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STATE OF ARIZONA
ARIZONA INDEPENDENT REDISTRICTING COMMISSION

P U B L I C

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

6

7 APPEARANCES:

8

CHAIRMAN STEVEN W. LYNN

9

VICE CHAIRMAN ANDI MINKOFF

10

COMMISSIONER JAMES R. HUNTWORK

11

COMMISSIONER JOSHUA M. HALL

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(Present As Indicated)

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ADDITIONAL APPEARANCES:

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2	2002 Election Results Sorted 2002 AQD Ascending Submitted by Neil Wake and 2002 Election Results Sorted Judge-It Ascending.
3	2-3-04 Letter Submitted by Ronald M. Lehman, Gabroy, Rollman & Bosse, re Santa Cruz County, To Arizona Independent Redistricting Commission, Steven W. Lynn, Chairman.
4	February 2, 2004, Independent Redistricting Commission Meeting, Testimony of Joseph C. Donaldson, Mayor of City of Flagstaff.
5	Talking Points of Senator Peter Rios.
6	Public Comment, Citizens Independent Redistricting Commission, February 3, 2004, Ann Eschinger, League of Women Voters of Arizona representing the drafters of Proposition 106.
7	Key Definitions Submitted by Paul Eckstein.
8	Paul Eckstein Speaker Slip.
9	Mike Flannery Speaker Slip.
10	Joseph Donaldson Speaker Slip.
11	Mitch Strohman Speaker Slip.
12	James Palmer Speaker Slip.
13	Senator Pete Rios Speaker Slip.

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NO. DESCRIPTION

- 14 Alberto Gutier Speaker Slip.
- 15 Ann Eschinger Speaker Slip.
- 16 Mark Herrington Speaker Slip.
- 17 Jim Hartdegen Speaker Slip.
- 18 Neil Wake Speaker Slip.

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Public Session
Phoenix, Arizona
February 3, 2004
9:25 o'clock a.m.

P R O C E E D I N G S

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.

1 This is the time for consideration and
2 comments and complaints from the public. Those wishing
3 to address the Commission shall request in advance by
4 filling out a speaker slip.

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

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

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

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

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

21 Mr. Eckstein, good morning.

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

24 I'm appearing on behalf of the Arizona
25 Minority Coalition. Senator Pete Rios is here, and he

1 will speak as well.

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

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

21 Now I realize, as Dr. McDonald testified at
22 the trial, that once one gets closer to zero it becomes
23 more competitive. And once one gets above seven percent,
24 it becomes less competitive. I accept Dr. McDonald's
25 statement that a -- the difference between a 6.9 and a

1 7.1 is not that significant. But the difference between
2 a 6.9 and 8.8 is that significant. And if my memory
3 serves me correct that the only district that, on your
4 map that was adopted in August of 2002, that was over
5 seven and less than 10, was one district at 8.8. I could
6 be wrong on that. And to me that seemed like a
7 significant difference. Whatever measurement was used,
8 the Hall-Minkoff Map and its various iterations was more
9 competitive than any map that was -- than the map that
10 was adopted by the Commission on August, in August of
11 2002. And, therefore, we recommend that map to you as
12 modified by Mr. Sissons.

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

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

23 I understand that you will be considering
24 all kinds of options. I certainly think you have the
25 right to do that. I would suggest to you that if you are

1 going to have a map that is going to be put in place for
2 the 2004 election, and if it is going to be precleared,
3 given your previous consideration of a Hall-Minkoff Map
4 and understanding of it, that is at least a good place to
5 start. With the understanding of that map, lest anyone
6 think one party or another is advantaged by that map, the
7 evidence at the trial made clear, and the record is
8 absolutely clear, that four districts are primarily
9 affected, two in Pima County, 26 and 28, and while a
10 number are affected in Maricopa County, the two that
11 change are 15 and 6. 28 is a Democratic district that
12 would become competitive under the Hall-Minkoff Map and
13 26 is a Republican district that would become competitive
14 under the Hall-Minkoff Map. 15 is Republican, would
15 become competitive, and 6 is Republican that would become
16 competitive. What you would have if you adopt that map,
17 which we urge you to do, is create four competitive
18 districts. And it would affect the two major parties
19 equally. They would lose two districts and you would
20 have four competitive districts. Moreover, you would not
21 face, in my judgment, any question from the Department of
22 Justice, because minority-majority districts are not
23 impacted by the Hall-Minkoff Map.

24 The biggest change is in one district, and
25 I can't remember which, it may be 14, in which the

1 Hispanic voting age population drops from 55.2 percent to
2 55 percent, well above what even the Justice Department
3 required before the Georgia vs. Ashcroft decision.

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

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

24 With respect to significant detriment, I
25 have provided a definition and given some examples of

1 what would not, in my judgment, constitute significant
2 detriment. One could come up, I think, with a larger
3 list, but the key here is whether the change in favoring
4 competitiveness in a particular district would cause
5 significant detriment by significantly undermining the
6 ability of citizens in a particular district to advocate
7 effective representation in the Legislature.

8 Let's look at the Isaac School District. I
9 think that's a classic example. The Isaac School
10 District has 44,000 people in it. Under the Hall-Minkoff
11 Map, almost all of that district, I think something like
12 42,000 people were in District 14 and 2,000 people were
13 in District 13. In my judgment, having 44,000 people in
14 one district does not undermine the ability of those, of
15 the people in that District, to have effective
16 representation in the Legislature. Indeed, I think the
17 argument the other way makes more sense, that the people
18 in that district will have four representatives. 42,000
19 people out of 170,000 is a significant block. Removing
20 2,000 people is not significant in that the 42,000 people
21 who are in District 14 have significant influence and
22 will be able to exercise significant influence. 2,000
23 people in District 13 can't be ignored, either.

24 I provide as an example here dividing
25 cities. When you have a city like City of Phoenix or

1 Tucson divided into multiple districts, Phoenix,
2 actually, I think, divided into 12 or more, dividing it
3 into one more district doesn't cause significant
4 detriment. When you look at the examples that you have
5 before you, I think you can come up with others.

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

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

18 Finally let me say a word about Ashcroft v.
19 Georgia. We had argued before, and I know I had, not on
20 behalf of the Minority Coalition but on behalf of the
21 Democratic Party, that there was such a thing as minority
22 influence districts. And while they had not been
23 recognized by the Supreme Court at that time, there were
24 court opinions that had recognized minority influence
25 districts. In the law -- a lot has been settled now that

1 you have the option, you don't have the obligation but
2 you have the option to create minority influence
3 districts.

4 Pete Rios, Senator Pete Rios will tell you,
5 and I think the record supports this, that the Coalition
6 2 Map that was submitted in September 2001 was based on
7 the assumption that a majority of minority-majority
8 districts were districts in which minorities, and the
9 majority of those cases Hispanics, could elect
10 representatives of their choice. They might not be
11 Hispanics. The majority of those districts, including
12 Senator Rios' district, District 23, are minority
13 districts.

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

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

23 I know your counsel will, if they haven't
24 already, advised you as to the flexibility that the
25 Georgia vs. Ashcroft opinion allows. And I invite you to

1 accept the challenge of Georgia vs. Ashcroft. And you
2 can do that by taking the districts that were proposed by
3 the Minority Coalition in September 2001, taking those
4 numbers and roughly those lines, and moving them as you
5 see fit.

6 With that, I probably overextended my
7 welcome.

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

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

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

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

16 CHAIRMAN LYNN: Microphone.

17 MS. HAUSER: One thing you said in
18 connection with Georgia, I don't disagree with your
19 reading on Georgia, but I am not sure your reading of
20 that is consistent with the court's order. You indicated
21 that the Commission has a choice of going with the two
22 options set forth under Georgia. And in the court's
23 order I think the trial court made it very clear, using
24 the language that you requested, that the Commission does
25 not have the option but must choose the substantive

1 representation approach adopted by Georgia.

2 The trial court's reading of Proposition
3 106 tells us that in order to favor competitiveness we
4 must choose the approach that provides for influence
5 districts rather than safe districts.

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

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

21 MS. HAUSER: One additional comment. With
22 respect to your significant detriment proposed
23 definition, lines three, four of that definition, it
24 indicates significant detriment is to be determined
25 before the consideration of any particular map or plan.

1 The examples that you gave are with respect to the kinds
2 of things that can be quantified more easily in terms of
3 splits or in terms of compactness measurement.

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

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

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

24 Community of interest, your definition
25 talks about interests actually asserted before the

1 Legislature or Congress. Are you making a distinction
2 there between evidence that has been presented in other
3 legislative bodies versus this legislative body?

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

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

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

18 MR. ECKSTEIN: Let me say, Mr. Chairman,
19 Ms. Hauser, I suppose it could be conceivable there would
20 be issues combined in a social group, cultural group
21 together that haven't come before the Legislature so you
22 wouldn't have that experience. I think that is probably
23 pretty rare. And people who have testified, for example
24 the people in the Tri-City area in Yavapai County have
25 talked about the common interest in ground water issues.

1 And those issues actually have, I think, some objective
2 evidence that they have commonly asserted those issues
3 before the Legislature. So I think that is the kind of
4 thing I was trying to get at.

5 MS. HAUSER: Okay. Thank you.

6 CHAIRMAN LYNN: Ms. Minkoff.

7 COMMISSIONER MINKOFF: Thank you,
8 Mr. Chairman.

9 Can you hear me?

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

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

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

19 MR. ECKSTEIN: I'm not sure, because with
20 Polsby-Popper, a perfectly compact district is a circle,
21 and that is one.

22 COMMISSIONER MINKOFF: Okay.

23 MR. ECKSTEIN: .1 percent.

24 COMMISSIONER MINKOFF: Not really a
25 percent.

1 MR. ECKSTEIN: Not a percent is right.

2 COMMISSIONER MINKOFF: Okay.

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

6 Maybe Mike can get it, my expert.

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

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

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

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

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

24 COMMISSIONER MINKOFF: Right.

25 MR. ECKSTEIN: .10 percent.

1 COMMISSIONER MINKOFF: Right. If changing
2 1 to .9, it's not a 10th of a percent; it's under a 10th
3 of a percent.

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

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

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

14 CHAIRMAN LYNN: So among choices.

15 MR. ECKSTEIN: Among choices.

16 Say you have a map, take the Polsby-Popper
17 test that has its compactness, and everything else is
18 equal, and the XYZ map that is presented to you. And the
19 XYZ map is .09 percent, in other words, nine percent,
20 nine percent less than, less compact than the map that
21 you have; that would not be considered, using this
22 definition, significant detriment. If it were .1 unit,
23 it could be considered significant detriment.

24 CHAIRMAN LYNN: Talking about either an
25 aggregate number or average number for that map.

1 Compactness is district by district.

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

6 CHAIRMAN LYNN: Okay.

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

9 CHAIRMAN LYNN: Ms. Minkoff.

10 COMMISSIONER MINKOFF: A few other
11 questions.

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

20 MR. ECKSTEIN: Such as Latinos.

21 COMMISSIONER MINKOFF: Latinos show up in
22 Census tract information.

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

25 COMMISSIONER MINKOFF: Other voting rights,

1 ethnic rights, voting rights, school districts.

2 Arcadia, for instance, came in and talked
3 to us, said they had some interests. Arcadia isn't a
4 specific geographic area. It's just kind of a general
5 area.

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

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

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

1 think is terribly important.

2 COMMISSIONER MINKOFF: Okay. A couple of
3 other things.

4 When you talk about significant detriment,
5 and you talk about making a determination before the
6 consideration of maps, of particular legislative or
7 Congressional maps we have to determine what would be a
8 significant detriment to this particular population, and
9 yet your examples all refer to what might be
10 hypothetically maps. So -- I'm trying to reconcile the
11 inconsistency there. If I want to consider whether
12 there's significant detriment to divide Phoenix in 12 or
13 14 Legislative Districts, really I'm going to make that
14 consideration, am I not, when I look at map A and map B
15 and try to decide which one to adopt?

16 MR. ECKSTEIN: Mr. Chair, Ms. Minkoff, upon
17 rethinking that, I think the words "to the extent
18 practicable" should be inserted before, before
19 "consideration of particular Legislative or Congressional
20 maps or plans to the extent practicable based upon
21 objective evidence;" because some of these things I think
22 can be done. To the extent they can be done before the
23 actual map is looked at, one can make those
24 determinations. One can come up with findings, one can
25 come up with examples beforehand. The more you do that,

1 the more objective the process will be and less subject
2 to influence by the particular district.

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

20 MR. ECKSTEIN: Mr. Chairman, Ms. Minkoff,
21 in my reading you would be in compliance doing that. If
22 someone could demonstrate intent to dilute minority vote
23 in creating influence districts, I think there could be a
24 problem there. The mere creation of influence districts,
25 that is taking them and calling them majority-minority

1 districts so that minorities have the ability to elect
2 representatives of their choice as opposed to the ability
3 to influence an election done for the purpose, for
4 example, of complying with the Arizona Constitutional
5 provision would not produce the bad intent that would in
6 other circumstances prohibit one from doing that.

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

10 MR. ECKSTEIN: I don't recall.

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

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

25 We did have a significant difference of

1 opinion on District 23. And I would say whatever you do,
2 don't return District 23 to the way you had it in
3 October, November of 2001, because that was never a
4 minority-majority district. It was a minority influence
5 district.

6 CHAIRMAN LYNN: Mr. Hall?

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

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

23 You, number one, are not impacting the
24 districts outside of Pima and Maricopa County. And you
25 think you can create more competitive districts and

1 consistent with the other goals outside of Maricopa and
2 Pima County, then you'll want to throw the Hall Map on
3 the table and try to do that. I'm not sure -- I'm not
4 sure you can.

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

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

15 CHAIRMAN LYNN: Part of the order, I'm not
16 an attorney and defer to your training reading court
17 orders, in part of the order he talked about the process
18 the Commission used to develop maps, not only the one
19 that was adopted as the final map but Hall-Minkoff as a
20 map that came out of the same process. What he has said,
21 as I read it, is competitiveness needs to be considered
22 first as the mapping process proceeds and the starting
23 point for that is the grid. So my reading of the order
24 would be that once you have a grid, you then must apply
25 competitiveness first and then worry about the other

1 criteria to create a map. As we both know, I believe,
2 depending on where you start and how you start, the
3 number of ultimate choices you have and maps you might
4 create is almost infinite, based on the application of
5 various criteria at various times along with whatever
6 testimony you heard.

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

11 CHAIRMAN LYNN: Mr. Hall?

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

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

23 MR. ECKSTEIN: Mr. Chairman, Mr. Hall, I
24 think it did affect the end result. By suggesting you
25 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

1 need to look at. And we have to deal with the definition
2 issue, which you made some suggestions about today.

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

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

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

24 What paragraph 13 does is say that you were
25 required to adjust the grid map to accommodate all the

1 goals. In my judgment, and maybe you come to a different
2 conclusion, Hall-Minkoff is a map that was created taking
3 into account and accommodating all the goals. If you
4 conclude differently, then you can't start with
5 Hall-Minkoff. And what you would do is you would start
6 with the Hall-Minkoff, make adjustments as you saw fit,
7 that would take into account competitiveness, and then
8 you would send it out for comment. The purpose of that
9 paragraph was to make sure that the map that was created
10 had competitiveness taken into account before it was sent
11 out for public comment. That was never done. If you do
12 what I suggest, that is start with Hall-Minkoff -- you
13 have to start with some map -- make whatever adjustments
14 internally you feel are appropriate, send it out for
15 comment, you will have done what paragraph 13 requires.

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

20 COMMISSIONER MINKOFF: Thank you,
21 Mr. Chairman.

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

25 MR. ECKSTEIN: Reprimanded.

1 COMMISSIONER MINKOFF: A wonderful story.
2 Maybe if they coax me hard enough, I'll tell them.

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

8 MR. ECKSTEIN: We start, here we are 18
9 days after the order was entered. You'll have to go to
10 the court, say here's what we've done. We have a map,
11 we're sending it out for comment in the community, and
12 ask the court for additional time. The problem is we're
13 18 days into the 45 days.

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

21 MR. ECKSTEIN: There's a question in my
22 mind whether the judge intended that. But I do think,
23 and I think I've been consistent on this, if one is going
24 to get the public input that is required by Proposition
25 106, one ought to get full public comment. And one of

1 our criticisms of your process before was that you had
2 sent out a final draft map that did not take
3 competitiveness into account and that was in addition to
4 the grid map the only map that you took around the state.
5 As Dr. Adams said, from that point on, competitiveness
6 would only be done around the edges. And that proved to
7 be true. So I think it is important to make sure that
8 whatever map you adopt is given to the public, that they
9 have every opportunity to comment on it, and that would
10 be in compliance with paragraph 13 of the findings of
11 fact.

12 CHAIRMAN LYNN: Ms. Hauser.

13 MS. HAUSER: Mr. Eckstein you see there's a
14 question about how to comply with the 30 days of public
15 comment. I guess, as you know, we went back to the trial
16 court to seek some clarification of this order. One of
17 the things we asked for clarification about was the 30
18 days requirement. And you responded, not you
19 specifically, I believe Mr. Halloran filed the response
20 with the trial court, said, "No clarification is
21 necessary; the order is perfectly clear." I guess now
22 I'm confused. On the one hand, on the one hand it's
23 perfectly clear when we want clarification from the trial
24 court. Now you are not exactly sure how we're to comply
25 with the 30-day requirement. That's one question.

1 Second question: If we were to go back to
2 the trial court when we come up with a map and ask for
3 the time for 30 days of public comment, is that something
4 that you would support?

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

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

21 MR. ECKSTEIN: I did. Here we are on the
22 18th day finding it difficult to comply with time
23 requirements. It wasn't when you filed the motion.

24 MS. HAUSER: Certainly we filed the motion
25 immediately, objected. You said there is no need for

1 clarification. As of the time you filed your response,
2 no need for clarification, what was your understanding
3 about the 30-day requirement at that point? How is that
4 incorporated?

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

10 CHAIRMAN LYNN: Mr. Hall.

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

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

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

25 COMMISSIONER HALL: Okay. With respect

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

10 So my question is you alluded to District
11 23 and absent maybe issues of District 23 and given your
12 position with the Georgia v Ashcroft on minority
13 percentages, is it your opinion that that first map
14 submitted to the Department of Justice would be in
15 compliance with the judge's order?

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

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

20 MR. ECKSTEIN: Absolutely not.

21 COMMISSIONER HALL: How do you think that?
22 Percentages are in the range, are they not?

23 MR. ECKSTEIN: No. You are absolutely
24 mistaken.

25 COMMISSIONER HALL: Okay.

1 MR. ECKSTEIN: Mr. Chairman, Mr. Hall, that
2 map you adopted is certainly -- the map you adopted in
3 2001 is more competitive than the map adopted in 2002,
4 not more competitive than Hall-Minkoff. Maybe what you
5 are confusing is the Coalition 2 map which is a map that
6 is -- was more competitive than the map that was adopted
7 either in 2001 or 2002.

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

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

15 COMMISSIONER HALL: Thank you.

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

25 MR. ECKSTEIN: You start at a starting

1 place. The starting place is not the ending place. The
2 starting place map you create to get public comment on.
3 And the problem with the maps you adopted were they were
4 never adjusted to favor competitiveness. That's what the
5 judge found. If you start with Hall-Minkoff and adjust
6 that, and you adjust in good faith to favor
7 competitiveness, that will be a good and fair starting
8 point.

9 CHAIRMAN LYNN: 2001 would not because --

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

13 CHAIRMAN LYNN: In your opinion.

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

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

23 Mr. Huntwork, you've been very patient.

24 Thank you.

25 COMMISSIONER HUNTWORK: Mr. Chairman, you

1 were just asking the question I just asked. To clarify
2 it, you were talking not about our draft map, the adopted
3 map.

4 CHAIRMAN LYNN: 2001 adopted.

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

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

13 The map you started in August of 2001 did
14 not take competitiveness into account at all. That was
15 the map you started with. And you -- you sent that
16 around the state. You got comments, you made significant
17 changes. And in fact, what the record shows is that
18 every time you considered the map, it became less
19 competitive, not more competitive. The map you adopted
20 in October and November of 2001 was less competitive than
21 the map, the draft map which was less competitive than
22 even the grid map where you didn't even try to create
23 competitiveness at all. You had four competitive
24 districts on the grid map and all of those were less
25 competitive than the maps people were complaining about

1 in the 1990s that had, according to Dr. McDonald, seven
2 competitive districts. So each time you touched a map,
3 it became less competitive. If that's favoring
4 competitiveness, then I live in a different world.

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

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

19 MR. ECKSTEIN: You did not adopt any map in
20 2003. You adopted two maps in 2002.

21 COMMISSIONER HUNTWORK: I stand corrected.

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

24 COMMISSIONER HUNTWORK: Clarify how many
25 questions I asked, which ones they were, and attempt to

1 answer all of them, please.

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

3 COMMISSIONER HUNTWORK: I'm not that good.

4 I had a serious question.

5 MR. ECKSTEIN: So many.

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

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

20 CHAIRMAN LYNN: Mr. Huntwork.

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

23 MR. ECKSTEIN: "Eckstein."

24 COMMISSIONER HUNTWORK: "Eckstein," I know
25 that. I apologize. I misspoke again.

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

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

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

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

25 Reality is that you need to start with a

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

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

11 COMMISSIONER HUNTWORK: Thank you.

12 CHAIRMAN LYNN: Mr. Hall.

13 COMMISSIONER HALL: For the record,
14 Mr. Minkoff, this Commission did not -- I'm sorry.

15 For the record, Mr. Eckstein, this
16 Commission did not --

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

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

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

23 COMMISSIONER HALL: I -- the Commission did
24 not consider nor were they aware of addresses of
25 incumbents, contrary to any opinion to the contrary.

1 But my question for you: Is Hall-Minkoff
2 Modified, which is a product of your staff, et cetera,
3 has that map considered the addresses of incumbents?

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

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

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

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

20 CHAIRMAN LYNN: Mr. Eckstein, I too want to
21 thank you. I think you can tell from the questions and
22 number of questions and the characterization of the
23 questions that the Commission is intending to try to
24 figure out how to comply with the Court's order. And
25 even though we had requested specifically some

1 clarifications in order to assist us in doing that, those
2 were not forthcoming. We're operating from what is on
3 the written page and whatever we can fashion from written
4 clues how to comply with the court's order.

5 We appreciate your comments and
6 conclusions.

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

9 MR. ECKSTEIN: Thank you, Mr. Chairman.

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

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

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

23 CHAIRMAN LYNN: I understand.

24 Since Commission unanimously agrees to
25 appeal the court's decision, the Commission doesn't agree

1 the process was as tainted. We'll look at the process
2 and comply with the order as best we can.

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

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

7 Could you take a few more comments?

8 THE REPORTER: Yes.

9 CHAIRMAN LYNN: Next slip, Mike Flannery,
10 Prescott Tri-City areas.

11 Is Mr. Flannery present?

12 MR. FLANNERY: Yes, sir.

13 Good morning, Mr. Chairman, Commissioners.

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

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

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

1 think you all remember that meeting.

2 VOICES: Yeah.

3 CHAIRMAN LYNN: Very well, Mr. Flannery.

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

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

19 CHAIRMAN LYNN: I appreciate that,
20 Mr. Flannery.

21 Mr. Hall has a question for you.

22 COMMISSIONER HALL: So just to summarize:
23 In your opinion, if we were to split Yavapai County,
24 would that cause significant detriment to your community
25 of interest?

