The State of Arizona Independent

Redistricting Commission convened in Open Public Session
on February 7, 2004, at 10:00 o'clock a.m., at the
Sheraton Airport, Tempe, 1600 South 52nd Street, Tempe,
Arizona, 85281, in the presence of:

APPEARANCES:

CHAIRMAN STEVEN W. LYNN
COMMISSIONER JAMES R. HUNTWORK
COMMISSIONER JOSHUA M. HALL
COMMISSIONER DANIEL R. ELDER

LISA A. NANCE, RPR, CCR No. 50349
ADDITIONAL APPEARANCES:

LISA T. HAUSER, Commission Counsel
JOSE de JESUS RIVERA, Commission Counsel
LOU JONES, IRC Staff
KRISTINA GOMEZ, IRC Staff
DOUG JOHNSON, NDC, Consultant
MARGUERITE LEONI, NDC Counsel
LISA A. NANCE, RPR, CCR, Court Reporter
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REPORT OF EXECUTIVE DIRECTOR:

Adolfo Echeveste ---

EXHIBITS

NO. DESCRIPTION

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2 Speaker Slip For: Merle Pete, Staff Assistant, The Navajo Nation

3 Speaker Slip For: Matt Ryan, Chairman, Coconino County Board of Supervisors

4 Speaker Slip For: Joseph Donaldson, Mayor, City of Flagstaff

5 Speaker Slip For: Dennis Miller, Director of Government Relations, Santa Cruz County

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LISA A. NANCE, RPR, CCR No. 50349
Public Session
Tempe, Arizona
February 7, 2004
10:00 o'clock a.m.

PROCEEDINGS

CHAIRMAN LYNN: Call the Commission to order.

For the record, roll call.

Mr. Huntwork?

COMMISSIONER HUNTWORK: Present.

CHAIRMAN LYNN: Mr. Elder?

COMMISSIONER ELDER: Here.

CHAIRMAN LYNN: Mr. Hall?

COMMISSIONER HALL: Present.

CHAIRMAN LYNN: Chairman is present.

For the record, Ms. Minkoff is excused.

Ms. Minkoff will not be able to join us until after the first of March. She's out of the country. That was announced at the last meeting. For those not present, I want those to be aware of it.

For the record, counsel, consultants, and IRC staff are present.

Item III, public comment. This is the time for consideration and discussion of comments and complaints from the public. Those wishing to address the
Commission shall request permission in advance by filling out a speaker slip. Yellow slips are available outside the door to the meeting room.

Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for consideration at a later date, unless the subject of an item is already on the agenda.

I have six or seven slips from the public, and we'll move through them this morning. I would ask those of you who are addressing the Commission, if you do have written comments that mirror what you are going to tell us, please submit those to Lisa Nance, our public stenographer, just to make sure we get those in the record as they are submitted.

I would also ask that without objection -- in your packets, there are some correspondence from members of the public. And I would ask that without objection those be included in the record as well.

I will make sure you have copies of those, Lisa, before.

The first speaker this morning is Michael Mandell.

Mr. Mandell representing the Arizona Minority Coalition.
Mr. Mandell, good morning.

MR. MANDELL: Good morning, Mr. Chairman,

Members of the Commission.

I am Michael Mandell. I represent the

Arizona Minority Coalition.

I will be brief this morning, as

Mr. Eckstein hit a lot of the points we wanted to make at

the last meeting.

I start off by going over some of the
definitions, or at least clarifying the definitions that
were adopted at the last meeting, actually, and those
that weren't; specifically with significant detriment is
where I wanted to start.

With significant detriment, as looking at
trying to define significant detriment, it seemed as
though at the last meeting you were moving down the road
of adopting a definition that would allow for any
impairment that was deemed substantial by the Commission.

We would advise the Commission that they
may want to tie that definition as we had handed out in
the definitions section of our last paper to the ability
of citizens in a particular district to achieve
representation in the Legislature or Congress. That's
clearly what the detriment is about, is whether or not
they have an effective representation.
So we'd like the Commission to consider focusing its definition of significant detriment on that type of point.

In addition, Senator Rios was asked at the last meeting to prepare a letter on behalf of the Coalition for the Commission with regard to the position on Georgia vs. Ashcroft. We've done that. So I have a letter for the Commission, which I'll give the original, if you would like, to Lisa Nance.

CHAIRMAN LYNN: That's fine.

MR. MANDELL: I have copies for each one of the Commissioners as well. I can give a stack -- have staff hand them out, or I'll do that as well. Rather than -- however you want me to do -- if you want me to read the letter into the record, I'll be more than happy to do that. You can take the letter and read it on your own.

CHAIRMAN LYNN: The letter that we directed Mr. Rios to try to achieve, I think we can just make that a part of the record. We can read that on our own. We'll be happy to hear your comments beyond that.

MR. MANDELL: To generally summarize what is contained in the letter, we were asked last time, or Senator Rios was asked last time, to talk about specific percentages in some of the minority districts,
specifically the Hispanic districts.

While we can't give specific percentages,
because a lot of what was done in the Coalition map we
looked at voting precincts and which precincts were high
efficacy precincts to determine what districts went in to
allow for reduction in voting age percentage of some of
those Hispanic districts in the Coalition 2 map. So it's
hard to give you in a vacuum a specific percentage one
way or another, whether 49 percent voting age or 53
percent voting age in a specific district is a viable
district, given the fact that we can't analyze it in a
vacuum.

So as part of that, we did go over and look
at some of the districts and wanted to mention that
Districts 23, 24, 25, 27, and 29 from the 2002 final
adopted map should retain the configurations that those
districts had in those maps because those were in fact
viable Hispanic districts that allow them to elect the
candidates of their choice.

So with that, Mr. Chairman, that generally
summarizing the letter. I'll be happy to answer any
questions you have.

CHAIRMAN LYNN: Mr. Mandell, do you read
the judge's order to suggest those districts be retained
in any form?
MR. MANDELL: Mr. Chairman, the judge's order doesn't specifically cite any district that should or should not be retained. But, in fact, he's talking about districts that still protect the interest of minority voting rights. Most of those districts are still majority-minority districts. I don't believe that any of them are actually voting age Hispanic majority-minority districts. I think 25 is probably the closest to that. But of the ones I mentioned, I didn't specifically check to see whether those were voting age, minority-majority voting age districts or not.

CHAIRMAN LYNN: I think you are aware we are trying to comply with the judge's order. The process that we've adopted essentially has us going back to the grid and producing competitive districts and then go looking at minority voting rights, other criteria from Proposition 106.

Using that methodology, it's quite likely, if not a certainty, that all of the districts, all 30 districts that were once drawn, will look different in this mapping.

So I just want to be clear about the reference to specific districts as it related to the adopted map.

MR. MANDELL: Understanding that,
Mr. Chairman, Commissioners, the core of the districts could be retained. So that's what we suggest the Commission look at doing.


MS. HAUSER: Mr. Mandell, just a couple questions.

One, at the top of the page 2, the paragraph that talks about Georgia versus Ashcroft, there is -- there are a couple of references that I want to try to make sure I understand.

Additional minority influence districts are referenced. And you are -- when you are talking about minority influence districts, are you speaking in terms of districts that are likely, although not guaranteed to elect minority members to the Legislature? When you speak about minority influence districts, are you talking about likelihood of electing minorities or likelihood of electing legislators who are sympathetic?

MR. MANDELL: Mr. Chairman, Ms. Hauser, it's a combination of the two, not one versus the other idea of creating a minority influence district is the idea of minority influence in districts and choice, whether minority or nonminority.

MS. HAUSER: In terms of -- I don't want to be maybe so much beating around the bush here. I think I
understand what Georgia was saying in this regard. In terms of majority in the Legislature, what the Georgia legislators were hoping to accomplish, or in that case, retain, but when you say legislators who are sympathetic to minority issues, what specifically are you referring to?

MR. MANDELL: Mr. Chairman, Ms. Hauser. I think Senator Rios made that very clear at the last meeting, based on his experience, that Republican legislators are not sympathetic to Legislative issues. Most minorities are in fact Democrats. If they are allowed to elect their candidate of choice, it is very likely those will also be Democrats.

MS. HAUSER: Okay.

MR. MANDELL: To get their agenda heard in the Legislature, there at least needs to be, if not more Democrats than Republicans, at least moderate Republicans sympathetic to Democratic issues.

MS. HAUSER: I think maybe another question Mr. Lynn already touched on -- but are you going to be here today so that in case any other questions come up certainly -- and certainly, with respect to the Coalition's position on any particular issue that we might be able to call upon you again?

MR. MANDELL: Mr. Chairman, Ms. Hauser, I
will be here at least until the afternoon until I have a
date with my daughter tonight.

MS. HAUSER: Okay. Thank you.

CHAIRMAN LYNN: I admire your priorities.

Mr. Elder.

COMMISSIONER ELDER: Mr. Chairman,

Mr. Mandell, the second, third sentence you made,
commenting, "Going down the path in relation to
significant detriment," either I missed or didn't
understand your logic or sequence there.

Could you either restate that or enlighten
me again?

MR. MANDELL: Certainly,

Mr. Chairman, Mr. Elder.

The last Commission meeting I attended, the
Commission was looking at altering the definition of
significant detriment. At the time, referring to my
notes, the definition, something along the line of "any
impairment," the Commission deemed to be substantial in
which the Commission deemed to be not inconsequential,
something along those lines.

What our suggestion was, was that the
Commission tied the definition of significant detriment
to a person's ability to, in a particular District, to
achieve the representation in the Legislature or Congress
that person would be interested in achieving.

So that is -- so what significant detriment would be is it would be tied to a person, group of citizens, the districts itself, believe that they have somehow been detrimentally changed so that they can no longer have effective representation in the Legislature or Congress.

What we're looking at here, in general, are people's ability to elect, in the districts, people to the Legislature or Congress.

COMMISSIONER ELDER: Where you have disparate potential interest, whether it be ethnicity, whether it be economic, whether it be Republican, Democrat, whatever you are looking for, from that standpoint. How do you bring to bear the issues of what is significant, what is not significant, which takes priority over? And it appears as though you are going back to the ability to elect in the competitiveness.

Your statements further on where you said, "Historically, the minority groups have been predominantly Democratic."

We start, end up going back to that definition, competitiveness being the key factor as opposed to being able to look at other factors put in Proposition 106 in the Constitution, if that was clear.

MR. MANDELL: If there is a way you can
clarify that into a succinct question, I'd be happy to
answer it.

COMMISSIONER ELDER: How would you envision
other elements of Proposition 106 being placed or
prioritized, if we even prioritize, in relation to
competition?

In other words, six factors were brought
out in Proposition 106. And it appears as though, by
your definition, you bring them all back into the
person's ability to elect somebody of their choice. And
then you brought in ethnicity or ethnic background, said
in predominantly Democrat. That then also leads me to
believe you are looking at competition as the almost only
viable factor or decision we can make.

MR. MANDELL: Mr. Chairman, Mr. Elder,
competition is an important factor you must consider,
certainly not the only factor that must be considered.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: I have -- I read
that reference to effective representation that you had
suggested, and it seemed to me that it was applicable to
significant detriment to communities of interest; but not
compactness, not to counties, not to geographical
boundaries. So that what we were talking about, in my
view of it was, overall notion. And then if you recalled
at the end of the meeting, Commissioner Minkoff was
talking about possibly unpacking, having further
refinements when we talked about specific criteria,
because it applies to more than one.

