was not fully consistent with the Voting Rights Act, then I would need to say that we will comply with the Voting Rights Act to the extent not inconsistent with the order of the court which is not something that I really want to, per se.

COMMISSIONER HALL: Say per se say.

COMMISSIONER HUNTWORK: Put into an action of this Commission. I want to comply first and foremost with the order of the court.

COMMISSIONER HALL: So I promise if you make a motion, I'll second it. I don't know if I'll vote for it. You make a motion, I'll second it.

CHAIRMAN LYNN: Put one out. See if we can get agreement.

COMMISSIONER HUNTWORK: Compliance with the Voting Rights Act means compliance, means full compliance with all applicable provisions of the Voting Rights Act as interpreted with the advice of legal counsel to the extent such advice is not inconsistent with the order of the court.
COMMISSIONER HALL: Pursuant to my promise,
I'm going to second that.

Now we interpret it.

COMMISSIONER HUNTWORK: What it means is I
don't place us in defiance of the order of the court and
to the extent that we might perceive an inconsistency,
that is a matter of interpretation and advice of our
counsel and in that gray area we are going to comply with
the order of the court.

CHAIRMAN LYNN: Well, however, however
subjective those options might be in terms of
interpretation outside what the court has specifically
ordered, the arbiter of this definition seems to me to be
the Department of Justice. And at some point they will
give an opinion, if given the opportunity, as to whether
or not this Commission complied with the Voting Rights
Act.

COMMISSIONER HUNTWORK: Mr. Chairman --

CHAIRMAN LYNN: However we apply whatever
we apply.

COMMISSIONER HUNTWORK: I was thinking of
saying in the definition unless and until the order of
the court is overruled by, but then again you understand
that now -- number one, it's a changing definition; the
entire order may be invalid, if it occurred.
You know, it just -- for the current purposes, and for purposes of the task we are undertaking at this time, I think we have to place compliance with the order as the top priority. And I'm just trying to think of a way to --

CHAIRMAN LYNN: -- express that.

COMMISSIONER HUNTWORK: -- express that that shows that we respect the fact that all involved in this process are doing their best to figure out how we are going to comply fully with all of the provisions of Arizona Constitutional provisions and with the overriding federal law.

COMMISSIONER HALL: So can I read this again, because what I -- I swear what I read is what you said.

COMMISSIONER HUNTWORK: Left off part, interpretation of counsel, all provisions, too. I think those may be all applicable provisions.

COMMISSIONER HALL: Compliance with Voting Rights Act as construed within the context of the Arizona Constitution's requirement that competitiveness be favored, says with compliance of Section Five under representative approach under Georgia v. Ashcroft.

COMMISSIONER HUNTWORK: My definition was compliance with all applicable provisions as advised by

LISA A. NANCE, RPR, CCR (623) 203-7525 193
legal counsel except to the extent that that advice is inconsistent with the order of the court in which case the Order of the Court will prevail.

MR. JOHNSON: If I put a thought out there, not a recommendation or suggestion, thought, the Voting Rights Act, the Department of Justice already issued a long recommendation on what is compliance with it, and the Court interpreted that. This may be one topic fairly well-defined, not very clearly, where you could not adopt a formal definition, instruct NDC, order on it, because that definition is out there.

COMMISSIONER HUNTWORK: But the judge ordered us to create a definition. We can't comply with the judge's order to create a definition if we don't do that. I say we create a definition and proceed.

CHAIRMAN LYNN: I guess in the last instance when you were explaining your motion, which is on the floor, I know there are a number of parts to it, and I understand that the construct of it is designed for that purpose, that there are multiple parts you want complied with, as interpreted by the attorneys or as advised by attorneys certainly not in contravention to the order of the court.

COMMISSIONER HUNTWORK: Right.

CHAIRMAN LYNN: It seems as though maybe
the wording is not as clear as everyone would like it, it
gives us the ability to fully and completely give
consideration to the Voting Rights Act and specifically
to do it with the guidance of and requirements of the
court in mind and that any advice we would get from
counsel would have to have that embedded in it, because
we've all read the order, and your motion accepts that.
Even though it's difficult construction, I think, for a
motion, I think I understand it and I think I could
probably support it.

So is there further discussion on the
motion?

COMMISSIONER MINKOFF: Mr. Chairman?

CHAIRMAN LYNN: Ms. Minkoff.

COMMISSIONER MINKOFF: Could somebody
please restate the motion, so many things going back and
forth.

CHAIRMAN LYNN: I'll ask Lisa Nance to do
that.

THE REPORTER: What Commissioner Huntwork
last stated was:

(Whereupon, the record was read as follows:

"COMMISSIONER HUNTWORK: My definition was
"compliance with all applicable provisions
"as advised by legal counsel except to the
"extent that that advice is inconsistent
"with the order of the court in which case
"the Order of the Court will prevail."

THE REPORTER: Do you want me to read the
original motion as given?

COMMISSIONER HUNTWORK: No.

CHAIRMAN LYNN: And I might just use the
last one that Mr. Huntwork just rearticulated. It's as
close to where it needs to be, as we need it to be.

I'd substitute that one by the Commission.
Acceptable to the second?

COMMISSIONER HALL: Yes.

CHAIRMAN LYNN: All in favor of the motion,
say "aye."

COMMISSIONER HALL: "Aye."

COMMISSIONER MINKOFF: "Aye."

COMMISSIONER HUNTWORK: "Aye."

CHAIRMAN LYNN: Chair votes "Aye."

Motion carries unanimously.

MR. JOHNSON: Next is a definition of
significant detriment. Webster's definition of
significant detriment: "Has meaning" or "is likely to
have an influence or effect." Detriment: "damage;
injury; or harm."

In this case, we do have a proposed
definition for, put out there. This would be significant
detriment to a redistricting goal is an effect so
negative that it is as if the goal is not respected at
all.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Mr. Chairman, this

neither follows from the dictionary definitions nor from
any logic I can apply. I would -- can't imagine where
this could have come from except possibly any lawyers.
It just doesn't make any sense to me. Significant
detriment is certainly different than absolute
annihilation. So I suggest we take that off the screen
and start over somewhere else.

We did.

CHAIRMAN LYNN: It's off the screen all
right. Josh disconnected himself and the consultants
simultaneously.

COMMISSIONER HALL: Sorry. Wrong cord.

MR. RIVERA: I know you listen to Jim, but
I didn't know you listened that way.

MS. HAUSER: That's the way to move things
along.

CHAIRMAN LYNN: Let's start with the
dictionary definition.

The heart of this definition, as we will
define it, has a lot to do with when and how decisions
are made because of the application of this particular
part of the law. And it is the one that has the most to
do with judgment, in some fashion, based on a variety of
facts, information, input, other factors.

Significant detriment could be said to
mean, it seems to me, having the influence or effect of
damage, injury, or harm.

COMMISSIONER HUNTWORK: Mr. Chairman, I
agree with the definition of detriment. The trick here I
think is the word "significant."

MS. HAUSER: I agree.

COMMISSIONER HUNTWORK: And we can focus on
that. And, you know, it's tempting to define it in terms
of synonyms: material, substantially, objectively
measurable.

CHAIRMAN LYNN: Overt, obvious. A number
of scales.

COMMISSIONER MINKOFF: I think we are
dealing with a subject of degree here. And Mr. Huntwork
objected to the proposed definition because it really was
an annihilation. It's as if it didn't even exist.

Let's say you are splitting a community of
interest, and it would require under this definition for
you to act as if that community didn't even exist rather
than it was being split because some other goal we needed
to achieve. But putting these two definitions together
has no meaning at all.

Any time you move one person from one
district to another you are causing some damage, injury,
or harm to that person because he doesn't want to be
moved, or the district doesn't want to lose him, or that
district doesn't want to get him. We need something
between total annihilation and any impact at all.

COMMISSIONER HUNTWORK: Right.

COMMISSIONER MINKOFF: That's what I'm
struggling with. What I've heard so far, I can't support
either one of those two extremes. We have to find
something that says it causes enough harm to one of the
criteria to make us take notice rather than some minimal
amount of harm or throwing the criteria out the window.

Somebody needs to word smith that for me.

COMMISSIONER HUNTWORK: Interestingly, you
say, you know, significant means material, substantial,
but not inconsequential, or one other word that I got
excited about, not insignificant --

What was the other word she used?

CHAIRMAN LYNN: I'm wondering.

(Whereupon the reporter reads back.)

MS. HAUSER: She can't look and transcribe
at the same time.

COMMISSIONER HUNTWORK: That was it. Thank you.

CHAIRMAN LYNN: I'm wondering if we can't come up with -- this is a question, I guess, more to counsel. You may not want to answer at this point, take it under some kind of advisement for an answer in the future.

If we talk about harm, or injury, or negative impact on one of the goals, which I suspect that it's going to be, it will not be acceptable to the court to have that simply as a standard when voted on by a majority of the Commission, by that I mean in the opinion of the Commission, a majority of the Commission, that impact, negative as it is, is sufficient to become significant. And I don't know whether you want to answer that. Because that goes to the heart of -- it's a discretion issue. And it -- I mean that is why it's so difficult. Because every single -- every single criterion we apply might very well have a different measurable definition of significant detriment. Not only criterion to criterion but the subject of criterion, subject to subject. In other words, I'm thinking through the concept of communities of interest, and not all communities of interest are created equal. And in cases,
case by case in applying this criterion, or this language
to the placement of a community of interest within a
district, or splitting it between or among districts, we
might determine the damage to be different in different
cases based on different circumstances as defined.

I guess the question is do we think that
kind of flexibility would be acceptable to the court? If
not we're going to have to struggle with a much more
narrow and specific definition.

COMMISSIONER HUNTWORK: And what does
counsel advise on that subject? I'm writing down words
everybody is using and can offer a synthesis at this
point. It is along the latter course. If that's not
going to suffice, there's no point in pursuing it.

MS. HAUSER: "The latter course" being --

COMMISSIONER HUNTWORK: Using -- let me --
significant detriment means an impairment of the perfect
accomplishment of a specified goal which the Commission
determines is material or substantial but not which the
Commission determines is merely minimal or
inconsequential.

CHAIRMAN LYNN: See, I understand in legal
terms that "perfect" has a definition.

COMMISSIONER HUNTWORK: Complete, yeah.

MS. HAUSER: I don't know that we know what
perfection is.

COMMISSIONER HUNTWORK: An impairment to
the accomplishment of a specified goal.

CHAIRMAN LYNN: Try that again with that
substitution.

COMMISSIONER HUNTWORK: Okay. Significant
detriment means an impairment to the accomplishment of a
specified redistricting goal which the Commission
determines is material or substantial but not an
impairment which the Commission determines is minimal or
inconsequential.

Maybe we should say determined on the best
evidence available based upon objective evidence. I
think it's -- I have a concern based upon the word
objective evidence which was a suggestion of the
Coalition. I do agree this needs to be made based upon
evidence. The problem is our evidence in deciding what
our particular communities of interest are has not been
objective evidence. It has been our fellow citizens
standing up and telling us subjectively what is important
to them, what they believe and feel and using our own
knowledge and common sense to sort through all of that
input and try to determine what is true and important
from all of that information. So -- and I don't know
where we are. It frightens me to think if we throw in
the word objective, without stopping to focus on that
element of it, we might exclude a hundred percent of the
testimony that we received at these hearings that we held
throughout the state which everyone agrees were a good
thing and an important part of the process.