1 MR. FLANNERY: We might invite you back up
2 for another meeting.

3 COMMISSIONER HALL: Is the answer yes?

4 MR. FLANNERY: The answer is yes.

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

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

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

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

20 "However, I would like to reiterate to the
21 Commission the strong desire of the City of Prescott for
22 Central Yavapai County to remain in one Legislative
23 District. Both Prescott City Council Members, as well as
24 numerous other elected officials and members of the
25 public, were extremely active in the Commission's initial

1 hearings on Legislative Districts. The almost unanimous
2 consensus of the testimony previously given to the
3 Commission was that Prescott, Prescott Valley, Chino
4 Valley, and all of Central Yavapai County, including
5 those communities in the Verde Valley, all had a common
6 community of interest which supported retaining Central
7 Yavapai County in one single State Legislative District.

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

23 "On behalf of the people of the City of
24 Prescott, I would urge you to retain Central Yavapai
25 County in one single State Legislative District.

1 "Sincerely, Mayor Rowie P. Simmons.")

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

5 Mayor Donaldson, good to see you, as
6 always.

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

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

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

23 As you may consider today, or at a time in
24 the future, the various definitions of key terms, I ask
25 you to consider the definition of the term community of

1 interest. I understand that the term communities of
2 interest has been defined in legal cases for some time as
3 distinctive units which share common concerns with
4 respect to one or more identifiable features such as
5 geography, demography, ethnicity, culture, socioeconomic
6 status, or trade. I believe application of this
7 definition will help the Commission in its task.

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

12 Thank you.

13 CHAIRMAN LYNN: Thank you, Mr. Mayor.

14 Comments or questions?

15 Ms. Minkoff.

16 COMMISSIONER MINKOFF: Yes, Mr. Chairman.
17 Not specifically of Mr. Donaldson. The last two speakers
18 have presented written comments. Could those be copied
19 during breaks so we have them before us?

20 CHAIRMAN LYNN: We'll attempt to do that.

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

22 Next speaker, Mr. Mitch Strohman,
23 Government Affairs Manager, Flagstaff Chamber of
24 Commerce.

25 MR. STROHMAN: Thank you very much for the

1 opportunity to speak with you briefly this morning.

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

15 After defining what communities of interest
16 are, the Flagstaff Chamber of Commerce and its nearly
17 1,100 members are hopeful that the Commission will give a
18 second look at the Flagstaff metropolitan area and
19 reconsider its placement as a whole community of interest
20 in a district that has other communities of interest.
21 Presently we believe that is not the case.

22 Bottom line, the Flagstaff Chamber is very
23 thankful and respectful of the very challenging and
24 difficult task that is laid before you and for your hard
25 work and efforts that you've already put into this

1 process and effort and work that you will be putting into
2 this process in the coming weeks and months. We are very
3 respectful of that and we recognize the difficulty of the
4 task before you. The Chamber of Commerce of Flagstaff
5 looks forward in the coming weeks to being intimately
6 involved in the process which has enormous, wide-ranging
7 impact on all Arizonans, not just those living in
8 Maricopa and Pima Counties.

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

12 CHAIRMAN LYNN: Thank you, Mr. Strohman.

13 Comments or questions?

14 Thank you.

15 Let's take one or two more comments and
16 then we'll need to take a break so the court reporter can
17 stretch.

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

20 MR. PALMER: Thank you. It's a pleasure to
21 be here with you.

22 I'd like to begin by thanking each of you
23 for the diligent work that has gone into the process, the
24 tiring, thankless job, at times difficult task before
25 you.

1 I'm happy to say Graham County and its
2 citizens have been part of the process since its infancy,
3 have been there since the early hearings right up to the
4 end of the process. We've made our voice heard and we've
5 been appreciative of our citizens for their involvement
6 in this. We've been very pleased that District 5 came
7 out as it did. It accomplished many things. It has a
8 community of interest, strong community of interest, five
9 counties organized into an organization which share many
10 not only geographic but socioeconomic issues, many things
11 in common. We have appreciated the fact that district
12 was created. We also understand this issue of
13 competitiveness has become an overriding issue. And as
14 you look at the numbers in Legislative District 5, the
15 current district that was adopted that is now being under
16 the map being challenged we are one of the most
17 competitive districts in the state. And we are happy to
18 say that we are. We hope that as you consider, however
19 this map is altered or changed, you will recognize the
20 fact we are very competitive, we do share a community of
21 interest factor that we think is very strong, and we end
22 hope the ripple effect of trying to create more
23 competitive districts in the Maricopa and Pima County
24 areas will not disrupt what we have which is very
25 competitive, which does share a very strong community of

1 interest factor; and we hope you will leave us intact.

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

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

11 CHAIRMAN LYNN: Thank you, Mr. Chairman.

12 In the interest of time, I know other
13 commitments are pressing, I'd like to take Senator Pete
14 Rios at this time. I know Senator Rios has to be
15 elsewhere. I want to be sure he's heard on the record.
16 Without objection, Senator Rios representing District 23.

17 SENATOR RIOS: Thank you for consideration.

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

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

25 The Minority Coalition, Mr. Chairman,

1 Members of the Commission, remains ready to help the
2 Commission to help districts in creating districts that
3 fully comply with the Arizona Constitution. Protection
4 of minority voting rights remains our top priority.
5 However, the Coalition stated in September of 2001 the
6 creation of competitive districts and the protection of
7 minority voting rights are not mutually exclusive. The
8 Commission's Hall-Minkoff plan is a good example and
9 shows that the majority-minority districts can still be
10 created while still creating a competitive map. In
11 addition, the Commission now has the Georgia v. Ashcroft
12 decision which allows it to reduce the minority voting
13 percentages in certain districts by spreading out
14 minority voters across more districts to create more
15 minority influence districts. The Commission can create
16 additional competitive districts or make some districts,
17 like 10, Legislative District 12, even more competitive.

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

20 I guess I have to be a little bit brutally
21 honest and say that in my 20 years of being a State
22 Senator, I have learned that Republican legislators are
23 not supportive of most Hispanic issues. Having more
24 districts that give Democrats a chance to be elected
25 increases the likelihood that minority issues will be

1 addressed. And there's a lot of issues that have come
2 before us having to do with English learners, English
3 only, issues having to do with immigration that I can
4 point to as examples of what I just stated, but for the
5 sake of time I won't go into detail.

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

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

25 CHAIRMAN LYNN: Senator Rios, may we have a

1 copy of your prepared statements for the record?

2 SENATOR RIOS: I wrote all over it, but
3 I'll see if I can get you a clean copy.

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

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

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

23 SENATOR RIOS: I think if we look at the
24 Coalition 2 map, I think it was, I think that will give
25 you a clear indication the Minority Coalition was

1 supportive of competitive districts and lower
2 percentages.

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

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

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

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

25 CHAIRMAN LYNN: So is it fair then to

1 suggest that neither the Coalition nor we, at this
2 moment, know how the Department of Justice might view
3 such a map?

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

10 CHAIRMAN LYNN: Mr. Huntwork.

11 COMMISSIONER HUNTWORK: Mr. Chairman,
12 Senator Rios, when you look back into the reasons for the
13 creation of the Civil Rights Act, in particular the
14 preclearance process for districts, historically, it was
15 designed to make sure that minority groups really would
16 have the opportunity to have -- to elect minority
17 candidates knowing that in the deep south the Democrats
18 would have, in those days, liked nothing better than to
19 be able to divide the pockets of black population and
20 keep control of those votes but prevent the black
21 citizens from electing people of color to actually hold
22 public office. Now I understand that the Supreme Court
23 has taken a somewhat broader view of the process in its
24 most recent ruling. At the same time, as I read it, it
25 was a very measured step and it did not throw the doors

1 open to simply disregard that original consideration.
2 And as I read it, it's going to be an evolutionary
3 process. And I don't believe that the courts or the
4 Justice Department or this Commission or the -- or the
5 Minority Coalition would want us to lose track of the
6 underlying reality that the ability to divide is
7 potentially one way of depriving minorities of
8 representation.

9 Would you agree with that statement?

10 SENATOR RIOS: I guess there's a couple of
11 ways of looking at that, Mr. Chairman, Mr. Huntwork. I
12 always look at the end result. And if I'm looking at the
13 Legislature, because I'm very familiar with the
14 Legislature, if I'm looking to promote legislation that
15 is going to benefit racial and ethnic minorities in the
16 State of Arizona, then I have to also look at party
17 affiliation. Because it doesn't do me -- doesn't do the
18 minority people in the State of Arizona any good to have
19 five Latino State Senators, to have three Native American
20 State Senators, two African American State Senators, and
21 two white Democratic State Senators, because there are 30
22 senators and they only end up with 12 and there's 18 of
23 the other side. So for us to be able to promote
24 legislation to benefit racial ethnic minorities, we need
25 people sensitive to the issues.

1 So in the minority world, the people that
2 we sometimes elect don't happen to be of the same ethnic
3 or racial makeup. We have white people that represent
4 some minority-majority districts that do an excellent
5 job. And that's what people at the end of the day are
6 looking at, who is going to represent my concerns and my
7 issues. If it happens to be from a Latino district and
8 happens to be a Latino State Senator, great. If it
9 happens to be a white State Senator and he or she is
10 representing the interest, that's what the community is
11 looking for. So I don't know that this court decision
12 necessarily takes away or does any detrimental harm to
13 the minority communities in the state, in my opinion.
14 But I'm not an attorney.

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

22 SENATOR RIOS: The issue of ethnicity of
23 candidates is a sad issue. When I was a student in grade
24 school, I could not speak English. Some people wish I
25 still couldn't. In our school, if we spoke Spanish on

1 the school grounds, we were hit with rulers on the hands,
2 smacked across the face, because it was not permitted.
3 There is a case in the Year of Our Lord 2004 in
4 Scottsdale, Arizona, where that is still happening. So
5 that is the protection that being a preclearance state
6 still affords minorities in this state, because we still
7 have not arrived to a level where people can say we are
8 equal and we are being treated as equal across the board.

9 So there are still many advantages to the
10 Voting Rights Act and the fact that Arizona is still a
11 preclearance state. And there are a lot of examples
12 Native Americans can raise and a lot of examples African
13 Americans can raise on this issue.

14 COMMISSIONER HALL: Senator Rios, thank you
15 for coming.

16 For me, I'm more of a practical kind of
17 guy. As we heard this morning, attorneys can disagree.
18 Bring in 10, and you can get 10 different opinions.

19 For me it's a confusing process with
20 respect to the Hispanic Coalition. At times there's been
21 unity relative to a position, relative to a position
22 relating to percentages on minority-majority issues, and
23 at times, my perception, disunity, or reverse opinion. I
24 guess my opinion is would it be possible, in your
25 opinion, given how far we've come -- personally, I concur

1 with you and agree with you it is more beneficial to have
2 like party representatives in addition to minority
3 representatives to forward issues relative to the
4 minority communities.

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

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

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

1 to get every single member and every person we speak
2 for --

3 COMMISSIONER HALL: Right.

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

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

9 SENATOR RIOS: We'd credit that.

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

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

24 SENATOR RIOS: You have to keep something
25 in mind: Part of leadership, elected officials to the

1 Legislature, if I had a district that is a safe
2 reelection District for me of 70 percent Latino and you
3 are going to ask me to give up my safe district and sign
4 this district, well, I don't think you are going to get
5 too much cooperation from that legislator. Bear that in
6 mind as well.

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

11 CHAIRMAN LYNN: Ms. Hauser.

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

1 statements to the Commission that they can consider.

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

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

21 SENATOR RIOS: Okay.

22 MS. HAUSER: It would be very helpful.

23 SENATOR RIOS: I understand that as well.

24 When Justice rejected even higher numbers
25 in some minority-majority districts, that was before the

1 new court decision.

2 MS. HAUSER: Right.

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

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

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

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

17 I do want to thank you for your past
18 support.

19 SENATOR RIOS: Okay.

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

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

24 CHAIRMAN LYNN: The Commission will come to
25 order.

1 For the record, Commissioners Minkoff,
2 Huntwork, and Hall are present. Commissioner Elder is
3 still excused.

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

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

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

13 For the last 36 years I have been involved
14 in politics and other things. Also, for the record, I'd
15 like to clarify, during the trial a letter I wrote in
16 2001 in which I was promoting the idea of District 18
17 being together at that time, 18 being composed of
18 Sunnyslope, North Central Phoenix, where I live, and Moon
19 Valley, my idea for the letter was strictly for keeping a
20 compact District 18. I am very comfortable. The
21 leadership in our Legislature took care of Sunnyslope, a
22 minority commuter. At the same time, the intention of
23 the letter, at the same time, the judge used it in the
24 trial as we needed more minority representation on it,
25 which was totally incorrect, not how the letter was

1 intended. I am very comfortable with District 11 created
2 by this Commission and also think the Commission did a
3 great job in very difficult times and in the time frame
4 they had to create very competitive, compact districts
5 which are working and work very well in this 2002
6 election. I don't think there are any problems. I have
7 never been represented by minorities. I'm definitely a
8 minority, a Latino immigrant, second minority from
9 someplace, am comfortable with the maps. They are great
10 maps. I'm comfortable with the maps. It's a shame the
11 courts tried to change that. I think it's important you
12 be given the proper time to do the job right by the
13 judge. I'd like to say to you, at the same time, there
14 is nothing wrong with maps as they are.

15 I'd answer any questions.

16 CHAIRMAN LYNN: Thank you, Mr. Gutier.

17 Ms. Minkoff.

18 COMMISSIONER MINKOFF: Mr. Gutier, you're
19 talking about my old neighborhood until two months ago.
20 I lived in what was District 18, now Legislative District
21 11, and lived there for 35 years. Are you suggesting
22 that either District 18 as it used to be or District 11
23 now are competitive districts? I believe in both the
24 prior map or this map they are strong Republican
25 districts and --

1 MR. GUTIER: Mr. Chairman, Commissioner
2 Minkoff, I'm comfortable. Moved 24, 25, 26, 18 together
3 in some form, the district organized. I know my party
4 side. The district is perfectly working, and we have a
5 lot of new involvement, people not involved before. And
6 the map is perfectly fine, District 11, as is.

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

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

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

19 MR. GUTIER: Have never held that office.

20 CHAIRMAN LYNN: I'd hate to tell you.

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

23 CHAIRMAN LYNN: Nor running for office.

24 MR. GUTIER: Not running for office.

25 CHAIRMAN LYNN: Next speaker, Ann

1 Eschinger, League of Women Voters.

2 Ann, good morning. Good to see you.

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

5 Ann Eschinger representing the drafters of
6 Proposition 106.

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

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

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

1 political process forcing a particular outcome.

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

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

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

18 CHAIRMAN LYNN: Thank you, Ms. Eschinger.

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

21 MS. HAUSER: If I can ask.

22 CHAIRMAN LYNN: Ms. Hauser has a question.

23 MS. ESCHINGER: Sure.

24 MS. HAUSER: What if any role did you play
25 in connection with the drafting of 106?

1 MS. ESCHINGER: I didn't hear that.

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

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

6 MS. HAUSER: Thank you.

7 CHAIRMAN LYNN: Thank you, Ms. Eschinger.

8 Next speaker, Mark Herrington.

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

11 Mr. Herrington, good morning.

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

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

25 CHAIRMAN LYNN: Somebody did, glad it was

1 you.

2 MR. HERRINGTON: All I had to do was say
3 the truth and what I had in my heart. I could do it,
4 easy.

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

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

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

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

20 CHAIRMAN LYNN: Thank you, Mr. Herrington.

21 The last speaker slip I have for this
22 session, although I want to make it clear that we will
23 certainly entertain public comment throughout the
24 process, is from Jim Hartdegen representing the Pinal
25 County Governmental Alliance and Casa Grande Chamber of

1 Commerce.

2 Mr. Hartdegen, it wouldn't be a Commission
3 meeting without your smiling face in front of us. And we
4 appreciate you in front of us.

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

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

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

15 First of all, you guys did a great job.

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

19 I think this group, with the right people
20 at the right time, I applaud your hard work. I think
21 you've come up with a good deal. No one can accuse you
22 of not trying to cover the state in hearings. If people
23 didn't show up to hearings, that's their problem. You
24 guys made a good effort to get input from citizens in all
25 different type of ways.

1 I went through a couple processes in my
2 legislative life, and it was all done in the basement.
3 One thing 106, I understand, tried to do, is take
4 politics out of this process. And I think you guys tried
5 to keep politics out of the process. I guess it just
6 moved from the basement of the Legislature into the
7 chambers of the judge, I guess.

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

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

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

21 We're very satisfied with District 23 the
22 way it is. But again, if you want to go back to the one
23 you gave the Department of Justice, we'd be just as happy
24 with that map, also. We just don't want to be, in our
25 location, the area that makes up for maybe some

1 short-comings in the Metropolitan Phoenix and Tucson
2 areas.

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

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

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

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

25 Are there other members of the public that

1 wish to be heard at this time? If not, we'll close
2 public comment.

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

7 COMMISSIONER MINKOFF: So moved.

8 CHAIRMAN LYNN: Second?

9 COMMISSIONER HALL: Second.

10 CHAIRMAN LYNN: Discussion?

11 All those in favor, signify by saying

12 "Aye."

13 COMMISSIONER HUNTWORK: "Aye."

14 COMMISSIONER HALL: "Aye."

15 COMMISSIONER MINKOFF: "Aye."

16 CHAIRMAN LYNN: Motion carries.

17 The commission will move to Executive
18 Session.

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

1 half is probably a good barometer for this Executive
2 Session.

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

5 (Whereupon, the Commission recessed Open
6 Public Session at 11:35 a.m. and convened
7 in Executive Session at 11:44 a.m. until
8 12:44 p.m. at which time the lunch recess
9 was taken. Open Public Session resumed
10 at 1:27 p.m.)

11 CHAIRMAN LYNN: The Commission will
12 reconvene in Open Session.

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

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

24 As Proposition 106 intended, we are five
25 very different people drawn from various parts of the

1 state with differing allegiance in terms of political
2 affiliations, different backgrounds, different ideas, all
3 brought to bear on the task of redistricting. We
4 actually heard this morning the framers of Proposition
5 106 actually intended that to be the case.

6 Sometimes we disagreed, mostly on minor,
7 sometimes on major issues, but we try to achieve
8 consensus. We tried to work for compromise on those
9 issues without compromising or sacrificing principles,
10 and we also recorded all of our votes publicly for
11 everyone to see. On some matters we were in agreement
12 from the beginning. We were unanimous about our desire
13 to listen carefully to the citizens of Arizona from
14 communities all over the state. We were also unanimous
15 in our, in our belief that the process that we used
16 should be fully transparent in the sense that our line
17 drawing would take place in public. We were unanimous,
18 as the mapping went forward, that we should take into
19 account the reactions of every group and seek to
20 accommodate and compromise among their views to achieve
21 the goals established. We were sure that this is what
22 the people wanted when they wrote Proposition 106 and
23 when they voted for it, a process that was supposed to be
24 immune from tampering by political power elites and a
25 process that would reconcile competing aspirations.

1 At the end of the process we were united by
2 several factors, even though the ultimate vote was not
3 unanimous. We were united by respect for one another.
4 We were united by the realization that each of us had
5 acted out of conviction in pursuit of goals honestly held
6 and openly expressed. And we reject categorically and
7 with disdain any implication that we improperly used
8 knowledge of specific locations of incumbents or
9 candidates in our deliberations or our decision making.

10 I know I speak for every member of the
11 Commission in expressing pride in the integrity of our
12 process.

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

25 Because of the time constraints imposed by

1 the court we are proceeding today to comply with the
2 court's order even as we appeal it.

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

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

11 Mr. Huntwork?

12 COMMISSIONER HUNTWORK: Mr. Chairman, thank
13 you.

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

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

21 The Independent Redistricting Commission
22 recognizes that it is one participant in a broader legal
23 process. In the broadest sense, the plaintiffs in the
24 lawsuit against us should not be viewed as our opponents
25 but our partners in this process, as are parties that

1 supported our maps, and as is the trial court that ruled
2 against us.

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

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

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

19 Secondly, we believe that it is important
20 to the process for the appellate courts, including the
21 Arizona Supreme Court, to provide definitive rulings on
22 these legal issues so that we and future Commissioners
23 can proceed with a clear understanding of our task.

24 Whether or not you, the public, agree with
25 our decisions to date, I hope you believe that we have

1 honestly followed the rules as we understood them and
2 will willingly and enthusiastically follow the rules as
3 they may be clarified by the courts.

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

8 Thank you, Mr. Chairman.

9 CHAIRMAN LYNN: Thank you, Mr. Huntwork.

10 Other members of the Commission?

11 Mrs. Minkoff?

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

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

19 As we went through this process, we were
20 wrestling with a lot of things in Proposition 106 and
21 trying our very, very best to comply with the
22 Constitution of the State of Arizona. We in this
23 Commission had different viewpoints as to what was the
24 proper way to go, which is why some of our votes were
25 divided. In six years another Commission is going to be

1 appointed, and they will have the task for the next
2 redistricting that we have had for this one. We owe it
3 to them. We owe it to the people of Arizona to make sure
4 what Proposition 106 really means. And so that is why I
5 feel, along with my fellow Commissioners, that it is
6 absolutely essential that this go to an appellate court,
7 that we have a determination of some of the ambiguous
8 points of the Constitution of the State of Arizona
9 regarding redistricting, so that we can go forward and do
10 the job right and so that our successor Commission can do
11 the job right. We owe the people of Arizona no less.

12 CHAIRMAN LYNN: Thank you, Ms. Minkoff.

13 Any other comments by Commissioners?

14 Comments by counsel?

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

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

20 For that we turn to NDC for a presentation.

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

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

24 DR. ADAMS: Mr. Chairman, Members of the
25 Commission, I am indeed here representing National

1 Demographics Corporation along with Marguerite Leoni and
2 Doug Johnson. We, as your consultants, are here to
3 assist you in whatever way you direct to carry out the
4 trial court's order.

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

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

13 CHAIRMAN LYNN: As we go.

14 MS. LEONI: Thank you, Florence.

15 Chairman Lynn, Members of the Commission,
16 I'm pleased to be speaking to you today.

17 The court's order is nearly 53 pages long
18 with 120 plus findings and a substantial number of
19 conclusions of law. It is not our intent today here
20 today to be comprehensive. There is going to be much
21 that is going to come up of the discussion of compliance
22 of that order. I'm also quite well aware that the
23 Commissioners here, as are its counsel, have studied this
24 decision and are very familiar with it. So the high
25 points I'm hitting are more for the benefit of the public

1 to get an idea of some of the key high notes of that
2 ruling in order to introduce the following sections of
3 the Power Point.

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

6 COMMISSIONER MINKOFF: No.

7 DR. ADAMS: They are here.

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

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

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

23 A couple of key holdings in terms of some
24 of the discussion that was held here today. The court
25 did find the creation of the grid was the initial mapping

1 phase. That is a phrase from Proposition 106. And the
2 court also held that the grid itself was the first draft
3 map.

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

7 The court key holding then front and center
8 during this morning's center is a need for definitions.

9 The court ruled that the IRC is required to
10 adopt essential definitions, definitions of essential
11 constitutional terms. Ones listed by the court:
12 significant detriment, communities of interest, to the
13 extent practicable, competitive districts. We also have
14 others: compactness, contiguity. We'll work with you to
15 look at terms in the broad sense.