My question to you is: Are you contending
the notion of effective representation is applicable to
compactness or preserving county lines? It just seems to
me to be a completely different concept.

MR. MANDELL: Mr. Chairman, Commissioner
Huntwork, I think what you can do is have more than one
definition rather than having one definition to fit the
entire constitutional scheme. As long as the definition
applies to one of the factors and it's applied
consistently throughout the state, I think you would be
complying with the judge's order.

You can certainly have a definition of
significant detriment as applies to community of interest
and a separate one that applied to compactness or county
lines as long as, again, they are applied throughout the
state.

COMMISSIONER HUNTWORK: The specific
question is: Do you agree that that concept of effective
representation applies only to communities of interest?

MR. MANDELL: Mr. Chairman, Commissioner
Huntwork, I think it's possible to apply it in a general
sense to some of the other criteria in a specific
objective sense, which other ones actually lend
themselves to much more so than communities of interest.
You can see 13 city splits, 18 city splits, those type of
things being numerically calculable as opposed to any
type of significant detriment that affects a city split.
I agree they are, in essence, different in
nature, in a general sense, and can be applied throughout
the criteria.

COMMISSIONER HUNTWORK: I want to try to
understand this. Would you explain to me how we should
take effective representation into account when we
defined or apply the criteria of compactness?
It just seems to me to be completely
irrelevant. I -- you are making a general statement,
well, you could sort of. I need to understand how,
exactly how do I take that into consideration on applying
compactness itself as a separate criteria.

MR. MANDELL: Well, as part of compactness,
you can look and determine in an unobjective way with
the -- using the effective representation methodology.
By looking at it and seeing the confines of the district
and how it looks, can you use that? And then you could
look to the objective Polsby-Popper or perimeter measures
to determine whether or not it is in fact compact.
I agree with you, it's a difficult concept to apply, and it very likely may be in applicable. But I think in, as I stated before, in the general ones, one could look at it that way.

COMMISSIONER HUNTWORK: We know we have to weigh communities of interest against compactness. We've known that, you know, from the beginning of this process. And so if effective representation is taken into consideration as part of communities of interest, it gets weighed against compactness.

But my question to you is: How do I include effective representation in the compactness analysis alone, all by itself, or are you simply saying you -- it belongs somewhere else and you weigh these factors against each other?

MR. MANDELL: I think I agree with your latter statement.

COMMISSIONER HUNTWORK: Thank you.

CHAIRMAN LYNN: Mr. Hall.

COMMISSIONER HALL: Mr. Mandell, throughout this process, you've heard me say before I've just been a little confused by what, from my perspective, is an inconsistent position.

In the letter here, you reference the Coalition 2 Map. My recollection is, the first map this
Commission submitted to DOJ for clearance had higher Hispanic percentages than the Coalition 2 Map. Yet, we received -- contrary to promises, we received no support, affirmative support, to the Department of Justice from the Hispanic Coalition. And consequently, in my opinion, that was a major reason that that map was not precleared.

So what is confusing me now is, is now I heard last week, and I'm seeing in this letter, that we would support Hispanic percentages pursuant to the Coalition 2 Map, which are lower than the percentages of the first map that we sent in, which they were unwilling to support when we went for preclearance.

So can you help me with that, what I perceived to be a very inconsistent position?

MR. MANDELL: Certainly.

Commissioner Lynn, Commissioner Hall, the Minority Coalition did not have an objection to the Commission's November 9th, 2001, adopted map with respect to the Voting Rights Act, except in regards to District 23. And a letter was sent to the Commission that very specifically stated that we did not support District 23 and that our support for the map was contingent on changing of District 23.

That district was not changed, so the Coalition was unable to support the Commission's map at
the Department of Justice, and in fact, contacted the
Department of Justice to let them know of our opposition
to District 23.

COMMISSIONER HALL: Well, as you know,
District 23 wasn't the only district that was the subject
of the Department of Justice denial. There were other
districts involved which, again, had higher percentages
than those represented in Coalition 2.

Coincidentally, District 23 is Mr. Rios'
district. So what -- what is even more concerning is --
is that you had District 22, at that time, which had a
pocket of Democrats that would have, I think, allowed a
moderate Democrat which was running, incidentally, at
that time, to have probably a competitive race. And
absent the support of a, quote/unquote, more competitive
District 22 to bump the numbers in District 23, District
22 became a completely dominant Republican district;
wherein, a Democrat didn't have a chance.

So the point being is, it seems to me, some
of the plaintiffs are in favor of more competitive
districts, as long as it doesn't affect their district.

MR. MANDELL: Mr. Chairman, Mr. Hall, I
disagree with that statement, especially in regard to the
position Coalition has taken.

First position the Minority Coalition has
taken protect minority voting rights. Minority rights is the second equally important right. Where is District 22?

COMMISSIONER HALL: Let me be clear on the record the neighboring district by Gilbert, out by Gilbert, the pocket of Democrats to increase District 23 came from that district; consequently, Mr. Mandell, decreasing the competitiveness of District 22 in favor of higher minority percentages.

So I -- what I'm saying is there -- from my perspective, as we wrestle with this issue, there has been an inconsistent position, at best. That's my struggle.

MR. MANDELL: Mr. Chairman, Mr. Hall, looking at District 22, I do not want to get into a quibble with you over whether it took in more Democrats or not.

Configuration of District 22 extending out to Gold Canyon Ranch, highly Republican area, bringing it into 22. I don't think it was taking Democrats out of 23, actually taking Republicans out of 23 and putting them into 22.

COMMISSIONER HALL: Both, actually.

MR. MANDELL: In any regard, I don't think the position of the Coalition has been inconsistent.
It's been very consistent. We want competition and protection of voting rights. District 23, as configured, made it very unlikely for Hispanics to continue to be elected.

COMMISSIONER HALL: To be summarized, not to beat a dead horse, you'd submit this be continued to the Department of Justice, absent numbers in District 23; the Minority Coalition would be supportive of the numbers in that map?

MR. MANDELL: Mr. Chairman, Mr. Hall, I can't speak specifically for the Coalition, and we've not discussed that. I don't know the specific position of my client, but it would be my belief that they would likely support that map at the Department of Justice if it contained those types of numbers and also contained a District 23 configuration that would allow Hispanics to would allow Hispanics to elect candidates of choice.

CHAIRMAN LYNN: One more clarification along the lines of Mr. Hall's questioning last week. Mr. Eckstein is with us talking about definitions and other suggestions as to how we might proceed. He made a distinction between that map you and Mr. Hall were just discussing and the Hall-Minkoff and Hall Modified testing.

Now, he and I had a conversation about that
in open session about his suggestions. We start with Hall-Minkoff, Hall Modified, adjust it for competitiveness; but we couldn't start with the 2001 map and adjust it. It's an interesting point of view. I know he may have been referring to the judge's order, your statement about the Coalition probably supporting the earlier map.

Do you not agree that with the judge's ruling the way it is, we can't go back to the 2001 submitted map, just like we can't go back to Hall-Minkoff or Hall Modified, we must go back to grid -- move forward from the grid to reconfigure the entire map?

MR. MANDELL: Mr. Chairman, I'd not seek to contradict the statement of Mr. Eckstein in the record. As I recall, start with any map the Commission chose to start with, as long as the Commission chose to adjust that map to try and create and favor competitive districts as required by the Constitution.

CHAIRMAN LYNN: You believe that statement you just paraphrased, I know it's not a quote, represents the judge's order?

MR. MANDELL: Without checking, Mr. Chairman, without checking the transcript for specifically what Mr. Eckstein said, my understanding, which may in fact be different than Mr. Eckstein's, I'm
not exactly sure. Again, not having read his testimony specifically; but the Commission can choose whatever map it wants to start with, as long as, in doing so, it complies with the Constitution in making adjustments to the map.

CHAIRMAN LYNN: Well, let me just probe this a little more. I don't mean to belabor the point; but my reading -- and I'm not a lawyer, so I'm not used to reading judge's order in the same manner that attorneys may be -- but I'm -- I'm trying to understand it in plain English, which is the language I choose to use most of the time, what the judge seemed to be saying was that, as we moved forward from the grid in our original mapping process, that because we didn't immediately apply competition -- competitive -- competitive mapping, or competition, as a criterion immediately after the grid, that all subsequent maps were flawed because competition should have been preferred and applied first.

And my reading then suggests that any process subsequent, this one or any other, that doesn't first apply competitiveness to the grid, would be simply flawed, using that line of questioning.

By that logic, I would suppose, in my nonlawyerly approach to this, that unless we went back to
the grid and unless we first applied competitiveness,

once the grid was established, that any map, 2001,

Hall-Minkoff, Hall Modified, test E, F, G, L and M were
all flawed in the same way, were all produced out of that
process the judge suggested should have been different.

Do you have a different reading of that?

MR. MANDELL: Mr. Chairman, I think the

Commission can start with any map the Commission chooses
to start with I. Don't necessarily agree the court
ordered the Commission to start with competitiveness in
adjusting the grid.

I think what the court had said is that the
process that was used excluded competitiveness from the
original adjustments at that grid. And the way the
Constitution reads is that it says, the grid shall be
adjusted according to the following criteria. And
competitiveness was excluded from the creation of the
final draft map, which occurred on August 17th, 2001.

And that was where it went wrong. Because

once you solidified -- and as Dr. Heslop testified at
trial -- once you've harmonized all other criteria, then
you apply competitiveness. By doing so, you are stuck
also with the deposition testimony of changing
competitiveness around the edges. And that I think what
the judge objected to is that competitiveness was simply
1 not favored as was required to be under the Constitution.
2
3 CHAIRMAN LYNN: So then to follow that
4 logic, if what -- if you believe that we could have -- we
5 could start now with any map we choose, take me through
6 the process that a map such 2001 or Hall Modified or
7 Hall-Minkoff would take and satisfy the judge's order, in
8 your opinion.
9
10 MR. MANDELL: I think it would be very
11 difficult, Mr. Chairman, to start with another map
12 because of the fact competitiveness was not favored in
13 creation before the map. However, you do have the
14 thematic overlays, so you can use the thematic overlays
15 to favor competitiveness by changing district boundaries.
16
17 The other problem is the Commission, when
18 you all went the first time, did not identify the
19 boundaries of communities of interest. So when you were
20 determining whether or not significant detriment was
21 going to be applied in the sense of the effect it had on
22 communities of interest or compactness or other things by
23 not defining boundaries of community of interest, you
24 couldn't see the impact of changing the district boundary
25 had on that specific community of interest or specific
26 communities of interest within the district.
27
28 CHAIRMAN LYNN: So I just heard you say
29 that none of those maps could be used, where before you
Mr. Mandell, help me out.

MR. MANDELL: I didn't say none of the maps could be used. I said it would be difficult for any of the maps to be used.

CHAIRMAN LYNN: Perhaps more absolute than you suggested, I take it to mean, when you say it would be difficult to use any of those maps, it would be difficult to start with those maps, and at the same time, comply with the judge's order.

I don't want to put words in your mouth. That's the context you find using those maps to be used; not impossible, but difficult.