CHAIRMAN LYNN: Ms. Hauser.

MS. HAUSER: Mr. Chairman, Commissioner
Huntwork, I think with a modification along the lines of
based on the record before the Commission versus --
whatever that record is, and this is a legislative body
and you do get citizen testimony, and I understand your
concerns about the limitation to objective evidence. So
I think with whatever that record is, you know, based on
the record before the Commission, that that might very
well be the approach you might want to take. The rest of
the definition I think sounds workable.

(Commissioner Hall leaves for the evening.)

MS. HAUSER: Jose?

MR. RIVERA: I would rather talk about it.

I would rather -- this is legal advice better given in
Closed Session rather than Open Session.

COMMISSIONER HUNTWORK: On advice of
counsel, shall we defer getting advice on this?

CHAIRMAN LYNN: That's what I think I'm
hearing.
COMMISSIONER HUNTWORK: Okay. Later today, after we've had a chance --

MR. RIVERA: I don't think it would take more than five, 10 minutes in Closed Session.

CHAIRMAN LYNN: Let's defer that in the interests of getting through the agenda as best we can.

MR. JOHNSON: Something simple.

So we start out with a number of slides here. The quote obviously is district boundaries shall respect communities of interest. And the first academic definition is from Bernie Grofman. A number of states have either constitutional or statutory provisions requiring districts to preserve, when practicable, communities of interest. Most states fail to define this phrase. It is roughly synonymous with recognition and maintenance of patterns of geography, social interaction, trade, political ties, and common interests.

I have another definition for you. This one is from Janet Boles and Dorothy Dean. They wrote, "It can be argued that the communities of interest criterion of redistricting should include urban neighborhoods of all racial types wherever possible. In a large metropolitan area, broad ethnic, social, religious, or economic communities can be readily taken into account. Although the social or psychological
boundaries of urban communities are not precise, they are nonetheless real in that people think of themselves as belonging to specific neighborhoods. The advantages of such districting are numerous. Homogenous districts facilitate effective representation because community sentiments are more clearly defined and consistent policy positions are more likely. Intergroup conflict is tempered."

We have another one. This is one has considerable writing and not quite as considerable consensus on. These two are actually from court rulings. The first one: "For our purposes, community of interest represents distinct units which share common concerns with respect to one or more identifiable features such as geography, demography, ethnicity, culture, social economic status or trade."

From a different lawsuit, "The social and economic interests common to the population of an area which are the probable subjects of a legislative action."

I believe one more academic, then court definitions.

This one is another court ruling. "Describing the notion of community is a stubborn problem. A community is definable as individuals who sense among themselves a cohesiveness that they regard as
prevailing over their cohesiveness with others. This cohesiveness may arise from numerous sources both manifest and obscure that include geography, history, tradition, religion, race, ethnicity, economics, and every other conceivable combination of chance, circumstance, time and place. In any event, a community is based finally and unappealably on the society and consent of its members, both of which are known best by the community's members. A community is exactly what a community believes itself to be."

Next we have actual language from the order in this case. "The Commission's discretion to protect a community of interest was limited by Prop 106 to include placing the entire community within the boundaries of a Legislative District. The Commission was not entitled to create homogenous districts comprised of like-minded yet distinct communities of interest at the expense of the creation of competitive districts which were to be favored."

Which brings us to the proposed: "A community of interest is a group of people in a defined geographic area with common concerns about issues such as religion, political ties, history, traditional, geography, demography, ethnicity, culture, social economic status, trade or other common interest, that
would benefit from common representation."

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Well, Mr. Chairman,
without having looked ahead to see the definition, I was
penciling in something similar. I notice one difference.
This defines it in terms of a fact -- a factor that I
think significantly affects the voting pattern as opposed
to a factor that necessarily might reflect the voting
pattern that would benefit from common representation. I
was thinking that it was, you know, population group.
Definable geographical boundaries, that's all in there,
that share one or more factors, which share one or more
factors that significantly affect voting patterns or are
significantly reflective of voting patterns.

Now, this is talking in terms of more --
some benefit, some nexus between, you know, this group
would be benefited by having a representative who stands
for the following political position. It's more like --
I'd rather look at it in terms of how people vote in
terms of what is good for them.

CHAIRMAN LYNN: I think the difficulty
there is how would we measure, particularly with
community of interest that either has not previously
existed for very long or doesn't have a record of voting
or did not have in previous districts the ability to vote
together. We are considering afresh — there's no way to determine how they might have voted in the past. There is some reason to believe they might want to vote together in the future. And that may be the only test we can apply.

Ms. Minkoff.

COMMISSIONER MINKOFF: Mr. Chairman, there is a lot I like about the proposed definition except for the parentheses. I don't think we need them. It does refer to voting behavior. We could talk about communities of interest that have nothing to do with legislative representation. And it is quite honestly unnecessary for us to consider them or define them or to map them. What we're talking about are groups of people who have common interests that can or should be represented at the legislative level. You know, you could say a community of interest is a classic car club but it's unlikely that is something we would consider in mapping a legislative district. I like this definition. It talks about common representation.

COMMISSIONER HUNTWORK: Mr. Chairman.

CHAIRMAN LYNN: Joshua?

COMMISSIONER HALL: Yes.

CHAIRMAN LYNN: Let me turn this up as best I can.
Okay. You are on.

(Commissioner Hall is present now by speakerphone.)

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Well, I wanted to take -- Joshua, we're debating definition of communities of interest. And you, I think you may have looked at the definition in the materials.

COMMISSIONER HALL: I have them in front of me.

COMMISSIONER HUNTWORK: What I want is to just raise the question. We used, we used school districts as a way of defining communities of interest. People begged us to do that. And it did seem an appropriate thing to do in our deliberations because of the fact that we felt not that the school district itself was the factor that defined the group and people are going to benefit from common representation because their kids all go to the same school but because it was indicative of something that we believed would represent a pattern of voting. So -- and kind of common interest, if you will. So I want to capture that notion or else we're going to have to stop using that criteria.

CHAIRMAN LYNN: Ms. Hauser.

MS. HAUSER: It actually is captured in
COMMISSIONER HUNTWORK: Okay.

MS. HAUSER: The school districts that came forward and asked for some recognition did not come forward and ask for recognition as a school district per se but going back to the testimony, for example, from the people from Isaac School District who asked to be treated as a community of interest, it was based on their common language, common socioeconomic status, and those kinds of issues that they spelled out. It just was easier to describe them, that community of interest, as the Isaac School District. But it was not because a school district, per se, needed to be recognized as a community of interest. So the concepts that bound those people together that they mentioned in their request to the Commission are all embodied in that definition.

COMMISSIONER HUNTWORK: But, counsel, let me ask you this. We went to some lengths to, for example, to try to keep the Isaac School District together despite the fact some of the people we were putting in, some of the people we were taking out were otherwise ethnically, economically indistinguishable, we used the school district itself as criteria. If I adopt this definition I see no basis whatsoever for continuing to use the school district lines as opposed to
demographic information. So please explain to me how you conclude that we would consider the school district lines per se.

MS. HAUSER: Because, Mr. Huntwork, they came in as a group from that particular school district and they have both characteristics. They were a school district community and the reason they indicated that they should be recognized as a community of interest was not simply they were a school district but because of other criteria. The school district was their way of defining their boundary. It made them -- if you were to take Paradise Valley School District, for example, quite large and very diverse in population, they would not meet those kinds of criteria in coming forward, necessarily, in saying they shared a particular commonalty.

COMMISSIONER HUNTWORK: All I'm saying is to the extent we know a school district line doesn't represent a boundary between ethnic divisions or socioeconomic divisions, it's merely an arbitrary line within that community, how would we be able to continue using a school district line under this definition?

MS. HAUSER: Not to say in their district there aren't other people that share similar economic interests, those people are bound together and work together on those issues as part of their school
district. I mean it was a combination of things.

COMMISSIONER HUNTWORK: How does school

district come in?

COMMISSIONER MINKOFF: Can I try to weigh

in on that? I think I can tell you.

There are issues where a school district

would have legislative concerns. And that's the key to

what is here. They would benefit from common

representation. We have all kinds of things before the

Legislature now in terms of English as a second language,
bilingual education, how we fund it, AIMS testing applied
to certain districts having trouble coming up to those
levels. There are very many issues where a homogeneous
school district like the Isaac School District would have
very distinct issues that would be a legislative concern
and they'd want to be represented at the Legislature. A
larger, more diverse Scottsdale School District, even
larger has -- they may have not as concrete issues to
deal with at the Legislature, other than those things
common to all school districts, school district funding
and, you know, that kind of issue. But a school district
like Isaac, I think, very definitely would be a community
of interest. As a school district they would have issues
that benefit from common representation involving
educational issues.
COMMISSIONER HUNTWORK: People of similar socioeconomic status that happen to live on the other side of the line would not share those same concerns?

COMMISSIONER MINKOFF: Not if their school district -- the Isaac School District borders a school district that for the most part has a totally different socioeconomic makeup. But there are small pockets of people in that district who may be more similar demographically to the people in the Isaac School District.

No, their school district would not have the same issues before the Legislature, because they might have a very, very small number of students who have the issues prevalent in the Isaac School District. Therefore, on educational issues you would identify the Isaac School District as a community of interest. On other issues of interest to an ethnic minority or a socioeconomic class, you may identify an overlapping community of interest to have some of the same boundaries, not all the same boundaries. You might want to consider both of them, and you'd have competing communities of interest and have to decide where to draw the lines.

COMMISSIONER HUNTWORK: What I'm worried about is it seems to talk about the fact or defines the
group rather than being indicative of, if you will. And
so --

CHAIRMAN LYNN: Is that not the difference
between a definition and an example?

COMMISSIONER HUNTWORK: Not necessarily.

I just think that a school district, in my
mind, is indicative strongly. I'm having trouble with
the argument it actually defines the group. I'd
certainly like to be able to use it for the reason it's
strongly indicative. That's what my concern is.

The point -- it seems to me the point is --
the point is very precise. In particular, it's
indicative of a suggestion of affinitive.

COMMISSIONER MINKOFF: I think when we
define somebody as a member of a community of interest,
that's not exclusive. It doesn't mean they're not a
member of any other community of interest. We had a
Hispanic AUR. A Hispanic living in the Isaac School
District would be a member of both AURs. There may be
competing interests and similar. If we combine
overlapping interests, we'd know what we're dealing with
when defining these interests.

CHAIRMAN LYNN: Mr. Hall, do you have an
opinion on this issue?

MS. HAUSER: I don't think he's there.
CHAIRMAN LYNN: Mr. Hall?

COMMISSIONER MINKOFF: We lost him.

MR. ECHEVESTE: I'll patch him in again.

CHAIRMAN LYNN: Go ahead.

(Whereupon it was later discovered that.

the phone line which connected

Commissioner Hall broke at some point in

the discussion.)

CHAIRMAN LYNN: I don't know that we'll

settle this. There are only the three of us left with

Mr. Hall in and out in terms of his availability. I'd

like to begin with the proposed definition and see if

there is a compromise that could be constructed by

amending that proposed definition to reflect the points

of view that have been expressed. Short of that, the

only thing we can do is offer a totally separate one.

You could, if you want to try it.