16 The court addressed the very broad issue of
17 the Voting Rights Act in light of the new Supreme Court
18 decision in the Ashcroft case and the mandate of
19 Proposition 106 to favor competitiveness. What the court
20 held is that the Commission failed to favor
21 competitiveness by creating majority districts with
22 Hispanic voting populations in excess of what was
23 necessary to meet your preclearance obligation and create
24 a nonretrogressive plan. That's another issue that needs
25 to be wrestled with by this Commission.

1 In a nutshell, the court held that the
2 Commission was required to create fewer, quote, "safe
3 districts" or "benchmark majority-minority districts."
4 And as we will see later on when we discuss the Ashcroft
5 decision, these are districts where a minority candidate
6 is virtually assured election.

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

14 On the crucial issue of communities of
15 interest, the court set forth three crucial limitations
16 of the Commission's discretion: the Commission's limited
17 competitiveness clause in Prop 106 placing an entire
18 community within the boundaries of a Legislative
19 District; number two, with regard to communities of
20 interest, the Commission was not entitled to create
21 homogeneous districts comprised of like-minded yet
22 distinct communities of interest at the expense of
23 creating competitive districts; and the last holding on
24 the communities of interest is that boundaries were --
25 should have been adopted for the communities of interest

1 in terms of identifying the issue of significant
2 detriment.

3 And with that --

4 Yes?

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

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

14 COMMISSIONER MINKOFF: Right.

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

20 COMMISSIONER MINKOFF: I'm still not sure.

21 CHAIRMAN LYNN: Microphone.

22 COMMISSIONER MINKOFF: We had an example
23 earlier in public comment of the Isaac School District.
24 Should that issue come up again in a map, are you saying
25 that we would have to put the entire school district

1 within a single district or could we put a substantial
2 portion of it in a single district?

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

8 CHAIRMAN LYNN: Ms. Hauser.

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

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

24 MS. HAUSER: Right.

25 COMMISSIONER MINKOFF: -- if necessary,

1 more than one?

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

11 COMMISSIONER MINKOFF: Okay.

12 CHAIRMAN LYNN: Okay. Florence.

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

15 Okay. Thank you.

16 Dr. Adams?

17 DR. ADAMS: Mr. Chairman, Members of the
18 Commission, the next portion of the Power Point speaks to
19 process. And I think it, I need to make it clear that
20 there are many ways, as you well know and from your
21 discussion this morning, you realize there are a number
22 of ways to approach the process. What we have here is
23 simply one possible way of a number of ways to approach
24 it. So what we would like to do is share that with you
25 now.

1 We think that the first step possibly in
2 process would be to adopt definitions. That would be one
3 beginning point. After we adopt definitions, after the
4 Commission adopts definitions and gives us guidance on
5 that, the next step in the process would be to map
6 communities of interest and then bring those back to you
7 and --

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

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

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

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

21 COMMISSIONER HUNTWORK: Mr. Chairman.

22 CHAIRMAN LYNN: Mr. Huntwork.

23 COMMISSIONER HUNTWORK: Did you include the
24 adoption of communities of interest by the Commission
25 before you mapped them or are you going to recommend,

1 provide us with maps that are -- that show communities
2 that you are going to recommend we adopt? Or what order
3 do you intend, do you suggest?

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

12 CHAIRMAN LYNN: Mr. Huntwork.

13 COMMISSIONER HUNTWORK: Clearly that would
14 save some time, and time is going to be of the essence.
15 But I also am concerned about anything that we have done
16 in the past to define communities of interest. My
17 concern is raised by other provisions of the court order
18 that aren't -- haven't been summarized here. But, you
19 know, we -- we listened to months of citizen input, but
20 it was all anecdotal. It wasn't legal evidence, in a
21 sense. And in order to winnow through it and define
22 communities of interest, we had to exercise our own
23 judgment and apply our own knowledge to separate the
24 wheat from the chaff, so to speak. And the -- and I
25 thought I read in the court's order that we needed to

1 limit ourselves to other types of evidence, that is
2 perhaps, you know, expert testimony or consultant review.
3 I don't know what types of evidence there might be, but
4 the communities we identified in the past, I think, may
5 have arisen from a process that the trial court disagreed
6 with.

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

10 Ms. Hauser?

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

25 COMMISSIONER HUNTWORK: Thank you.

1 CHAIRMAN LYNN: Dr. Adams.

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

23 Then, to continue following with the
24 Proposition 106 criteria, to meet the adopted standard
25 for geographic compactness. That was discussed some this

1 morning. We have further information and slides on that
2 to show you in the next slide show.

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

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

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

13 Ms. Minkoff.

14 COMMISSIONER MINKOFF: Question, Dr. Adams.

15 CHAIRMAN LYNN: Microphone.

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

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

22 COMMISSIONER MINKOFF: As you go through
23 all the other criteria and you suggest that we adjust to
24 comply, certainly logically it makes sense that the next
25 one is the Voting Rights Act, because that really trumps

1 everything else. But then you go into communities of
2 interest, geographic compactness, and visible geographic
3 features. And what I'm wondering is if you reverse the
4 order of these or change them in any way if it would
5 significantly impact what the final map was. In other
6 words, instead of doing communities of interest next, if
7 you did geographic features next and then communities of
8 interest, you know, if you mix up the order of these,
9 does it change the map significantly enough and, if so,
10 then I believe that is something we need to weigh in on
11 in terms of which comes next, which comes next, and which
12 comes last.

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

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

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

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

25 COMMISSIONER MINKOFF: You could do any of

1 various orders of those three, could be organized to show
2 us different options.

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

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

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

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

24 Ms. Hauser.

25 MS. HAUSER: I think that's basically

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

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

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

18 COMMISSIONER HALL: They are listed in a
19 sequential order.

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

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

25 CHAIRMAN LYNN: Ms. Minkoff.

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

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

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

21 Mr. Huntwork.

22 COMMISSIONER HUNTWORK: Mr. Chairman, I
23 would just ask, think further about his answer --

24 Doug, think further about his answer to the
25 question. It isn't obvious to me when you put two

1 criteria down side by side, say I'm going to weigh them
2 equally, that the one you do first has the higher
3 priority, if -- regardless of which one you start with,
4 if you weigh fully, evenly, you end up with the same
5 result, just as a logical matter. I would ask you to
6 consider that. But if the answer truly is that it
7 matters what you start with, then I think we have to
8 start with the Voting Rights Act, not with -- I mean the
9 first map we draw has to be Voting Rights Act, it has the
10 highest priority, and everything else is clearly below
11 that, so if we stumble on the first step, if your answer
12 holds, yet we consider competitiveness first.

13 CHAIRMAN LYNN: Mr. Johnson.

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

24 COMMISSIONER HUNTWORK: Reduced or
25 eliminated?

1 MR. JOHNSON: Reduced. Could also do a
2 balanced effect as well.

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

6 COMMISSIONER HUNTWORK: Would you do that?

7 MR. JOHNSON: Sure.

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

12 CHAIRMAN LYNN: Mr. Hall.

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

20 DR. ADAMS: I would have to let attorneys
21 speak finally to that. I would simply say that to begin
22 with favoring competitiveness and then adjusting for the
23 Voting Rights Act may make sense because favoring
24 competitiveness is very obviously at the top of the
25 court's mind. I'll let Ms. Leoni speak to that.

1 MS. LEONI: One way, Commissioner Hall, to
2 look at the court's order is to realize that the holdings
3 with regard to the Voting Rights Act are colored
4 significantly by the need to favor competitiveness. And
5 from one point of view, starting with a map based on
6 factors indicating competitiveness lets you know how
7 creating the Voting Rights Act, districts, and that, you
8 must comply with what impact it has on that particular
9 map. So it is simply a way of viewing them at the same
10 time in that process, trying to implement both 106 and
11 Ashcroft. It's not the only way. You can certainly
12 proceed with your Voting Rights Act districts first.

13 COMMISSIONER HALL: Thank you,
14 Mr. Chairman.

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

25 We're debating over margins, but it's

1 percentages we're talking about.

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

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

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

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

24 So what you want to do, if you create, just
25 go out and create influence districts, you may create

1 influence districts. Simply the fact you create
2 influence districts is not to have competitiveness.
3 Overlay competitiveness, then overlay competitiveness to
4 see if influence districts can become more competitive.
5 You can't do it any other way.

6 CHAIRMAN LYNN: Mr. Huntwork.

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

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

23 CHAIRMAN LYNN: I tend to agree. The only
24 thing I suggest when Mr. Rivera makes comment starting
25 with competitiveness, it seems to me just on the basis of

1 logical explanation to the court that you would be better
2 off telling the court that you began with that criterion
3 as the court suggested and even to the extent of the
4 Voting Rights Act determine whether or not those
5 districts could, that were once created as competitive,
6 could continue to stand in light of all the other
7 criteria being applied and either found to be significant
8 detriment or not.

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

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

24 We may be splitting hairs. You may be
25 absolutely right, it could go either way from the

1 standpoint we're assuring it attempting to comply with
2 the court's order. We're attempting to comply with
3 competitiveness.

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

7 CHAIRMAN LYNN: Whether they meet the test.

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

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

12 MR. RIVERA: Right.

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

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

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

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

23 CHAIRMAN LYNN: Oh. Okay. Thank you.

24 Dr. Adams.

25 DR. ADAMS: Mr. Chairman, Members of the

1 Commission, that concludes that part of the presentation.
2 I don't know if at this point you want to continue
3 discussing process and make a decision on it or continue
4 on to the next as we continue on to the next. It's the
5 first part of --

6 CHAIRMAN LYNN: The process.

7 DR. ADAMS: The process.

8 CHAIRMAN LYNN: I think we ought to start
9 here.

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

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

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

21 Mr. Hall.

22 COMMISSIONER HALL: Mr. Chairman,
23 Mr. Huntwork may well be right, and you have been before,
24 on occasion, so -- I'm just wondering if we were to do
25 the competitiveness first, Voting Rights Act second.

1 There's some question regarding the other remaining
2 criteria. Pursuant to Ms. Minkoff's suggestion, why not
3 just randomly pick those so there would be no indication?
4 I think there's some merit to the argument if completely
5 thorough of analysis of all variables, in the end it's
6 academic, anyway. As a matter there wasn't some hidden
7 agenda in order, maybe just randomly pick the latter
8 criteria. I think that the procedure that has been
9 proposed by NDC is logical. I would move that we
10 progress in that fashion.

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

13 Is there a second?

14 COMMISSIONER MINKOFF: I'll second it.

15 CHAIRMAN LYNN: Thank you.

16 Discussion on the motion?

17 Ms. Minkoff?

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

20 CHAIRMAN LYNN: Microphone.

21 COMMISSIONER MINKOFF: -- obviously if we
22 don't comply with the Voting Rights Act, the whole map
23 gets thrown out at one point or another. However, as
24 long as we comply with the Voting Rights Act, I don't
25 think it matters which stage in the process we comply

1 with that process since we specifically have been told to
2 comply with competitiveness by the state court. I think
3 that's what we have to do. Department of Justice isn't
4 going to care when we get around to complying with the
5 Voting Rights Act as long as we do ultimately comply with
6 it.

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

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

24 COMMISSIONER MINKOFF: And visible
25 boundaries, political and geographic boundaries.

1 CHAIRMAN LYNN: Mr. Huntwork --

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

5 CHAIRMAN LYNN: I am in support.

6 Mr. Huntwork, on the motion.

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

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

24 MR. RIVERA: I think we'll hold that in
25 abeyance, also.

1 CHAIRMAN LYNN: Okay.

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

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

7 MS. HAUSER: Okay.

8 COMMISSIONER HUNTWORK: Or geologic
9 factors.

10 CHAIRMAN LYNN: Or political boundary
11 factors.

12 MS. HAUSER: Okay.

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

25 Mr. Huntwork.

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

13 CHAIRMAN LYNN: Mr. Hall?

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

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

20 COMMISSIONER HALL: Okay.

21 CHAIRMAN LYNN: I didn't want it to be
22 ambiguous we hadn't discussed it, we weren't clear on it
23 and didn't have agreement that was an appropriate
24 starting point. As we read the rule, I'm certainly in
25 agreement your assessment of what the court was telling

1 us is accurate. I believe that's what they are telling
2 us.

3 Any further discussion on the motion?

4 Are you ready for the question?

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

7 COMMISSIONER MINKOFF: "Aye."

8 COMMISSIONER HUNTWORK: "Aye."

9 COMMISSIONER HALL: "Aye."

10 CHAIRMAN LYNN: Chair votes "Aye."

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

17 Is that an accurate representation?

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

20 CHAIRMAN LYNN: It would be random.

21 COMMISSIONER MINKOFF: -- it would be
22 random.

23 CHAIRMAN LYNN: Absolutely.

24 COMMISSIONER HUNTWORK: That is an accurate
25 summary of the motion.

1 I'd also like to point out the court order
2 also orders us to come out to a certain minimum result.
3 I believe that is a different process.

4 In my own mind, at least, I do not believe
5 that compliance with the court order is a single track
6 exercise but rather parallel. When we follow a
7 principled analysis we may or may not come up with the
8 number of competitive districts that the court has
9 ordered us to achieve. So, therefore, I think we have to
10 supplement the process by saying -- and I suppose we can
11 cross this bridge when we come to it. If the result of
12 that process is not a sufficient number of competitive
13 districts, in order to comply, we are going to have to
14 simply make some districts more competitive whether
15 they -- whether that satisfies their definitions or
16 procedures or not.

17 CHAIRMAN LYNN: Well, I would suggest that
18 as we move forward to adopt definitions, that within the
19 definition category of competitiveness we might also put
20 something on the record as to recognizing that the court
21 has set, if you will, a benchmark of its own for the
22 number of competitive districts that are required to
23 satisfy the court's ruling and that that become a part of
24 that definitional process so that it is included in the
25 thought process behind the evolution of the maps that we

1 just talked about. There are several other ways to do
2 it, but the point is we know any map submitted in court
3 or presume any map submitted to the court does not at
4 least equal the benchmark cited by the court will be
5 found lacking.

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

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

17 COMMISSIONER HUNTWORK: When we come down
18 to the bottom line, I would like to have the opportunity
19 at least to see, we have the map we created before; and
20 we have the Hall-Minkoff Modified Test that we never
21 fully -- we ourselves never fully considered but that we
22 could start with from that plan to see what result, you
23 know, how we get the requisite number of competitive
24 districts starting with that plan. We will also have
25 another process that fixes many of the other things the

1 judge found lacking, location of definitions, and
2 hopefully more consistent process may result in a
3 different map if it also doesn't achieve the requisite
4 number of competitiveness, too, it happens we don't have
5 the requisite number of competitive districts. But then
6 we'll have the option to decide which one we wish to
7 modify in order to meet the benchmark. I just -- I would
8 rather approach it that way where we don't come out of
9 the box with a result in mind but rather a principled
10 decision-making process and then see.

11 You know, I don't believe it was the
12 judge's intent, honestly, to say when you follow, when
13 you and future commissions follow the process that I have
14 in mind, there's going to be a benchmark criteria. And I
15 and future courts are going to tell you how many you have
16 to come up with. Rather I think implicit in his decision
17 must have been the conclusion if we get to where
18 Hall-Minkoff was, we considered competitiveness enough
19 however we got to that point and so there -- I think
20 there may be two ways that we can satisfy the -- satisfy
21 the court's order in this instance, meet the benchmark
22 and also leave a light for future commissions, show here
23 is a principled decision-making process that leads to its
24 own result which in this year we will have to apparently
25 modify -- may have to modify in order to achieve a

1 specific number of competitive districts; but 10 years
2 from now our successors may not do that.

3 CHAIRMAN LYNN: Ms. Minkoff.

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

10 CHAIRMAN LYNN: As a map.

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

25 CHAIRMAN LYNN: Mr. Huntwork?

1 COMMISSIONER HUNTWORK: I will wait for
2 advice from counsel.

3 CHAIRMAN LYNN: Thank you.

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

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

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

1 about that. I'll let one follow the other and I'll go
2 click slides.

3 CHAIRMAN LYNN: Mr. Huntwork.

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

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

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

22 COMMISSIONER HUNTWORK: Okay. Thank you.

23 COMMISSIONER HALL: My only problem,
24 Mr. Huntwork, is that I think that that is only one of
25 many perplexing issues in the order. I mean -- no

1 disrespect intended, I'm just saying there are many
2 things from my perspective that are very perplexing.
3 You've identified only one.

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

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

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

18 CHAIRMAN LYNN: It is perplexing.

19 COMMISSIONER HALL: Put it on the shelf.

20 MS. HAUSER: Right.

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

25 COMMISSIONER HALL: You've been gone so

1 long, Doug, you've lost a bunch of hair.

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

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

9 Also from the order, we know that --

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

12 CHAIRMAN LYNN: Overview.

13 COMMISSIONER HALL: Flying over.

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

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

20 COMMISSIONER HALL: Right.

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

23 COMMISSIONER HALL: Right.

24 MR. JOHNSON: The other thing the order
25 said was heterogeneous districts may be more competitive.

1 The court failed to include dissimilar communities of
2 interest in the same district to create heterogeneous and
3 competitive districts.

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

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

14 Two theoretical definitions cited in the
15 order.

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

23 COMMISSIONER HUNTWORK: Mr. Chairman --

24 COMMISSIONER HUNTWORK: What does that
25 mean? Does that mean over seven percent, that the

1 minority party had no chance of winning, 99 percent of
2 the time didn't win, or what does it mean?

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

5 CHAIRMAN LYNN: Ms. Hauser.

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

8 MS. HAUSER: Where did Mr. Rivera go?

9 COMMISSIONER MINKOFF: Right behind you.

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

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

20 MS. HAUSER: Can we come back to that?

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

23 COMMISSIONER HALL: Jim, we promise next
24 time we'll have another Executive Session, I promise.
25 I'll move for it.

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

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

17 COMMISSIONER HUNTWORK: Thank you.

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

25 COMMISSIONER MINKOFF: It says under seven

1 percent.

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

9 COMMISSIONER HALL: Okay.

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

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

1 predict the election?

2 MR. RIVERA: Mr. Chairman, before
3 Mr. Johnson answers that question, I guess it's
4 Marguerite that should advise her client not to answer
5 that question.

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

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

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

13 MR. RIVERA: I do not --

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

16 COMMISSIONER MINKOFF: Okay.

17 COMMISSIONER HALL: Going over.

18 COMMISSIONER HALL: Quotes from the order.
19 Again, I think many things in the order are rather
20 perplexing.

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

24 MS. HAUSER: You will see a recommended
25 definition coming up.

1 Again, just trying to --

2 COMMISSIONER HALL: Hold on.

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

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

9 Mr. Johnson.

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

13 MR. RIVERA: That's fine.

14 COMMISSIONER HALL: Are there any in here?

15 MR. JOHNSON: The next slide in here about
16 JudgeIt, the court says an accuracy rate of approximately
17 98 percent in predicting results of the 2002 election,
18 that is a quote cited.

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

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

22 CHAIRMAN LYNN: Let me ask counsel how
23 we're going to proceed on this. I'm trying to get to a
24 series of definitions today agreed to by the Commission.
25 At some point we will need to have a definition of

1 competitiveness. Shall we simply defer that one, move
2 on, see if there are more clear opportunities to adopt
3 and come back to that?

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

7 MS. HAUSER: That's there.

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

11 CHAIRMAN LYNN: We can try that one.

12 MR. RIVERA: Your choice.

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

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

21 COMMISSIONER HALL: You don't care legally?

22 MR. RIVERA: I don't care.

23 COMMISSIONER HALL: Right.

24 CHAIRMAN LYNN: What I'm concerned about is
25 there are a couple questions raised about this particular

1 definition if left unanswered are going to render it
2 difficult if not impossible for the Commission to come to
3 a definition of competitiveness. I may be wrong about
4 it. I sense both Ms. Minkoff and Mr. Huntwork in their
5 minds may make it difficult to arrive at a consensus
6 unless questions are answered.

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

16 COMMISSIONER HALL: Can I follow that up
17 with a question, Jim? While I think that that is an
18 interesting discussion, and certainly I think it's going
19 to be beneficial, what that answer is, how does that
20 affect what our definition is? Our -- I think our
21 mandate from the court, if I'm not wrong, we're going to
22 have to be less than seven percent. I think the
23 inference from the order is very clear that the
24 measurement of competitiveness is seven percent or less.
25 I think essentially the intent of what, for example,

1 Mr. Eckstein put on the table is a relatively accurate
2 definition pursuant to the order of the court. Whether
3 or not -- you know, your question, I think, is very
4 valid. Andi's question, JudgeIt had an accuracy rate of
5 98 percent. I think that's a perplexing statement, the
6 merits of which are subject, at best. Nevertheless, I
7 don't think it affects what the definition is going to
8 be. I mean that's my opinion.

9 COMMISSIONER HUNTWORK: Perhaps that's
10 true.

11 CHAIRMAN LYNN: Ms. Minkoff.

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

15 MR. JOHNSON: Registration.

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

1 standard that we don't understand because it's going to
2 be meaningless.

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

10 CHAIRMAN LYNN: Mr. Rivera.

11 MR. RIVERA: Andi, you're looking at two
12 different things, the definition of JudgeIt, how AQD or
13 JudgeIt is run a number of times. AQD was given by NDC.
14 Every time they ran a spread sheet, they told you AQD,
15 JudgeIt, the same thing, the variety. From Dr. McDonald,
16 he tells you how he defined the program he ran and the
17 standard deviation from it and the accuracy, his
18 confidence level within that. That is the definition.
19 That is a different question than what Commissioner
20 Minkoff is asking, accuracy, how accurate. Although I
21 don't want to go into that and don't think we can at this
22 point in time because it's paraphrasing the record, the
23 court determined the accuracy rate and then made a
24 determination as how to judge whether accurate, 99
25 percent accurate or not.

1 What I would tell you is the court states
2 and it's undisputed that you never look at these things
3 through one election cycle. That's what you are looking
4 at at this point, one election cycle, Commissioner
5 Minkoff. Although one election cycle, however you define
6 it, is an indication, nobody can tell you how these are
7 accurate from one election cycle.

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

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

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

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

1 seven percent. So --

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

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

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

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

22 CHAIRMAN LYNN: Is there a second?

23 Hearing none, Mr. Huntwork.

24 COMMISSIONER HUNTWORK: A couple things. I
25 would be interested in the technical workings of the

1 equation and all of that for some nighttime bedtime
2 reading, something like that. But what I really do need
3 to know are what are the odds when you get outside the
4 seven percent range or -- if there is, once outside that
5 range, what this is telling me is there's a one percent
6 chance of being elected, I might have to conclude the
7 range is too big or if -- I have to know what the
8 statistics mean, exactly what Commissioner Minkoff is
9 saying. We don't necessarily have to understand
10 differential calculus, but we do have to understand what
11 it means in terms of getting elected and the likelihood
12 of opposing candidates to run against each other.

13 CHAIRMAN LYNN: Mr. Rivera.

14 MR. RIVERA: I can tell you Dr. McDonald
15 stated in terms of AQD, JudgeIt, the plus or minus 3.5, a
16 95 percent confidence interval, within that range, as
17 racially competitive. He cannot -- it's a bell curve.
18 He did a lot better job than I did. Once -- edges of the
19 bell curve end in 95 percent. The further away you get
20 from it, the further the confidence level goes down.