MR. MANDELL: If the Commission takes a map, the 2001 map, identify communities of interest, identify boundaries, and identities and favors competitiveness, and then applies definitions across the state in a statewide manner, looking at -- using the boundaries, but not, in effect, leaving those boundaries in concrete, but is willing to completely change certain districts in certain areas if those districts required it because of the fact that the definitions that had been adopted no longer apply and take subjectivity out that occurred last time, I think you start with a map, although it may not look anything like the map you
started with.

CHAIRMAN LYNN: When you are finished.

MR. MANDELL: When you have finished.

MS. HAUSER: Mr. Chairman.

CHAIRMAN LYNN: Ms. Hauser.

MS. HAUSER: Mr. Mandell, if the Commission starts, I mean, goes back to the grid to, in a sense, cleanse the state, go back to that starting point to begin this map drawing process; and if the Commission then, as its first step, adjusts that grid to create competitive districts first and then apply the other criteria that, you know, according to definitions adopted; and after having mapped out the boundaries of various communities of interest, get those geographic boundaries down and see if those competitive districts caused significant detriment to any of those and then make adjustments, is that the process that the Coalition objects to?

MR. MANDELL: Mr. Chairman, Ms. Hauser, the Commission can choose to perform its process any way it wants to. Certainly, if the end result results in a map that complies with the Constitution as we understand it, then whatever process gets you there, we won't have a problem with.

MS. HAUSER: Well, that's good to hear you
say. That's certainly different than the position the Coalition has taken before because you have, in fact, have been very concerned about the process. And not -- I mean -- you've in the past had concerns about the end result, not just because of what the end result looked like, but because of the process that gets us there.

So I really do want to know if -- if that is your opinion, that the process that I just laid out that we start from the grid, create then districts from that grid that are competitive, and then adjust to the other criteria, if that's a process you say that we are free to choose under the court's order, then I just make sure we're on the same page there. You agree that that, in and of itself is not an order of events that the Coalition would later claim is problematic in any way?

MR. MANDELL: Mr. Chairman, Ms. Hauser, if in fact the Commission applies all of the criteria at any early time when -- in adjusting the grid, if you apply all of the criteria, then I don't think the Coalition is going to have a problem with it, assuming that -- and I don't want to say that the -- that we don't object to the process that occurred last time, because we certainly do, and -- for a number of reasons, and have been filed in a number of different court papers. But if the process is one that complies with the Constitution, then the
Coalition is not going to object to it.

MS. HAUSER: Let me narrow it down a little bit further. I understand you may have some issues later with how specific definitions are applied or something of that nature. But starting from the grid and adjusting first for competitiveness and, you know, at least making sure those districts are contiguous, and roughly equal in population, taking the first step is not something the Coalition objects to; is that right?

MR. MANDELL: Certainly not, Mr. Chairman, Ms. Hauser.

CHAIRMAN LYNN: Mr. Mandell, thank you.

As you can tell, I mean, you and the staff attorneys have had opportunities to speak back and forth during the court proceedings. Commissioners not being a party to those as individuals obviously appreciate engaging you or Mr. Eckstein or anyone else in conversation, Mr. Rios, Senator Rios.

We are trying to get a feel for what would work. This is, after all, supposed to be about the art of the doing, not art of objectionable. We're trying to find out what would work. That's the nature of this inquiry.

MR. MANDELL: As the Coalition stated all along, we'd like not to go through the process again,
much like you would. And if we can be of any assistance
to help make that occur, we're more than happy to do so.
And any time if any of the Commissioners want to call any
of us, we're more than welcome to have your counsel on
the line and engage in any type of conversation and
engage in any answers you have.

CHAIRMAN LYNN: Thank you. I
appreciate you all have been with us a while. I
appreciate it.

(The following is dated February 4, 2004,
from the Minority Coalition for Fair Redistricting, to
the Arizona Independent Redistricting Commission, 1400
West Washington, Suite B-10, Phoenix, Arizona, 85007,
hand-submitted at the public hearing, reading as follows:
"Dear Commissioners:

"On behalf of the Arizona Minority
Coalition for Fair Redistricting ("Minority Coalition"),
we want to thank the Commission in advance for the
opportunity to be heard on proposed district
configurations as the Commission develops new legislative
district maps. We also want to commend the Commission
for beginning its compliance with the Superior Court's
Order.

"Throughout the redistricting process, the
Minority Coalition has steadfastly maintained that the
protection of minority voting rights is our top priority. We have also consistently stated that the Arizona Constitution requires the Commission to favor the creation of politically competitive districts. These two constitutional goals are not mutually exclusive -- the Commission can create competitive districts and at the same time, create districts that protect minority voting rights in compliance with the Voting Rights Act of 1965. Indeed the Coalition II map, presented to the Commission in September 2001, accomplished this goal. It did so, however, not by arbitrarily determining the Hispanic Voting Age percentages to be included within a given district (although those percentages are important), but instead, by studying Hispanic voting precincts and ensuring the proper placement of high efficacy Hispanic precincts within majority-minority districts.

"Although we understand that the Commission would like the Minority Coalition to provide explicit Hispanic Voting Age percentages for each majority-minority district, that cannot be done in a vacuum. However, we can tell the Commission that the Minority Coalition strongly supports and believes that the Commission should retain the district configurations and the Hispanic Voting Age percentages as currently exist in Districts 23, 24, 25, 27 and 29 (which are
outside of Maricopa County except for a small part of
District 23) from the August 14, 2002 Final Adopted
Legislative Plan. Moreover, with regard to legislative
districts in Maricopa County, while specific Hispanic
Voting Age percentages cannot be provided without the
opportunity to study the configuration of the districts,
the Minority Coalition believes that the Commission
should apply the interpretation of Georgia v. Ashcroft,
123 S.Ct. 2398 (2003) consistently with the Conclusions
of Law (paragraphs 36 through 40) of the Superior Court's
January 16, 2004 Minute order. Using that
interpretation, the Minority Coalition supports slight
reductions in the Hispanic Voting Age percentages of
Districts 13, 14 and 16 as configured in the August 14,
2002, final Adopted Legislative Plan. By doing so, the
Commission can create additional minority influence
districts in Maricopa County and at the same time
increase the political competitiveness of the legislative
map. Such an action will also substantially benefit the
Hispanic community, as it did the African-American
community in Georgia v. Ashcroft, by increasing the
likelihood that more legislators who are sympathetic to
minority issues will be elected.

"By fully complying with the Arizona
Constitution as interpreted in the Superior Court's
Minute order, the Commission can create a legislative
district map that contains numerous districts that both
protect minority voting rights and are politically
competitive. The Minority Coalition remains ready to
assist the Commission as it redraws legislative districts
that comply with the Arizona Constitution and the Voting

"Sincerely, Pete Rios, State Senator,
District 23. Mary Rose Wilcox, Maricopa County
Supervisor, District 5."

CHAIRMAN LYNN: Next speaker, Merle Pete,
Staff Assistant from Window Rock.

MR. PETE: Good morning, Mr. Chair.

I have prepared statements from the Navajo
Nation leadership. If you don't mind, I'll submit
written statements and go ahead and read through the
written comments, if that's okay with you and the
Commission.

CHAIRMAN LYNN: Without objection.

MR. PETE: Good morning. Merle Pete, staff
assistant, Navajo Nation Council here, representing the
Navajo Nation. Elected leadership cannot be here because
of conflicting schedules.

The Navajo Nation appreciates the chance to
be before this Commission. The Navajo Nation covers
portions of three states: Arizona, New Mexico, and Utah.

Within Arizona, the nation's total population is 104,565, and a voting age population of 61,331. The Navajo Nation currently located Legislative District to only Native American majority-minority district of the total population, the non-Hispanic Native American percentage, 68.08 percentage of voting age population, non-Hispanic Native American, 62.16 percent. 2002 elections demonstrated Native American candidates can be elected from the Legislative District pursuant to the requirements of the Federal Voting Rights Act. The Commission should consider electability of Native American candidates in modifications to Legislative District 2.

Community of interest. The Navajo Nation is a community of interest. The Commission has previously stipulated to that, and it comports with the definition of community interest which was adopted by this Commission on February 3rd, 2004, which states: A community of interest is a group of people in a defined geographic area with concerns about common issues, such as religion; political ties; history; tradition; geography; demography; history; social economic status; trade; or other common interest benefit from common representation.
Proposition 106, Section 14D states:

District boundaries shall respect communities of interest.

Judge Fields has concluded that Commission -- that Commission's discretion to protect community of interest was limited by Proposition 106 to include placing the entire community within boundaries of the Legislative District.

The Navajo Nation urges this commission to heed the ruling of Judge Fields and place all Navajo Nation within a single Legislative District.

The Voting Rights Act. Federal law, including the Federal Voting Rights Act, preempts state law, including the Arizona Constitution. It is for this reason that any redistricting plan must first meet the U.S. Constitutional requirements of one person, one vote, and the requirements of the Voting Rights Act.

The Navajo Nation urges the Commission to reject any efforts to create a competitive district in northeastern Arizona, as such efforts are likely to result in dilution of the Native American vote. The sole Native American majority-minority district is not capable of adjustment to permit competitive voting without violation of the Voting Rights Act.

Mr. Chair and the Commission, thank you for
the opportunity to share these views with the Commission.

CHAIRMAN LYNN: Thank you, Mr. Pete.

One question I would have. I believe you are aware that another portion of the judge's order, he suggests that because of the findings of Georgia V Ashcroft, that minority percentages in districts that would qualify as voting rights districts could be significantly reduced if there was the possibility that minorities in that district could still elect representation of their choosing, not necessarily minority representation. And I'm not stating that specifically in terms of quoting it, but the concept is embedded in his ruling.

I take your comments to be at odds with that portion of the ruling. Could you clarify that for me?

MR. PETE: As I think -- just to clarify, when we -- if it was our decision to elect someone, I think we'd be sensitive to electing a person who is sensitive to our needs on the reservation within our district.

CHAIRMAN LYNN: But you are suggesting that the, if I understand it, that the percentages that currently exist in the Legislative District 2 are percentages that you would like to see maintained?
MR. PETE: You are referring to the 50 percent?

CHAIRMAN LYNN: I'm talking about voting age population, as well as non-Hispanic Native American population.

MR. PETE: If it applies, right?

MS. DWORKIN: Would it be all right if I joined the conversation?

CHAIRMAN LYNN: Absolutely. State your name for the record.

MS. DWORKIN: Judith Dworkin, counsel for Navajo Nation in this matter. And I think I'll lower this, also.

We believe that in this particular district, unlike some of the Hispanic districts in the central part of the state, that it would be difficult to reduce the percentage of Native American voting, even subject to Georgia V Ashcroft, without resulting in issues of dilution under Section 2 of the Voting Rights Act.

CHAIRMAN LYNN: Mr. Hall.

COMMISSIONER HALL: Sorry. Let me just make sure I can summarize what I thought I heard you -- both of you say.

You do not feel that we should favor
competitiveness over the existing community of interest
of the Navajo Nation; is that correct?

MS. DWORKIN: Mr. Chair, Mr. Hall, we
believe that in attempting to do that, it will raise a
significant issue of dilution.

Now, obviously, there are an infinite
number of possibilities of drawing maps and districts.
We all know that. And the Navajo Nation would certainly
take a look at whatever final map that you came up with.
But we wanted to advise that we think that there would be
significant problems, and we will be looking very closely
at that issue.