COMMISSIONER MINKOFF: Mr. Chairman, I'm

comfortable with the definition as written because I

think it allows us to identify virtually all communities

of interest we've talked about during our deliberations

and also possibly to exclude others that came to us

begging to be considered that really didn't have any

legislative agenda, just a neighborhood that wanted to be

kept together, and maybe would help us exclude those.
COMMISSIONER HUNTWORK: That's another good example. Some of those people were -- had the strongest feelings of wanting to be kept together and they felt their neighborhood, if you came across throughout the state, their neighborhoods would be in jeopardy if they did not --

COMMISSIONER MINKOFF: If they can demonstrate to us a legislative agenda, I think we can consider them. If what they demonstrate is more of a municipal agenda, then they are a community of interest very appropriate to consider during a municipal redistricting but not necessarily during a legislative redistricting. You know, I think the burden falls on them to see if they can define themselves as having a Legislative or a Congressional commonalty of purpose. And if they do, then we should map them as a community of district. If they are a historic district that wants to be recognized by the City of Phoenix or City of Tucson, or whatever, I don't know that that requires being in the same Legislative District. It may require being in the same city council district.

CHAIRMAN LYNN: I have to tell you I'm pretty comfortable with the proposed definition as well. Because I don't think we can fully define it. I think we can generally define it. We still have to make
determinations as we're presented with information and
testimony and evidence and everything else. I think this
is broad enough and I think it's consistent enough with
what the court was asking for. I can certainly vote for
it.

Mr. Huntwork.

COMMISSIONER HUNTWORK: One much smaller
quibble with the definition. I have some concern about
the phrase "with common concerns about issues." I would
rather -- this is blinking like crazy, now it stopped. I
would rather define it in terms of -- something we
determine is effective common interest rather than people
that share the same views. This is taking more about
people who all vote the same way rather than people
reasonably concerned about the same issues. That's a
very minor quibble in the definition, but I would like to
focus more on the underlying interests of the group
rather than necessarily the homogeneity of how they would
vote. I suppose some of the best competitive districts
in the state may be a neighborhood in Central Tucson
where the people may be very similar demographically but
fall in different camps and disagree with each other.

CHAIRMAN LYNN: Ms. Hauser.

MS. HAUSER: Mr. Huntwork, what if the word
"common" was moved from where it is to right before
"issues" so it's: "With concerns about common issues."

They have the issue in common, but people within that area might have different points of view on it.

COMMISSIONER HUNTWORK: I think that would solve the problem that I'm focusing on.

CHAIRMAN LYNN: I'm fine with that change.

COMMISSIONER MINKOFF: I am, too.

CHAIRMAN LYNN: I don't have a motion.

COMMISSIONER MINKOFF: Would you like a motion?

CHAIRMAN LYNN: I'd love a motion.

COMMISSIONER MINKOFF: I propose adoption of slide 41 with the moving of the word common in line to just before the word issues.

CHAIRMAN LYNN: It's up to you to second it.

COMMISSIONER HUNTWORK: I could really be -- I'm actually going to vote against it because I think it's too narrow, but I'm, because of the position you've expressed, I'll second it so it can come up for a vote.

CHAIRMAN LYNN: Thank you.

It's been moved and seconded to accept this definition with the proposed amendment.

Is there further discussion on the motion?
I need a ruling, need a parliamentary ruling. I don't know how to ask it other than -- because we're here at this juncture. Is it the case that a majority of the Commission is a majority of those members present or is it an absolute majority of the Commission? Because we're about to take a vote with three members. Is two to one enough to pass a motion? That's my question.

MS. HAUSER: I think it is.

MR. RIVERA: We actually did some research about two years ago, and the research was, you did on the subcommittee, the subcommittee had to a majority of, but could without in the committee.

CHAIRMAN LYNN: Subcommittee did but the committee did not.

Understanding we may need to revisit this for reratification with other Commissioners present.

MR. RIVERA: We can do more research on it later.

CHAIRMAN LYNN: Any more --

COMMISSIONER HUNTWORK: Mr. Chairman, I know how difficult all this is to begin with. With the continuing protest we're acting under, I am going to -- I'll change what I said and vote in favor of the motion so we may move on.
CHAIRMAN LYNN: I'm very appreciative of
that perspective and point of view.

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

COMMISSIONER MINKOFF: "Aye."

COMMISSIONER HUNTWORK: "Aye."

CHAIRMAN LYNN: The Chair votes "Aye."

Motion carries and is so ordered.

CHAIRMAN LYNN: Okay or break?

THE REPORTER: A break would be nice.

CHAIRMAN LYNN: Let's try to establish
contact with Mr. Hall. Try to keep the break to 15
minutes, standard break.

(Recess taken at 5:12 p.m.)

CHAIRMAN LYNN: The Commission will
reconvene.

For the record, Commissioners present are
Mr. Huntwork, Ms. Minkoff, Chairman Lynn, and we are
missing Mr. Hall and Mr. Elder this evening. My guess is
that for the balance of the evening we will be without
the other two Commissioners. That's my guess. But
without objection, we will try to finish the agenda this
evening.

To that end, also without objection, I
would also like to take one call to the public slip I
have. I know it's in the middle of something we're doing. In deference to Mr. Wake who has been here for a considerable amount of time -- and I don't know whether it's appropriate -- I guess it would be Judge Designate Wake at this time, not quite Your Honor but close, Neil Wake representing Arizonans for Fair and Legal Redistricting.

Mr. Wake.

MR. WAKE: I hope "close" is the right word.

I want to thank you, Mr. Chairman, for letting me speak. I was not able to be here this morning because of other obligations I simply a could not avoid. Because I was not here, I risk repeating things. If I do, I apologize in advance. I want to make just a few points. I hope I will been done in 10 minutes or less. First, I appreciate the observations I've heard today, everything being done by the Commission is under protest, not voluntarily, plus would not moot the appeal or pending motions for stay. Indeed, I note in the same respect as I read Proposition 106, the Commission lacks authority to change a plan once adopted unless, of course, adopted by a court.

I believe the Commission could not voluntarily change the adopted plan. It is only by
A few comments. I understood that there were comments this morning by Mr. Eckstein that the Commission has to go back to the Superior Court to get leave to extend the March 5th deadline. I don't know if I heard that right. It was reported to me. I wanted to suggest in my view virtually everything the Court, Commission would do, is contrary to the law. That's beside the point if the court ordered it. Commission's duty is to comply with that unless and until overturned by a higher court, noncompliance with 30-day provisions of 106, just one of many things the court has not complied with, therefore, I submit the Commission's duty is to do the best job it can in good faith and still have a plan by March the 5th if the stay has not been granted and that means doing the deliberate job as it appears you are with the maximum time to study, deliberate, come up with the best plan within the constraints of the unlawful order and to give the maximum time for the public to comment. That doesn't require going back to the court to extend the March 5th date.

Now, the -- we may have, a week from today, a ruling from the Court of Appeals on the stay motions. In the meantime, I submit the Commission should be doing
the best job it can. But if the stay is granted, that
should be the end of these proceedings. At that time,
the Commission could come up with an alternate map in
compliance with the order, have at least two weeks' time
for public comment, time for another hearing at which
substantial public comment will be perceived on whatever
might be promulgated, and in that way do the best
possible job.

I would point out that, I don't know if
this has been observed to the Commission, whatever is
done here has virtually no process for being implemented
for the 2004 election, notwithstanding optimism expressed
in Judge Fields' order. The reason is this process
itself probably requires preclearance.

This Commission is probably violating
Section Five of the Voting Rights Act now. Of course you
must do so, must comply with the order until and unless
overturned, that's undisputed. If a new map is adopted,
that must be precleared before it could be implemented is
undisputed. Indeed, Mr. Eckstein acknowledges this in
filings with the Supreme Court last week. No plan that
may be adopted here will even be considered for
 preclearance until after affirmed on appeal. Therefore,
if one plays out the time frame, it is just simply
impossible to adopt a plan, have it reviewed and affirmed
on appeal, have it submitted to Department of Justice, and even at an enormously optimistic speed have it implemented in time for May, all of which suggests the Commission is on the right track, doing the best job it can within the time it has in obedience with the order; but still, I submit, no chance that it can be implemented. So the Commission should do the best job it can, not worry about artificial time limits within the March 5 deadline.

Now, the -- we submit, of course, there are very serious errors in the order that you are complying with now. The order of some 50 pages is in every respect, except for perhaps half a dozen, word for word what the plan the Coalition submitted. This is legally significant. Appellate courts in many jurisdictions when a trial judge adopts extensive findings proposed by a party, they are not supposed to do that. An appellate court will look especially carefully at that. We believe that will happen here. That contributes to the reasonable prospect of a stay.

I want to just offer a few comments on the discussion I have heard here today.

First, as to the definition of political competitiveness, I respectfully submit when the Commission labors with this further, further scrutiny
needs to be taken to the JudgeIt seven percent issue. There was substantial evidence in the trial first of all the Chairman's recollection, Mr. Huntwork's recollection of what happened before is correct, the Commission never adopted a single measure of competitiveness. Indeed, Dr. McDonald testified that his rule of thumb of JudgeIt seven percent was never adopted by the Commission. It was one of a number of factors that the Commission considered, and, indeed, he acknowledged that there are nonquantifiable data, that private data or things that are not subject to statistics relative to competitiveness, all of which should be considered, and this Commission did that the last time. Ultimately the question of whether JudgeIt at a seven percent range should be adopted as a measure should be looked at in terms of its predictive value. This was an attempt to make prediction of what will be competitive races.

If I may, I would like to leave with the Commission an Exhibit we prepared at, offered in the trial, simply a compilation of data otherwise prepared. We took the JudgeIt seven percent measure of predicting competitive races and we applied them to the 2002 race. And what we found is that Dr. McDonald predicted that there were only four competitive districts. But when we measured them against the actual races we found that
there were 10 districts that had clearly competitive
races, either that they elected a mixed delegation to the
Legislature or they had an actual race which was within a
five percent range. No one can dispute that's a
competitive race. If one extends more than 10
competitive races, not more. Same for AQD. It predicts
five competitive races. There were at least 10. If you
expand further, it was more.

Now, the last time the Commission was doing
its task it could only look at the past and predict the
future. We now have the acid test of the value of that
predictive measure. Again, I'd like to leave that with
you.

What that means is your experience the last
time, which was that there is no one conclusive measure,
no one major measure, no one objective measure, there are
a variety of statistical mathematical analyses, there is
a lot of data that you cannot measure, and that you have
a responsibility to judge competitiveness in light of all
that data.

Now I would ask the Commission, I know
you've already voted on this, but when you come back I'd
ask you to think again about the observations,
Commissioner Lynn said it well, that there are in fact
more competitive districts than that one measure and the
Court did not require the Commission to adopt that or anything else. What the court said was that it inferred, notwithstanding the denials from Dr. McDonald, that the Commission had in fact made seven percent JudgeIt its measure of competitiveness. Of course you looked at that, gave that weight, never made that the measure. He inferred because you did that, you have to do that for everything else. But elsewhere in his order he very clearly said it's up to you to decide what the measure is.

I would respectfully submit that the court was not saying that JudgeIt had any mathematical measure that was required. He was not telegraphing he would reject any other measure. He was saying explicitly no in direction, that it's up to this Commission to adopt a measure to apply consistently. I'd hope the Commission do that as you continue with this process.

A few other comments.