21 I don't know if that -- it's strictly a
22 mathematical calculation.

23 CHAIRMAN LYNN: Mr. Huntwork.

24 COMMISSIONER HUNTWORK: Even with that,
25 it's 95 percent that either party can win, in other

1 words, one party has only a five percent advantage over
2 the other party; then my judgment would be the range is
3 too narrow, for a couple reasons: Number one, we're
4 trying to create as many competitive districts as
5 possible and, as we, you know, have to adjust them in
6 order to create some in a very narrow range, we impair
7 the ability for others to fall slightly outside the
8 range. And we're trying to get public debate, trying to
9 get candidates to run against each other, trying to get
10 accountability for candidates, all the things in
11 legislative districts from Proposition 106 that have been
12 articulated to us many times. If it's literally only a
13 five percent difference in electability, that is, in my
14 judgment, way too narrow a definition --

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

23 What I can tell you, without being an
24 expert in anything, is we had several definitions we
25 talked about during the course of the process of what

1 competitiveness might be. What we did was apply three of
2 them, which was voter registration, AQD, and JudgeIt, to
3 those maps, fully tested, and evaluated on
4 competitiveness as we went through the process. And the
5 court in ruling used those same tests to determine its
6 own target for competitiveness.

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

21 What isn't subject to review, in my
22 judgment, is applying JudgeIt, because the court has
23 already heard that definition, accepted that definition
24 in terms of the ruling that was made, and is fully
25 prepared, I believe, to look at a new map we submit in

1 light of JudgeIt and make a determination as to whether
2 or not it meets the target or not.

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

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

8 COMMISSIONER HALL: I think less than.

9 COMMISSIONER MINKOFF: Paul's language.

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

20 CHAIRMAN LYNN: Mr. Huntwork, Ms. Minkoff.

21 COMMISSIONER HUNTWORK: Mr. Chairman, at
22 the appropriate time I'd like counsel to advise us
23 whether or not the court order did so order or not. I
24 read the order to say the court was ordering us to create
25 a definition; and whether a number was a theme in the

1 argument, in the order, and the extent to which that was
2 validly taken, or if going for its own internal purposes,
3 to seem to apply a definition, we need to apply it
4 consistently. That is what I was reading. I didn't read
5 the court to order that was the definition. We --

6 Obviously we need legal advice on this so
7 we'll comply. If that's the order, it was a moot point;
8 I'll comply.

9 COMMISSIONER MINKOFF: I have a suggestion
10 to move along. We've been using JudgeIt seven percent
11 throughout all the proceedings. That was certainly a
12 standard the court was comfortable with. I don't have a
13 problem adopting it as the standard of competitiveness.
14 However, I want to make sure that we make sure we have
15 appropriate information in front of us before we adopt
16 it. What I would suggest is that we temporarily table
17 this. I think we can resolve it in five minutes after we
18 get the information, Jose, you said was available in
19 terms of a little bit more flushing out of JudgeIt, the
20 range of less than seven percent. I want to make sure
21 when we take this vote it cannot be challenged, that it
22 was an informed definition, we considered all of the
23 options and we came to this decision with full
24 understanding of what it meant. I don't think we have a
25 full understanding of what it meant except the court

1 liked it. That's why I suggest we put this aside, move
2 on, and get the definitions and go back and I think adopt
3 it very quickly.

4 CHAIRMAN LYNN: Mr. Hall.

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

12 COMMISSIONER MINKOFF: Yep.

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

21 The other fact of the matter is that we
22 have to come away with definitions from this today in
23 order for us to proceed through the process as we have
24 previously outlined it. And, quite frankly, I'm really
25 struggling with this whole deal. To me it seems to be

1 blatantly obvious. I could be dense. I've been called
2 that before. What am I missing?

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

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

10 CHAIRMAN LYNN: Ms. Hauser.

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

23 You may also want to consider saying
24 something with respect to what, you know, what it means
25 to be competitive in a way that doesn't use a number. I

1 would almost suggest maybe there are two different
2 things. There is what is the concept of competitiveness
3 you are adopting and how are you going to go about
4 measuring that.

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

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

23 One of the main benefits of it as compared
24 to the much simpler method of AQD was it considered the
25 incumbency factor. So, finally, I recently made the

1 point throughout our earlier proceeding that -- it seemed
2 to me that we were improperly constraining the full
3 meaning of Proposition 106 if we were to say a
4 competitive district is one with a seven percent spread
5 under whatever criteria we use versus one district with a
6 seven percent spread versus two districts with eight
7 percent spreads, or whatever, and prove to me that is the
8 best way to achieve an overall competitive map, you know,
9 to achieve the purposes of Proposition 106.

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

15 Now, all those issues were open and were
16 fully considered in our previous deliberations. At no
17 time in our previous deliberations did the Commission
18 narrow itself to a specific definition or a specific
19 range. That is a mischaracterization of what we did.
20 And to the extent that the court found that that is what
21 we did, I would respectfully disagree. If you look at
22 the whole record that is not in fact what we did. Even
23 to that extent, I don't believe the court said this is
24 the answer. The court just said you, whatever you do,
25 you have to be logically consistent. It has -- and I

1 agree with that. It has to be a transparent process.
2 People have to understand what we did and why. And I
3 believe that is what the court was admonishing us to do
4 in the creation of clearer rules and following them
5 consistently.

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

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

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

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

20 COMMISSIONER HUNTWORK: Be patient a few
21 minutes.

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

25 COMMISSIONER HUNTWORK: Have I seen a

1 definition, a proposed definition?

2 CHAIRMAN LYNN: I don't think you will.

3 Language, but to see suggestions --

4 COMMISSIONER HALL: Can I make another

5 motion? I'll stay out here --

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

7 COMMISSIONER HALL: -- hell freezes over.

8 How about make it more trendy? How about

9 competitive means, Mr. Chair, quoting from you, "That

10 either party or other parties would have an opportunity

11 to prevail in such an election, period. A Legislative or

12 Congressional District shall be deemed competitive if the

13 difference in the JudgeIt score between the two major

14 parties in that district is less than seven percent?"

15 CHAIRMAN LYNN: Is there a second?

16 COMMISSIONER MINKOFF: I'll second it.

17 CHAIRMAN LYNN: Discussion on the motion?

18 Mr. Huntwork.

19 COMMISSIONER HUNTWORK: Mr. Chairman, I

20 continue to be very concerned about whether JudgeIt

21 actually works if you can't consider incumbency. I'd

22 like to understand the difference between JudgeIt and AQD

23 without incumbency being considered. I'm also concerned

24 AQD, according to what the court found as a higher

25 percentage of predictiveness, is certainly something done

1 more quickly, costs less to apply, you get results back
2 immediately, and we can do it basically ourselves, don't
3 have to wait for an expert to look at everything and come
4 back to us.

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

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

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

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

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

22 CHAIRMAN LYNN: Mr. Johnson.

23 MR. JOHNSON: On that question, the AQD
24 measurement can't give you the likelihood of an election.
25 It simply looks at partisan leanings in essentially a

1 candidate approved race, the general leaning of a
2 district, not the likelihood to elect, a statistical
3 measurement you are talking about.

4 COMMISSIONER HUNTWORK: Does JudgeIt do it?

5 MR. RIVERA: What Dr. McDonald said is
6 there's some work done to do that is not part of the work
7 he's ever done in his commission. He could give much
8 more reason why. That was his answer, some theoretical
9 work out there. The JudgeIt itself, the district
10 perfectly balanced, three-and-a-half percent range either
11 side, comes from the statistical model. If within that
12 seven percent range, the statistical model says perfectly
13 balanced, not likelihood to elect.

14 CHAIRMAN LYNN: Ms. Minkoff.

15 COMMISSIONER MINKOFF: Mr. Chairman, the
16 reason I seconded the motion this time when I didn't the
17 last, I got some sense of assurance from Ms. Hauser that
18 an affirmative vote would be legally sustainable. I'm
19 not as concerned about the effective of incumbency.
20 Quite honestly, I believe in a competitive district if an
21 incumbent keeps on getting re-elected it's because that
22 individual appeals to both parties. We have a
23 Congressional District that we drew which I believe is a
24 competitive district and it has had the same
25 representative for a lot of years. And he'll probably be

1 there as long as he wants to be there, and it doesn't
2 make it an uncompetitive district. It means there is a
3 lot of crossover voting for this particular individual
4 because he is somewhat centrus and appeals to voters in
5 both parties. That to me is a competitive district.

6 What I said earlier is it screams
7 competitive district, competitive district, no matter
8 which party, you have to appeal to voters, have to appeal
9 to voters of the other party. What is happening in, is
10 it District 8 --

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

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

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

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

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

1 COMMISSIONER MINKOFF: Also true.

2 CHAIRMAN LYNN: On the record.

3 Mr. Huntwork.

4 COMMISSIONER HUNTWORK: I'd like to make
5 the point there is a complete difference in philosophy
6 and methodology in the methodology between your
7 definition and Dr. McDonald's definition. And the
8 JudgeIt program is not addressed to your definition at
9 all. It is addressed toward Dr. McDonald's definition.
10 What Doug just said basically is JudgeIt is a measure of
11 statistical significance of a prediction when you have an
12 exactly equal district. It's like a margin of error,
13 almost, in a poll, as I understand, not predictive of who
14 is going to get elected at all; if within this range, you
15 can't say not exactly even. Now to me that's not what we
16 are looking for. That to me that is not what Proposition
17 106 was intended to accomplish. It was intended to
18 accomplish what you just said. It was intended to
19 accomplish what Commissioner Minkoff just said. That
20 does not mean our goal is to create to the extent
21 possible given the limitations of statistical analysis
22 and human understanding a fifty-fifty district.

23 COMMISSIONER MINKOFF: No.

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

1 COMMISSIONER HALL: That's seven percent.

2 COMMISSIONER MINKOFF: That's what

3 Dr. McDonald said.

4 COMMISSIONER HALL: That's not my motion.

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

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

1 perhaps should apply to this.

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

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

1 in light of those scores, they, the court, can make an
2 apples-to-apples comparison.

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

5 Mr. Huntwork.

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

8 I am going to vote against the motion for
9 the following reasons: Number one, because I do not
10 believe that the court required us to adopt this
11 particular definition; number two, because based on the
12 comments by Commissioners, I don't believe that this
13 definition reflects the true sense of the Commission as
14 to what a competitive district is; and, number three, I
15 do not believe, in any event, that this definition
16 complies with the constitutional standards of Proposition
17 106.

18 CHAIRMAN LYNN: Mr. Hall.

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

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

6 What would you propose for an alternative
7 definition of competitiveness?

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

15 COMMISSIONER HALL: How do you measure
16 that?

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

1 but, you know, I think that is what we are really talking
2 about.

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

8 CHAIRMAN LYNN: Ms. Minkoff.

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

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

20 CHAIRMAN LYNN: The question is called for.
21 Any further discussion?

22 I mean I need to say one last thing. I'm
23 certainly prepared to vote. I would prefer a motion,
24 quite honestly, that was more reflective of the original
25 process but was inclusive of JudgeIt, that is to say I

1 would like the new maps to be run on all three bases,
2 have all three bases looked at, registration, once
3 finished, AQD, and JudgeIt, and that the JudgeIt standard
4 in my mind is not less than seven percent, it is seven
5 percent, which is a full three-and-a-half percent up or
6 down. I happen to think that is way too strict, in my
7 own mind, but -- I don't even want to shave that another
8 hundredth of a point and say less than Dr. McDonald said.
9 If plus or minus three percent, three-and-a half percent,
10 a full seven-and-a-half percent range, he has a 95
11 percent confidence in that number performing as a
12 competitive district.

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

17 CHAIRMAN LYNN: No, it doesn't.

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

21 CHAIRMAN LYNN: That will be an
22 instruction.

23 COMMISSIONER MINKOFF: We can't adopt three
24 standards. Have to adopt one standard. If we adopt this
25 standard, there's still one of the other motions.

1 MR. RIVERA: Run them. If you adopt a
2 standard, you can't take the other into consideration.

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

7 MR. RIVERA: Just JudgeIt.

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

18 CHAIRMAN LYNN: Ms. Hauser.

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

22 I mean as Doug and others are mapping, they
23 can look at those things they know will improve a JudgeIt
24 score. If you approve this definition, you know if you
25 narrowed a definition range, the JudgeIt score would

1 likely be also more narrow. So I think you can look at
2 those things. But the ultimate -- if you adopt this
3 definition, the ultimate determination of whether a
4 district is competitive or not will be whether it falls
5 within that JudgeIt range.

6 COMMISSIONER MINKOFF: Right.

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

12 COMMISSIONER MINKOFF: Seven percent or
13 less.

14 CHAIRMAN LYNN: My preference.

15 COMMISSIONER HALL: I'd concur with that.

16 COMMISSIONER MINKOFF: Me too.

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

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

22 CHAIRMAN LYNN: Acceptable to the second?

23 COMMISSIONER MINKOFF: Right.

24 COMMISSIONER HUNTWORK: Mr. Chairman.

25 In light of that comment, one more shot at

1 something. Another way to try to make this comply a
2 little better with what I think is the purpose of why
3 we're here, if we could, if we could expand the
4 uncertainty factor. What would the range, if we say what
5 we're looking for is a factor of 80 percent certainty
6 that this is a perfectly competitive district as opposed
7 to 95 percent certainty that this is a fifty-fifty
8 district, that would more accurately reflect -- still
9 give us a way of using the tools that we already have, we
10 could apply those tools that we already have
11 retroactively to maps we've already done, to what the
12 judge has already looked at, at lease show that we
13 believe that the goal here is to not necessarily create
14 some perfectly competitive districts but to create as
15 many as possible reasonably competitive districts where
16 opposing candidates will come out, where they will
17 debate, where superior candidates do have a chance to get
18 elected. That's what I think Proposition 106 was all
19 about. This extremely narrow range I think does violence
20 to the purpose that we're here to serve.

21 CHAIRMAN LYNN: I have to tell you
22 philosophically I'm right with you. Practically I have
23 to go the other direction. When we submit the map and
24 submit it to the court, it meets the court's test, not
25 ours, the court's test. I, you, or anyone else could

1 look at the map, apply the standards we believe are more
2 reasonable, broader than seven percent, and come up with
3 our own number. I happen to think the map we're
4 currently looking at as adopted has as many as 10, 12
5 under the broader definition of competitive; but no one
6 seems to share that opinion but me. For that reason I
7 need to understand what the practical solution to the
8 problem is. For that reason, I'm going to vote for the
9 motion as it's been amended.

10 Ms. Minkoff?

11 COMMISSIONER MINKOFF: No.

12 CHAIRMAN LYNN: Any further discussion on
13 the motion?

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

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

19 COMMISSIONER MINKOFF: Read back.

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

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

25 CHAIRMAN LYNN: Can't take it out. I said

1 it. It's testimony --

2 COMMISSIONER MINKOFF: It's a definition.

3 Take it out.

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

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

13 CHAIRMAN LYNN: Mr. Huntwork.

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

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

20 Roll call.

21 Mr. Huntwork?

22 COMMISSIONER HUNTWORK: "No."

23 CHAIRMAN LYNN: Mr. Hall?

24 COMMISSIONER HALL: "Yes."

25 CHAIRMAN LYNN: Ms. Minkoff?

1 COMMISSIONER MINKOFF: "Yes."

2 CHAIRMAN LYNN: Chair votes "Yes."

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

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

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

10 CHAIRMAN LYNN: Back to order.

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

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

22 CHAIRMAN LYNN: Ms. Minkoff.

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

1 COMMISSIONER HUNTWORK: Certainly.

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

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

10 CHAIRMAN LYNN: Understood.

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

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

15 Mr. Johnson.

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

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

25 COMMISSIONER MINKOFF: Need a motion?

1 CHAIRMAN LYNN: Need a motion.

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

6 COMMISSIONER HALL: I have a question.

7 CHAIRMAN LYNN: Mr. Hall.

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

10 COMMISSIONER MINKOFF: I'd have a record.
11 Can never deviate more than one person, or deviate in
12 voting rights of persons, or deviate for competitiveness
13 purposes?

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

16 COMMISSIONER HALL: Thank you.

17 CHAIRMAN LYNN: Mr. Huntwork.

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

24 COMMISSIONER MINKOFF: My definition did
25 not include to the extent practicable, just the extent

1 equal population is plus or minus one person per district
2 and any deviation is justified on the record. All these
3 include to the extent practicable. When we define that,
4 we'll apply all these, all these criteria. There can be
5 deviation to the extent practicable.

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

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

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

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

25 COMMISSIONER MINKOFF: If we deviate from

1 equal population, it is to create a competitive district,
2 to comply with the Voting Rights Act creating
3 majority-minority districts. Those would be
4 justifications for deviating from equal population we'd
5 have to explain on the record.

6 CHAIRMAN LYNN: Mr. Huntwork.

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

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

20 COMMISSIONER MINKOFF: Mr. Chairman, as I
21 recall, we were given information that in the case of
22 Congressional Districts, the standard is really pretty
23 strict, that you have to come right there with equal
24 population; but in the case of legislative districts, the
25 courts have allowed deviation of about five percent. And

1 we have stayed -- we tried to stay well under that in the
2 maps that we have prepared up to this point. I hope we
3 can still continue to do that. But if we can't do that,
4 you know, in respecting geographic boundaries, we may
5 take three people of a city, stick them in another
6 district, have to have equal population, three people too
7 many. I don't think we want to do that if creating
8 competitive districts. We will be moving people from
9 various political parties from district to district,
10 otherwise you can't create competitive districts if
11 districts from more than one party than another
12 throughout the state need to create competitive
13 districts. The only way to do it is taking people from
14 parties and moving them between districts.

15 CHAIRMAN LYNN: Ms. Hauser.

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

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

1 by to the extent practicable.

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

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

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

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

18 Mr. Johnson or Ms. Leoni?

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

25 The Brooklyn Heights Association case, a

1 redistricting case out of New York, "To the extent
2 practicable contemplates the need for flexibility in
3 carrying out an enormous task that necessarily involves
4 many compromises and difficult choices." So it's an
5 exercise in redefinition.

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

13 CHAIRMAN LYNN: Is there a motion?

14 Mr. Huntwork.

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

19 COMMISSIONER HALL: Both or one?

20 COMMISSIONER HUNTWORK: Both.

21 COMMISSIONER MINKOFF: I combined it.

22 COMMISSIONER HUNTWORK: With, however, the
23 caveat in the definition of equal population that any,
24 that we attempt to the -- that we attempt to explain our
25 reasons for deviations on the record from any criteria.

1 COMMISSIONER MINKOFF: Can I give it a try?

2 CHAIRMAN LYNN: Ms. Minkoff.

3 CHAIRMAN LYNN: Is that a motion?

4 COMMISSIONER HUNTWORK: No.

5 CHAIRMAN LYNN: I want to be clear.

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

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

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

23 COMMISSIONER HUNTWORK: Before we state it,
24 something important in the first definition, focus
25 separately for a moment. The -- even in its analysis of

1 the fundamental right to vote, the United States Supreme
2 Court has always taken into consideration the issue of
3 administrative feasibility, what can be done. And some
4 tasks are simply too enormous. For example, the
5 disenfranchisement of convicted felons, is every felon
6 automatically unqualified to vote or is it feasible for
7 election boards to interview each one and consider their
8 unique circumstances and background and decide which ones
9 should be allowed to vote, which ones shouldn't? In
10 cases like that you say no, you do what is
11 administratively, are only required to do, even in the
12 area of administrative rights, what is administratively
13 feasible.

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

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

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

23 CHAIRMAN LYNN: Adopt them both as is as
24 standards that apply. I don't see anything in there too
25 contradictory. They are complimentary.

1 COMMISSIONER MINKOFF: Based on
2 Mr. Huntwork's concerns we also need to add something
3 that says that, I'm searching for words here and they are
4 not coming to me. I'm having a senior moment. Is that
5 any deviation from any of the criteria will be explained
6 and justified.

7 CHAIRMAN LYNN: On the record.

8 COMMISSIONER MINKOFF: Right.

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

11 COMMISSIONER MINKOFF: You may.

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

17 COMMISSIONER MINKOFF: Uh-huh.

18 CHAIRMAN LYNN: Is that a motion?

19 COMMISSIONER MINKOFF: Yes. I'll make it.

20 CHAIRMAN LYNN: Is there a second?

21 COMMISSIONER HALL: Second.

22 CHAIRMAN LYNN: Discussion?

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

25 COMMISSIONER MINKOFF: "Aye."

1 COMMISSIONER HALL: "Aye."

2 COMMISSIONER HUNTWORK: "Aye."

3 CHAIRMAN LYNN: Motion carries.

4 It is so ordered.

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

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

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

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

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

25 COMMISSIONER MINKOFF: I just think this is

1 one that is so obviously going to require deviation in
2 order to achieve the other goals that I'm just really
3 seeking to emphasize it. That's all.

4 CHAIRMAN LYNN: I think it's covered.

5 COMMISSIONER MINKOFF: It is.

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

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

12 CHAIRMAN LYNN: Mr. Huntwork.

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

25 CHAIRMAN LYNN: One person.

1 COMMISSIONER MINKOFF: Thank you.

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

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

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

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

22 CHAIRMAN LYNN: Not yet.

23 COMMISSIONER HALL: I so move.

24 COMMISSIONER MINKOFF: Second.

25 CHAIRMAN LYNN: Discussion on the motion?

1 If not, all those in favor say "Aye."

2 COMMISSIONER HALL: "Aye."

3 COMMISSIONER MINKOFF: "Aye."

4 CHAIRMAN LYNN: Chair votes "Aye."

5 Motion carries. It is so ordered.

6 MS. LEONI: Up to Voting Rights Act,

7 complying with Voting Rights Act.

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

16 What we do know is this, that the Supreme
17 Court in Georgia v. Ashcroft expanded the ways that a
18 state could prove its redistricting plan is
19 nonretrogressive. The typical way before Georgia, the
20 Supreme Court in Georgia got a hold of the issue, the
21 preservation of the ability to elect districts. These
22 were districts where they call it representational
23 elections, where you really actually elected minority
24 candidates. They didn't require you to keep a district
25 super packed, but you had to keep it safe. If you had an

1 80 percent district, it would not have been retrogressive
2 to reduce it so long as that ability to elect remained.
3 What the Supreme Court did is said a state in its
4 discretion can look at retrogression or propose a plan as
5 nonretrogression in a different sense, that sense was
6 termed substantive representation. It could be
7 coalitional districts, interests of minorities are
8 protected and minorities are likely to elect a candidate
9 of choice, maybe not quite as likely as under safe
10 districts. That's a lot of words.

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

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

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

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

25 CHAIRMAN LYNN: Before you ask a question,

1 I'd ask at least one of counsel be at the table at all
2 times. We have questions that need to be answered. So
3 let's make sure we have either or both of our counsel at
4 the table all the time.

5 Now ask your question, Mr. Huntwork.

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

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

16 COMMISSIONER HUNTWORK: Right.

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

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

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

24 CHAIRMAN LYNN: I think that standard
25 expressed in the ruling, since it has not been settled as

1 a matter of review by the Department of Justice, may very
2 well be reviewed on this case if we in fact get to the
3 place where we adopt a map, certify it, and submit it.

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

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

1 test case.

2 CHAIRMAN LYNN: Everybody wants in.

3 Mr. Rivera, let me let you go first.

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

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

18 COMMISSIONER MINKOFF: I really have a
19 question when wrestling with definitions here. I'm
20 wondering if we need to define compliance with the Voting
21 Rights Act. It seems to me compliance with the Voting
22 Rights Act is compliance with the Voting Rights Act.
23 Judge Fields told us to use the standard substantive
24 representation.