Does that answer your question, Mr. Hall?

COMMISSIONER HALL: So, just -- is it your
opinion that the Navajo Nation, all in one combined, if
you will, together, does that constitute a community of
interest?

MS. DWORKIN: That is -- Mr. Chair,
Mr. Hall, that is a very easy question to answer.
The Navajo Nation, all within its
geographic boundaries, without any carve-outs, is a
single community of interest under the definition that I
understand was passed on February 3rd, and under almost
any other definition, and under the stipulation that your
counsel made in the court proceeding that the Navajo
Nation was a community of interest.

COMMISSIONER HALL: One final question,

Mr. Chairman. I think it would be safe to say that the Navajo Nation would be homogeneous in many respects and, of course, the judge, in his order, took exception to creating districts that were, quote/unquote, homogeneous.

Do you have an opinion relative to that portion of the order, as it relates to the portion of the order?

MS. DWORIN: My recollection -- my recollection is a district should not be created in order to put together and aggregate homogeneous communities of interest. That, in fact, you might include two communities of interest that are not homogeneous.

For example, the Navajo Nation, one community of interest. And the Hopi Tribe, another community of interest, within the same district, including both nonhomogeneous communities of interest.

CHAIRMAN LYNN: Ms. Hauser.

MS. HAUSER: Thank you, Mr. Chairman.

This is not a request for Ms. Dworkin, just something for you all as I'm listening to your questions to the representatives of the Navajo Nation. I think I can clarify something for you on the record. If you have additional questions about this, then we can take them up
in Executive Session. But I mention them now because I think it may be helpful to everyone who is present to know this information.

Georgia versus Ashcroft deals only with Section 5 of the Voting Rights Act. Section 5 being the section that deals with preclearance and the duty to not retrogress in connection with a minority community. And in connection with that, of course, the judge has indicated: Whereas, other states may choose one or the other type of representation, that in order to favor competitiveness, we must choose what is known as the substantive representation, the one that leads to the likelihood of electing those who are sympathetic with a minority's interests.

And the thing I want to point out about that is that it is important in that context and in the facts of Ashcroft to have minority support for that change. So I just want to point out, in connection with the request that the Navajo Nation is making, it is not necessarily inconsistent with Ashcroft.

The second point I want to make is that Ms. Dworkin's comment about Section 2 dilution is a complete -- when she talks about dilution, she's talking about Section 2 of the Voting Rights Act, which is a completely different issue as Georgia V Ashcroft, to this
point, has no bearing on Section 2. In some ways it could come up with other cases later on as that law develops. I just want to make that distinction for you.

CHAIRMAN LYNN: Thank you, Ms. Hauser.

Mr. Elder.

MS. HAUSER: I'm sorry, one other thing. On homogeneous districts, also, the answer that Ms. Dworkin gave you about the ruling, I believe, is correct. We're not talking about homogeneous within a particular community of interest but as it respects communities of interest being combined into a district.

CHAIRMAN LYNN: Mr. Elder.

COMMISSIONER ELDER: Yes. I'd like to propose a question further on down. I believe Mr. Mandell said we need to look at boundaries of communities of interest. When we look at that, would it be your opinion that we should look at the community of interest as being the Navajo ethnic group as opposed to geographical boundary?

In other words, you have Navajo that live in Flagstaff and areas off the reservation.

MS. DWORKIN: No, we're talking about the simple approach the Navajo Nation is taking. Look at the community of interest, being the reservation, the Navajo Nation reservation, within the portion of that
reservation that is within the State of Arizona.

COMMISSIONER ELDER: So you are looking at jurisdictional as opposed to ethnic or peoples related to the Nation?

MS. DWORIN: That's the position the Navajo Nation is most concerned about, yes, sir.

CHAIRMAN LYNN: Thank you, Ms. Dworkin, Mr. Pete, thank you very much. We'll ask you to give a copy of your statement so that it can be made a part of the record.

Any additional comments, Mr. Pete?

MR. PETE: No. Thank you.

CHAIRMAN LYNN: Next speaker this morning, Matt Ryan, Chairman of the Coconino County Board of Supervisors.

Mr. Ryan.

MR. RYAN: Mr. Chairman and Commissioners, I want to, once again, acknowledge, I understand you have a very difficult task. I'm here on behalf of the Board of Supervisors to stay consistent with where our positions have been in trying to also fit within your definitions.

Our county, we understand, had to be split. And it did make sense in terms of the last discussion that was presented with our Native American populations.
Holding those populations together is very important.

An area that we did have fragmentation occur associated with communities is communities of like interest, the greater Flagstaff area. And are asking that while we're pretty consistent with recommendations that the City of Flagstaff will present, and they may also help you in your task in keeping that as one issue, but also assisting in finding potential mechanisms for more competitive districts.

With that, that's what I brought down today, after the City of Flagstaff presents.

CHAIRMAN LYNN: Next speaker for the City of Flagstaff, Mayor Donaldson.

Mayor Donaldson, good morning.

MAYOR DONALDSON: Good morning.

Thank you, Mr. Chairman, Commissioners.

Joe Donaldson, City of Flagstaff.

Again, thank you for this opportunity to speak before the Commission on behalf of the Flagstaff community.

I understand the Commission will be reviewing today data and maps prepared by NDC. I respectfully request an opportunity to present for the Commission's review and consideration the data and map we have prepared. I recognize this may not be the
appropriate time in the proceedings for the presentation.
I am prepared to provide this information at the
convenience of the Commission.

This information was prepared based on
available information, including a process and
definitions of many of Proposition 106 criteria adopted
by the Commission at its February 3rd meeting. As the
Commission continues to develop definitions and determine
the application of all Proposition 106 criteria,
Flagstaff is prepared to amend our data and maps as may
be necessary.

I would also like to read into the record a
letter from our attorney, David J. Cantelme, who was
asked to provide some information at the February 3rd
meeting. And it's a letter from Jennings, Strouss, and
it's to the Honorable Steven W. Lynn, Chairman, Arizona
Independent Redistricting Commission. And it reads as
follows:

"Dear Chairman Lynn:

"At the conclusion of my remarks to the
Commission last February 3rd, the Commission asked me
whether all of the Flagstaff Metropolitan Planning
Organization fell within a school district. At the time
I answered I thought the bulk of the FMPO fell within the
Flagstaff Unified School District, but some may lay
within another school district. I also said I would
provide information to the Commission on that point.

"I enclose a map of Flagstaff area
geographic entities. The map shows that the vast
majority of the FMPO falls within the Flagstaff Unified
School District, but a sliver of at the northwest corner
falls within the Maine Consolidated School District. As
I understand it, the portion of the FMPO within the Maine
Consolidated School District has no residents.

"As I understand it, according to the 2000
census, the population of the City of Flagstaff, 52,894
persons, the population of the FMPO is 61,128 persons,
and the population of the Flagstaff School District is
76,533 persons.

"Hoping this information answers
Commissioner Huntwork's question. I remain, very truly
yours, David J. Cantelme."

CHAIRMAN LYNN: Thank you, Mr. Mayor.

We'll, without objection, make that letter
from Mr. Cantelme part of the record.

MAYOR DONALDSON: As we move forward in the
process, I urge you without objection to perhaps -- if
what you are saying about your map, as we progress, your
map is going to change as our discussion changes, there
may be a point at which your map could be supplied,
certainly, after all the definitions have been adopted and perhaps applied as you see them.

But it may be premature to look at your map at this stage of the process because those changes will need to occur. So I don't want to slight your map, but I do think that there probably is a better time for it to come into the record.

MAYOR DONALDSON: Yes, I understand that.

We want to make a point, we don't want to be left out of consideration, our map be considered in the process. We don't want to be at a position where, if we had presented the map 15 minutes earlier, it could have been part of the discussion. This is -- this reorganization of the map is very critical to us. And we want to be able to have some -- offer some assistance, provide assistance to the Commission in addressing issues that face and are of concern to the City of Flagstaff.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Mr. Chairman, I wanted to say if there is material available, I personally would like to see it and look at it now and as it progresses. We're going through this so quickly, that any information I can have now is better than getting it tomorrow sometime.

CHAIRMAN LYNN: I take it from your
comments, then, if -- I'm perfectly happy to accept into the record what you have now. But understanding that it may change several times as we make adjustments to the definitions that are yet unsettled, we have to do that fairly quickly this morning.

I don't know whether that will have any impact on your map or not. Maybe several iterations of your map may be entered into the record several times.

MAYOR DONALDSON: Yes. Mr. Chairman, Commissioners, we're prepared to follow process and adjust the maps as necessary. We're prepared to be of any assistance we possibly can to the Commission in its work and can present the maps.

CHAIRMAN LYNN: Well, then, let me figure out where on the agenda that should go in terms of a presentation. And what we may need to do is, we may need to amend the agenda for Monday for that to occur.

I want to double-check with counsel to make sure we're not violating an open meeting tenant. If it fits under one of the things we have on the agenda, we can take it; but we'll take it at the appropriate time.

MAYOR DONALDSON: Thank you, Mr. Chairman. Again, to reiterate Flagstaff's position, I don't want to be left out of the process, don't want to be somewhere in the process moved too far along that it's impossible for
our maps to be considered.

CHAIRMAN LYNN: Ms. Hauser.

MS. HAUSER: Mr. Chairman, in connection with public comment, you can receive any information. Whether or not you can act upon what you get during public comment depends on how it's noticed. But in connection with any of the meetings that deal with mapping, we'll endeavor to notice them broadly enough so you may consider whatever comes before you.

CHAIRMAN LYNN: In that instance, without objection, what I'd like to do is, I'd like to take the rest of the public comment, return to the City of Flagstaff during that portion of the agenda, at that time ask you make the presentation on your map.

MAYOR DONALDSON: All right. Thank you very much.

CHAIRMAN LYNN: Go through the rest of the speaker slips and then return for your presentation at the close of public comment, period.

MAYOR DONALDSON: Thank you.

CHAIRMAN LYNN: Next speaker, Mr. Dennis Miller, Director Public Relations for the County of Santa Cruz.

Mr. Miller, good morning.

MR. MILLER: Good morning.
Mr. Chairman, Members of the Commission, I think this is about the fourth time I have appeared before you, and want to thank you for the courteous way which you've always treated me and others. And as you've gone around the state, I think you made a real good effort to take in everybody's point of view.

Santa Cruz County is 91 percent Hispanic, have 38,000 people. We're very concerned with minority issues. With that being said, we are so small, we really are not going to have a district within Santa Cruz County, we're likely to elect people from Santa Cruz County to Legislature.

So that said, we like having multiple districts. Prior to last go-around, actually, had three districts when first carved up to three districts. This is ridiculous. We're used to that. Said we had nine people go down there and lobby at the Legislature. That worked very well for us. Lines changed many times.

Senator Rios is here, can probably attest to this, as at one time he represented Santa Cruz County. Once you represent Santa Cruz County, you always represent Santa Cruz County and never let us go.

Wherever we can get some help.

Basically, we're satisfied. We think in our respect to Districts 25, 30 serve us well. We
understand you are going to have to make some changes.

We like having multiple districts. We'd like to have not less than two. With that said, I'd be glad to answer any questions.