I do have a comment on equality, equality in the population measure in Prop 106 itself. Deviation in that is not a proper measure of political competitiveness. Significant detriment to equality is any detriment. We know that from Congressional criterion. The same language applies to Congressional and competitive. You know equal Congressional Districts.
You've done it. On Voting Rights Act issues, you had lot
of debate on this, but the -- I submit substantial
representation criterion from the Georgia case that the
court found somehow was read into the year 2000
proposition when Georgia wasn't handed down until three
years later. Obviously we will discuss that with the
appellate courts, but as I read Georgia, it has to do
with the protected community expressing a wish for the
substantive representation as opposed to the old form.
Now, I don't know what you will hear if you give the
minority community the opportunity to be heard. But I do
know at the trial we concluded the Mexican-American Legal
Defense Fund, a strong voice for political interests of
Hispanics throughout the Southwest, came down squarely in
favor of old measure, not for substantive measure. Those
are things that merit consideration.

And one final thought and then I'll thank
you for your patience. The significant detriment issue I
think you are on track with. The concept that I know
Commissioner Huntwork expressed is -- used words
materiality, substantiality. Law frequently used words
substantial versus insubstantial, material versus
immaterial. Those are synonyms. Anything that has the
effect that counts or matters for the purpose in
question. That -- it is a low threshold. There is
nothing in this court's order that requires the
Commission to drop the standard to tolerate any degree of
any detriment to another goal that could be observed and
that could matter. I think you are on the right track in
that definition.

Thank you very much for hearing me.

Again, I apologize I could not be here in
the morning.

CHAIRMAN LYNN: Thank you, Mr. Wake.

Any comments or questions for Mr. Wake?

COMMISSIONER HUNTWORK: I'd like to ask

Mr. Wake: You said something about what our obligation
would be if the trial court order is stayed. I believe
you said we would be obligated at that point to
discontinue all activities in absence of a valid, binding
trial court order. It's your position we don't have
authority to do anything.

MR. WAKE: That's precisely our position
about the law. Exactly, Mr. Huntwork.

COMMISSIONER HUNTWORK: Thank you.

CHAIRMAN LYNN: Comments or questions?

All right. Thank you.

Without objection, another member of the
public wishes to be heard. Without objection, we'll
listen to David Cantelme representing the City of
Mr. Cantelme.

MR. CANTELME: Thank you, Mr. Chairman, Members of the Commission.

David Cantelme, Jennings, Strouss and Salmon, representing the City of Flagstaff.

I appreciate the efforts the Commission is making, thank you for the time you are spending on it, and the diligence with which you are approaching your task.

We would strongly urge the Commission that the -- to use the definitions adopted, apply them equally around the state. You have done that using your definition of community of interest. We recommend and strongly urge you take testimony, consider the evidence, and find the facts where communities of interest exist around the state, what their boundaries are. And when you do so, we believe that Flagstaff, the evidence and facts will show, will establish that the city, and its environs, make a community of interest. By its environs, we will define that as the Flagstaff metropolitan planning organization boundaries, which is roughly about 10 miles around the city limits. We believe that the commonalities between Flagstaff and it's environs and education, environment, economic development, law
enforcement, transportation, health and forests, the
University community, zoning and land use, and all other
local interests make a community of interest under your
definition between Flagstaff and its environs. We also
believe that Judge Fields' order indicates, and the
proposition indicates, that you should not split a
community of interest where it is possible not to do so.
That doesn't mean the Legislative District must be
homogeneous. You can have a collection of communities of
interest within a Legislative District. It's our
position that unless you have to split a community of
interest to satisfy any other requirements of the
constitution of Arizona or the United States you should
not do so. We believe that applying the Commission's
criteria, Flagstaff itself will come forward with a plan
that will demonstrate how a map can be drawn to maximize
competitiveness, respect communities of interest,
properly recognized under your definition, and complying
with all other criteria.

Thank you, Mr. Chairman, Members of the
Commission.

CHAIRMAN LYNN: Thank you, Mr. Cantelme.

Any comments or questions from the
Commission?

Mr. Huntwork?
COMMISSIONER HUNTWORK: Mr. Cantelme, what school districts are there in Flagstaff and do they comprise the area you are referring to or is it divided between school districts?

MR. CANTELME: I believe primarily Flagstaff District and --

Second one?

MAYOR DONALDSON: Parks School District.

COMMISSIONER HUNTWORK: Can you provide us with definitions?

MR. CANTELME: Sure.

MR. WAKE: Can I submit this Exhibit?

CHAIRMAN LYNN: Absolutely.

Other members of the public?

We'll have another time at the end of the evening. We're going to try to finish this evening. Really, another meeting tomorrow is not practicable to any extent.

Dr. Adams.

DR. ADAMS: Mr. Chairman, Members of the Commission, the next definition with which we are proposing to deal is geographically compact.

CHAIRMAN LYNN: Dr. Adams, before you go into that, Mr. Huntwork one second.

COMMISSIONER HUNTWORK: I apologize,
Dr. Adams. What I wanted to call attention to is what we defined I believe was the term community of interest. Before we move away from it, I'd like to call attention to the phrase "respect communities of interest." I believe the Court had a good amount of language in its order that was directed specifically toward what it means to respect communities of interest. This is language we looked at earlier about putting a single community and single district, if possible, and so on. I think for purposes of our current proceedings, and under veil of protest, as always, I think we should adopt those standards as the definition of respecting communities of interest.

I'll make the motion.

CHAIRMAN LYNN: Please restate your motion, for the record.

COMMISSIONER HUNTWORK: Well, if I can find the direct publisher, I can get this more formally. I would refer to bubble 40 on page 10 of the material that was handed out. And I would suggest that we basically take the first two quotations in and cite that as the definition of respecting communities of interest.

COMMISSIONER MINKOFF: Mr. Chairman, I don't have any problem with what is in there, cited by
the court. We obviously have to comply with that. I
don't understand how that is a definition of respecting
communities of interest.

COMMISSIONER HUNTWORK: My thought is that
we have, we've gone to a lot of trouble to specifically
define what we mean by community of interest, but we
haven't defined what we will do with that definition.
Here is the court's order telling us how we are to handle
communities of interest. I merely want to -- this is a
term which gives substance to one of the terms in the
act.

COMMISSIONER MINKOFF: Okay. I may have a
problem with it. We've also talked about the term to the
extent practicable as applying to all of the criteria.
And looking at this where it says limited by Proposition
106 to include placing the entire community within the
boundaries of a Legislative District, it seems if we
adopt this that means we can never split a community of
interest. And I don't think that we're going to be able
to come up with an acceptable map if we never split a
community of interest. There are competing communities
of interest, there are overlapping communities of
interest. You know, if we, for instance, accept
Flagstaff's definition of their community of interest,
which is not what is currently represented by their
1 Legislative District, and adopt that as a part of a
2 legislative -- as a community of interest which impacts
3 that Legislative District, that has a ripple effect
4 through the entire map of rural Arizona that is going to
5 require us to split other communities of interest. You
6 can't respect them all a hundred percent. And if we
7 adopt this, it seems to me that we cannot split, ever, a
8 community of interest because it says we have to place
9 the entire community within the boundaries of a
10 Legislative District. We can't do that.
11
12 CHAIRMAN LYNN: Ms. Hauser.
13
14 MS. HAUSER: Mr. Chairman, Ms. Minkoff, are
15 you saying you view these as limitations on our ability
16 to respect communities of interest, qualifiers, if you
17 will, rather than a definition of respecting? They are
18 the court's limitations or constraints on how we may
19 respect communities of interest but that they don't
20 necessarily equal respecting communities of interest.
21 That's what I'm understanding you to say. Is that right?
22
23 No?
24
25 COMMISSIONER HUNTWORK: Mr. Chairman.
26
27 CHAIRMAN LYNN: Mr. Huntwork.
28
29 COMMISSIONER HUNTWORK: This phrase is only
30 part of what we are required to do. I just wanted to
31 define all the terms of the phrase. We have defined
"community of interest." We have also defined "to the extent practicable." I'm not taking that out. It's just that clearly, what the court has done is direct us how we are to define the concept of respecting communities of interest. And I thought that it would be useful to incorporate that into a definition. I would simply say even if we don't, that we are going to be bound and we're going to have to follow this language, but --

CHAIRMAN LYNN: I think the difficulty is adopting it into a definition, not that we're not going to have to follow it. It's clear the court is telling us that this, the application of this standard is requisite.

COMMISSIONER HUNTWORK: Right. I'm wondering, maybe if counsel tells us maybe we don't have to define all the terms we're using, maybe this is one we don't have to define, since one is readily available and the court did tell us to define all the terms, maybe more fully in compliance with the court order to define this term than leave it undefined even though it is our intent to comply fully. But if counsel advises us that it's not necessary to define this particular term, as long as we're aware of the constraints ordered by the court, I'd certainly be satisfied with that advice.

MS. HAUSER: Clearly, if you find a term to be, given what the court has said, needing a definition,
then you are certainly free to do so, free to define a
term. I certainly don't think that the court meant to
say that every term in the Constitution needs to be
defined. And the court has given you instruction with --

COMMISSIONER HUNTWORK: If it's your advice
we don't have to define this, I don't want to. I only
want to do what is necessary to comply.

MS. HAUSER: I'd seek Jose's conference.

I don't think you need to define "respect."

MR. RIVERA: That's a nod. Affirmative.

CHAIRMAN LYNN: Thank you.

Dr. Adams.

DR. ADAMS: Mr. Chairman, Members of the
Commission, now turn to geographically compact.

Here is an academic definition of
compactness, "Compactness, at a simple, intuitive level
conforms to a standard dictionary definition: "A figure
is compact if it is packed into a relatively small space
or its parts are closely packed together," by American
Heritage Dictionary definition.

By way of contrast, "A figure is not
compact to the degree that it is spread out." That comes
to us by an article by Niemi, Grofman, Carlucci and
Hofeller.

There are a number of definitions cited in
The visual test, the simplest of all the
tests, simply uses the eye and intuition.

The Roeck test, find the smallest circle
containing the district and take the ration of the
district's area to that of the circle.

There is the Schwartzberg test, construct
the adjusted perimeter of the district by connecting by
straight lines those points on the district boundary
where three or more constituent units, i.e. Census
tracts, from any district meet. Divide the length of the
adjusted perimeter by the perimeter of a circle with area
equal to that of a district.

A couple more definitions: Perimeter test,
find the sum of the perimeters of all the districts. The
shorter the total perimeter, the more compact the
districting plan.

Just to point out, this is looking at a
plan, a whole plan, rather than looking at individual
districts; although if looking at an urban area you could
probably use it in urban area, couldn't compare urban and
rural areas.

Polsby-Popper test computes the ratio of
the district area to the area of a circle with the same
perimeter.
Population polygon. Ratio of district population to the approximate population of the convex hull of the district, minimum convex polygon which completely contains the district.

Population circle, the ratio of the district population to the approximate population of the minimum enclosing circle of the district.

And Ehrenburg, the region of the largest inscribed circle divided by the area of the district.

Some of these are perimeter tests, some are area tests, some are population based tests. The important thing to note is all of these tests are, indeed, available in Maptitude.

To continue, I just thought this might be an interesting quote. For all the tests cited, just to let you know, for all the tests cited in the previous slides except for the perimeter test, the measure is always between zero and one, with one being the most compact. So the quote from the Young article, "The idea has sometimes been advanced that a district with a Roeck measure of less than .4 should be deemed noncompact and rejected," Hacker 1963. "It would be impossible to divide a hexagon into three equal-sized districts without violating the .4 threshold. Roeck himself cautioned against the use of thresholds."
Now I'm not sure what this says about the Pomona College education that Mr. Eckstein and I share, but I am going to turn to Mr. Johnson who has rather more technical knowledge of this than I do to talk about these next slides.