25 MS. LEONI: Right.

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

5 MS. LEONI: Recognition.

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

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

18 MS. HAUSER: Yes.

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

24 MS. LEONI: I agree, Chairman Lynn, and I
25 need to definitely emphasize what your counsel has

1 stated, that the evidence in that case is what was
2 important. There were superpacked districts in the case,
3 65 percent. No district was reduced below 50. And at
4 the same time coalitional districts were increased.
5 There was strong support by majority legislators and
6 definite impact on what was going to happen in the
7 legislature if the substantive approach were taken. I
8 think we need to have, with the help of the minority
9 community, a record to back up what we send to the
10 Department of Justice on this issue.

11 CHAIRMAN LYNN: Thank you.

12 Mr. Hall, then Mr. Huntwork.

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

16 MR. RIVERA: Are you asking NDC or --

17 COMMISSIONER HALL: Our counsel.

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

24 COMMISSIONER HALL: What about as generic,
25 drawing out for discussion compliance with the Voting

1 Rights Act means compliance with Sections Five and
2 Sections Two of the Federal Voting Rights Act; in the
3 context of the Arizona Voting Act, compliance with
4 Section Five, and the substantive representative approach
5 set forth in Georgia v. Ashcroft? That's pretty general.

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

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

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

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

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

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

22 CHAIRMAN LYNN: Mr. Huntwork.

23 COMMISSIONER HUNTWORK: Well, I think in
24 our definition, we need to make it clear that it is our
25 intent to follow the approach specifically ordered by the

1 court, not harken back to Sections Five and Section Two,
2 simply that we are going to do our utmost to follow the
3 exact approach to the word that was ordered by the trial
4 court. So to me the definition, if we create one, would
5 be to say we'll follow the interpretation ordered by the
6 court or just quote the language directly out of the
7 opinion.

8 COMMISSIONER HALL: Well --

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

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

16 COMMISSIONER HUNTWORK: My point is -- I at
17 least personally do not agree with the approach that is
18 being ordered by the court. We have said before that
19 we're doing this under protest and specifically for the
20 purpose of complying fully and completely with the order
21 of this court. And that's exactly what I want to do. I
22 believe that in so doing we -- I think we are violating
23 the Federal Voting Rights Act by complying with the order
24 of this court, certainly violating the preclearance
25 requirement of it, maybe violating the substantive

1 requirement of it, and find ourselves in the position of
2 being ordered by the court to take certain actions. And
3 it's my intention to take exactly those actions, not, you
4 know, not assert any position contrary to the order of
5 the court, no more and no less than exactly what the
6 court has ordered us to do.

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

20 CHAIRMAN LYNN: Part of the problem is
21 original deliberations of this Commission were done prior
22 to and without the benefit of the Georgia v. Ashcroft
23 decision and its implications. The court has ordered
24 that the application of that decision or parts of it
25 should be taken up by the Commission. And it may be

1 sufficient to simply say that compliance with the Voting
2 Rights Act has always meant and continues to mean
3 compliance with the Voting Rights Act as it's written.
4 And perhaps for the purposes of this portion of our
5 deliberation we should say to comply with the court's
6 order in addition to the definition we've always had full
7 compliance with the Voting Rights Act, we will take, I'm
8 using language on slide 32, as directed by the court to
9 take the substantive representation approach which --
10 well, it's -- but it really says that we may choose this
11 methodology.

12 MS. HAUSER: No.

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

15 MS. HAUSER: Right.

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

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

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

22 CHAIRMAN LYNN: I think the concern was
23 going back to a previous standard in including that.
24 I'm --

25 COMMISSIONER HUNTWORK: Mr. Chairman, let

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

11 COMMISSIONER HALL: Say per se say.

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

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

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

20 COMMISSIONER HUNTWORK: Compliance with the
21 Voting Rights Act means compliance, means full compliance
22 with all applicable provisions of the Voting Rights Act
23 as interpreted with the advice of legal counsel to the
24 extent such advice is not inconsistent with the order of
25 the court.

1 COMMISSIONER HALL: Pursuant to my promise,
2 I'm going to second that.

3 Now we interpret it.

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

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

18 COMMISSIONER HUNTWORK: Mr. Chairman --

19 CHAIRMAN LYNN: However we apply whatever
20 we apply.

21 COMMISSIONER HUNTWORK: I was thinking of
22 saying in the definition unless and until the order of
23 the court is overruled by, but then again you understand
24 that now -- number one, it's a changing definition; the
25 entire order may be invalid, if it occurred.

1 You know, it just -- for the current
2 purposes, and for purposes of the task we are undertaking
3 at this time, I think we have to place compliance with
4 the order as the top priority. And I'm just trying to
5 think of a way to --

6 CHAIRMAN LYNN: -- express that.

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

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

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

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

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

1 legal counsel except to the extent that that advice is
2 inconsistent with the order of the court in which case
3 the Order of the Court will prevail.

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

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

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

24 COMMISSIONER HUNTWORK: Right.

25 CHAIRMAN LYNN: It seems as though maybe

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

11 So is there further discussion on the
12 motion?

13 COMMISSIONER MINKOFF: Mr. Chairman?

14 CHAIRMAN LYNN: Ms. Minkoff.

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

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

20 THE REPORTER: What Commissioner Huntwork
21 last stated was:

22 (Whereupon, the record was read as follows:

23 "COMMISSIONER HUNTWORK: My definition was

24 "compliance with all applicable provisions

25 "as advised by legal counsel except to the

1 "extent that that advice is inconsistent
2 "with the order of the court in which case
3 "the Order of the Court will prevail."

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

6 COMMISSIONER HUNTWORK: No.

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

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

12 COMMISSIONER HALL: Yes.

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

15 COMMISSIONER HALL: "Aye."

16 COMMISSIONER MINKOFF: "Aye."

17 COMMISSIONER HUNTWORK: "Aye."

18 CHAIRMAN LYNN: Chair votes "Aye."

19 Motion carries unanimously.

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

25 In this case, we do have a proposed

1 definition for, put out there. This would be significant
2 detriment to a redistricting goal is an effect so
3 negative that it is as if the goal is not respected at
4 all.

5 CHAIRMAN LYNN: Mr. Huntwork.

6 COMMISSIONER HUNTWORK: Mr. Chairman, this
7 neither follows from the dictionary definitions nor from
8 any logic I can apply. I would -- can't imagine where
9 this could have come from except possibly any lawyers.
10 It just doesn't make any sense to me. Significant
11 detriment is certainly different than absolute
12 annihilation. So I suggest we take that off the screen
13 and start over somewhere else.

14 We did.

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

18 COMMISSIONER HALL: Sorry. Wrong cord.

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

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

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

25 The heart of this definition, as we will

1 define it, has a lot to do with when and how decisions
2 are made because of the application of this particular
3 part of the law. And it is the one that has the most to
4 do with judgment, in some fashion, based on a variety of
5 facts, information, input, other factors.

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

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

12 MS. HAUSER: I agree.

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

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

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

23 Let's say you are splitting a community of
24 interest, and it would require under this definition for
25 you to act as if that community didn't even exist rather

1 than it was being split because some other goal we needed
2 to achieve. But putting these two definitions together
3 has no meaning at all.

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

10 COMMISSIONER HUNTWORK: Right.

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

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

22 What was the other word she used?

23 CHAIRMAN LYNN: I'm wondering.

24 (Whereupon the reporter reads back.)

25 MS. HAUSER: She can't look and transcribe

1 at the same time.

2 COMMISSIONER HUNTWORK: That was it. Thank
3 you.

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

9 If we talk about harm, or injury, or
10 negative impact on one of the goals, which I suspect that
11 it's going to be, it will not be acceptable to the court
12 to have that simply as a standard when voted on by a
13 majority of the Commission, by that I mean in the opinion
14 of the Commission, a majority of the Commission, that
15 impact, negative as it is, is sufficient to become
16 significant. And I don't know whether you want to answer
17 that. Because that goes to the heart of -- it's a
18 discretion issue. And it -- I mean that is why it's so
19 difficult. Because every single -- every single
20 criterion we apply might very well have a different
21 measurable definition of significant detriment. Not only
22 criterion to criterion but the subject of criterion,
23 subject to subject. In other words, I'm thinking through
24 the concept of communities of interest, and not all
25 communities of interest are created equal. And in cases,

1 case by case in applying this criterion, or this language
2 to the placement of a community of interest within a
3 district, or splitting it between or among districts, we
4 might determine the damage to be different in different
5 cases based on different circumstances as defined.

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

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

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

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

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

24 COMMISSIONER HUNTWORK: Complete, yeah.

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

1 perfection is.

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

4 CHAIRMAN LYNN: Try that again with that
5 substitution.

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

12 Maybe we should say determined on the best
13 evidence available based upon objective evidence. I
14 think it's -- I have a concern based upon the word
15 objective evidence which was a suggestion of the
16 Coalition. I do agree this needs to be made based upon
17 evidence. The problem is our evidence in deciding what
18 our particular communities of interest are has not been
19 objective evidence. It has been our fellow citizens
20 standing up and telling us subjectively what is important
21 to them, what they believe and feel and using our own
22 knowledge and common sense to sort through all of that
23 input and try to determine what is true and important
24 from all of that information. So -- and I don't know
25 where we are. It frightens me to think if we throw in

1 the word objective, without stopping to focus on that
2 element of it, we might exclude a hundred percent of the
3 testimony that we received at these hearings that we held
4 throughout the state which everyone agrees were a good
5 thing and an important part of the process.

6 CHAIRMAN LYNN: Ms. Hauser.

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

17 (Commissioner Hall leaves for the evening.)

18 MS. HAUSER: Jose?

19 MR. RIVERA: I would rather talk about it.
20 I would rather -- this is legal advice better given in
21 Closed Session rather than Open Session.

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

24 CHAIRMAN LYNN: That's what I think I'm
25 hearing.

1 COMMISSIONER HUNTWORK: Okay. Later today,
2 after we've had a chance --

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

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

7 MR. JOHNSON: Something simple.

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

18 I have another definition for you. This
19 one is from Janet Boles and Dorothy Dean. They wrote,
20 "It can be argued that the communities of interest
21 criterion of redistricting should include urban
22 neighborhoods of all racial types wherever possible. In
23 a large metropolitan area, broad ethnic, social,
24 religious, or economic communities can be readily taken
25 into account. Although the social or psychological

1 boundaries of urban communities are not precise, they are
2 nonetheless real in that people think of themselves as
3 belonging to specific neighborhoods. The advantages of
4 such districting are numerous. Homogenous districts
5 facilitate effective representation because community
6 sentiments are more clearly defined and consistent policy
7 positions are more likely. Intergroup conflict is
8 tempered."

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

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

20 I believe one more academic, then court
21 definitions.

22 This one is another court ruling.
23 "Describing the notion of community is a stubborn
24 problem. A, community is definable as individuals who
25 sense among themselves a cohesiveness that they regard as

1 prevailing over their cohesiveness with others. This
2 cohesiveness may arise from numerous sources both
3 manifest and obscure that include geography, history,
4 tradition, religion, race, ethnicity, economics, and
5 every other conceivable combination of chance,
6 circumstance, time and place. In any event, a community
7 is based finally and unappealably on the society and
8 consent of its members, both of which are known best by
9 the community's members. A community is exactly what a
10 community believes itself to be."

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

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

1 would benefit from common representation."

2 CHAIRMAN LYNN: Mr. Huntwork.

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

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

21 CHAIRMAN LYNN: I think the difficulty
22 there is how would we measure, particularly with
23 community of interest that either has not previously
24 existed for very long or doesn't have a record of voting
25 or did not have in previous districts the ability to vote

1 together. We are considering afresh -- there's no way to
2 determine how they might have voted in the past. There
3 is some reason to believe they might want to vote
4 together in the future. And that may be the only test we
5 can apply.

6 Ms. Minkoff.

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

21 COMMISSIONER HUNTWORK: Mr. Chairman.

22 CHAIRMAN LYNN: Joshua?

23 COMMISSIONER HALL: Yes.

24 CHAIRMAN LYNN: Let me turn this up as best
25 I can.

1 Okay. You are on.

2 (Commissioner Hall is present now by
3 speakerphone.)

4 CHAIRMAN LYNN: Mr. Huntwork.

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

9 COMMISSIONER HALL: I have them in front of
10 me.

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

24 CHAIRMAN LYNN: Ms. Hauser.

25 MS. HAUSER: It actually is captured in

1 here.

2 COMMISSIONER HUNTWORK: Okay.

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

17 COMMISSIONER HUNTWORK: But, counsel, let
18 me ask you this. We went to some lengths to, for
19 example, to try to keep the Isaac School District
20 together despite the fact some of the people we were
21 putting in, some of the people we were taking out were
22 otherwise ethnically, economically indistinguishable, we
23 used the school district itself as criteria. If I adopt
24 this definition I see no basis whatsoever for continuing
25 to use the school district lines as opposed to

1 demographic information. So please explain to me how you
2 conclude that we would consider the school district lines
3 per se.

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

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

22 MS. HAUSER: Not to say in their district
23 there aren't other people that share similar economic
24 interests, those people are bound together and work
25 together on those issues as part of their school

1 district. I mean it was a combination of things.

2 COMMISSIONER HUNTWORK: How does school
3 district come in?

4 COMMISSIONER MINKOFF: Can I try to weigh
5 in on that? I think I can tell you.

6 There are issues where a school district
7 would have legislative concerns. And that's the key to
8 what is here. They would benefit from common
9 representation. We have all kinds of things before the
10 Legislature now in terms of English as a second language,
11 bilingual education, how we fund it, AIMS testing applied
12 to certain districts having trouble coming up to those
13 levels. There are very many issues where a homogeneous
14 school district like the Isaac School District would have
15 very distinct issues that would be a legislative concern
16 and they'd want to be represented at the Legislature. A
17 larger, more diverse Scottsdale School District, even
18 larger has -- they may have not as concrete issues to
19 deal with at the Legislature, other than those things
20 common to all school districts, school district funding
21 and, you know, that kind of issue. But a school district
22 like Isaac, I think, very definitely would be a community
23 of interest. As a school district they would have issues
24 that benefit from common representation involving
25 educational issues.

1 COMMISSIONER HUNTWORK: People of similar
2 socioeconomic status that happen to live on the other
3 side of the line would not share those same concerns?

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

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

24 COMMISSIONER HUNTWORK: What I'm worried
25 about is it seems to talk about the fact or defines the

1 group rather than being indicative of, if you will. And
2 so --

3 CHAIRMAN LYNN: Is that not the difference
4 between a definition and an example?

5 COMMISSIONER HUNTWORK: Not necessarily.

6 I just think that a school district, in my
7 mind, is indicative strongly. I'm having trouble with
8 the argument it actually defines the group. I'd
9 certainly like to be able to use it for the reason it's
10 strongly indicative. That's what my concern is.

11 The point -- it seems to me the point is --
12 the point is very precise. In particular, it's
13 indicative of a suggestion of affinitive.

14 COMMISSIONER MINKOFF: I think when we
15 define somebody as a member of a community of interest,
16 that's not exclusive. It doesn't mean they're not a
17 member of any other community of interest. We had a
18 Hispanic AUR. A Hispanic living in the Isaac School
19 District would be a member of both AURs. There may be
20 competing interests and similar. If we combine
21 overlapping interests, we'd know what we're dealing with
22 when defining these interests.

23 CHAIRMAN LYNN: Mr. Hall, do you have an
24 opinion on this issue?

25 MS. HAUSER: I don't think he's there.

1 CHAIRMAN LYNN: Mr. Hall?

2 COMMISSIONER MINKOFF: We lost him.

3 MR. ECHEVESTE: I'll patch him in again.

4 CHAIRMAN LYNN: Go ahead.

5 (Whereupon it was later discovered that.

6 the phone line which connected

7 Commissioner Hall broke at some point in

8 the discussion.)

9 CHAIRMAN LYNN: I don't know that we'll

10 settle this. There are only the three of us left with

11 Mr. Hall in and out in terms of his availability. I'd

12 like to begin with the proposed definition and see if

13 there is a compromise that could be constructed by

14 amending that proposed definition to reflect the points

15 of view that have been expressed. Short of that, the

16 only thing we can do is offer a totally separate one.

17 You could, if you want to try it.

18 COMMISSIONER MINKOFF: Mr. Chairman, I'm

19 comfortable with the definition as written because I

20 think it allows us to identify virtually all communities

21 of interest we've talked about during our deliberations

22 and also possibly to exclude others that came to us

23 begging to be considered that really didn't have any

24 legislative agenda, just a neighborhood that wanted to be

25 kept together, and maybe would help us exclude those.

1 COMMISSIONER HUNTWORK: That's another good
2 example. Some of those people were -- had the strongest
3 feelings of wanting to be kept together and they felt
4 their neighborhood, if you came across throughout the
5 state, their neighborhoods would be in jeopardy if they
6 did not --

7 COMMISSIONER MINKOFF: If they can
8 demonstrate to us a legislative agenda, I think we can
9 consider them. If what they demonstrate is more of a
10 municipal agenda, then they are a community of interest
11 very appropriate to consider during a municipal
12 redistricting but not necessarily during a legislative
13 redistricting. You know, I think the burden falls on
14 them to see if they can define themselves as having a
15 Legislative or a Congressional commonalty of purpose.
16 And if they do, then we should map them as a community of
17 district. If they are a historic district that wants to
18 be recognized by the City of Phoenix or City of Tucson,
19 or whatever, I don't know that that requires being in the
20 same Legislative District. It may require being in the
21 same city council district.

22 CHAIRMAN LYNN: I have to tell you I'm
23 pretty comfortable with the proposed definition as well.
24 Because I don't think we can fully define it. I think we
25 can generally define it. We still have to make

1 determinations as we're presented with information and
2 testimony and evidence and everything else. I think this
3 is broad enough and I think it's consistent enough with
4 what the court was asking for. I can certainly vote for
5 it.

6 Mr. Huntwork.

7 COMMISSIONER HUNTWORK: One much smaller
8 quibble with the definition. I have some concern about
9 the phrase "with common concerns about issues." I would
10 rather -- this is blinking like crazy, now it stopped. I
11 would rather define it in terms of -- something we
12 determine is effective common interest rather than people
13 that share the same views. This is taking more about
14 people who all vote the same way rather than people
15 reasonably concerned about the same issues. That's a
16 very minor quibble in the definition, but I would like to
17 focus more on the underlying interests of the group
18 rather than necessarily the homogeneity of how they would
19 vote. I suppose some of the best competitive districts
20 in the state may be a neighborhood in Central Tucson
21 where the people may be very similar demographically but
22 fall in different camps and disagree with each other.

23 CHAIRMAN LYNN: Ms. Hauser.

24 MS. HAUSER: Mr. Huntwork, what if the word
25 "common" was moved from where it is to right before

1 "issues" so it's: "With concerns about common issues."
2 They have the issue in common, but people within that
3 area might have different points of view on it.

4 COMMISSIONER HUNTWORK: I think that would
5 solve the problem that I'm focusing on.

6 CHAIRMAN LYNN: I'm fine with that change.

7 COMMISSIONER MINKOFF: I am, too.

8 CHAIRMAN LYNN: I don't have a motion.

9 COMMISSIONER MINKOFF: Would you like a
10 motion?

11 CHAIRMAN LYNN: I'd love a motion.

12 COMMISSIONER MINKOFF: I propose adoption
13 of slide 41 with the moving of the word common in line to
14 just before the word issues.

15 CHAIRMAN LYNN: It's up to you to second
16 it.

17 COMMISSIONER HUNTWORK: I could really
18 be -- I'm actually going to vote against it because I
19 think it's too narrow, but I'm, because of the position
20 you've expressed, I'll second it so it can come up for a
21 vote.

22 CHAIRMAN LYNN: Thank you.

23 It's been moved and seconded to accept this
24 definition with the proposed amendment.

25 Is there further discussion on the motion?

1 I need a ruling, need a parliamentary
2 ruling. I don't know how to ask it other than -- because
3 we're here at this juncture. Is it the case that a
4 majority of the Commission is a majority of those members
5 present or is it an absolute majority of the Commission?
6 Because we're about to take a vote with three members.
7 Is two to one enough to pass a motion? That's my
8 question.

9 MS. HAUSER: I think it is.

10 MR. RIVERA: We actually did some research
11 about two years ago, and the research was, you did on the
12 subcommittee, the subcommittee had to a majority of, but
13 could without in the committee.

14 CHAIRMAN LYNN: Subcommittee did but the
15 committee did not.

16 Understanding we may need to revisit this
17 for reratification with other Commissioners present.

18 MR. RIVERA: We can do more research on it
19 later.

20 CHAIRMAN LYNN: Any more --

21 COMMISSIONER HUNTWORK: Mr. Chairman, I
22 know how difficult all this is to begin with. With the
23 continuing protest we're acting under, I am going to --
24 I'll change what I said and vote in favor of the motion
25 so we may move on.

1 CHAIRMAN LYNN: I'm very appreciative of
2 that perspective and point of view.

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

5 COMMISSIONER MINKOFF: "Aye."

6 COMMISSIONER HUNTWORK: "Aye."

7 CHAIRMAN LYNN: The Chair votes "Aye."
8 Motion carries and is so ordered.

9 CHAIRMAN LYNN: Okay or break?

10 THE REPORTER: A break would be nice.

11 CHAIRMAN LYNN: Let's try to establish
12 contact with Mr. Hall. Try to keep the break to 15
13 minutes, standard break.

14 (Recess taken at 5:12 p.m.)

15 CHAIRMAN LYNN: The Commission will
16 reconvene.

17 For the record, Commissioners present are
18 Mr. Huntwork, Ms. Minkoff, Chairman Lynn, and we are
19 missing Mr. Hall and Mr. Elder this evening. My guess is
20 that for the balance of the evening we will be without
21 the other two Commissioners. That's my guess. But
22 without objection, we will try to finish the agenda this
23 evening.

24 To that end, also without objection, I
25 would also like to take one call to the public slip I

1 have. I know in it's in the middle of something we're
2 doing. In deference to Mr. Wake who has been here for a
3 considerable amount of time -- and I don't know whether
4 it's appropriate -- I guess it would be Judge Designate
5 Wake at this time, not quite Your Honor but close, Neil
6 Wake representing Arizonans for Fair and Legal
7 Redistricting.

8 Mr. Wake.

9 MR. WAKE: I hope "close" is the right
10 word.

11 I want to thank you, Mr. Chairman, for
12 letting me speak. I was not able to be here this morning
13 because of other obligations I simply a could not avoid.
14 Because I was not here, I risk repeating things. If I
15 do, I apologize in advance. I want to make just a few
16 points. I hope I will been done in 10 minutes or less.

17 First, I appreciate the observations I've
18 heard today, everything being done by the Commission is
19 under protest, not voluntarily, plus would not moot the
20 appeal or pending motions for stay. Indeed, I note in
21 the same respect as I read Proposition 106, the
22 Commission lacks authority to change a plan once adopted
23 unless, of course, adopted by a court.

24 I believe the Commission could not
25 voluntarily change the adopted plan. It is only by

1 virtue of compliance by order of Superior Court that
2 anything here could have effect.

3 A few comments. I understood that there
4 were comments this morning by Mr. Eckstein that the
5 Commission has to go back to the Superior Court to get
6 leave to extend the March 5th deadline. I don't know if
7 I heard that right. It was reported to me. I wanted to
8 suggest in my view virtually everything the Court,
9 Commission would do, is contrary to the law. That's
10 beside the point if the court ordered it. Commission's
11 duty is to comply with that unless and until overturned
12 by a higher court, noncompliance with 30-day provisions
13 of 106, just one of many things the court has not
14 complied with, therefore, I submit the Commission's duty
15 is to do the best job it can in good faith and still have
16 a plan by March the 5th if the stay has not been granted
17 and that means doing the deliberate job as it appears you
18 are with the maximum time to study, deliberate, come up
19 with the best plan within the constraints of the unlawful
20 order and to give the maximum time for the public to
21 comment. That doesn't require going back to the court to
22 extend the March 5th date.