CHAIRMAN LYNN: With that said, you might like to send to the City of Glendale.

MR. MILLER: We're represented by the law firm of --

CHAIRMAN LYNN: Next speaker, Mr. Casper.

MR. CASPER: Good morning, Mr. Chairman,

Members of the Commission.

I'm not a lawyer, not representing anybody, just a private citizen. As a private citizen, you know, I've been at a number of these just because I'm interested. I want to thank you for all the work, know it's tough, know you have to balance an awful lot of balls. I don't envy you.

I just want to make a point, came to make a point. I'm independent, hearing, reading all the things in the media. I don't have all your documents, don't have all the different test maps and all the statistical data that you have. So I'm speaking possibly from a bit of ignorance. So please pardon me if I'm saying something ignorant. I'm more than happy to be educated.

I just feel that those folks who only look
at Democrat and Republican registration, no matter who
they are, are engaging in a very questionable practice.
It's not necessarily flawed, not anything like that, just
questionable. Because to base competitiveness only on
Democratic/Republican, a 20 percent or more electorate of
State Independents, Libertarians, any number of different
groups, does not take a look at the whole picture.
That's all I'm saying. I don't know how
you are going to do it if you don't factor independent
voters into your structure. It might be something to
look at: 7 percent disparity, 10 percent independents.
Is the district possibly competitive? It very well could
be.

I just -- again, I could be quite wrong in
my assumption because I'm only getting what I get from
media and listening to different sources. But this
argument seems to being made on a partisan level. And as
a nonpartisan, I just think it needs -- we need to take
the independent voter into account.

I'm not the sharpest knife in the drawer.
If Republicans and Democrats only represent 80 percent,
they can only represent 80 percent, any percent to elect
somebody. So the independent voter, oftentimes a swing
tvoter, may go either way.

To not take an independent into
consideration, I think at least -- at least you should
look at it. That's all.

CHAIRMAN LYNN: Thank you, Mr. Casper.
Are there other members of public who wish
to be heard at this time?

If not, let's go back to the City of
Flagstaff. And without objection, have the map entered
into the record. And again, to the extent, Mayor
Donaldson, you have the accompanying data to go with the
map itself, I don't think you need to go into that in a
lot of detail, just make it available to us so we and the
consultants can use both the physical form of the map and
the analysis of it.

MAYOR DONALDSON: Right. Thank you,
Mr. Chairman. I asked Mr. Sissons, Research Advisory
Services, to make a presentation on behalf of Flagstaff.

CHAIRMAN LYNN: Without objection,
Mr. Sissons. Again, as we're all becoming excruciatingly
familiar with how to read maps. Brevity would be
appreciated. Not to cut any pertinent information, but
just -- we'll understand your data when we see it.

MR. SISSONS: I do understand that,
Commissioner Lynn. I hadn't filled out a slip up until
now. I didn't know whether I would be asked to speak or
not.
CHAIRMAN LYNN: We'll just take you as a part of the Flagstaff presentation.

MR. SISSONS: Thank you.

In this presentation, I do -- really not much of a presentation, just to go over some points that this map represents. And, if your staff could distribute these handouts, that would be greatly appreciated.

Actually, those five are for Commission members, and these are extras --

Oh, can I keep one?

MR. ECHEVESTE: Yes.

MR. SISSONS: I do also have a digital copy of the map, which I would like to hand to Digital Doug.

CHAIRMAN LYNN: For the record, that would be Mr. Johnson.

MR. MANDELL: Of course, that will be his name from now on.

MR. SISSONS: Mr. Chairman, Members of the Commission, Flagstaff asked me to look at a map that basically, in essence, solves their needs; but a map that is -- would also be very reflective of what appeared to appeal to Judge Fields in terms of his acceptance level of competitiveness.

And the approach that I used for that was to, in essence, take two of the Commission's maps and,
well, for lack of a better term, graph them together. The way I did that, as you'll see in the first sheet of the handout, that says, "Facts About Flagstaff Preferred Plan C9," 22 of the Districts on this plan, are exactly as the Commission drew them. Districts 1 and 2 are from the adopted August 17th draft plan -- August 17th, 2001, draft plan. Then Districts 5 through 10 and then 17 through 30 are from the Commission's Hall-Minkoff plan. It's not the Hall Modified, the Hall-Minkoff plan, which is a plan that the Commission asked its consultant, NDC, to evaluate and report back to you on. The changes to Districts 3 and 4 are simply the result of fitting together the two IRC plans, the August 17th plan and the Hall-Minkoff plan. And then Districts 11 through 16 in Central Phoenix, I made modifications there to reunite the Isaac School District within a single Legislative District. Also, changes to make one additional minority district -- well, one district that was already a totally all age minority district, make it a voting age majority district as well, and then to add competitive districts. The final result, and you can sort of see on the spreadsheet that was the second page of the
handout, Flagstaff Plan C9 has 10 minority-majority
districts, seven of them -- seven of them being voting
age majorities, which is exactly the same minority
district profile as the -- as the current districts, the
court-ordered interim plan.

This plan has a smaller population
deviation than the interim plan, and its districts
statewide are more compact than in the interim plan.
Flagstaff's plan C9 does not increase the number of
cities or towns that are divided by Legislative
boundaries, and it does eliminate the division of the
Isaac School District.

Now, whereas the interim plan has four
competitive districts using the AQD spread of less than
seven percent, that being the only competitiveness
measure that is at my disposal to use, I'm not in a
position to come up with JudgeIt calculation, but --
well, the interim plan has four competitive districts.
And using exactly that same measure, the plan C9 has nine
competitive districts.

One of the -- I think one thing that this
plan well illustrates is that when one has to draw
districts that are fully respective of the Voting Rights
Act, that does not necessarily mean that would take so
many Democrats away from the mix that additional -- that,
you know, a fairly substantial number of competitive
districts could not be created. Because here we have a
situation of ten minority-majority districts and nine
competitive districts on the same map and these shapes,
I'm sure, you'll recognize as being very similar to
shapes that you looked at during the process.

MS. HAUSER: Mr. Chairman.

CHAIRMAN LYNN: Ms. Hauser.

MS. HAUSER: Mr. Sissons, have you run
JudgeIt on this particular plan?

MR. SISSONS: No, I have no ability to run
JudgeIt.

MS. HAUSER: And in terms of the number of
majority-minority districts that you indicated, have
you -- what steps did you take in constructing this
particular map to address the Georgia versus Ashcroft
portion of the court's order?

MR. SISSONS: I think the answer there is
that I was using the purely mathematical computation of
50 percent representing a -- well, more than 50 percent
representing a majority. And the minority portions that
I was using in this mapping, or in this analysis, was the
aggregate minority combining Hispanics with all other
recognized minority populations.

So in my work on this, it was not the issue
of examining influence districts or -- I think the term you've been using is substantive representation. This work has been basically kind of looking at it in the -- well, in the sort of rather rigid mathematical way we used to look at these sorts of things.

MS. HAUSER: All right. And did you -- well, I -- it seems noteworthy that this is the first map I can recall, at least recently, where Flagstaff has taken a position with respect to the Metropolitan Phoenix area.

Can you describe the thought process that went into doing so in this particular presentation?

MR. SISSONS: I think I can respond this way: Insofar as the instructions to me were to -- the City of Flagstaff was aware, through their attorney, David Cantelme's presentation, that of all the maps that the Commission looked at, drew, or adopted, really only the August 17th, 2001 plan accommodated the City of Flagstaff in the way -- in a way that it was, you know, was comfortable with.

Then the sort of companion issue for the City of Flagstaff was that, you know, for a map to be found acceptable, you know -- a map that was acceptable to Flagstaff that would be acceptable to the Commission, the court, the general public, in essence, please draft,
you know, a situation that treats us well onto what appears to be or would seem to be the most palatable map, in general. Beyond that, I can't speak to Flagstaff's viewpoint.

MS. HAUSER: And in drawing this map, did you develop any definitions of any of the significant terms that Judge Fields spoke about? Did you adopt any definitions? And if so, how did you apply them?

MR. SISSONS: Chairman, Ms. Hauser, the answer is no to really all of those. I did not examine the effect of Judge Fields' ruling on my perception of what you would be asked to do and trying to align myself in that same fashion.

MS. HAUSER: Thank you.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Mr. Chairman, I would like to say that we have at times in the past, I wouldn't say criticized Flagstaff, reminded Flagstaff that it isn't sufficient just to present a map that shows just Flagstaff. And it's really meaningless without showing it's incorporated into a whole concept. To that extent, I wouldn't have any criticism for the fact this just doesn't deal with just Flagstaff.

I do have this question. It appears to me
we have a division of Yavapai County into several pieces. I am not sure I can tell exactly how many are here from what I'm looking at. The thing that concerns me the most, that it appears that the Prescott and Prescott Valley area has, once again, been divided into three pieces. I can't tell where the epicenter is of those lines; but just from my common-sense knowledge, it looks like it's pretty much in the middle of that area.

And -- are you telling us the only way that we can reunite Flagstaff is to divide Prescott or have you -- have you devoted yourself to trying to think of an alternative that is unite Prescott and unite Prescott?

Because that's a fairly important consideration for the Commission as well.

MR. SISSONS: Chairman Lynn, Mr. Huntwork, I very much recognize your -- the issue that you are raising. It is certainly true that in deciding to take plans that the Commission has drawn and sort of put together a plan composed of those parts, to some degree I'm sort of wanting to have these efforts not viewed as kind of -- well, somebody coming in at the last minute with wholly different concepts.

In my view, and my advice to the City of Flagstaff, to the extent possible, let's have a map that is composed of districts that have already been
scrutinized by the Commission. And certainly, in
choosing to use the shape of District 1, as you have
configured it in your first adopted plan, that boundary
did in fact divide Prescott Valley from Prescott and from
Chino Valley, which is not to say that -- well, that's
not to say that other configurations couldn't be found;
but it might be a bit difficult, insofar as if the
District 2 configuration stay as it is and the District 5
configuration stays as it is, to a large extent that
circumscribes the District 1 containing Flagstaff in such
a way that its only way to pick up the population it
needs would be to approach that Tri-City area.

And as it approaches that area, taking in
all three communities does too much; not taking in any of
the three means that it's got to travel a much greater
distance to find the requisite population to come up with
that population size.

So it's -- the question that you raise is
one that is difficult to deal with, on this map.

COMMISSIONER HUNTWORK: And you are saying
it's difficult because District -- if you set District
5 -- if you set District 2 and treat those as being
unchangeable --

MR. SISSONS: Then the reunification of
Flagstaff, as far as you've been able to figure out,
leads directly to the division of Prescott.

MR. SISSONS: That’s true.

COMMISSIONER HUNTWORK: You cannot think of any alternative to those. Well, I would say that you should keep thinking, but --

MR. SISSONS: That is true.

COMMISSIONER HUNTWORK: Any idea that might accomplish that would be warmly received by the Commission.

MR. SISSONS: Yes.

CHAIRMAN LYNN: Mr. Sissons, I want to ask a question. It’s really in the form of a statement I’d like you to agree or disagree with or challenge in detail.

Recognizing that you have been retained by the City of Flagstaff to do some mapping for them --

MR. SISSONS: Yes.