MR. JOHNSON: Then one thing we wanted to do was take abstract academic definitions and show you some examples of districts and what those lines result in for the measurements. For these examples I should, to avoid which controversy over which map, or whatever, these are 1990s we're using as examples, just to give you a sense of what the numbers mean.

You see a district here, perimeter over 1,200, population polygon .17, .10, .19, sense what that shape gives you. Notice as you go through these, take those districts, pick ones, essentially .1 step up, Polsby-Popper. So the second example, Polsby-Popper .12, .19, see how other numbers change as well. Third example, now getting up to Polsby-Popper .13. See the distinct difference in this district and the original one?

CHAIRMAN LYNN: I want to be clear on something Mr. Johnson, as comparing example one to sample two, using Polsby-Popper, one would construe sample two as twice as compact as is -- as sample one. Is that
accurate, on the scale?

MR. JOHNSON: The score is twice as high.

Don't know if it's a linear scale.

CHAIRMAN LYNN: Okay. That is not necessarily correct reasoning. One could construe that it is more compact.

MR. JOHNSON: By that measurement, yes.

CHAIRMAN LYNN: I want to point out the same comparison, sample one and two, population polygon, it is less compact.

MR. JOHNSON: Yes.

CHAIRMAN LYNN: Those are at odds.

MR. JOHNSON: Yes.

CHAIRMAN LYNN: Thank you.

So, going to District 4, this is giving Polsby-Popper .40, see perimeter and other scores there.

Finally the final example, District 5, Polsby-Popper, now we're up to point is a .61.

Now summarizing, puts all sample scores together except perimeter one. See exactly, Mr. Chairman, what referring to, Polsby-Popper, population polygon drops down then goes up. So measurements, because measuring different things, different characteristics of a district, you can get different results.
Oh, yes, that is the last of the compactness slides.

MS. HAUSER: Mr. Chairman, a question for Doug. Is one of these easier to implement in Maptitude?

MR. JOHNSON: Perimeter and Polsby-Popper as seen before can be run in seconds, is extremely fast for population. Polygon population, a circle, both take 10, 15 minutes to run. Take a pause, take a break, and run. Perimeter and Polsby-Popper are the easiest to run.

COMMISSIONER MINKOFF: Perimeter and Polsby-Popper?

MR. JOHNSON: Yes.

CHAIRMAN LYNN: In terms of definition and discussions, if I'm not mistaken, when discussing the perimeter test, the indication was that perimeter test could be run not only on a district but on a plan or solely on a plan?

MR. JOHNSON: You could run that on just a district, if you wanted to, but typically it's run on a whole plan and give you district whole scores.

CHAIRMAN LYNN: Polsby-Popper test is run only on a district-by-district basis?

MR. JOHNSON: It also gives you district-by-district scores. It does sum and average scores for you.
CHAIRMAN LYNN: If we wanted to use the Polsby-Popper test on a plan, entire plan, run it and have both a district-by-district score on compactness but also have a plan score?

MR. JOHNSON: Yes.

CHAIRMAN LYNN: Ms. Minkoff.

COMMISSIONER MINKOFF: Okay. I don't understand how the perimeter test works on a single district. I can understand how it would work on an entire plan. You have 30 districts, plan A, plan B, and if one of them has shorter perimeters, then it's more compact. If you take an individual district, it might have a very sparsely populated rural district. A complete square makes it extremely compact but will have a very large perimeter. How do you use that on an individual district?

MR. JOHNSON: It's a good point. You can only use it as a comparison to another version of a district in that same area. You are right, just looking at this district as this perimeter without that context in comparison to another district doesn't tell you anything.

COMMISSIONER MINKOFF: If the other district is a sufficient issue, that entry is different in terms of the geographic area that it covers, then you
really have a meaningless comparison. I don't understand how we can use the perimeter test district by district.

MR. JOHNSON: The only place you can use it would be looking at a district in the same geographic area.

COMMISSIONER MINKOFF: If looking at a district saying how can we make this more compact and it's essentially the same district by evening out the lines, or something like that, I see you can use it. The kind of thing we're doing I don't think is that approach. We're not going to try to look at a snake and tweak it to make it more compact. We have a whole bunch of competing criteria.

I'd feel real uncomfortable using that one.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Okay. I was thinking exactly the opposite. Bear with me here. I'm sure we'll hammer this out.

MR. RIVERA: We only have three people, remember.

COMMISSIONER HUNTWORK: Number one, it's intuitively obvious. The perimeter test is intuitively obvious, a lot easier just as a nonstatistician, whatever, to understand the perimeter test, very well understand two districts side by side, both square, if
for some reason you want to extend one up here, this one
down here, they're not as compact. You've affected
compactness of each district, both districts. I also
understand that, you know, as we make changes in two,
three, four districts, that it becomes a mapwide test
because you could easily make a couple of those districts
less compact but all of them together could be more
compact than the way it started. To me, that's obviously
what we should be trying to do. I also think that it is
obviously more compatible with the idea of the grid. I
don't mean to oversimplify this, but the drafters of Prop
106 wanted us to start with the grid. Now correct me if
I'm wrong, but although a circle is the most compact
individual district, a group of squares is the most
compact total district, because the perimeter of -- the
perimeter of a square is the minimum perimeter for any
four-sided figure, right?

MR. JOHNSON: It's a pretty good rule of
thumb, yes.

COMMISSIONER HUNTWORK: It is. I can do
the math if you want me to. A rectangle is more compact
than the rombos, and so on, triangles. Maybe you can
tile the state with triangles. We said a grid is a
square. We eliminated triangles, and stars, and all
those crazy mappings of tiles from mihrab mosques, things
they used to spend time figuring out how to do before.

The perimeter test is kind of -- seems like
the one all this is pulling to, if we're going to pick
one test. Also seems to me maybe considering all the
different things we have to weigh, and -- that we maybe
should allow ourselves the flexibility of viewing our
maps and using a number of different criteria. And as
long as what we come up with is reasonably compact under
one of the criteria that is readily available to us, and
that is widely accepted in the scholarly literature, that
perhaps it would be better to have several rather than
just one. So, in other words, if we're going to pick
one, I'd say it's this perimeter test. But I guess I
would prefer to pick several and be able to run it that
way and then see if we've really done violence to the
concept.

CHAIRMAN LYNN: Given the practical
constraints of time as we move through this process,
Mr. Johnson has already given us information that suggest
both perimeter test and Polsby-Popper are rather
instantaneously known through the software. Others take
more time to evaluate. Would it be a reasonable
compromise of those positions that we run both tests on
all maps we might develop and use those standards both
for comparison purposes?
COMMISSIONER HUNTWORK: Absolutely. I agree with that, Mr. Chairman. And I will make a motion to that effect here momentarily. But I would -- Okay, I'll do it now.

COMMISSIONER MINKOFF: I'll second.

COMMISSIONER HUNTWORK: So moved.

CHAIRMAN LYNN: Moved and seconded.

Mr. Huntwork.

COMMISSIONER HUNTWORK: The point I want to bring out is we use the results as guidance, that is because they produce inconsistent results, we would need to have our actions justified by one or the other tests but not necessarily by both of these tests.

CHAIRMAN LYNN: Ms. Minkoff.

COMMISSIONER MINKOFF: Mr. Chairman, I infinitely support the point you are making, however, I run into trouble if we justify creation of one district because of measurement of the perimeter test and another on measurement of Polsby-Popper. At some point we need to apply consistent standards to the whole map. I just suggest because I won't be here when you are doing it that rather than justify creation of a district because it is more compact under one of the measures that you examine the entire map by both standards and then say either that both of these alternatives are essentially as
compact or that this one is significantly more compact
than the other and you may decide to go with the other
one anyway because of certain other criteria that it is
not so much less compact as to justify violating some of
the things that the second map achieves.

COMMISSIONER HUNTWORK: Well, I -- I think
what you are saying, just bear with me, if I understand
you, the real test, if you are just affecting two
districts next to each other, you don't have to test the
whole map to see what effect you are having on
compactness. But ultimately what we're trying to achieve
is compactness of the entire map, not specifically of an
individual district. If we create a beautiful, compact
district and sacrifice five others to increase total
compactness of the map, we're not doing our job, we've
violated the criteria. That's a separate point and maybe
one we should focus on approving separately from the --

CHAIRMAN LYNN: Your choice, separate or
included. It's on the same issue.

COMMISSIONER HUNTWORK: Okay. I would like
to propose a change in my motion to indicate we will
consider both of these, use both of these tests in order
to consider the, primarily the compactness of the map as
a whole where any action that we are taking affects more
than two contiguous districts.
CHAIRMAN LYNN: Is that acceptable to the second?

COMMISSIONER MINKOFF: Well, let me just ask our attorneys. I don't have a problem with it, but I'm concerned that you may take District A and District B and decide that based on the perimeter test that a certain map is more compact, and then District C and District D, and look at Polsby-Popper for those two. I think we might run into problems. If counsel says we won't, then I don't have a problem.

MS. HAUSER: Well --

CHAIRMAN LYNN: Ms. Hauser.

MS. HAUSER: I'm not sure this is even responsive to your question. I've been sitting here puzzling over the fact that what we're going to be looking at is not just compliance with the geographical compactness criteria but significant detriment to it, and that's going to be more of a by district thing by map kind of question, isn't it?

COMMISSIONER HUNTWORK: Compactness by district?

MS. HAUSER: Significant detriment to the competitive -- you know, if you are looking at competitiveness, which is where significant detriment comes up. I'm trying to think of the places you are
going to be dealing with this particular definition. Significant detriment to this criteria is something that I'm just questioning whether or not you are going to be getting to that question in terms of a map as a whole or, as you know, with a lot of the other criteria, with respect to individual districts. So I'm a little concerned about trying to make that work.

COMMISSIONER HUNTWORK: I was trying to address the fact we'll undoubtedly do both. As we do fine-tuning in the past we have always said where we can trade this area from this area, swap two districts or three-way swap, three districts, without affecting the rest of the map. But before you get to that level of detail you make some very, you make some big picture decisions to get you down to that point. So we will be doing different things at different times in the process. I do think it would be a complete miscarriage of this, I think, if we end up with a map completely noncompact but have created a few districts we looked at closely that are very, very compact. I mean that would be -- that's not what Prop 106 is all about. I think we have to do different things at different stages or even simultaneous.

CHAIRMAN LYNN: I think your motion as refined allows for both.
COMMISSIONER HUNTWORK: It was intended to.

COMMISSIONER MINKOFF: I think we have to be very, very concerned, it was very clear in the court's decision we apply consistent standards throughout the map. And if we're using two tests, I think we have to look at both of them every time we look at either the whole map or other districts, otherwise we're not doing what the court told us to in applying consistent standards throughout the whole map. It's almost like trying to measure competitiveness. District 1 is competitive by JudgeIt, District 2 wasn't competitive by JudgeIt, but was by AQD, JudgeIt by one, AQD for the other, registration for a third, come up with a whole bunch of competitive districts, not applying consistent standards.