23 Now, the -- we may have, a week from today,
24 a ruling from the Court of Appeals on the stay motions.
25 In the meantime, I submit the Commission should be doing

1 the best job it can. But if the stay is granted, that
2 should be the end of these proceedings. At that time,
3 the Commission could come up with an alternate map in
4 compliance with the order, have at least two weeks' time
5 for public comment, time for another hearing at which
6 substantial public comment will be perceived on whatever
7 might be promulgated, and in that way do the best
8 possible job.

9 I would point out that, I don't know if
10 this has been observed to the Commission, whatever is
11 done here has virtually no process for being implemented
12 for the 2004 election, notwithstanding optimism expressed
13 in Judge Fields' order. The reason is this process
14 itself probably requires preclearance.

15 This Commission is probably violating
16 Section Five of the Voting Rights Act now. Of course you
17 must do so, must comply with the order until and unless
18 overturned, that's undisputed. If a new map is adopted,
19 that must be precleared before it could be implemented is
20 undisputed. Indeed, Mr. Eckstein acknowledges this in
21 filings with the Supreme Court last week. No plan that
22 may be adopted here will even be considered for
23 preclearance until after affirmed on appeal. Therefore,
24 if one plays out the time frame, it is just simply
25 impossible to adopt a plan, have it reviewed and affirmed

1 on appeal, have it submitted to Department of Justice,
2 and even at an enormously optimistic speed have it
3 implemented in time for May, all of which suggests the
4 Commission is on the right track, doing the best job it
5 can within the time it has in obedience with the order;
6 but still, I submit, no chance that it can be
7 implemented. So the Commission should do the best job it
8 can, not worry about artificial time limits within the
9 March 5 deadline.

10 Now, the -- we submit, of course, there are
11 very serious errors in the order that you are complying
12 with now. The order of some 50 pages is in every
13 respect, except for perhaps half a dozen, word for word
14 what the plan the Coalition submitted. This is legally
15 significant. Appellate courts in many jurisdictions when
16 a trial judge adopts extensive findings proposed by a
17 party, they are not supposed to do that. An appellate
18 court will look especially carefully at that. We believe
19 that will happen here. That contributes to the
20 reasonable prospect of a stay.

21 I want to just offer a few comments on the
22 discussion I have heard here today.

23 First, as to the definition of political
24 competitiveness, I respectfully submit when the
25 Commission labors with this further, further scrutiny

1 needs to be taken to the JudgeIt seven percent issue.
2 There was substantial evidence in the trial first of all
3 the Chairman's recollection, Mr. Huntwork's recollection
4 of what happened before is correct, the Commission never
5 adopted a single measure of competitiveness. Indeed,
6 Dr. McDonald testified that his rule of thumb of JudgeIt
7 seven percent was never adopted by the Commission. It
8 was one of a number of factors that the Commission
9 considered, and, indeed, he acknowledged that there are
10 nonquantifiable data, that private data or things that
11 are not subject to statistics relative to
12 competitiveness, all of which should be considered, and
13 this Commission did that the last time. Ultimately the
14 question of whether JudgeIt at a seven percent range
15 should be adopted as a measure should be looked at in
16 terms of its predictive value. This was an attempt to
17 make prediction of what will be competitive races.

18 If I may, I would like to leave with the
19 Commission an Exhibit we prepared at, offered in the
20 trial, simply a compilation of data otherwise prepared.
21 We took the JudgeIt seven percent measure of predicting
22 competitive races and we applied them to the 2002 race.
23 And what we found is that Dr. McDonald predicted that
24 there were only four competitive districts. But when we
25 measured them against the actual races we found that

1 there were 10 districts that had clearly competitive
2 races, either that they elected a mixed delegation to the
3 Legislature or they had an actual race which was within a
4 five percent range. No one can dispute that's a
5 competitive race. If one extends more than 10
6 competitive races, not more. Same for AQD. It predicts
7 five competitive races. There were at least 10. If you
8 expand further, it was more.

9 Now, the last time the Commission was doing
10 its task it could only look at the past and predict the
11 future. We now have the acid test of the value of that
12 predictive measure. Again, I'd like to leave that with
13 you.

14 What that means is your experience the last
15 time, which was that there is no one conclusive measure,
16 no one major measure, no one objective measure, there are
17 a variety of statistical mathematical analyses, there is
18 a lot of data that you cannot measure, and that you have
19 a responsibility to judge competitiveness in light of all
20 that data.

21 Now I would ask the Commission, I know
22 you've already voted on this, but when you come back I'd
23 ask you to think again about the observations,
24 Commissioner Lynn said it well, that there are in fact
25 more competitive districts than that one measure and the

1 Court did not require the Commission to adopt that or
2 anything else. What the court said was that it inferred,
3 notwithstanding the denials from Dr. McDonald, that the
4 Commission had in fact made seven percent JudgeIt its
5 measure of competitiveness. Of course you looked at
6 that, gave that weight, never made that the measure. He
7 inferred because you did that, you have to do that for
8 everything else. But elsewhere in his order he very
9 clearly said it's up to you to decide what the measure
10 is.

11 I would respectfully submit that the court
12 was not saying that JudgeIt had any mathematical measure
13 that was required. He was not telegraphing he would
14 reject any other measure. He was saying explicitly no in
15 direction, that it's up to this Commission to adopt a
16 measure to apply consistently. I'd hope the Commission
17 do that as you continue with this process.

18 A few other comments.

19 I do have a comment on equality, equality
20 in the population measure in Prop 106 itself. Deviation
21 in that is not a proper measure of political
22 competitiveness. Significant detriment to equality is
23 any detriment. We know that from Congressional
24 criterion. The same language applies to Congressional
25 and competitive. You know equal Congressional Districts.

1 You've done it. On Voting Rights Act issues, you had lot
2 of debate on this, but the -- I submit substantial
3 representation criterion from the Georgia case that the
4 court found somehow was read into the year 2000
5 proposition when Georgia wasn't handed down until three
6 years later. Obviously we will discuss that with the
7 appellate courts, but as I read Georgia, it has to do
8 with the protected community expressing a wish for the
9 substantive representation as opposed to the old form.
10 Now, I don't know what you will hear if you give the
11 minority community the opportunity to be heard. But I do
12 know at the trial we concluded the Mexican-American Legal
13 Defense Fund, a strong voice for political interests of
14 Hispanics throughout the Southwest, came down squarely in
15 favor of old measure, not for substantive measure. Those
16 are things that merit consideration.

17 And one final thought and then I'll thank
18 you for your patience. The significant detriment issue I
19 think you are on track with. The concept that I know
20 Commissioner Huntwork expressed is -- used words
21 materiality, substantiality. Law frequently used words
22 substantial versus insubstantial, material versus
23 immaterial. Those are synonyms. Anything that has the
24 effect that counts or matters for the purpose in
25 question. That -- it is a low threshold. There is

1 nothing in this court's order that requires the
2 Commission to drop the standard to tolerate any degree of
3 any detriment to another goal that could be observed and
4 that could matter. I think you are on the right track in
5 that definition.

6 Thank you very much for hearing me.

7 Again, I apologize I could not be here in
8 the morning.

9 CHAIRMAN LYNN: Thank you, Mr. Wake.

10 Any comments or questions for Mr. Wake?

11 COMMISSIONER HUNTWORK: I'd like to ask
12 Mr. Wake: You said something about what our obligation
13 would be if the trial court order is stayed. I believe
14 you said we would be obligated at that point to
15 discontinue all activities in absence of a valid, binding
16 trial court order. It's your position we don't have
17 authority to do anything.

18 MR. WAKE: That's precisely our position
19 about the law. Exactly, Mr. Huntwork.

20 COMMISSIONER HUNTWORK: Thank you.

21 CHAIRMAN LYNN: Comments or questions?

22 All right. Thank you.

23 Without objection, another member of the
24 public wishes to be heard. Without objection, we'll
25 listen to David Cantelme representing the City of

1 Flagstaff.

2 Mr. Cantelme.

3 MR. CANTELME: Thank you, Mr. Chairman,
4 Members of the Commission.

5 David Cantelme, Jennings, Strouss and
6 Salmon, representing the City of Flagstaff.

7 I appreciate the efforts the Commission is
8 making, thank you for the time you are spending on it,
9 and the diligence with which you are approaching your
10 task.

11 We would strongly urge the Commission that
12 the -- to use the definitions adopted, apply them equally
13 around the state. You have done that using your
14 definition of community of interest. We recommend and
15 strongly urge you take testimony, consider the evidence,
16 and find the facts where communities of interest exist
17 around the state, what their boundaries are. And when
18 you do so, we believe that Flagstaff, the evidence and
19 facts will show, will establish that the city, and its
20 environs, make a community of interest. By its environs,
21 we will define that as the Flagstaff metropolitan
22 planning organization boundaries, which is roughly about
23 10 miles around the city limits. We believe that the
24 commonalities between Flagstaff and it's environs and
25 education, environment, economic development, law

1 enforcement, transportation, health and forests, the
2 University community, zoning and land use, and all other
3 local interests make a community of interest under your
4 definition between Flagstaff and its environs. We also
5 believe that Judge Fields' order indicates, and the
6 proposition indicates, that you should not split a
7 community of interest where it is possible not to do so.
8 That doesn't mean the Legislative District must be
9 homogeneous. You can have a collection of communities of
10 interest within a Legislative District. It's our
11 position that unless you have to split a community of
12 interest to satisfy any other requirements of the
13 constitution of Arizona or the United States you should
14 not do so. We believe that applying the Commission's
15 criteria, Flagstaff itself will come forward with a plan
16 that will demonstrate how a map can be drawn to maximize
17 competitiveness, respect communities of interest,
18 properly recognized under your definition, and complying
19 with all other criteria.

20 Thank you, Mr. Chairman, Members of the
21 Commission.

22 CHAIRMAN LYNN: Thank you, Mr. Cantelme.

23 Any comments or questions from the
24 Commission?

25 Mr. Huntwork?

1 COMMISSIONER HUNTWORK: Mr. Cantelme, what
2 school districts are there in Flagstaff and do they
3 comprise the area you are referring to or is it divided
4 between school districts?

5 MR. CANTELME: I believe primarily
6 Flagstaff District and --

7 Second one?

8 MAYOR DONALDSON: Parks School District.

9 COMMISSIONER HUNTWORK: Can you provide us
10 with definitions?

11 MR. CANTELME: Sure.

12 MR. WAKE: Can I submit this Exhibit?

13 CHAIRMAN LYNN: Absolutely.

14 Other members of the public?

15 We'll have another time at the end of the
16 evening. We're going to try to finish this evening.
17 Really, another meeting tomorrow is not practicable to
18 any extent.

19 Dr. Adams.

20 DR. ADAMS: Mr. Chairman, Members of the
21 Commission, the next definition with which we are
22 proposing to deal is geographically compact.

23 CHAIRMAN LYNN: Dr. Adams, before you go
24 into that, Mr. Huntwork one second.

25 COMMISSIONER HUNTWORK: I apologize,

1 Dr. Adams. What I wanted to call attention to is what we
2 defined I believe was the term community of interest.
3 Before we move away from it, I'd like to call attention
4 to the phrase "respect communities of interest." I
5 believe the Court had a good amount of language in its
6 order that was directed specifically toward what it means
7 to respect communities of interest. This is language we
8 looked at earlier about putting a single community and
9 single district, if possible, and so on. I think for
10 purposes of our current proceedings, and under veil of
11 protest, as always, I think we should adopt those
12 standards as the definition of respecting communities of
13 interest.

14 I'll make the motion.

15 CHAIRMAN LYNN: Please restate your motion,
16 for the record.

17 COMMISSIONER HUNTWORK: Well, if I can find
18 the direct publisher, I can get this more formally.

19 I would refer to bubble 40 on page 10 of
20 the material that was handed out. And I would suggest
21 that we basically take the first two quotations in and
22 cite that as the definition of respecting communities of
23 interest.

24 COMMISSIONER MINKOFF: Mr. Chairman, I
25 don't have any problem with what is in there, cited by

1 the court. We obviously have to comply with that. I
2 don't understand how that is a definition of respecting
3 communities of interest.

4 COMMISSIONER HUNTWORK: My thought is that
5 we have, we've gone to a lot of trouble to specifically
6 define what we mean by community of interest, but we
7 haven't defined what we will do with that definition.
8 Here is the court's order telling us how we are to handle
9 communities of interest. I merely want to -- this is a
10 term which gives substance to one of the terms in the
11 act.

12 COMMISSIONER MINKOFF: Okay. I may have a
13 problem with it. We've also talked about the term to the
14 extent practicable as applying to all of the criteria.
15 And looking at this where it says limited by Proposition
16 106 to include placing the entire community within the
17 boundaries of a Legislative District, it seems if we
18 adopt this that means we can never split a community of
19 interest. And I don't think that we're going to be able
20 to come up with an acceptable map if we never split a
21 community of interest. There are competing communities
22 of interest, there are overlapping communities of
23 interest. You know, if we, for instance, accept
24 Flagstaff's definition of their community of interest,
25 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 CHAIRMAN LYNN: Ms. Hauser.

12 MS. HAUSER: Mr. Chairman, Ms. Minkoff, are
13 you saying you view these as limitations on our ability
14 to respect communities of interest, qualifiers, if you
15 will, rather than a definition of respecting? They are
16 the court's limitations or constraints on how we may
17 respect communities of interest but that they don't
18 necessarily equal respecting communities of interest.
19 That's what I'm understanding you to say. Is that right?

20 No?

21 COMMISSIONER HUNTWORK: Mr. Chairman.

22 CHAIRMAN LYNN: Mr. Huntwork.

23 COMMISSIONER HUNTWORK: This phrase is only
24 part of what we are required to do. I just wanted to
25 define all the terms of the phrase. We have defined

1 "community of interest." We have also defined "to the
2 extent practicable." I'm not taking that out. It's just
3 that clearly, what the court has done is direct us how we
4 are to define the concept of respecting communities of
5 interest. And I thought that it would be useful to
6 incorporate that into a definition. I would simply say
7 even if we don't, that we are going to be bound and we're
8 going to have to follow this language, but --

9 CHAIRMAN LYNN: I think the difficulty is
10 adopting it into a definition, not that we're not going
11 to have to follow it. It's clear the court is telling us
12 that this, the application of this standard is requisite.

13 COMMISSIONER HUNTWORK: Right. I'm
14 wondering, maybe if counsel tells us maybe we don't have
15 to define all the terms we're using, maybe this is one we
16 don't have to define, since one is readily available and
17 the court did tell us to define all the terms, maybe more
18 fully in compliance with the court order to define this
19 term than leave it undefined even though it is our intent
20 to comply fully. But if counsel advises us that it's not
21 necessary to define this particular term, as long as
22 we're aware of the constraints ordered by the court, I'd
23 certainly be satisfied with that advice.

24 MS. HAUSER: Clearly, if you find a term to
25 be, given what the court has said, needing a definition,

1 then you are certainly free to do so, free to define a
2 term. I certainly don't think that the court meant to
3 say that every term in the Constitution needs to be
4 defined. And the court has given you instruction with --

5 COMMISSIONER HUNTWORK: If it's your advice
6 we don't have to define this, I don't want to. I only
7 want to do what is necessary to comply.

8 MS. HAUSER: I'd seek Jose's conference.
9 I don't think you need to define "respect."

10 MR. RIVERA: That's a nod. Affirmative.

11 CHAIRMAN LYNN: Thank you.

12 Dr. Adams.

13 DR. ADAMS: Mr. Chairman, Members of the
14 Commission, now turn to geographically compact.

15 Here is an academic definition of
16 compactness, "Compactness, at a simple, intuitive level
17 conforms to a standard dictionary definition: "A figure
18 is compact if it is packed into a relatively small space
19 or its parts are closely packed together," by American
20 Heritage Dictionary definition.

21 By way of contrast, "A figure is not
22 compact to the degree that it is spread out." That comes
23 to us by an article by Niemi, Grofman, Carlucci and
24 Hofeller.

25 There are a number of definitions cited in

1 academic literature:

2 The visual test, the simplest of all the
3 tests, simply uses the eye and intuition.

4 The Roeck test, find the smallest circle
5 containing the district and take the ration of the
6 district's area to that of the circle.

7 There is the Schwartzberg test, construct
8 the adjusted perimeter of the district by connecting by
9 straight lines those points on the district boundary
10 where three or more constituent units, i.e. Census
11 tracts, from any district meet. Divide the length of the
12 adjusted perimeter by the perimeter of a circle with area
13 equal to that of a district.

14 A couple more definitions: Perimeter test,
15 find the sum of the perimeters of all the districts. The
16 shorter the total perimeter, the more compact the
17 districting plan.

18 Just to point out, this is looking at a
19 plan, a whole plan, rather than looking at individual
20 districts; although if looking at an urban area you could
21 probably use it in urban area, couldn't compare urban and
22 rural areas.

23 Polsby-Popper test computes the ratio of
24 the district area to the area of a circle with the same
25 perimeter.

1 Population polygon. Ratio of district
2 population to the approximate population of the convex
3 hull of the district, minimum convex polygon which
4 completely contains the district.

5 Population circle, the ratio of the
6 district population to the approximate population of the
7 minimum enclosing circle of the district.

8 And Ehrenburg, the region of the largest
9 inscribed circle divided by the area of the district.

10 Some of these are perimeter tests, some are
11 area tests, some are population based tests. The
12 important thing to note is all of these tests are,
13 indeed, available in Maptitude.

14 To continue, I just thought this might be
15 an interesting quote. For all the tests cited, just to
16 let you know, for all the tests cited in the previous
17 slides except for the perimeter test, the measure is
18 always between zero and one, with one being the most
19 compact. So the quote from the Young article, "The idea
20 has sometimes been advanced that a district with a Roeck
21 measure of less than .4 should be deemed noncompact and
22 rejected," Hacker 1963. "It would be impossible to
23 divide a hexagon into three equal-sized districts without
24 violating the .4 threshold. Roeck himself cautioned
25 against the use of thresholds."

1 Now I'm not sure what this says about the
2 Pomona College education that Mr. Eckstein and I share,
3 but I am going to turn to Mr. Johnson who has rather more
4 technical knowledge of this than I do to talk about these
5 next slides.

6 MR. JOHNSON: Then one thing we wanted to
7 do was take abstract academic definitions and show you
8 some examples of districts and what those lines result in
9 for the measurements. For these examples I should, to
10 avoid which controversy over which map, or whatever,
11 these are 1990s we're using as examples, just to give you
12 a sense of what the numbers mean.

13 You see a district here, perimeter over
14 1,200, population polygon .17, .10, .19, sense what that
15 shape gives you. Notice as you go through these, take
16 those districts, pick ones, essentially .1 step up,
17 Polsby-Popper. So the second example, Polsby-Popper .12,
18 .19, see how other numbers change as well. Third
19 example, now getting up to Polsby-Popper .13. See the
20 distinct difference in this district and the original
21 one?

22 CHAIRMAN LYNN: I want to be clear on
23 something Mr. Johnson, as comparing example one to sample
24 two, using Polsby-Popper, one would construe sample two
25 as twice as compact as is -- as sample one. Is that

1 accurate, on the scale?

2 MR. JOHNSON: The score is twice as high.

3 Don't know if it's a linear scale.

4 CHAIRMAN LYNN: Okay. That is not
5 necessarily correct reasoning. One could construe that
6 it is more compact.

7 MR. JOHNSON: By that measurement, yes.

8 CHAIRMAN LYNN: I want to point out the
9 same comparison, sample one and two, population polygon,
10 it is less compact.

11 MR. JOHNSON: Yes.

12 CHAIRMAN LYNN: Those are at odds.

13 MR. JOHNSON: Yes.

14 CHAIRMAN LYNN: Thank you.

15 So, going to District 4, this is giving
16 Polsby-Popper .40, see perimeter and other scores there.
17 Finally the final example, District 5, Polsby-Popper, now
18 we're up to point is a .61.

19 Now summarizing, puts all sample scores
20 together except perimeter one. See exactly,
21 Mr. Chairman, what referring to, Polsby-Popper,
22 population polygon drops down then goes up. So
23 measurements, because measuring different things,
24 different characteristics of a district, you can get
25 different results.

1 Oh, yes, that is the last of the
2 compactness slides.

3 MS. HAUSER: Mr. Chairman, a question for
4 Doug. Is one of these easier to implement in Maptitude?

5 MR. JOHNSON: Perimeter and Polsby-Popper
6 as seen before can be run in seconds, is extremely fast
7 for population. Polygon population, a circle, both take
8 10, 15 minutes to run. Take a pause, take a break, and
9 run. Perimeter and Polsby-Popper are the easiest to run.

10 COMMISSIONER MINKOFF: Perimeter and
11 Polsby-Popper?

12 MR. JOHNSON: Yes.

13 CHAIRMAN LYNN: In terms of definition and
14 discussions, if I'm not mistaken, when discussing the
15 perimeter test, the indication was that perimeter test
16 could be run not only on a district but on a plan or
17 solely on a plan?

18 MR. JOHNSON: You could run that on just a
19 district, if you wanted to, but typically it's run on a
20 whole plan and give you district whole scores.

21 CHAIRMAN LYNN: Polsby-Popper test is run
22 only on a district-by-district basis?

23 MR. JOHNSON: It also gives you
24 district-by-district scores. It does sum and average
25 scores for you.

1 CHAIRMAN LYNN: If we wanted to use the
2 Polsby-Popper test on a plan, entire plan, run it and
3 have both a district-by-district score on compactness but
4 also have a plan score?

5 MR. JOHNSON: Yes.

6 CHAIRMAN LYNN: Ms. Minkoff.

7 COMMISSIONER MINKOFF: Okay. I don't
8 understand how the perimeter test works on a single
9 district. I can understand how it would work on an
10 entire plan. You have 30 districts, plan A, plan B, and
11 if one of them has shorter perimeters, then it's more
12 compact. If you take an individual district, it might
13 have a very sparsely populated rural district. A
14 complete square makes it extremely compact but will have
15 a very large perimeter. How do you use that on an
16 individual district?

17 MR. JOHNSON: It's a good point. You can
18 only use it as a comparison to another version of a
19 district in that same area. You are right, just looking
20 at this district as this perimeter without that context
21 in comparison to another district doesn't tell you
22 anything.

23 COMMISSIONER MINKOFF: If the other
24 district is a sufficient issue, that entry is different
25 in terms of the geographic area that it covers, then you

1 really have a meaningless comparison. I don't understand
2 how we can use the perimeter test district by district.

3 MR. JOHNSON: The only place you can use it
4 would be looking at a district in the same geographic
5 area.

6 COMMISSIONER MINKOFF: If looking at a
7 district saying how can we make this more compact and
8 it's essentially the same district by evening out the
9 lines, or something like that, I see you can use it. The
10 kind of thing we're doing I don't think is that approach.
11 We're not going to try to look at a snake and tweak it to
12 make it more compact. We have a whole bunch of competing
13 criteria.

14 I'd feel real uncomfortable using that one.

15 CHAIRMAN LYNN: Mr. Huntwork.

16 COMMISSIONER HUNTWORK: Okay. I was
17 thinking exactly the opposite. Bear with me here. I'm
18 sure we'll hammer this out.