CHAIRMAN LYNN: -- and recognizing the City of Flagstaff has a perspective or point of view with respect to how they’d like maps to look relative to their city boundaries and their planning area, is it fair to say that, in choosing the pieces and parts of maps, that you chose that you wanted to be sure that your client’s primary goal was included in the map?

MR. SISSONS: Yes.
CHAIRMAN LYNN: And the approximate result of the beginning at that point was, whether intended or otherwise, a division of other communities of interest, which have been established on the record, such as the Tri-Cities area or other parts of the state. And it's really an end sum game, meaning that if you are creating districts and trying to keep a low population deviation, that you simply must do some of those things in order to complete the task.

MR. SISSONS: I would find that statement to be true.

CHAIRMAN LYNN: Then the last thing I'd ask you to comment on is that simply, any other constituency -- and I use that term in its broadest sense, City of Flagstaff being constituency, Navajo Nation being constituency, City of Casa Grande being constituency -- any constituency might simply engage you or any other map drawer to begin with a premise, and that premise be reflected in the map; and then what happens to the rest of the state happens as a matter of course as you go through the state to achieve the goals that are set forth.

MR. SISSONS: On that point, you know, I can -- I can see the appearance or the likelihood of that. However, this is -- this is -- if another sort of
simply situated community were to approach me to do that, you know, they would get -- I mean, we would engage in quite a discussion of the trade-offs involved in that mapping.

In other words, it wouldn't sort of -- just as in my discussions with the City of Flagstaff, and actually addressing the Flagstaff City Council, the sort of political balances that you are referring to were completely discussed, as -- and that sort of process I would go through with any other constituency client that approached me.

CHAIRMAN LYNN: Not approaching trade-offs may have been known, trade-offs were made.

MR. SISONS: Yes.

CHAIRMAN LYNN: Any other comments or questions?

Mr. Hall.

COMMISSIONER HALL: Mr. Sissons, my Commissioners have, I think, adequately discussed issues relative to ripple effect on the communities of interest. But my -- for me, the way I'm working, the way my mind works is, I think we have to really look first at the impact on districts with respect to voting rights issues. So my question is, in the numbers that I'm looking at -- and just to review all of our
understanding, Mr. Sissons, obviously, you formerly work
and still probably work for the plaintiffs in the case,
also now evidently work with the City of Flagstaff. So
the specific numbers that you put forward, the
percentages in 13, 14, and 15 -- well, I stand
corrected -- yeah, the percentages in 13, 14, and 16, are
all lower than the existing map that has been precleared
by the Department of Justice that this Commission has put
forward.

So I guess my question to you is this. And
I guess that's a by-product of the ripple effect down
into Maricopa County. So -- are your other clients aware
or in agreement with that impact in light of the fact --
pardon me, that they represent the Minority Coalition?
I'm trying to -- maybe you are not
authorized to speak on their behalf. I know you work for
both parties.

MR. SISSONS: Sure. I tried to make clear
during the court proceedings, I choose not to function as
a conduit between both clients. There's kind of a bit of
a firewall there.

COMMISSIONER HALL: I see.

MR. SISSONS: I'm sure Mr. Mandell could
look at these figures and tell you whether he feels that
his clients might be comfortable with them.
Insofar as these percentages are very close
to their -- to the values that showed on the Hall-Minkoff
test plan, which was kind of the -- from which this was
based. And really, it's only kind of the increase of the
proportion in District 15, taking a little bit from
Districts 13, 14, and 16, that in the aggregate, that
sort of grouping of four districts, that the other
plaintiffs were presumably happy with at the time that
this matter was brought before Judge Fields.

Insofar as the kind of minority profile has
been changed only to the extent that a fourth voting age
district has been created by that reconfiguration, I
wouldn't see that as being a diminution of the minority
voting strength in that grouping of four districts.

COMMISSIONER HALL: Thank you.

CHAIRMAN LYNN: Mr. Rivera.

MR. RIVERA: Mr. Sissons, although --

CHAIRMAN LYNN: I guess Mr. Mandell wants
to weigh in on that question.

MR. MANDELL: Mr. Chairman, Michael Mandell
for the Minority Coalition.

To respond for the Minority Coalition and
make sure the record is clear, we've not seen any of
these maps and take no position on any of the numbers in
there.
COMMISSIONER HALL: Thank you.

CHAIRMAN LYNN: Thank you.

MR. RIVERA: You drew up the Minority Coalition 2 way back when, remember that, drew Minority Coalition 2?

MR. SISSONS: Did not draw any of the Coalition maps that were prepared -- well, I did not draw any of the maps that had the name "Coalition" in their title.

MR. RIVERA: You were going to testify about the Coalition 2 Map and agreed with the Coalition 2 Map. Right? Would I be correct in saying that?

MR. SISSONS: Yes.

MR. RIVERA: Mr. Mandell came up and testified, at the very minimum, the Coalition 2 Map met the Ashcroft criteria, according to them.

How does your map compare in terms of minority percentages to Coalition 2? Is it higher than Coalition 2 in Central Phoenix or lower than Coalition 2 in Central Phoenix?

MR. SISSONS: Mr. Rivera, I do not know the answer to that.

MR. RIVERA: You wouldn't know -- I hate to put you on the spot. You would not know whether this map meets the Ashcroft criteria as perceived by the
Coalition?

MR. SISSONS: I would not know.

MR. RIVERA: Thank you.

CHAIRMAN LYNN: Okay. Thank you, Mr. Sissons, very much. Thank you.

Obviously, we have copies of the map, and as we move forward, you may need to do the same in terms of where we go with this process. Thank you, Mr. Sissons.

What I'd like to do now is take a break so that our court reporter can stretch. I'd like to try to keep the break to no more than 15 minutes, and then we'll reconvene and -- reconvene the agenda. So stand in recess for 15 minutes.

(Recess taken.)

CHAIRMAN LYNN: Next item on the agenda is item V. We'll hold in abeyance any consideration of an executive session.

Just for housekeeping purposes, and particularly for those joining us for these meetings, in about 45 minutes or so, we will break for a lunch break. We'll try to keep the lunch break to a reasonable amount of time. It won't exceed an hour. And we'll just pick up the agenda after the lunch break wherever we are in it. So for those of you who may wish to grab lunch at
the same time, there are a couple of choices either in
the hotel or nearby. I want to give you that heads up.

Report on definitions adopted at the
meeting of February 3rd, possible presentation,
discussion, discussion and possible decision of
constitutional terms.

Mr. Johnson.

MS. HAUSER: Definitions.

CHAIRMAN LYNN: Did I surprise you?

MR. JOHNSON: Yes.

CHAIRMAN LYNN: What would you prefer to
do?

MR. JOHNSON: I believe --

CHAIRMAN LYNN: Several shots of your young
child?

MR. JOHNSON: There are several things I
could suggest.

There were three definitions postponed to
today's hearing. I don't know if counsel does have a
preference.

Significant detriment.

CHAIRMAN LYNN: Compactness is another.

MR. JOHNSON: I can look up the other.

CHAIRMAN LYNN: Others were settled.

COMMISSIONER HALL: The meeting has been
posted for a while. Were you aware of that?

MR. JOHNSON: Interest access issues.

I think, if you want, I can bring up the presentation from last week, put up information we had on those terms --

CHAIRMAN LYNN: Let's start there.

MS. LEONI: Compactness was deferred.

Compactness and communities of interest.

MR. JOHNSON: I guess, want to start with compactness? Significant detriment?

CHAIRMAN LYNN: I think probably significant detriment is going to --

MR. JOHNSON: Okay. When we last left definitions, one of the things unresolved was a definition for significant detriment. And this example is an example of how that term might apply to communities of interest.

COMMISSIONER ELDER: Mr. Chairman.

CHAIRMAN LYNN: Mr. Elder.

COMMISSIONER ELDER: Could not significant detriment be applied to any of the other five?

MS. LEONI: This is an incorrect slide.

CHAIRMAN LYNN: Kind of why I pointed it out.

(Slide: Definition of significant and...
COMMISSIONER HUNTWORK: In our previous meeting, we had gotten well beyond this point. I think Commissioners Hall and Elder were not there to participate in much of that discussion. And rather than starting over with the raw slides, I think it might be helpful to pick up at the point that we had gotten to. And if they have questions, we can backtrack.

COMMISSIONER HALL: Thank you for summarizing for us.

COMMISSIONER HUNTWORK: Okay. Well, what we had done was, we actually had gotten to the point of making a motion to define the term "significant detriment" in a comprehensive way. And I do not have the exact formulation of that; but we did have one, I made it in the form of a motion.

Commissioner Minkoff declined politely to second the motion on the ground that, not that she didn't feel emphatically she agreed with the definition, but she felt it would be inappropriate to adopt such an important definition without four out of five Commissioners being present and, in effect, five out of five, if two of you concur.

So -- let's see. What is the proposed definition?
Is there a slide of this, by any chance?

MR. JOHNSON: I'll put it up.

COMMISSIONER HUNTWORK: I made a motion, defined the term "significant detriment": Any impairment of a redistricting criterion which the Commission determines, based on the record before it, to be material and substantial, but not an impairment which the Commission determines to be minimal or inconsequential.

Impairment is "A-I-R" for what it's worth.

MR. JOHNSON: What is the last?

COMMISSIONER HUNTWORK: "Minimal or inconsequential."

CHAIRMAN LYNN: For the benefit of Mr. Elder and Mr. Hall, what we had done at the last meeting, in order to sharpen the focus of the last discussion, in an attempt for discussion purposes to attempt to have a proposed definition, we moved and seconded the discussed modified change ultimately adopted for purposes of discussion.

Mr. Huntwork, are you reintroducing this as a motion?

COMMISSIONER HUNTWORK: Yes.

CHAIRMAN LYNN: Second?

COMMISSIONER HALL: Yes.

CHAIRMAN LYNN: Thank you.
Discussion on the motion. You know, take a
moment, particularly Mr. Hall, Mr. Elder, it's a first
impression situation for two of you that you've not seen
this proposed definition before. If you wish to take a
minute, just --

COMMISSIONER HUNTWORK: If I continue
summarizing a moment as to that, just a little more to
the discussion.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Commissioner
Minkoff agreed with the methodology adopting this general
definition, also suggested that we consider refinements
or subdefinitions so this could be applied more readily
to each of individual criteria that refer separately to
significant detriment.

Now, with that in mind, the sharing of
ideas we had this morning with Mr. Mandell suggested
possibly another approach all together, which is in fact
the possibility of simply a separate definition for each
of the criteria.

While looking at that, I think -- and
that -- that approach has some potential benefits to it.
As I was thinking about it, I, myself, would like to
consider the possibility of doing it that way rather than
this way. At least talk through both approaches so we
have considered them fully.

CHAIRMAN LYNN: Mr. Hall.

COMMISSIONER HALL: Just for my benefit, with respect to your last comment of having specific qualifiers, if you will, for each goal, I think that that is really pretty simple to comprehend with respect to compactness. You get a score, it's X. I mean, that's -- but I guess, obviously, the more challenging category, for example, communities of interest.

So, can you give me an example of how that -- how that would work?

COMMISSIONER HUNTWORK: Well, the definition on the board a moment ago is one approach and is very similar to the effective representation standard that Mr. Mandell was suggesting. There are some -- not exactly the same -- along the same lines, adequate representation, I think what -- can't remember what our slide said, effective versus -- fair representation versus -- fair representation versus effective representation.