COMMISSIONER HUNTWORK: Let me ask this question of you or possibly counsel, too, or the consultants. If we were to, let's say, get down to the point of weighing other factors against compactness, determine what is to the extent practicable, and we find, use both tests and find in one case, in order to make districts more competitive, or preserve communities of interest, or anything else, that we have, still have districts very compact by the perimeter test, in another case we find we have districts very compact in
COMMISSIONER MINKOFF: District wide?

COMMISSIONER HUNTWORK: Final configuration, two districts here, create this swap, create more districts, perimeter test, Polsby-Popper, North Central Phoenix, North Tucson, do the same thing, flunks Polsby-Popper, just fine by perimeter, what I was thinking was that we adopt a standard that specifically says we can do that if we don't -- if it passes one of these two tests, it doesn't have to pass both of them.

COMMISSIONER MINKOFF: I don't think it has to pass either one. I think it's something you look at and weigh along with all other things. We have said we can make changes as long as it's not to the significant detriment. What I would do is I'd look at those districts under both standards, if we're going to use both standards.

COMMISSIONER HUNTWORK: Right.

COMMISSIONER MINKOFF: Take them both into consideration and say that we do not believe that it does significant detriment and we believe creating a competitive district is a strong enough reason to affect the compactness of the district in a way that is not significant detriment.

COMMISSIONER HUNTWORK: I think we're both
saying the same thing. I want to be clear, though, because the tests can produce opposite results, we may end up using one test, making one decision, and using the other test and making another decision. My point would be that if we say in advance that we're going to do that, is that an inconsistency? What we've said is these are both tests recognized in the industry. If the compactness of the district is demonstrated by either one of these tests, we have the right to consider it to be a compact district even though the other district might not -- other test might not consider it to be as compact.

Do you see -- it's really a philosophical problem with that. Not saying apply one test over the other, not apply a test not widely recognized in the industry. Just saying we can do something to achieve one of the other goals that still passes one of these two tests, that our standard is that we haven't violated compactness.

COMMISSIONER MINKOFF: But I think we'll get hung on consistency. What I'd do is look at the map, look at both of the tests, say in our opinion there is a legitimate reason for the impact on compactness which is to create a competitive district with respect to community of interest, or equal population, whatever it is, voting rights issue. I would strongly urge you to be
consistent throughout the whole map and not pick and
choose the test that gives you the result you want. I
think that will lead to trouble when somebody else is
looking at the map.

CHAIRMAN LYNN: I think that is -- the
matter of definition is one thing, matter of application
is another thing. The matter of definition is at hand,
application as we move forward with mapping.
Notwithstanding the hypothetical adoption of the
standard, the motion goes to that standard. In this
instance, run both tests on both districts and maps to
give us a sense of the compactness of those districts
and/or maps and then we will determine, based on our
other definitions, whether or not that change, that
shift, has created a significant detriment. And to do
otherwise at this point is beginning to down a road with
an indeterminable number of hypotheticals.

COMMISSIONER HUNTWORK: I believe
Commissioner Minkoff put her finger on an important issue
inherent used on a decision used with two tests. I was
trying to see if there was way to resolve that tension.
The argument she is making to admonish us really is not,

in fact, unless both tests support what we're doing. And
to me that is a counterproductive result. I'd rather
select one test so that we did not face the prospect of
inconsistent application.

    CHAIRMAN LYNN: Let me just clarify
something.

Mr. Johnson, it's been asserted that the
perimeter test and Polsby-Popper could offer differing
results against the same district or same plan test, that
is to say that in comparing two districts, and if you ran
both tests, one could have a positive effect, positive
meaning more compact, and the other test could indicate a
negative effect, being less compact. Is that possible?

    MR. JOHNSON: Between those two tests, I
haven't looked into it in detail, but I believe that
would be true, depending how laid out, as you move from
square to circle.

    CHAIRMAN LYNN: If that is the case, if
Commissioner Minkoff is correct, the application of those
needs to be consistent. I believe she is correct.
Perhaps Mr. Huntwork's conclusion is correct, we had best
pick one, use it and apply it across the entire process.

    COMMISSIONER HUNTWORK: That's the
conclusion I draw.

    COMMISSIONER MINKOFF: Mr. Chairman,
looking at the sample districts provided for us, looking
at sample one, sample two, those are two districts I
don't think anybody would say are terribly compact.
District 2 is more compact under Polsby-Popper, less compact under perimeter. I submit the reason it is less compact, look at the area it's covering. There aren't any people up there. It's an enormous district. I'm not sure if district by district perimeter really gives you anything. It may for the entire map, but I'm not sure district for district.

CHAIRMAN LYNN: I think it suggests, where we're going next, the motion on floor, which the two of you created. The two of you withdraw it.

COMMISSIONER HUNTWORK: I'd like to withdraw it.

COMMISSIONER MINKOFF: I withdraw the second.

CHAIRMAN LYNN: That clears the way. Point well-taken. Particularly where dealing with a state with enormous differences in population density in an area, the perimeter test is misleading.

COMMISSIONER HUNTWORK: How so?

CHAIRMAN LYNN: When you get into a rural area that must have, for equal population purposes, a tremendous amount of area to deal with, the only legitimate comparison it seems you can make is other rural districts, in terms of compactness, using the perimeter test, because by definition an urban district
with highly dense population will have a significantly lower perimeter score than a rural district with less density.

COMMISSIONER HUNTWORK: But,

Mr. Chairman --

CHAIRMAN LYNN: If making a population change, not rural to rural but rural to urban, as these districts come into the urban areas, you are going to run into problems in terms of a definition of whether the -- those districts and then perhaps the map is affected negatively by that exchange. Seems to me we ought to go to Polsby-Popper, it ought to be the sole determinant on the districts and maps we test. That's my suggestion.

COMMISSIONER MINKOFF: So moved.

CHAIRMAN LYNN: It's been moved.

Is there a second?

COMMISSIONER HUNTWORK: I would like to discuss this a little further.

COMMISSIONER MINKOFF: Second then --

COMMISSIONER HUNTWORK: No. If I do, it's up to a vote.

CHAIRMAN LYNN: We'll discuss --

COMMISSIONER HUNTWORK: Here the Chairman already expressed his opinion.

CHAIRMAN LYNN: You have all the power. We
have a determination in terms of needing three
affirmative votes on any issue. So unless the three
agree on anything --

MS. HAUSER: If three don't agree, no legal
action is taken.

COMMISSIONER HUNTWORK: Okay, fine.

Second.

CHAIRMAN LYNN: Moved and seconded to adopt
Polsby-Popper apply equally on both district maps.

Mr. Huntwork.

COMMISSIONER HUNTWORK: Okay. While the
point you make at the first level, at the first cut you
made is correct, if you look one step deeper, I believe
the point disappears all together. In any district,
anywhere in the state, when you apply either criteria,
you don't compare that district to another district. You
have to create another district before you can compare.
Then you can say this district is -- you still have to
choose which district you are comparing it to. And your
concern about having large districts in rural areas,
that's true no matter what measure we apply. The
perimeter test when it is applied to two districts side
by side still does tell you something. That is two
districts you are moving things back and forth between
will still tell you something. And when you apply it to
the map as a whole it will absolutely tell you something.

I just disagree that there is anything that Polsby-Popper tells you that the perimeter test does not tell you.

CHAIRMAN LYNN: Are you, therefore, recommending we choose the perimeter test and apply it?

COMMISSIONER HUNTWORK: I recommend there is no impairment to the perimeter test as you previously suggested and the perimeter test is far more compatible with the notions expressed in Proposition 106, creation of the grid and adjustment of the grid. I think that leads directly to the perimeter test if we're going to apply a single test.

COMMISSIONER MINKOFF: Mr. Chairman?

CHAIRMAN LYNN: Ms. Minkoff.

COMMISSIONER MINKOFF: When we adopted a definition of competitiveness because we needed a definition, we said it was going to be JudgeIt seven percent or less. That doesn't mean we can't also look at registration figures or AQD, it just means our standard is JudgeIt. I would suggest we do the same thing here. I think Polsby-Popper, to me, seems to me in most cases a better measurement. If perimeter is that easy to run, let's run it. It doesn't mean pause a district is slightly less competitive in Polsby-Popper -- slightly
less compact that you can't do it, because there are all kinds of other competing characteristic -- competing criteria for modifying districts. We have to have a standard rather than two standards.

CHAIRMAN LYNN: The point in reverse is just as true. That is to say Mr. Huntwork's point, choose perimeter as the primary test, work both ways.

COMMISSIONER MINKOFF: Put them in a hat, pull one out. We have to decide.

COMMISSIONER HUNTWORK: I have no idea, Mr. Chairman, which test will produce what results on a map. I have no dog in this fight of any kind other than that it seems to me that the perimeter test is more consistent with the concept of the grid which is what we've been ordered to go back to start with and what future commissions will have to deal with. I would -- I prefer, myself, to think we are --

CHAIRMAN LYNN: I don't think we're going to get three votes on this one, which means we're not going to adopt a definition. Now since this is a secondary criterion, I don't mean secondary in terms of importance, I mean in terms of our process and our instructions, this criterion will be applied subsequently to the primary application of competitiveness and the secondary application of voting rights, that we don't
need to adopt this evening a definition for this, and we
can do so in advance of applying it evenly to any map we
create, I suggest we wait until we have a broader
complement of the Commission. Might we agree, the three
of us agree on one or the other of those approaches?

COMMISSIONER HUNTWORK: I think that's very
wise in terms of what we instruct our consultants to do. Should we instruct them to use these two tests or should we not even narrow it to these two tests?

CHAIRMAN LYNN: I don't think we narrow it at this point. That could come this weekend when we narrow the process.

COMMISSIONER HUNTWORK: Very well.

CHAIRMAN LYNN: The first thing to look at are other criteria. We can always go back to anything that has been created, correct me if I'm wrong, Mr. Johnson, any previous map, or the grid for that matter could be viewed in Maptitude and these two tests could be run virtually immediately and we could get measurements on both of those.

MR. JOHNSON: Yes. That's correct.

CHAIRMAN LYNN: I suggest where we do not agree this evening, simply on that issue defer. And it does us no harm in terms of complying with the order.

Counsel, are you in agreement with that?
Thank you.

Let's put that one aside and see if we might be able to agree on contiguity.

MR. JOHNSON: Okay. The last two slides.

First, definitions from past court decisions.

Did you want to do this?

Short of an intervening land mass totally severing two sections of an electoral district, there is no, per se, test for the constitutional requirement of contiguity. Each district must be examined separately. One ruling in one court definition: The tracts of land in the territory must touch or adjoin one another in a reasonably substantial physical sense.

I'm not sure, I believe there was a phase where they went out and physically walked.

Next slide.

And the proposed definition, drawing from those two court rulings, is: Tracts of territory in contact with one another along a boundary that is more than a point.

MS. HAUSER: In other words, they have to touch.

CHAIRMAN LYNN: They have to touch more broadly than a point.
MR. JOHNSON: Right.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Mr. Chairman, I would like to --

MR. JOHNSON: It's really hard to hear.

COMMISSIONER HUNTWORK: I would think Colorado is contiguous with Arizona, touches at more than a point. Anything else is a feature of compactness. I think contiguous means they have to touch.

CHAIRMAN LYNN: Ms. Hauser.

MS. HAUSER: I was going to ask, what is a point?

MR. JOHNSON: A point, as it says, four corners is a good example. You could say they touch, all share that common point. But you can't actually get from one to the other without -- unless you are -- without crossing over the other --

CHAIRMAN LYNN: Were it not for a monument connecting the geographic point one could get from Arizona to Colorado taking one step.