19 MR. RIVERA: We only have three people,
20 remember.

21 COMMISSIONER HUNTWORK: Number one, it's
22 intuitively obvious. The perimeter test is intuitively
23 obvious, a lot easier just as a nonstatistician,
24 whatever, to understand the perimeter test, very well
25 understand two districts side by side, both square, if

1 for some reason you want to extend one up here, this one
2 down here, they're not as compact. You've affected
3 compactness of each district, both districts. I also
4 understand that, you know, as we make changes in two,
5 three, four districts, that it becomes a mapwide test
6 because you could easily make a couple of those districts
7 less compact but all of them together could be more
8 compact than the way it started. To me, that's obviously
9 what we should be trying to do. I also think that it is
10 obviously more compatible with the idea of the grid. I
11 don't mean to oversimplify this, but the drafters of Prop
12 106 wanted us to start with the grid. Now correct me if
13 I'm wrong, but although a circle is the most compact
14 individual district, a group of squares is the most
15 compact total district, because the perimeter of -- the
16 perimeter of a square is the minimum perimeter for any
17 four-sided figure, right?

18 MR. JOHNSON: It's a pretty good rule of
19 thumb, yes.

20 COMMISSIONER HUNTWORK: It is. I can do
21 the math if you want me to. A rectangle is more compact
22 than the rombos, and so on, triangles. Maybe you can
23 tile the state with triangles. We said a grid is a
24 square. We eliminated triangles, and stars, and all
25 those crazy mappings of tiles from mihrab mosques, things

1 they used to spend time figuring out how to do before.

2 The perimeter test is kind of -- seems like
3 the one all this is pulling to, if we're going to pick
4 one test. Also seems to me maybe considering all the
5 different things we have to weigh, and -- that we maybe
6 should allow ourselves the flexibility of viewing our
7 maps and using a number of different criteria. And as
8 long as what we come up with is reasonably compact under
9 one of the criteria that is readily available to us, and
10 that is widely accepted in the scholarly literature, that
11 perhaps it would be better to have several rather than
12 just one. So, in other words, if we're going to pick
13 one, I'd say it's this perimeter test. But I guess I
14 would prefer to pick several and be able to run it that
15 way and then see if we've really done violence to the
16 concept.

17 CHAIRMAN LYNN: Given the practical
18 constraints of time as we move through this process,
19 Mr. Johnson has already given us information that suggest
20 both perimeter test and Polsby-Popper are rather
21 instantaneously known through the software. Others take
22 more time to evaluate. Would it be a reasonable
23 compromise of those positions that we run both tests on
24 all maps we might develop and use those standards both
25 for comparison purposes?

1 COMMISSIONER HUNTWORK: Absolutely. I
2 agree with that, Mr. Chairman. And I will make a motion
3 to that effect here momentarily. But I would --

4 Okay, I'll do it now.

5 COMMISSIONER MINKOFF: I'll second.

6 COMMISSIONER HUNTWORK: So moved.

7 CHAIRMAN LYNN: Moved and seconded.

8 Mr. Huntwork.

9 COMMISSIONER HUNTWORK: The point I want to
10 bring out is we use the results as guidance, that is
11 because they produce inconsistent results, we would need
12 to have our actions justified by one or the other tests
13 but not necessarily by both of these tests.

14 CHAIRMAN LYNN: Ms. Minkoff.

15 COMMISSIONER MINKOFF: Mr. Chairman, I
16 infinitely support the point you are making, however, I
17 run into trouble if we justify creation of one district
18 because of measurement of the perimeter test and another
19 on measurement of Polsby-Popper. At some point we need
20 to apply consistent standards to the whole map. I just
21 suggest because I won't be here when you are doing it
22 that rather than justify creation of a district because
23 it is more compact under one of the measures that you
24 examine the entire map by both standards and then say
25 either that both of these alternatives are essentially as

1 compact or that this one is significantly more compact
2 than the other and you may decide to go with the other
3 one anyway because of certain other criteria that it is
4 not so much less compact as to justify violating some of
5 the things that the second map achieves.

6 COMMISSIONER HUNTWORK: Well, I -- I think
7 what you are saying, just bear with me, if I understand
8 you, the real test, if you are just affecting two
9 districts next to each other, you don't have to test the
10 whole map to see what effect you are having on
11 compactness. But ultimately what we're trying to achieve
12 is compactness of the entire map, not specifically of an
13 individual district. If we create a beautiful, compact
14 district and sacrifice five others to increase total
15 compactness of the map, we're not doing our job, we've
16 violated the criteria. That's a separate point and maybe
17 one we should focus on approving separately from the --

18 CHAIRMAN LYNN: Your choice, separate or
19 included. It's on the same issue.

20 COMMISSIONER HUNTWORK: Okay. I would like
21 to propose a change in my motion to indicate we will
22 consider both of these, use both of these tests in order
23 to consider the, primarily the compactness of the map as
24 a whole where any action that we are taking affects more
25 than two contiguous districts.

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

3 COMMISSIONER MINKOFF: Well, let me just
4 ask our attorneys. I don't have a problem with it, but
5 I'm concerned that you may take District A and District B
6 and decide that based on the perimeter test that a
7 certain map is more compact, and then District C and
8 District D, and look at Polsby-Popper for those two. I
9 think we might run into problems. If counsel says we
10 won't, then I don't have a problem.

11 MS. HAUSER: Well --

12 CHAIRMAN LYNN: Ms. Hauser.

13 MS. HAUSER: I'm not sure this is even
14 responsive to your question. I've been sitting here
15 puzzling over the fact that what we're going to be
16 looking at is not just compliance with the geographical
17 compactness criteria but significant detriment to it, and
18 that's going to be more of a by district thing by map
19 kind of question, isn't it?

20 COMMISSIONER HUNTWORK: Compactness by
21 district?

22 MS. HAUSER: Significant detriment to the
23 competitive -- you know, if you are looking at
24 competitiveness, which is where significant detriment
25 comes up. I'm trying to think of the places you are

1 going to be dealing with this particular definition.
2 Significant detriment to this criteria is something that
3 I'm just questioning whether or not you are going to be
4 getting to that question in terms of a map as a whole or,
5 as you know, with a lot of the other criteria, with
6 respect to individual districts. So I'm a little
7 concerned about trying to make that work.

8 COMMISSIONER HUNTWORK: I was trying to
9 address the fact we'll undoubtedly do both. As we do
10 fine-tuning in the past we have always said where we can
11 trade this area from this area, swap two districts or
12 three-way swap, three districts, without affecting the
13 rest of the map. But before you get to that level of
14 detail you make some very, you make some big picture
15 decisions to get you down to that point. So we will be
16 doing different things at different times in the process.
17 I do think it would be a complete miscarriage of this, I
18 think, if we end up with a map completely noncompact but
19 have created a few districts we looked at closely that
20 are very, very compact. I mean that would be -- that's
21 not what Prop 106 is all about. I think we have to do
22 different things at different stages or even
23 simultaneous.

24 CHAIRMAN LYNN: I think your motion as
25 refined allows for both.

1 COMMISSIONER HUNTWORK: It was intended to.

2 COMMISSIONER MINKOFF: I think we have to
3 be very, very concerned, it was very clear in the court's
4 decision we apply consistent standards throughout the
5 map. And if we're using two tests, I think we have to
6 look at both of them every time we look at either the
7 whole map or other districts, otherwise we're not doing
8 what the court told us to in applying consistent
9 standards throughout the whole map. It's almost like
10 trying to measure competitiveness. District 1 is
11 competitive by JudgeIt, District 2 wasn't competitive by
12 JudgeIt, but was by AQD, JudgeIt by one, AQD for the
13 other, registration for a third, come up with a whole
14 bunch of competitive districts, not applying consistent
15 standards.

16 COMMISSIONER HUNTWORK: Let me ask this
17 question of you or possibly counsel, too, or the
18 consultants. If we were to, let's say, get down to the
19 point of weighing other factors against compactness,
20 determine what is to the extent practicable, and we find,
21 use both tests and find in one case, in order to make
22 districts more competitive, or preserve communities of
23 interest, or anything else, that we have, still have
24 districts very compact by the perimeter test, in another
25 case we find we have districts very compact in

1 Polsby-Popper.

2 COMMISSIONER MINKOFF: District wide?

3 COMMISSIONER HUNTWORK: Final

4 configuration, two districts here, create this swap,
5 create more districts, perimeter test, Polsby-Popper,
6 North Central Phoenix, North Tucson, do the same thing,
7 flunks Polsby-Popper, just fine by perimeter, what I was
8 thinking was that we adopt a standard that specifically
9 says we can do that if we don't -- if it passes one of
10 these two tests, it doesn't have to pass both of them.

11 COMMISSIONER MINKOFF: I don't think it has
12 to pass either one. I think it's something you look at
13 and weigh along with all other things. We have said we
14 can make changes as long as it's not to the significant
15 detriment. What I would do is I'd look at those
16 districts under both standards, if we're going to use
17 both standards.

18 COMMISSIONER HUNTWORK: Right.

19 COMMISSIONER MINKOFF: Take them both into
20 consideration and say that we do not believe that it does
21 significant detriment and we believe creating a
22 competitive district is a strong enough reason to affect
23 the compactness of the district in a way that is not
24 significant detriment.

25 COMMISSIONER HUNTWORK: I think we're both

1 saying the same thing. I want to be clear, though,
2 because the tests can produce opposite results, we may
3 end up using one test, making one decision, and using the
4 other test and making another decision. My point would
5 be that if we say in advance that we're going to do that,
6 is that an inconsistency? What we've said is these are
7 both tests recognized in the industry. If the
8 compactness of the district is demonstrated by either one
9 of these tests, we have the right to consider it to be a
10 compact district even though the other district might
11 not -- other test might not consider it to be as compact.

12 Do you see -- it's really a philosophical
13 problem with that. Not saying apply one test over the
14 other, not apply a test not widely recognized in the
15 industry. Just saying we can do something to achieve one
16 of the other goals that still passes one of these two
17 tests, that our standard is that we haven't violated
18 compactness.

19 COMMISSIONER MINKOFF: But I think we'll
20 get hung on consistency. What I'd do is look at the map,
21 look at both of the tests, say in our opinion there is a
22 legitimate reason for the impact on compactness which is
23 to create a competitive district with respect to
24 community of interest, or equal population, whatever it
25 is, voting rights issue. I would strongly urge you to be

1 consistent throughout the whole map and not pick and
2 choose the test that gives you the result you want. I
3 think that will lead to trouble when somebody else is
4 looking at the map.

5 CHAIRMAN LYNN: I think that is -- the
6 matter of definition is one thing, matter of application
7 is another thing. The matter of definition is at hand,
8 application as we move forward with mapping.
9 Notwithstanding the hypothetical adoption of the
10 standard, the motion goes to that standard. In this
11 instance, run both tests on both districts and maps to
12 give us a sense of the compactness of those districts
13 and/or maps and then we will determine, based on our
14 other definitions, whether or not that change, that
15 shift, has created a significant detriment. And to do
16 otherwise at this point is beginning to down a road with
17 an indeterminable number of hypotheticals.

18 COMMISSIONER HUNTWORK: I believe
19 Commissioner Minkoff put her finger on an important issue
20 inherent used on a decision used with two tests. I was
21 trying to see if there was way to resolve that tension.
22 The argument she is making to admonish us really is not,
23 in fact, unless both tests support what we're doing. And
24 to me that is a counterproductive result. I'd rather
25 select one test so that we did not face the prospect of

1 inconsistent application.

2 CHAIRMAN LYNN: Let me just clarify
3 something.

4 Mr. Johnson, it's been asserted that the
5 perimeter test and Polsby-Popper could offer differing
6 results against the same district or same plan test, that
7 is to say that in comparing two districts, and if you ran
8 both tests, one could have a positive effect, positive
9 meaning more compact, and the other test could indicate a
10 negative effect, being less compact. Is that possible?

11 MR. JOHNSON: Between those two tests, I
12 haven't looked into it in detail, but I believe that
13 would be true, depending how laid out, as you move from
14 square to circle.

15 CHAIRMAN LYNN: If that is the case, if
16 Commissioner Minkoff is correct, the application of those
17 needs to be consistent. I believe she is correct.
18 Perhaps Mr. Huntwork's conclusion is correct, we had best
19 pick one, use it and apply it across the entire process.

20 COMMISSIONER HUNTWORK: That's the
21 conclusion I draw.

22 COMMISSIONER MINKOFF: Mr. Chairman,
23 looking at the sample districts provided for us, looking
24 at sample one, sample two, those are two districts I
25 don't think anybody would say are terribly compact.

1 District 2 is more compact under Polsby-Popper, less
2 compact under perimeter. I submit the reason it is less
3 compact, look at the area it's covering. There aren't
4 any people up there. It's an enormous district. I'm not
5 sure if district by district perimeter really gives you
6 anything. It may for the entire map, but I'm not sure
7 district for district.

8 CHAIRMAN LYNN: I think it suggests, where
9 we're going next, the motion on floor, which the two of
10 you created. The two of you withdraw it.

11 COMMISSIONER HUNTWORK: I'd like to
12 withdraw it.

13 COMMISSIONER MINKOFF: I withdraw the
14 second.

15 CHAIRMAN LYNN: That clears the way. Point
16 well-taken. Particularly where dealing with a state with
17 enormous differences in population density in an area,
18 the perimeter test is misleading.

19 COMMISSIONER HUNTWORK: How so?

20 CHAIRMAN LYNN: When you get into a rural
21 area that must have, for equal population purposes, a
22 tremendous amount of area to deal with, the only
23 legitimate comparison it seems you can make is other
24 rural districts, in terms of compactness, using the
25 perimeter test, because by definition an urban district

1 with highly dense population will have a significantly
2 lower perimeter score than a rural district with less
3 density.

4 COMMISSIONER HUNTWORK: But,
5 Mr. Chairman --

6 CHAIRMAN LYNN: If making a population
7 change, not rural to rural but rural to urban, as these
8 districts come into the urban areas, you are going to run
9 into problems in terms of a definition of whether the --
10 those districts and then perhaps the map is affected
11 negatively by that exchange. Seems to me we ought to go
12 to Polsby-Popper, it ought to be the sole determinant on
13 the districts and maps we test. That's my suggestion.

14 COMMISSIONER MINKOFF: So moved.

15 CHAIRMAN LYNN: It's been moved.

16 Is there a second?

17 COMMISSIONER HUNTWORK: I would like to
18 discuss this a little further.

19 COMMISSIONER MINKOFF: Second then --

20 COMMISSIONER HUNTWORK: No. If I do, it's
21 up to a vote.

22 CHAIRMAN LYNN: We'll discuss --

23 COMMISSIONER HUNTWORK: Here the Chairman
24 already expressed his opinion.

25 CHAIRMAN LYNN: You have all the power. We

1 have a determination in terms of needing three
2 affirmative votes on any issue. So unless the three
3 agree on anything --

4 MS. HAUSER: If three don't agree, no legal
5 action is taken.

6 COMMISSIONER HUNTWORK: Okay, fine.
7 Second.

8 CHAIRMAN LYNN: Moved and seconded to adopt
9 Polsby-Popper apply equally on both district maps.

10 Mr. Huntwork.

11 COMMISSIONER HUNTWORK: Okay. While the
12 point you make at the first level, at the first cut you
13 made is correct, if you look one step deeper, I believe
14 the point disappears all together. In any district,
15 anywhere in the state, when you apply either criteria,
16 you don't compare that district to another district. You
17 have to create another district before you can compare.
18 Then you can say this district is -- you still have to
19 choose which district you are comparing it to. And your
20 concern about having large districts in rural areas,
21 that's true no matter what measure we apply. The
22 perimeter test when it is applied to two districts side
23 by side still does tell you something. That is two
24 districts you are moving things back and forth between
25 will still tell you something. And when you apply it to

1 the map as a whole it will absolutely tell you something.

2 I just disagree that there is anything that
3 Polsby-Popper tells you that the perimeter test does not
4 tell you.

5 CHAIRMAN LYNN: Are you, therefore,
6 recommending we choose the perimeter test and apply it?

7 COMMISSIONER HUNTWORK: I recommend there
8 is no impairment to the perimeter test as you previously
9 suggested and the perimeter test is far more compatible
10 with the notions expressed in Proposition 106, creation
11 of the grid and adjustment of the grid. I think that
12 leads directly to the perimeter test if we're going to
13 apply a single test.

14 COMMISSIONER MINKOFF: Mr. Chairman?

15 CHAIRMAN LYNN: Ms. Minkoff.

16 COMMISSIONER MINKOFF: When we adopted a
17 definition of competitiveness because we needed a
18 definition, we said it was going to be JudgeIt seven
19 percent or less. That doesn't mean we can't also look at
20 registration figures or AQD, it just means our standard
21 is JudgeIt. I would suggest we do the same thing here.
22 I think Polsby-Popper, to me, seems to me in most cases a
23 better measurement. If perimeter is that easy to run,
24 let's run it. It doesn't mean pause a district is
25 slightly less competitive in Polsby-Popper -- slightly

1 less compact that you can't do it, because there are all
2 kinds of other competing characteristic -- competing
3 criteria for modifying districts. We have to have a
4 standard rather than two standards.

5 CHAIRMAN LYNN: The point in reverse is
6 just as true. That is to say Mr. Huntwork's point,
7 choose perimeter as the primary test, work both ways.

8 COMMISSIONER MINKOFF: Put them in a hat,
9 pull one out. We have to decide.

10 COMMISSIONER HUNTWORK: I have no idea,
11 Mr. Chairman, which test will produce what results on a
12 map. I have no dog in this fight of any kind other than
13 that it seems to me that the perimeter test is more
14 consistent with the concept of the grid which is what
15 we've been ordered to go back to start with and what
16 future commissions will have to deal with. I would -- I
17 prefer, myself, to think we are --

18 CHAIRMAN LYNN: I don't think we're going
19 to get three votes on this one, which means we're not
20 going to adopt a definition. Now since this is a
21 secondary criterion, I don't mean secondary in terms of
22 importance, I mean in terms of our process and our
23 instructions, this criterion will be applied subsequently
24 to the primary application of competitiveness and the
25 secondary application of voting rights, that we don't

1 need to adopt this evening a definition for this, and we
2 can do so in advance of applying it evenly to any map we
3 create, I suggest we wait until we have a broader
4 complement of the Commission. Might we agree, the three
5 of us agree on one or the other of those approaches?

6 COMMISSIONER HUNTWORK: I think that's very
7 wise in terms of what we instruct our consultants to do.
8 Should we instruct them to use these two tests or should
9 we not even narrow it to these two tests?

10 CHAIRMAN LYNN: I don't think we narrow it
11 at this point. That could come this weekend when we
12 narrow the process.

13 COMMISSIONER HUNTWORK: Very well.

14 CHAIRMAN LYNN: The first thing to look at
15 are other criteria. We can always go back to anything
16 that has been created, correct me if I'm wrong,
17 Mr. Johnson, any previous map, or the grid for that
18 matter could be viewed in Maptitude and these two tests
19 could be run virtually immediately and we could get
20 measurements on both of those.

21 MR. JOHNSON: Yes. That's correct.

22 CHAIRMAN LYNN: I suggest where we do not
23 agree this evening, simply on that issue defer. And it
24 does us no harm in terms of complying with the order.

25 Counsel, are you in agreement with that?

1 Thank you.

2 Let's put that one aside and see if we
3 might be able to agree on contiguity.

4 MR. JOHNSON: Okay. The last two slides.
5 First, definitions from past court
6 decisions.

7 Did you want to do this?

8 Short of an intervening land mass totally
9 severing two sections of an electoral district, there is
10 no, per se, test for the constitutional requirement of
11 contiguity. Each district must be examined separately.
12 One ruling in one court definition: The tracts of land
13 in the territory must touch or adjoin one another in a
14 reasonably substantial physical sense.

15 I'm not sure, I believe there was a phase
16 where they went out and physically walked.

17 Next slide.

18 And the proposed definition, drawing from
19 those two court rulings, is: Tracts of territory in
20 contact with one another along a boundary that is more
21 than a point.

22 MS. HAUSER: In other words, they have to
23 touch.

24 CHAIRMAN LYNN: They have to touch more
25 broadly than a point.

1 MR. JOHNSON: Right.

2 CHAIRMAN LYNN: Mr. Huntwork.

3 COMMISSIONER HUNTWORK: Mr. Chairman, I
4 would like to --

5 MR. JOHNSON: It's really hard to hear.

6 COMMISSIONER HUNTWORK: I would think
7 Colorado is contiguous with Arizona, touches at more than
8 a point. Anything else is a feature of compactness. I
9 think contiguous means they have to touch.

10 CHAIRMAN LYNN: Ms. Hauser.

11 MS. HAUSER: I was going to ask, what is a
12 point?

13 MR. JOHNSON: A point, as it says, four
14 corners is a good example. You could say they touch, all
15 share that common point. But you can't actually get from
16 one to the other without -- unless you are -- without
17 crossing over the other --

18 CHAIRMAN LYNN: Were it not for a monument
19 connecting the geographic point one could get from
20 Arizona to Colorado taking one step.

21 COMMISSIONER MINKOFF: Go through the air.
22 You honestly can't on the ground go from one to the
23 other. It's just a point. The width of your foot puts
24 you from Utah into New Mexico.

25 COMMISSIONER HUNTWORK: Practicality as

1 opposed to theoretics.

2 In mathematical terms, touching at a point
3 is contiguity. That is geometry, and so on. That's
4 contiguity. If you are talking about practicality, it's
5 more than a point, it's the width of a normal size of an
6 adult human being, or the width of a vehicle, or -- and
7 so, you know, the concept of a point here doesn't do this
8 for me. I would just like to eliminate that and say they
9 have to touch.

10 CHAIRMAN LYNN: I have to tell you that of
11 all the criteria this is the one I'm least concerned
12 about from the standpoint the violation of the contiguity
13 rule is almost always associated with a political
14 gerrymander we're not going to endeavor to create.
15 Therefore, I'm perfectly happy to go with any two land
16 masses that touch.

17 COMMISSIONER MINKOFF: I also can't imagine
18 that we would create a district where there was a
19 connection only by a point.

20 CHAIRMAN LYNN: No.

21 COMMISSIONER MINKOFF: That's fine. If you
22 want that one, fine.

23 CHAIRMAN LYNN: I'd like a motion.

24 COMMISSIONER HUNTWORK: I move we define
25 contiguity as actual physical contact.

1 CHAIRMAN LYNN: Tracts of territory in
2 actual physical contact with one another.

3 COMMISSIONER HUNTWORK: Yes. Thank you.

4 COMMISSIONER MINKOFF: Why not. I'll
5 second it.

6 CHAIRMAN LYNN: It's a second. Further
7 discussion on that motion?

8 All those in favor, say "Aye."

9 COMMISSIONER HUNTWORK: "Aye."

10 COMMISSIONER MINKOFF: "Aye."

11 CHAIRMAN LYNN: "Aye."

12 Motion carries.

13 Now, refresh my memory. Did we in fact
14 defer a definition pending a brief Executive Session?

15 COMMISSIONER HUNTWORK: Substantial
16 significant detriment.

17 MR. JOHNSON: Yes, significant detriment.

18 CHAIRMAN LYNN: Does counsel still believe
19 that we need that Executive Session this evening before
20 we proceed?

21 MS. HAUSER: Hang on one second.

22 CHAIRMAN LYNN: Or, in the alternative,
23 might we adopt that definition, prior to applying it to
24 anything, next time we meet before we make any -- before
25 we get a presentation on any map or any application of

1 the criteria?