COMMISSIONER HALL: So when we say, "deprives a significant portion of that community," significant being --

COMMISSIONER HUNTWORK: Well, okay. I mean I --
COMMISSIONER HALL: Fuller definition might be a substantial -- material or substantial, not a minimal or inconsequential portion of the community, if you will.

CHAIRMAN LYNN: I think the point here is that -- the pointed issue is adopting a definition that can be applied fairly across the map. And what you are not going to be able to get away from, in my opinion, is some degree of judgment on what is significant and what is substantial.

But I think the more we use those terms as we move through the map and create a record that details what those significances happen to be, I think we can figure out whether or not we're applying them equally or whether we've strayed. I mean, it is a working definition, by every sense of that term.

Mr. Hall.

COMMISSIONER HALL: Real point is, how naive the order is. But that's a whole other point.

My question is: Why -- why is it necessary to add, "but not an impairment the IRC determines to be minimal and inconsequential"?

COMMISSIONER HUNTWORK: I don't think it is necessary, but this is -- you know, it's an effort to use enough words to encapsulate an area of discretion. And
those words -- those words may help to describe a floor,
  a bottom criteria --

  COMMISSIONER HALL: I see.
  COMMISSIONER HUNTWORK: -- as well as the
top and sides, and so forth.

  So, you know, without -- as you say, in the
case of compactness, you can actually try to set a
numerical standard if you choose to do so. Here it, by
necessity, remains somewhat a matter of judgment and
discretion. And we are trying to -- as many legal rules
do, we are trying to express it clearly enough so that a
reasonable person can grasp the idea and seek honestly to
apply it in a logical and consistent manner.

  CHAIRMAN LYNN: Mr. Elder.
  COMMISSIONER ELDER: Mr. Chairman, could I
ask a question of counsel?

  In attempting to work within the
constraints or the opportunities, as that case may be, of
Judge Fields' order, this puts it into legal context.
Does material and substantial have something we should be
aware of as far as terms in a legal sense?

  In other words, a definition of material,
substantial; yes, this was a material event, or no, it
was not.

  MS. HAUSER: Mr. Elder, in another context,
there is case law concerning what the word "material"
means. And by using that particular word, Commissioner
Huntwork's motion was intended to suggest that it is
something, you know, at a higher level. It is not just
any sort of detriment, but something that truly impairs
the achievement of that particular redistricting role.

COMMISSIONER ELDER: Term "obvious," is
that the same as material and substantial?

MS. HAUSER: No. I don't believe obvious
is the same.

MS. HAUSER: Mr. Huntwork is making a
motion to comment.

COMMISSIONER HUNTWORK: It's not the same,
Commissioner Elder. What we are dealing with is many
cases, not obvious. We have information we've gotten by
going around hearing from people all over the State of
Arizona, and may not have been available to anyone, even
in the best informed expert consultant without going
through that process.

So, to me, obviousness is the opposite of
subtly, not the -- not the opposite of significant or
insignificant.

CHAIRMAN LYNN: Mr. Rivera.

MR. RIVERA: Similar to following
Mr. Huntwork, something can be obvious not material.
Also, can make a change readily seen in the map, might not be a material change to that district.

CHAIRMAN LYNN: Any further discussion on the motion?

COMMISSIONER ELDER: See if the maker of the motion, modify the motion to delete the phrase "but not an impairment which the IRC determines to be a minimal or consequential," replace that comma with a -- comma with a period.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER ELDER: I would do that, if necessary. I personally prefer to have that, those additional words as a -- as an aid to interpretation in further understanding and refinement of the definition.

I do think this. I think that the words "material" and "substantial" in other contexts will have a lot more legal meaning attached to them than the words "minimal" or "inconsequential" do. And in that regard, one might say that if the court were laying down a rule of law, I would expect to see the period after the word "substantial."

But, you know, I continue to struggle with the fact that, although we are held to a strict standard as if we were a court, not even a jury, but a court, being subject to review on that standard, in a
nontechnical way, I think that those words add a lot of
meaning. So that's my --

CHAIRMAN LYNN: Shorthand answer is no,
Mr. Elder.

COMMISSIONER HUNTWORK: Shorthand answer
is, if we can get it passed, I'm not going to change it.
If that's what it takes to get it passed, I guess I will.
CHAIRMAN LYNN: Further discussion on the
motion?

MR. JOHNSON: One thing, Mr. Chairman.
CHAIRMAN LYNN: Mr. Johnson.

MR. JOHNSON: Grammar thing. Might want to
put commas after "determines" and "it," so we set off
that clause. "So IRC determines, comma, based on the
record before it, comma."

CHAIRMAN LYNN: Mr. Huntwork, any objection
to commas?

COMMISSIONER HUNTWORK: No objection to
commas, but I would like to ask our counsel what the word
"record" means. What is the record before us?

CHAIRMAN LYNN: Mr. Rivera.

MR. RIVERA: All inclusive rather than
exclusive to things that have come in. Judge Fields, in
his opinion, seemed to state that it's more than people
coming in and testifying in front of the Commission. I
think it's presentations. I think it is people
testifying in front of you. I think it's geographic
outside information that you may be aware of. Census
places, whatever you can find on the map, I would be all
inclusive rather than limiting, I think.

CHAIRMAN LYNN: Are you suggesting, then,
that clause come out?

MR. RIVERA: I think you leave it in.
CHAIRMAN LYNN: For our purposes, the
definition of record is more inclusive than simply
testimony.

MR. RIVERA: Exactly right.

COMMISSIONER ELDER: Mr. Chairman, Mr. --
Jose, is that to mean, if I went, had a meeting with the
Chairman Tohono O'dham, an individual meeting with
Mr. Lopez, the Mayor of Nogalas, meeting other people,
the wholeness of my perception of what the issues are, is
that the record?

MR. RIVERA: Yeah.

COMMISSIONER ELDER: Not written --

MR. RIVERA: That's a good question,
Commissioner, start of process, back in 1890, whenever it
was, you know, we specifically made that part of the
record, outside contacts and Commissioners were allowed
to go speak to people. And we had contact forms that we
requested people would fill out. But I think that those comments are part of the record. It's not excluded, part of what Commissioners bring in.

I preface, when you make a comment based on something like that, I make that on your statement in terms of where you got that from.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: So we can, by our own comments, add things to the record.

MR. RIVERA: That would be part of the record.

COMMISSIONER HUNTWORK: If this meeting took place, but Mr. Elder never mentioned it on the record, it would not be part of the record.

MR. RIVERA: That's correct.

COMMISSIONER HUNTWORK: One last question. What about things we know of our own knowledge that are factually correct and we simply state them? Is that -- is that or is it not?

MS. LEONI: Evidence versus record.

COMMISSIONER HUNTWORK: Does that become part of the record?

MS. HAUSER: Mr. Huntwork, Mr. Rivera believe that is part of the record. You, I think, help that record by sharing the factual information that you
have, such as it exists, to explain the information that
you are bringing in before the rest of the Commission;
and I think it has always been helpful. You all are
representatives of different parts of the state selected
to bring different points of view and different
geographic representation to the Commission.

So your personal knowledge, let's document
it, stated in terms of the factual information you have
rather than just stating it as opinion; but I think that
that is helpful information to share with your fellow
Commissioners. And then it is part of the record, then
can be at that point evaluated by your fellow
Commissioners for whatever --

COMMISSIONER HUNTWORK: Reviewed by the
court or anyone else for accuracy of the information.

Let me ask this also, then. The way in
which we evaluate the information provided to us by
others, it seems to me, is also based on our own
knowledge and common sense.

In other words, we are not receiving sworn
testimony. I don't know that we have a single affidavit
in our record. Anyone who wants to can get up and make
any comment they want to without having to worry about
being prosecuted for perjury or even, you know, flatly
contradicting themselves within a short time in the same
context of the same statement. As we ourselves do
sometimes, I might add. We use our own knowledge and
common sense to evaluate that kind of information.

We also, for example, if 20 people come to
a meeting, all stand up say one thing, and one person
stands up and says something else, we don't take that as
a vote, at least as I perceive it. We consider what each
person said, decide what is correct based on their own
knowledge, understanding.

Two questions. Do you agree we are allowed
to do that and should do that?

Number two, do we need to state our
reasoning on the record? Do we need to resolve these
conflicts between opposing information as a matter of
record?

MS. HAUSER: Commissioner Huntwork, let me
take the second part of that first.

The extent to which you can do that,
it's -- it's probably helpful to state those reasons on
the record as clearly as you can, if you are making
distinctions between conflicting information that is in
front of the Commission.

With respect to the first part of your
question, I don't believe that anyone intends that you
all leave your brains in a box at the door outside when
you come into this room. You do have knowledge and an
ability to reason that is necessary for you to use in
this process. So as information is presented to you, I
think the fact that it is not sworn testimony is not
particularly significant in this context.

The Legislature, itself, has hearings on
bills. Many of you probably attended those and people
come in, and they make statements and the legislators
evaluate that information presented to them. The -- even
in a court situation where you have sworn witness
testimony, the trier of fact, whether that is a jury or a
judge, still evaluates, because you can have sworn
testimony that is in conflict. And so there is still an
evaluation process that goes on by the trier of fact in
terms of the weight of that evidence or the credibility
of those particular witnesses, and those are all things
that you need to pay attention to in this context.

So I think you are correct in stating, if
you have 20 witnesses who come in say one thing, one who
says another, it's not a question of how many you have
saying something; but looking at it in the entire context
of the situation.

COMMISSIONER HUNTWORK: One last question,
if I may.

Jose, I'm sorry.
MR. RIVERA: I was going to say my comments who are, yep, always put as much detail as I can. My firm also has an active criminal law section of it.

COMMISSIONER HUNTWORK: Might simplify things in some way.

My last question for you was, there was some language in the judge's order we are attempting to comply with dealt with the use by Commissioners of their own knowledge as opposed to something. And I'm trying to reconcile that statement or understand that statement.

Would you explain your own -- the way you make -- what -- the advice you've just given us consistent with that portion of the court's order?

MS. HAUSER: My understanding of what was said there -- Mr. Mandell is present, if Coalition has a different view of this, I'd offer the opportunity for him to express that.

My understanding, the court in referring to instances when it viewed Commissioners to have relied on their own personal knowledge, I believe it was the court's view that that was to the exclusion of other factual information. And not indicating that you don't have some inability to weigh and evaluate information that is presented to you.

Would that be a fair statement,
Mr. Mandell?

COMMISSIONER HUNTWORK: Before he answers,

I just want to ask you, to make sure I understand it: If somebody gets -- it's no different than anything else.
If somebody gets up and says something to us we know is not correct, we know it's not correct, we don't have to do what they told us to because no one else stood up and said that's not correct.

MS. HAUSER: You'd want to make a record with respect, you know, to be correct; and we can certainly try to, you know, document that in some way.

COMMISSIONER HUNTWORK: If we fail to make that record, are we then bound by the statement someone -- do we have to contradict, interrupt people saying things to us we know are incorrect, contradict them at the time, that's the only way we'll keep up with this?

MS. HAUSER: You've been doing that.