COMMISSIONER MINKOFF: Go through the air.

You honestly can't on the ground go from one to the other. It's just a point. The width of your foot puts you from Utah into New Mexico.

COMMISSIONER HUNTWORK: Practicality as
opposed to theoretics.

In mathematical terms, touching at a point is contiguity. That is geometry, and so on. That's contiguity. If you are talking about practicality, it's more than a point, it's the width of a normal size of an adult human being, or the width of a vehicle, or -- and so, you know, the concept of a point here doesn't do this for me. I would just like to eliminate that and say they have to touch.

CHAIRMAN LYNN: I have to tell you that of all the criteria this is the one I'm least concerned about from the standpoint the violation of the contiguity rule is almost always associated with a political gerrymander we're not going to endeavor to create. Therefore, I'm perfectly happy to go with any two land masses that touch.

COMMISSIONER MINKOFF: I also can't imagine that we would create a district where there was a connection only by a point.

CHAIRMAN LYNN: No.

COMMISSIONER MINKOFF: That's fine. If you want that one, fine.

CHAIRMAN LYNN: I'd like a motion.

COMMISSIONER HUNTWORK: I move we define contiguity as actual physical contact.
CHAIRMAN LYNN: Tracts of territory in
actual physical contact with one another.

COMMISSIONER HUNTWORK: Yes. Thank you.

COMMISSIONER MINKOFF: Why not. I'll
second it.

CHAIRMAN LYNN: It's a second. Further
discussion on that motion?

All those in favor, say "Aye."

COMMISSIONER HUNTWORK: "Aye."

COMMISSIONER MINKOFF: "Aye."

CHAIRMAN LYNN: "Aye."

Motion carries.

Now, refresh my memory. Did we in fact
defer a definition pending a brief Executive Session?

COMMISSIONER HUNTWORK: Substantial
significant detriment.

MR. JOHNSON: Yes, significant detriment.

CHAIRMAN LYNN: Does counsel still believe
that we need that Executive Session this evening before
we proceed?

MS. HAUSER: Hang on one second.

CHAIRMAN LYNN: Or, in the alternative,
might we adopt that definition, prior to applying it to
anything, next time we meet before we make any -- before
we get a presentation on any map or any application of
the criteria?

MS. HAUSER: Mr. Chairman, it's our consensus, it would be best to have a broader cross section of Commissioners here to resolve this particular issue and it can be done at the beginning of the next meeting.

COMMISSIONER MINKOFF: I don't object.

MS. HAUSER: Before you object or --

COMMISSIONER HUNTWORK: As parliamentary procedure, a Commissioner not here can't vote, or against the action, for reconsideration?

COMMISSIONER MINKOFF: No.

CHAIRMAN LYNN: You have to be on the prevailing side.

Okay with deferral?

COMMISSIONER HUNTWORK: I would -- yes and no.

CHAIRMAN LYNN: Can't be yes and no.

COMMISSIONER HUNTWORK: I don't know yet.

I have a question.

CHAIRMAN LYNN: That's better.

COMMISSIONER HUNTWORK: Is there some advice you wish to render to us? If so, I would like to --

MS. HAUSER: Here? Now?
COMMISSIONER HUNTWORK: -- go into Executive Session, find out what it is, then be able to decide if I agree.

COMMISSIONER MINKOFF: Mr. Chairman, much as I don't want to be excluded from this, I think the definition of significant detriment is much more critical to what we're doing than the definition of contiguity. As much as I would love to weigh in on that decision, I'd really feel uncomfortable if the three us came to unanimous conclusion and excluded other Commissioners. Four is better than three. I forgive you for doing this without me. I suggest deferring until more people are here.

COMMISSIONER HUNTWORK: Okay. On the other hand, the three of us represent -- well, we don't represent.

MS. HAUSER: For purposes of moving forward, Jose, fine with going into Executive Session, giving advice here what that is, have an opportunity to ponder that until the next meeting? Doesn't necessarily mean that you have to act on that advice right now. So -- maybe that's a good compromise.

CHAIRMAN LYNN: Perhaps in the interest of representation, would it be reasonable to have a brief
Executive Session, give Ms. Minkoff the benefit of the representation, allow us on the record to give the benefit of her thought on that when the four of us meet.

COMMISSIONER MINKOFF: I just don't want the three of us to decide this.

COMMISSIONER HUNTWORK: We have a Republican, Democrat, Phoenix, Tucson, all the balance.

COMMISSIONER MINKOFF: We have urban and urban.

COMMISSIONER HUNTWORK: Okay.

COMMISSIONER MINKOFF: And urban.

CHAIRMAN LYNN: Almost all the balance.

COMMISSIONER MINKOFF: On the other hand, you'll be terribly gender biased going on without me.

CHAIRMAN LYNN: Pursuant to A.R.S. 38-431.03(A)(3) and A.R.S. 38-431.03(A)(4), is there a motion for Executive Session?

COMMISSIONER HUNTWORK: So moved.

CHAIRMAN LYNN: Second?

COMMISSIONER MINKOFF: Second.

CHAIRMAN LYNN: All those in favor, say "Aye."

COMMISSIONER HUNTWORK: "Aye."

COMMISSIONER MINKOFF: "Aye."

CHAIRMAN LYNN: Chair votes "Aye."
Ladies and gentlemen of the public, I'm guessing 10, 15 minutes. If interested where we're going next, stick around. If not, see you next time, but it's your choice.

COMMISSIONER MINKOFF: I won't see you next time.

(Whereupon, the Commission recessed Open Public Session at 6:45 p.m. and convened in Executive Session at 6:46 p.m. until 7:12 p.m. at which time Open Public Session resumed at 7:18 p.m.)

CHAIRMAN LYNN: Back on the record.

For the record, Ms. Minkoff, Mr. Huntwork, and the Chairman are present, along with legal counsel and the consultants.

With respect to the issue of significant detriment, is there further business of the Commission?

COMMISSIONER HUNTWORK: Mr. Chairman.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: I would like to make a motion that we define the term "significant detriment" as any impairment of a redistricting criterion which the Commission determines, based on the record before it, to be material and substantial but not an impairment which the Commission determines to be minimal
or inconsequential.

CHAIRMAN LYNN: Is there a second?

COMMISSIONER MINKOFF: Mr. Chairman.

CHAIRMAN LYNN: Ms. Minkoff.

COMMISSIONER MINKOFF: Normally I would second that, because I agree with the sense of it. I think that it's a very good definition. But I really feel uncomfortable adopting something this important with just the three of us here, if you also support it.

I think you ought to leave this over to the weekend, even though I won't be here, because honestly, if we can't get one of the two absent Commissioners to support this definition, I would feel uncomfortable moving forward with it.

You would have my vote if we were -- if I were here this weekend, but I would hope it would at least pass four-to-one. This is too important for a three-to-two vote. If you can bring the other Commissioners along, fine. Otherwise I think you have to search for another definition.

CHAIRMAN LYNN: Let me be clear. You wish to defer to the weekend. You have no problem with the language.

COMMISSIONER MINKOFF: I'd add one more thing. As a general definition, it makes a lot of sense.
I think when you look at different criteria, it will mean different things for different criteria.

I say adopt this definition, or hopefully something very similar to it; apply it consistently to all the criteria. But I think for each individual criterion, or at least for most of them, it's probably going to need some further explanation.

I would hope that you do that in a way that I would approve of if I were here.

CHAIRMAN LYNN: We'll attempt to do that, Ms. Minkoff.

Motion dies for lack of a second.

Before we move on to instructions to NDC, is there anything else with respect to definitions that we need to deal with this evening?

Mr. Huntwork?

COMMISSIONER HUNTWORK: Mr. Chairman, I would like to propose we reconsider a definition we adopted earlier, specifically compliance with the Voting Rights Act.

CHAIRMAN LYNN: Motion to reconsider --

Is that a motion?

COMMISSIONER HUNTWORK: I guess so.

CHAIRMAN LYNN: A motion to reconsider has two criteria with it. Someone that makes a motion must
have voted on the prevailing side, which Mr. Huntwork
did; and it will require a vote of the Commission to
revisit that.

Is there a second to the motion to
reconsider?

COMMISSIONER MINKOFF: Mr. Chairman, before
I can consider it, can I have it read back to me what we
adopted before so I know what we adopted?

CHAIRMAN LYNN: Certainly.

MS. HAUSER: Adopted as the definition of
compliance with the Voting Rights Act: Full compliance
with all applicable provisions as advised by legal
counsel except advice not inconsistent with the order of
the court.

COMMISSIONER HUNTWORK: Not consistent --
MS. HAUSER: Not consistent with the order
of the court; to that extent the court order shall
prevail. Sorry.

COMMISSIONER HUNTWORK: Perhaps it would be
helpful, Mr. Chairman, if I explain the reason for my
motion.

COMMISSIONER MINKOFF: That would help.

CHAIRMAN LYNN: Well, what I'd really
rather do --

COMMISSIONER MINKOFF: Want me to second it
to get it on the floor?

CHAIRMAN LYNN: Explain your vote any way you want.

COMMISSIONER MINKOFF: Thank you, Mr. Huntwork.

COMMISSIONER HUNTWORK: The reason for reconsideration is that I am concerned that the references to advice of counsel might, to some extent, or to a greater extent, waive the confidentiality of our communications with our counsel, which would be, while not intent of fact, certainly be detrimental to our process. What I hope to be able to accomplish is adopt essentially the same motion and delete mention to "advice of counsel."

COMMISSIONER MINKOFF: No problem.

CHAIRMAN LYNN: Further discussion on the motion to reconsider? If not, all in favor of the motion say "Aye."

COMMISSIONER HUNTWORK: "Aye."

COMMISSIONER MINKOFF: "Aye."

CHAIRMAN LYNN: Chair votes "Aye."

It carries unanimously.

Now consideration of the Voting Rights Act.

Mr. Huntwork.

COMMISSIONER HUNTWORK: I move adoption of
the same motion with simply elimination of references to
counsel.

If I could see a copy of the text for a
moment it would be very readily apparent exactly what
that entailed.

Mr. Chairman, I propose we define the term
as follows: Compliance with the Voting Rights Act means
full compliance with all applicable provisions thereof
except to the extent -- I'm sorry, with all applicable
provisions to the extent they are consistent with the
order of the court.

COMMISSIONER MINKOFF: Mr. Chairman, just a
procedural matter. It seems to me what is on the floor
right now is consideration of what we previously adopted.
Don't we either --

CHAIRMAN LYNN: Motion previously made. I
take this as an amendment to the previous motion.

COMMISSIONER MINKOFF: What is on the floor
right now is approval of what we already approved.

CHAIRMAN LYNN: Back to discussion.

COMMISSIONER MINKOFF: Now it's
reconsidered. That motion is on the floor. What we're
talking about is amendment to that motion.

CHAIRMAN LYNN: Mr. Huntwork, I believe
you're offering amendment to a motion previously

LISA A. NANCE, RPR, CCR (623) 203-7525 274
considered and again on the floor.

MR. HUNTWORK: The definition compliance
with the Voting Rights Act, full compliance with all
applicable provisions thereof to the extent consistent
with the order of the court.

COMMISSIONER MINKOFF: Did you add
something after that or not?