2 MS. HAUSER: Mr. Chairman, it's our
3 consensus, it would be best to have a broader cross
4 section of Commissioners here to resolve this particular
5 issue and it can be done at the beginning of the next
6 meeting.

7 COMMISSIONER MINKOFF: I don't object.

8 MS. HAUSER: Before you object or --

9 COMMISSIONER HUNTWORK: As parliamentary
10 procedure, a Commissioner not here can't vote, or against
11 the action, for reconsideration?

12 COMMISSIONER MINKOFF: No.

13 CHAIRMAN LYNN: You have to be on the
14 prevailing side.

15 Okay with deferral?

16 COMMISSIONER HUNTWORK: I would -- yes and
17 no.

18 CHAIRMAN LYNN: Can't be yes and no.

19 COMMISSIONER HUNTWORK: I don't know yet.
20 I have a question.

21 CHAIRMAN LYNN: That's better.

22 COMMISSIONER HUNTWORK: Is there some
23 advice you wish to render to us? If so, I would like
24 to --

25 MS. HAUSER: Here? Now?

1 COMMISSIONER HUNTWORK: -- go into
2 Executive Session, find out what it is, then be able to
3 decide if I agree.

4 COMMISSIONER MINKOFF: Mr. Chairman, much
5 as I don't want to be excluded from this, I think the
6 definition of significant detriment is much more critical
7 to what we're doing than the definition of contiguity.
8 As much as I would love to weigh in on that decision, I'd
9 really feel uncomfortable if the three of us came to
10 unanimous conclusion and excluded other Commissioners.
11 Four is better than three. I forgive you for doing this
12 without me. I suggest deferring until more people are
13 here.

14 COMMISSIONER HUNTWORK: Okay. On the other
15 hand, the three of us represent -- well, we don't
16 represent.

17 MS. HAUSER: For purposes of moving
18 forward, Jose, fine with going into Executive Session,
19 giving advice here what that is, have an opportunity to
20 ponder that until the next meeting?

21 Doesn't necessarily mean that you have to
22 act on that advice right now. So -- maybe that's a good
23 compromise.

24 CHAIRMAN LYNN: Perhaps in the interest of
25 representation, would it be reasonable to have a brief

1 Executive Session, give Ms. Minkoff the benefit of the
2 representation, allow us on the record to give the
3 benefit of her thought on that when the four of us meet.

4 COMMISSIONER MINKOFF: I just don't want
5 the three of us to decide this.

6 COMMISSIONER HUNTWORK: We have a
7 Republican, Democrat, Phoenix, Tucson, all the balance.

8 COMMISSIONER MINKOFF: We have urban and
9 urban.

10 COMMISSIONER HUNTWORK: Okay.

11 COMMISSIONER MINKOFF: And urban.

12 CHAIRMAN LYNN: Almost all the balance.

13 COMMISSIONER MINKOFF: On the other hand,
14 you'll be terribly gender biased going on without me.

15 CHAIRMAN LYNN: Pursuant to A.R.S.
16 38-431.03(A)(3) and A.R.S. 38-431.03(A)(4), is there a
17 motion for Executive Session?

18 COMMISSIONER HUNTWORK: So moved.

19 CHAIRMAN LYNN: Second?

20 COMMISSIONER MINKOFF: Second.

21 CHAIRMAN LYNN: All those in favor, say
22 "Aye."

23 COMMISSIONER HUNTWORK: "Aye."

24 COMMISSIONER MINKOFF: "Aye."

25 CHAIRMAN LYNN: Chair votes "Aye."

1 Ladies and gentlemen of the public, I'm
2 guessing 10, 15 minutes. If interested where we're going
3 next, stick around. If not, see you next time, but it's
4 your choice.

5 COMMISSIONER MINKOFF: I won't see you next
6 time.

7 (Whereupon, the Commission recessed Open
8 Public Session at 6:45 p.m. and convened
9 in Executive Session at 6:46 p.m. until
10 7:12 p.m. at which time Open Public
11 Session resumed at 7:18 p.m.)

12 CHAIRMAN LYNN: Back on the record.

13 For the record, Ms. Minkoff, Mr. Huntwork,
14 and the Chairman are present, along with legal counsel
15 and the consultants.

16 With respect to the issue of significant
17 detriment, is there further business of the Commission?

18 COMMISSIONER HUNTWORK: Mr. Chairman.

19 CHAIRMAN LYNN: Mr. Huntwork.

20 COMMISSIONER HUNTWORK: I would like to
21 make a motion that we define the term "significant
22 detriment" as any impairment of a redistricting criterion
23 which the Commission determines, based on the record
24 before it, to be material and substantial but not an
25 impairment which the Commission determines to be minimal

1 or inconsequential.

2 CHAIRMAN LYNN: Is there a second?

3 COMMISSIONER MINKOFF: Mr. Chairman.

4 CHAIRMAN LYNN: Ms. Minkoff.

5 COMMISSIONER MINKOFF: Normally I would
6 second that, because I agree with the sense of it. I
7 think that it's a very good definition. But I really
8 feel uncomfortable adopting something this important with
9 just the three of us here, if you also support it.

10 I think you ought to leave this over to the
11 weekend, even though I won't be here, because honestly,
12 if we can't get one of the two absent Commissioners to
13 support this definition, I would feel uncomfortable
14 moving forward with it.

15 You would have my vote if we were -- if I
16 were here this weekend, but I would hope it would at
17 least pass four-to-one. This is too important for a
18 three-to-two vote. If you can bring the other
19 Commissioners along, fine. Otherwise I think you have to
20 search for another definition.

21 CHAIRMAN LYNN: Let me be clear. You wish
22 to defer to the weekend. You have no problem with the
23 language.

24 COMMISSIONER MINKOFF: I'd add one more
25 thing. As a general definition, it makes a lot of sense.

1 I think when you look at different criteria, it will mean
2 different things for different criteria.

3 I say adopt this definition, or hopefully
4 something very similar to it; apply it consistently to
5 all the criteria. But I think for each individual
6 criterion, or at least for most of them, it's probably
7 going to need some further explanation.

8 I would hope that you do that in a way that
9 I would approve of if I were here.

10 CHAIRMAN LYNN: We'll attempt to do that,
11 Ms. Minkoff.

12 Motion dies for lack of a second.

13 Before we move on to instructions to NDC,
14 is there anything else with respect to definitions that
15 we need to deal with this evening?

16 Mr. Huntwork?

17 COMMISSIONER HUNTWORK: Mr. Chairman, I
18 would like to propose we reconsider a definition we
19 adopted earlier, specifically compliance with the Voting
20 Rights Act.

21 CHAIRMAN LYNN: Motion to reconsider --

22 Is that a motion?

23 COMMISSIONER HUNTWORK: I guess so.

24 CHAIRMAN LYNN: A motion to reconsider has
25 two criteria with it. Someone that makes a motion must

1 have voted on the prevailing side, which Mr. Huntwork
2 did; and it will require a vote of the Commission to
3 revisit that.

4 Is there a second to the motion to
5 reconsider?

6 COMMISSIONER MINKOFF: Mr. Chairman, before
7 I can consider it, can I have it read back to me what we
8 adopted before so I know what we adopted?

9 CHAIRMAN LYNN: Certainly.

10 MS. HAUSER: Adopted as the definition of
11 compliance with the Voting Rights Act: Full compliance
12 with all applicable provisions as advised by legal
13 counsel except advice not inconsistent with the order of
14 the court.

15 COMMISSIONER HUNTWORK: Not consistent --

16 MS. HAUSER: Not consistent with the order
17 of the court; to that extent the court order shall
18 prevail. Sorry.

19 COMMISSIONER HUNTWORK: Perhaps it would be
20 helpful, Mr. Chairman, if I explain the reason for my
21 motion.

22 COMMISSIONER MINKOFF: That would help.

23 CHAIRMAN LYNN: Well, what I'd really
24 rather do --

25 COMMISSIONER MINKOFF: Want me to second it

1 to get it on the floor?

2 CHAIRMAN LYNN: Explain your vote any way
3 you want.

4 COMMISSIONER MINKOFF: Thank you,
5 Mr. Huntwork.

6 COMMISSIONER HUNTWORK: The reason for
7 reconsideration is that I am concerned that the
8 references to advice of counsel might, to some extent, or
9 to a greater extent, waive the confidentiality of our
10 communications with our counsel, which would be, while
11 not intent of fact, certainly be detrimental to our
12 process. What I hope to be able to accomplish is adopt
13 essentially the same motion and delete mention to "advice
14 of counsel."

15 COMMISSIONER MINKOFF: No problem.

16 CHAIRMAN LYNN: Further discussion on the
17 motion to reconsider? If not, all in favor of the motion
18 say "Aye."

19 COMMISSIONER HUNTWORK: "Aye."

20 COMMISSIONER MINKOFF: "Aye."

21 CHAIRMAN LYNN: Chair votes "Aye."

22 It carries unanimously.

23 Now consideration of the Voting Rights Act.

24 Mr. Huntwork.

25 COMMISSIONER HUNTWORK: I move adoption of

1 the same motion with simply elimination of references to
2 counsel.

3 If I could see a copy of the text for a
4 moment it would be very readily apparent exactly what
5 that entailed.

6 Mr. Chairman, I propose we define the term
7 as follows: Compliance with the Voting Rights Act means
8 full compliance with all applicable provisions thereof
9 except to the extent -- I'm sorry, with all applicable
10 provisions to the extent they are consistent with the
11 order of the court.

12 COMMISSIONER MINKOFF: Mr. Chairman, just a
13 procedural matter. It seems to me what is on the floor
14 right now is consideration of what we previously adopted.
15 Don't we either --

16 CHAIRMAN LYNN: Motion previously made. I
17 take this as an amendment to the previous motion.

18 COMMISSIONER MINKOFF: What is on the floor
19 right now is approval of what we already approved.

20 CHAIRMAN LYNN: Back to discussion.

21 COMMISSIONER MINKOFF: Now it's
22 reconsidered. That motion is on the floor. What we're
23 talking about is amendment to that motion.

24 CHAIRMAN LYNN: Mr. Huntwork, I believe
25 you're offering amendment to a motion previously

1 considered and again on the floor.

2 MR. HUNTWORK: The definition compliance
3 with the Voting Rights Act, full compliance with all
4 applicable provisions thereof to the extent consistent
5 with the order of the court.

6 COMMISSIONER MINKOFF: Did you add
7 something after that or not?

8 COMMISSIONER HUNTWORK: I attempted to
9 summarize or to the extent not inconsistent with an order
10 of the court.

11 CHAIRMAN LYNN: A double negative. And to
12 that extent the Court order shall prevail. That was
13 language in the previous motion.

14 Your choice. Your motion.

15 COMMISSIONER HUNTWORK: I feel that was a
16 very convoluted way of saying it. It all boils down to
17 say it simpler.

18 COMMISSIONER HUNTWORK: Full applicable
19 provisions thereof, consistent with order of the court.

20 CHAIRMAN LYNN: Second to the amendment?

21 COMMISSIONER MINKOFF: I second.

22 CHAIRMAN LYNN: Discussion on the
23 amendment?

24 If not, all in favor of the amendment,
25 signify by saying "Aye."

1 COMMISSIONER MINKOFF: "Aye."

2 COMMISSIONER HUNTWORK: "Aye."

3 CHAIRMAN LYNN: The amendment agreed to
4 consideration as amended with the new language.

5 Further discussion on the motion?

6 If not, all those in favor of the motion,
7 signify by saying "Aye."

8 COMMISSIONER HUNTWORK: "Aye."

9 COMMISSIONER MINKOFF: "Aye."

10 CHAIRMAN LYNN: Motion carries unanimously.

11 Any other modification or discussion on
12 definitions this evening other than those we specifically
13 deferred until our next meeting?

14 Hearing none, the next item on the agenda
15 is instruction to NDC.

16 Now, let me try to summarize what I believe
17 our adoption of the process and discussion of definitions
18 has instructed NDC to do. And let me just put it out
19 there. And so we can either agree to that or modify it
20 or go where we need to go.

21 I believe what we have told NDC to do,
22 first of all, is we have adopted the process that was
23 proposed and that that process required us, first, to
24 adopt some definitions which we have, in the main, done;
25 and while at this point that as quickly practicable, the

1 definitions that have been determined this evening, this
2 afternoon and this evening, would be posted on our
3 website so that those who are following the process will
4 have the specific definitions that we have agreed to
5 today; that we have, because of the adoption of that
6 process instructed NDC to return to the grid plan that
7 was originally presented to the Commission and from that
8 grid plan we have asked that they first apply the
9 criterion of competitiveness so as to create a map that
10 is essentially a map which has equal population and
11 competitiveness as its components, the grid being equal
12 population and then competitiveness applied; that
13 subsequent to the creation of that map, the criterion of
14 applicability -- compliance, pardon me, compliance with
15 the Voting Rights Act be applied; and that a
16 representative map with that criterion added also be
17 prepared.

18 Stop me if I'm misconstruing this, because
19 I'm going on what I think the process said and I think we
20 ordered.

21 Ms. Minkoff.

22 COMMISSIONER MINKOFF: I just had a
23 question. Are you talking about two separate maps?
24 First a map is presented just with competitive districts
25 and then a second map is presented which is a

1 modification of that to comply with the Voting Rights
2 Act?

3 CHAIRMAN LYNN: Yes. My estimation, I
4 think we have to look at this sequentially, how map A
5 becomes map B, map C, map D, and so on, so it is a
6 process of evolution that will ultimately result in a map
7 considered for adoption. That at -- and I believe that
8 what we have left undone and needs to be done over the
9 weekend -- I believe what I've just ordered or what we
10 will order, if you agree with me can be done with the
11 definitions that have been fully defined today and don't
12 require settlement of the issues that are still
13 outstanding for the next meeting, which are some
14 definition of significant detriment which won't be
15 applied until we get into comparative mapmaking, and what
16 we will need to do is settle that matter before we look
17 at those maps next weekend, we will settle that matter
18 first. And then the second thing not yet settled as of
19 this weekend is the order in which other criteria will be
20 applied to the map. That, too, will be settled but we
21 will not need to settle that for the first day of the
22 next meeting.

23 COMMISSIONER MINKOFF: Don't we also have
24 to settle compactness?

25 COMMISSIONER HUNTWORK: Yes.

1 CHAIRMAN LYNN: We have to settle the issue
2 of compactness which is one of the criterion added and
3 added subsequently. So we have those things yet to
4 finalize for purposes of beginning the process,
5 instructions as I've outlined them, creation of the grid
6 plus competitiveness, and then a second map, which is the
7 grid plus competitiveness plus compliance with the Voting
8 Rights Act is what we are ordering.

9 Mr. Huntwork.

10 COMMISSIONER HUNTWORK: Mr. Chairman, the
11 only slight concern I have is that it's possible when you
12 adjust the competitive map -- well, it's possible that
13 when you adjust the grid for competitiveness or when you
14 adjust the competitiveness map for Voting Rights Act
15 compliance you might be tempted to use population
16 variations in order to comply in which case we would have
17 had to have defined significant detriment. So I would
18 like to include in this instruction in whatever they do
19 in this initial stage that they keep the populations, the
20 districts as equal as humanly possible, and any variation
21 in population would have to be considered at a later
22 time. Otherwise we're going to have to define
23 significant detriment and tell them to comply with it,
24 tell them no detriment.

25 MR. JOHNSON: I assume we understand that

1 modified to within the time available before the weekend.
2 It's getting to perfect equality that is a very
3 time-consuming process.

4 COMMISSIONER HUNTWORK: Yes. Within the
5 time available, absolutely.

6 CHAIRMAN LYNN: Ms. Hauser.

7 MS. HAUSER: In the decision, there should
8 be an instruction to NDC to map, to come up with
9 boundaries for whatever communities of interest are
10 already in the record.

11 CHAIRMAN LYNN: Thank you. I was getting
12 there. But thank you.

13 An additional instruction to NDC would be
14 to review the record, identify communities of interest
15 which have previously been identified, and to
16 geographically compose their construct, which is another
17 way of saying "map them." But what I'm saying is those
18 boundaries have to be known geographically so as to be
19 applied to a map at some future date. So to the extent
20 that you have any information or testimony that allows
21 you to create those communities of interest with
22 geographic boundaries, that also should be completed.

23 Mr. Huntwork.

24 COMMISSIONER HUNTWORK: In that regard, I
25 think we should tell them to use their discretion to map

1 anything that they think might be, whether we have found
2 it to be a community of interest or not, specifically,
3 but is in the record and that we might, that the
4 Commission might consider to be a community of interest
5 under the definition that we have adopted. Get as much
6 homework done as possible. We may or may not affirm any
7 of the communities we previously adopted when we apply
8 the definitions. We may define other things that were
9 not before communities of interest.

10 To the extent that our consultants can
11 anticipate that, come up with things that might or might
12 not be, it will put us one step ahead. I think it's
13 important that they not do this in the form of
14 recommending, that we do or do not adopt this, but only
15 this is a result of search of the record and things we
16 might consider to be communities of interest.

17 CHAIRMAN LYNN: Ms. Hauser.

18 MS. HAUSER: That is actually one of the
19 clarifications I was going to make.

20 The other clarification is that, again, the
21 tendency to refer to this as mapping communities of
22 interest, again, just to make it very clear on the record
23 that this has no relationship with putting them on any
24 particular maps, these would be stand-alone geographic
25 boundary depictions of community of interest. They are

1 not at this point being laid upon any map, even the grid
2 map.

3 COMMISSIONER HUNTWORK: I think it's
4 important for us to say out loud instead of shaking our
5 heads yes. I certainly agree with that.

6 CHAIRMAN LYNN: Absolutely. That's why I
7 was struggling with the terms of, specific definition of
8 the term "mapping communities of interest." I don't like
9 the term. We're identifying them geographically, what
10 are their boundaries.

11 Okay. Are there other instructions either
12 from Members of the Commission or counsel we need to give
13 to NDC this evening?

14 Ms. Leoni?

15 All right.

16 May I have a motion to formally instruct
17 NDC in the manner that was just discussed?

18 COMMISSIONER MINKOFF: So moved.

19 COMMISSIONER HUNTWORK: Second.

20 CHAIRMAN LYNN: Thank you.

21 Discussion on the motion?

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

24 COMMISSIONER HUNTWORK: "Aye."

25 COMMISSIONER MINKOFF: "Aye."

1 CHAIRMAN LYNN: Chair votes "Aye."
2 Motion carries unanimously and is so
3 ordered.
4 Any instructions to counsel?
5 MR. RIVERA: I think you've given us plenty
6 during the evening.
7 CHAIRMAN LYNN: Okay.
8 Report from the Executive Director?
9 Do you have any report?
10 MR. ECHEVESTE: No report.
11 CHAIRMAN LYNN: Okay. Thank you.
12 I'd ask we do have a time on the next
13 agenda, direct counsel in preparing the agenda to include
14 an Executive Director report at which time we'll discuss
15 the financial circumstances of the Commission with
16 respect to our work going forward so that I might
17 communicate that to the leadership of the Legislature and
18 the Governor.
19 Let me ask one more time if there is any
20 public comment.
21 Hearing none, let me talk about future
22 meetings. Please correct me if I misspeak about the
23 meeting. As I understand it, this meeting, obviously,
24 the next meeting will be posted in accordance with the
25 requirements for posting a 48-hour notice. But my

1 understanding is that our next-scheduled meeting will be
2 this Saturday, which is the 7th --

3 MS. HAUSER: Yes.

4 CHAIRMAN LYNN: -- of February. The
5 meeting will begin at 10:00 a.m., and we have a location.
6 And the location is the Sheraton Hotel -- Sheraton
7 Airport, I believe is the designation, on Broadway near
8 about 52nd --

9 COMMISSIONER MINKOFF: 52nd and Broadway.

10 MS. HAUSER: The same place we met October
11 2001.

12 CHAIRMAN LYNN: If you liked it then you'll
13 love it now. If you didn't, you won't. That's just the
14 way it is.

15 Any other business that has been listed on
16 the agenda to come before the Commission?

17 If not, I want to take note of a couple
18 things before we close. Number one, as I think most of
19 you know, this is the only meeting during this part of
20 the procedure, part of the process, where Ms. Minkoff
21 will be able to join us until after the end of the month.
22 And while we clearly would prefer that she be here, and
23 she would prefer that she be able to participate, it's
24 just a circumstance that cannot be altered at this point.
25 And --

1 MS. HAUSER: Unless we get a stay.

2 CHAIRMAN LYNN: I was about to say.

3 COMMISSIONER MINKOFF: Stay, stay, stay.

4 CHAIRMAN LYNN: If we are successful in
5 getting a stay of the proceedings, it would be
6 advantageous for a number of reasons, not the least of
7 which is more full participation of the Commission. I
8 hope a stay is granted and Ms. Minkoff can join us as we
9 move forward.

10 The second of which, I would like to
11 mention we welcome back to the Commission Lou Jones. Lou
12 is back with us, and we can't be more delighted to have
13 her back. We'll continue to have her back on light duty
14 until her doctor clears her for more strenuous work.

15 We're delighted to have her back: Lou.

16 With that, we'll adjourn this meeting and
17 reconvene at the time that will be posted officially on
18 Saturday.

19 The Commission will stand adjourned.

20 (Submittal Exhibit No. 3:

21 "February 3, 2004, Letter from Ronald M.
22 Lehman, Gabroy, Rollman & Bosse, P.C., to Steven W.
23 Lynn, Chairman, Arizona Independent Redistricting
24 Commission, 1400 West Washington Street, Suite
25 B-110, Phoenix, Arizona, 85007, Re: Santa Cruz

1 County:

2 "Dear Chairman Lynn:

3 "As you may remember, I represent Santa
4 Cruz County which actively participated in the
5 lawsuit decided by Judge Fields. During that
6 Lawsuit, no one advocated changing the portions of
7 Santa Cruz County that lie within Legislative
8 Districts 25 and 30.

9 "On behalf of Santa Cruz County, we would
10 ask the Commission to consider the testimony from
11 the previous hearings held by the Commission in
12 Santa Cruz County. The County strongly believes
13 that it should have a minimum of two, if not three,
14 legislative districts which include portions of
15 Santa Cruz County.

16 "We ask that this letter and the attached
17 final Findings be made a part of the official record
18 of the Commission in its upcoming proceedings: 1)
19 Analysis of Competitiveness; 2) Affidavit of Manuel
20 Ruiz; 3) Affidavit of Dennis Miller; 4) Santa Cruz
21 County's Final Finds of Fact and Conclusions of Law.

22 "If you need anything else on behalf of
23 Santa Cruz County, please let me know.

24 "Thank you.

25 "Very truly yours.

1 "Gabroy, Rollman & Bosse, P.C.,
2 "Ronald M. Lehman,
3 "RML:acr
4 "Enclosures
5 "C: Greg Lucero, SCC Manager,
6 "Dennis Miller,
7 "Government Relations Director,
8 "Holly Hawn, Esq.
9 "Lisa Hauser, Esq.")
10 (Whereupon, the Commission adjourned at
11 approximately 7:38 p.m.)

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STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

BE IT KNOWN that the foregoing hearing was taken before me, LISA A. NANCE, RPR, CCR, Certified Court Reporter in and for the State of Arizona, Certificate Number 50349; that the proceedings were taken down by me in shorthand and thereafter reduced to typewriting under my direction; that the foregoing 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