COMMISSIONER HUNTWORK: I attempted to
summarize or to the extent not inconsistent with an order
of the court.

CHAIRMAN LYNN: A double negative. And to
that extent the Court order shall prevail. That was
language in the previous motion.

Your choice. Your motion.

COMMISSIONER HUNTWORK: I feel that was a
very convoluted way of saying it. It all boils down to
say it simpler.

COMMISSIONER HUNTWORK: Full applicable
provisions thereof, consistent with order of the court.

CHAIRMAN LYNN: Second to the amendment?

COMMISSIONER MINKOFF: I second.

CHAIRMAN LYNN: Discussion on the
amendment?

If not, all in favor of the amendment,
signify by saying "Aye."
COMMISSIONER MINKOFF: "Aye."
COMMISSIONER HUNTWORK: "Aye."
CHAIRMAN LYNN: The amendment agreed to consideration as amended with the new language.
Further discussion on the motion?
If not, all those in favor of the motion,
signify by saying "Aye."
COMMISSIONER HUNTWORK: "Aye."
COMMISSIONER MINKOFF: "Aye."
CHAIRMAN LYNN: Motion carries unanimously.
Any other modification or discussion on definitions this evening other than those we specifically deferred until our next meeting?
Hearing none, the next item on the agenda is instruction to NDC.
Now, let me try to summarize what I believe our adoption of the process and discussion of definitions has instructed NDC to do. And let me just put it out there. And so we can either agree to that or modify it or go where we need to go.
I believe what we have told NDC to do,
first of all, is we have adopted the process that was proposed and that that process required us, first, to adopt some definitions which we have, in the main, done; and while at this point that as quickly practicable, the
 definitions that have been determined this evening, this afternoon and this evening, would be posted on our website so that those who are following the process will have the specific definitions that we have agreed to today; that we have, because of the adoption of that process instructed NDC to return to the grid plan that was originally presented to the Commission and from that grid plan we have asked that they first apply the criterion of competitiveness so as to create a map that is essentially a map which has equal population and competitiveness as its components, the grid being equal population and then competitiveness applied; that subsequent to the creation of that map, the criterion of applicability -- compliance, pardon me, compliance with the Voting Rights Act be applied; and that a representative map with that criterion added also be prepared.

Stop me if I'm misconstruing this, because I'm going on what I think the process said and I think we ordered.

Ms. Minkoff.

COMMISSIONER MINKOFF: I just had a question. Are you talking about two separate maps? First a map is presented just with competitive districts and then a second map is presented which is a
modification of that to comply with the Voting Rights Act?

CHAIRMAN LYNN: Yes. My estimation, I think we have to look at this sequentially, how map A becomes map B, map C, map D, and so on, so it is a process of evolution that will ultimately result in a map considered for adoption. That at -- and I believe that what we have left undone and needs to be done over the weekend -- I believe what I've just ordered or what we will order, if you agree with me can be done with the definitions that have been fully defined today and don't require settlement of the issues that are still outstanding for the next meeting, which are some definition of significant detriment which won't be applied until we get into comparative mapmaking, and what we will need to do is settle that matter before we look at those maps next weekend, we will settle that matter first. And then the second thing not yet settled as of this weekend is the order in which other criteria will be applied to the map. That, too, will be settled but we will not need to settle that for the first day of the next meeting.

COMMISSIONER MINKOFF: Don't we also have to settle compactness?

COMMISSIONER HUNTWORK: Yes.
CHAIRMAN LYNN: We have to settle the issue of compactness which is one of the criterion added and added subsequently. So we have those things yet to finalize for purposes of beginning the process, instructions as I've outlined them, creation of the grid plus competitiveness, and then a second map, which is the grid plus competitiveness plus compliance with the Voting Rights Act is what we are ordering.

Mr. Huntwork.

COMMISSIONER HUNTWORK: Mr. Chairman, the only slight concern I have is that it's possible when you adjust the competitive map -- well, it's possible that when you adjust the grid for competitiveness or when you adjust the competitiveness map for Voting Rights Act compliance you might be tempted to use population variations in order to comply in which case we would have had to have defined significant detriment. So I would like to include in this instruction in whatever they do in this initial stage that they keep the populations, the districts as equal as humanly possible, and any variation in population would have to be considered at a later time. Otherwise we're going to have to define significant detriment and tell them to comply with it, tell them no detriment.

MR. JOHNSON: I assume we understand that
modified to within the time available before the weekend.

It's getting to perfect equality that is a very
time-consuming process.

COMMISSIONER HUNTWORK: Yes. Within the
time available, absolutely.

CHAIRMAN LYNN: Ms. Hauser.

MS. HAUSER: In the decision, there should
be an instruction to NDC to map, to come up with
boundaries for whatever communities of interest are
already in the record.

CHAIRMAN LYNN: Thank you. I was getting
there. But thank you.

An additional instruction to NDC would be
to review the record, identify communities of interest
which have previously been identified, and to
geographically compose their construct, which is another
way of saying "map them." But what I'm saying is those
boundaries have to be known geographically so as to be
applied to a map at some future date. So to the extent
that you have any information or testimony that allows
you to create those communities of interest with
geographic boundaries, that also should be completed.

Mr. Huntwork.

COMMISSIONER HUNTWORK: In that regard, I
think we should tell them to use their discretion to map
anything that they think might be, whether we have found it to be a community of interest or not, specifically, but is in the record and that we might, that the Commission might consider to be a community of interest under the definition that we have adopted. Get as much homework done as possible. We may or may not affirm any of the communities we previously adopted when we apply the definitions. We may define other things that were not before communities of interest.

To the extent that our consultants can anticipate that, come up with things that might or might not be, it will put us one step ahead. I think it's important that they not do this in the form of recommending, that we do or do not adopt this, but only this is a result of search of the record and things we might consider to be communities of interest.

CHAIRMAN LYNN: Ms. Hauser.

MS. HAUSER: That is actually one of the clarifications I was going to make.

The other clarification is that, again, the tendency to refer to this as mapping communities of interest, again, just to make it very clear on the record that this has no relationship with putting them on any particular maps, these would be stand-alone geographic boundary depictions of community of interest. They are
not at this point being laid upon any map, even the grid
map.

COMMISSIONER HUNTWORK: I think it's
important for us to say out loud instead of shaking our
heads yes. I certainly agree with that.

CHAIRMAN LYNN: Absolutely. That's why I
was struggling with the terms of, specific definition of
the term "mapping communities of interest." I don't like
the term. We're identifying them geographically, what
are their boundaries.

Okay. Are there other instructions either
from Members of the Commission or counsel we need to give
to NDC this evening?

Ms. Leoni?

All right.

May I have a motion to formally instruct
NDC in the manner that was just discussed?

COMMISSIONER MINKOFF: So moved.

COMMISSIONER HUNTWORK: Second.

CHAIRMAN LYNN: Thank you.

Discussion on the motion?

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

COMMISSIONER HUNTWORK: "Aye."

COMMISSIONER MINKOFF: "Aye."
CHAIRMAN LYNN: Chair votes "Aye."

Motion carries unanimously and is so ordered.

Any instructions to counsel?

MR. RIVERA: I think you've given us plenty during the evening.

CHAIRMAN LYNN: Okay.

Report from the Executive Director?

Do you have any report?

MR. ECHEVSTE: No report.

CHAIRMAN LYNN: Okay. Thank you.

I'd ask we do have a time on the next agenda, direct counsel in preparing the agenda to include an Executive Director report at which time we'll discuss the financial circumstances of the Commission with respect to our work going forward so that I might communicate that to the leadership of the Legislature and the Governor.

Let me ask one more time if there is any public comment.

Hearing none, let me talk about future meetings. Please correct me if I misspeak about the meeting. As I understand it, this meeting, obviously, the next meeting will be posted in accordance with the requirements for posting a 48-hour notice. But my
understanding is that our next-scheduled meeting will be this Saturday, which is the 7th --

MS. HAUSER: Yes.

CHAIRMAN LYNN: -- of February. The meeting will begin at 10:00 a.m., and we have a location. And the location is the Sheraton Hotel -- Sheraton Airport, I believe is the designation, on Broadway near about 52nd --

COMMISSIONER MINKOFF: 52nd and Broadway.

MS. HAUSER: The same place we met October 2001.

CHAIRMAN LYNN: If you liked it then you'll love it now. If you didn't, you won't. That's just the way it is.

Any other business that has been listed on the agenda to come before the Commission?

If not, I want to take note of a couple things before we close. Number one, as I think most of you know, this is the only meeting during this part of the procedure, part of the process, where Ms. Minkoff will be able to join us until after the end of the month. And while we clearly would prefer that she be here, and she would prefer that she be able to participate, it's just a circumstance that cannot be altered at this point.

And --
MS. HAUSER: Unless we get a stay.

CHAIRMAN LYNN: I was about to say.

COMMISSIONER MINKOFF: Stay, stay, stay.

CHAIRMAN LYNN: If we are successful in getting a stay of the proceedings, it would be advantageous for a number of reasons, not the least of which is more full participation of the Commission. I hope a stay is granted and Ms. Minkoff can join us as we move forward.

The second of which, I would like to mention we welcome back to the Commission Lou Jones. Lou is back with us, and we can't be more delighted to have her back. We'll continue to have her back on light duty until her doctor clears her for more strenuous work.

We're delighted to have her back: Lou.

With that, we'll adjourn this meeting and reconvene at the time that will be posted officially on Saturday.

The Commission will stand adjourned.

(Submittal Exhibit No. 3:

"Dear Chairman Lynn:

"As you may remember, I represent Santa Cruz County which actively participated in the lawsuit decided by Judge Fields. During that Lawsuit, no one advocated changing the portions of Santa Cruz County that lie within Legislative Districts 25 and 30.

"On behalf of Santa Cruz County, we would ask the Commission to consider the testimony from the previous hearings held by the Commission in Santa Cruz County. The County strongly believes that it should have a minimum of two, if not three, legislative districts which include portions of Santa Cruz County.

"We ask that this letter and the attached final Findings be made a part of the official record of the Commission in its upcoming proceedings: 1) Analysis of Competitiveness; 2) Affidavit of Manuel Ruiz; 3) Affidavit of Dennis Miller; 4) Santa Cruz County's Final Finds of Fact and Conclusions of Law.

"If you need anything else on behalf of Santa Cruz County, please let me know.

"Thank you.

"Very truly yours.

LISA A. NANCE, RPR, CCR (623) 203-7525
"Gabroy, Rollman & Bosse, P.C.,
"Ronald M. Lehman,
"RML:acr
"Enclosures
"C: Greg Lucero, SCC Manager,
"Dennis Miller,
"Government Relations Director,
"Holly Hawn, Esq.
"Lisa Hauser, Esq.")

(Whereupon, the Commission adjourned at
approximately 7:38 p.m.)

* * * *

LISA A. NANCE, RPR, CCR (623) 203-7525 287
STATE OF ARIZONA )
  ) ss.
COUNTY OF MARICOPA )

BE IT KNOWN that the foregoing hearing was taken before me, LISA A. NANCE, RPR, CCR, Certified Court Reporter in and for the State of Arizona, Certificate Number 50349; that the proceedings were taken down by me in shorthand and thereafter reduced to typewriting under my direction; that the foregoing 287 pages constitute a true and accurate transcript of all proceedings had upon the taking of said hearing, all done to the best of my ability.

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

DATED at Phoenix, Arizona, this 13th day of February, 2004.

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