Someone comes before you, asks you for some particular consideration or makes statements with respect to a particular community of interest, those are good times to then say, "Well, wait a minute, what about X," and to fill in those blanks. If you don't do that, I suppose in the absence of some other information in the record, I'm not saying you are bound by it -- what we don't know in
the context of the hypothetical you are presenting is the
decision point in which that information becomes
relevant. And it may or may not result in a particular
decision point.

COMMISSIONER HUNTWORK: Right.

MS. HAUSER: It's hard to answer that
question in the abstract.

COMMISSIONER HUNTWORK: Many of the people
that stand before us are ordinary citizens who feel
strongly, may be timid, may have been a very brief thing
to come and talk to the Commission. I have no intention
whatever of intimidating these people and trying to
contradict what they are saying. In fact, even if what
they are saying isn't correct, it's wonderful that they
have taken their time to come and participate in the
process.

So, you know, and unless you tell me that
I'm obligated to do so in order to preserve the record, I
would prefer to being kind to the ordinary citizens and
cross-examining the lawyers, if possible; but not people
who, you know, are not used to that sort of give and
take.

MS. HAUSER: Mr. Huntwork, it's possible to
get information and be kind at the same time.

COMMISSIONER HUNTWORK: It is a knack I
MS. HAUSER: Apologize for asking the question. It depends on the point, depends on what is incorrect about the particular point they are making and whether or not it is possible to correct the record with respect to some other information instead and just let that person make their statement and move on. It's just going to depend on the situation. If we can deal with those case by case, that would be more comfortable than globally.

I would like to get Mr. Mandell's response to the point I made, which is you, in my view, under the court's order, his criticism was that he felt that -- and I'm not saying this is true or not, again, since we're talking about complying with the order -- his view of the use of Commissioners' personal knowledge was criticized in connection with doing so, as he saw it, to the exclusion of everything else, to the exclusion of facts.

And I would -- and I think that in terms of evaluating what is before you, that you have the ability to use your brains and common sense in evaluating that information.

COMMISSIONER HUNTWORK: I don't want to put off the answer. I think it's important. I just want to understand your question, too. I want to understand it.
I would understand your answer if it were simply the judge disagreed with the facts we presented based on our own knowledge just as he might have with any other fact he had found. I would certainly understand that. But short of saying that anybody who sent -- we have to correct the factual record with respect to anybody who stands up and says something to us, I don't -- I'm not sure what the stopping-off point is in between those two positions.

MS. HAUSER: Again, Mr. Huntwork, I don't believe I said you have to correct the record. I said, if you have information --

COMMISSIONER HUNTWORK: I know what you said. I am saying -- I'm asking you what is the stopping-off point between those two positions?

Either we are allowed to and judge purely on the basis of the accuracy of the information we state and rely upon our own knowledge or we're not allowed to use our own knowledge to contradict what someone else has said to us. Your question, we can only use our own knowledge where there is no record whatsoever.

MS. HAUSER: No.

COMMISSIONER HUNTWORK: What's the stopping-off point?

MS. HAUSER: That's certainly not what I
indicated. I didn't say you can only use your own knowledge when there's no record. I'm talking about using knowledge, experience, wisdom and judgment to evaluate the record in front of you. Some of that record may include information you, as Commissioners, bring forward as well and can be subject to some kind of verification or some kind of, you know, debate by your fellow Commissioners.

So it, again, is something that I think we could spend another hour talking about here. But it is difficult to give that kind -- the kind of definitive answer you seek outside the context of some specific information.

As we move forward, if there is some particular piece of information that is giving you heartburn, I suggest we deal with it there. But I do want to get Mr. Mandell's view with respect to the ability of the Commissioners to use their personal knowledge to evaluate material that has been presented to them, which I do not believe the court has disallowed.

CHAIRMAN LYNN: Mr. Mandell.

MR. MANDELL: Mr. Chairman, Commissioners, Michael Mandell representing the Minority Coalition. I don't think it's possible to analyze the issues. You have to analyze without using a grade of personal
I think what the court was trying to say in its order, I know it when I see it test to the exclusion of other issues.

Let me give you an example. Last time when the Commission was reviewing the Hall-Minkoff test, there were a number of comments about the change caused significant detriment -- the change caused problems with the area of compactness, yet no -- none of the objective tests for compactness were run. The Polsby-Popper or perimeter test showed increase of compactness as opposed to decreasing. Part of it were shown Commissioners looking at the map. It looks to me like it's less compact than others. There were objective tests to the exclusion of that, looked at that when there were objective tests to determine that.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: I understand that very well. Thank you.

Let me give you another example. If, for example, having been a certified real estate expert in Phoenix for the last 15 years and having done lots of work on various types of real estate activities, I believe I know of my own knowledge that Moon Valley and North has a lot more in common, a lot more shared
interests than Sunnyslope and South. Suppose that I believe that, I know that of my own knowledge.

Now, what -- I thought the court might be saying that I'm not allowed to introduce or use that knowledge, even though I have it. I can understand the court -- and I'm having trouble with that. I can understand the court saying, "Well, I've looked at all the facts what you thought you knew is factually incorrect there for an invalid criterion; but I'm having a lot of trouble with the fact I can't use the knowledge if in fact I have it."

Is -- do you feel that is what the court said, or did I completely misinterpret that?

MR. MANDELL: Mr. Chairman, Mr. Huntwork, don't think the court said you have to exclude all personal judgment, for example, in the situation you gave. If you developed community of interest and the Commission adopted community of interest of Sunnyslope, any other community that in fact was mapped community of interest, then -- in doing so, you had said, well, I -- you know, based on my experience, here are reasons why, in my experience, I have encountered this, this, and this, then I think that can be used as part of that. And if you've got objective data to go along with that to which shows, the petitioner software shows a lot of good
demographic data to develop communities of interest as well as your personal knowledge in combination with objective data, I think is what the court is looking for. An example would be, for others, could be a deferment to someone who is an expert. For issue -- on the issue of competition, the Commission before had Dr. McDonald, who at least had his analyses available, but didn't ever ask him to assist the Commission in actually creating competitive districts.

COMMISSIONER HUNTWORK: Right.

MR. MANDELL: He was a competitive expert, could have provided that. None of the Commissioners, to my knowledge, are competitiveness experts to simply say I think it is a competitive district without basing it on, well, if you look at past elections and look at voting returns in these districts and how this showed, those type of things, in combination, objective and subjective, I think that's permissible.

COMMISSIONER HUNTWORK: This is very helpful to me, and I appreciate very much the, you know, the sense of partnership that we can have, at least at this -- in this setting, as we talk about these things.

I want to ask you this last question: When we dealt with the Hall-Minkoff test, we were under a lot of time pressure. We are, as we go into this process
that we're going into right now, we are also going to be under a tremendous amount of time pressure. How do you deal with things that you know are right when you don't have time -- if this in fact happens -- if you don't have time to send the experts back to do a mapping and produce demographic, you know, spreadsheets, and so on?

How do you deal with that? Do you have to do what you know is wrong because you don't have time to do it right? Or do you do the best you can and hope that the court will be understanding of the situation? Or what -- how would you handle it under those circumstances?

MR. MANDELL: Mr. Chairman, Mr. Huntwork, I start off respectfully disagreeing with the time frame of the Hall-Minkoff plan. I don't think you were under any time constraint back at that time, June 2002, in that you were drawing lines for 2004.

With regard to the situation now and time constraints, and certainly, there are issues of time, part of that is doing the best job you can do, given the time remaining. Certainly, had the Commission started immediately after the court's order, they would have had an additional two weeks or so to continue to try and come up with additional maps. That not being the case, and being where you are, certainly, you have to do -- live
within the confines of what has been created.

I don't know how else to put it, other than

if I were in that situation, I would try and obtain the

best information that I could obtain within the time I

had to obtain it.

CHAIRMAN LYNN: Ms. Hauser.

MS. HAUSER: Mr. Chairman, I think one very

important rule goes kind of back to what Mr. Huntwork is

saying. When you hear something is incorrect, if you let

it go uncorrected, you are admitting whatever has been

alleged.

I would like to correct for the record

right here and now that the Commission did start working

immediately. The court's order was issued on the

afternoon of January 16th, which was a Friday afternoon.

The 19th was the Martin Luther King holiday and state

offices closed. Commission requires 48 hours' notice

under the Constitution to meet. The Commissioners were

each given a copy of the order, telephoned, and their

schedules were ascertained. The soonest a meeting notice

could be posted was on Tuesday, first business day

following the court's order. And the first day we could

possibly have met was Thursday, and we met Friday

morning.

The process began then and work has been
under way ever since that meeting to comply with the
court's order. Work to comply with the court's order
should not be confused with dates on which the Commission
has met. So I have heard and listened to the Coalition's
representatives mention on a couple of occasions that
you've waited, you've waited. And that is just factually
incorrect.

So I would appreciate that, with the
correction of that fact, that you take that information
back to the Coalition. Thank you.

CHAIRMAN LYNN: Further discussion on the
motion, which is to accept the definition on the screen.

COMMISSIONER HUNTWORK: Thank you.

CHAIRMAN LYNN: Mr. Hall.

COMMISSIONER HALL: My only question,
Mr. Chairman, we substituted the word "impairment" for
"detriment" when the drafters, I'm sure, would have
little -- probably didn't realize that we would be
parsing two words of significant detriment.

My concern is, or question is, why are we
adding another word or synonym to detriment? Why not use
the word "detriment," say "any detriment"?

CHAIRMAN LYNN: We are in fact defining two
words, "significant" and "detriment." My experience
suggests you don't use a word to define a word.
COMMISSIONER HALL: Well, I think that the words around the word define the word. Now we have to define "impairment." Just a thought. I'm just asking.

COMMISSIONER HUNTWORK: I think --

Mr. Chairman, I would consider amending the motion to add additional synonyms. We had on the board, we had "harm."

COMMISSIONER HALL: Injury.

COMMISSIONER HUNTWORK: We had injury. And that wouldn't be, you know, damage, injury, harm or --

CHAIRMAN LYNN: Or impairment.

COMMISSIONER HUNTWORK: I would certainly be happy to do that.

COMMISSIONER HALL: It's clear to me, significant detriment is clear to me. I'm just saying, you know, as long as we're here, in the abundance of caution, I'm just asking.

CHAIRMAN LYNN: Are you suggesting that those words be added?

COMMISSIONER HALL: I am at the mercy of my fellow Commissioners. I'll vote for anything at this point, to be real honest.

COMMISSIONER HUNTWORK: I would accept -- I would accept that change to my motion.

CHAIRMAN LYNN: Mr. Hall, you accepting the change?
COMMISSIONER HUNTWORK: Question: damage, harm, or injury.

CHAIRMAN LYNN: Damage, injury, harm or impairment. Is there further discussion on the motion?

COMMISSIONER HALL: So we change "other impairment," too, or are we good there?

COMMISSIONER HUNTWORK: Why not take out the word "there" but not "which"?

MS. HAUSER: Yeah.

COMMISSIONER HALL: Great.

CHAIRMAN LYNN: Mr. Hall?

COMMISSIONER HALL: The second concurs.

CHAIRMAN LYNN: All right. So we have --

COMMISSIONER ELDER: Call the question.

CHAIRMAN LYNN: The question is called for.

Any further discussion?

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

COMMISSIONER HUNTWORK: "Aye."

COMMISSIONER HALL: "Aye."

COMMISSIONER ELDER: "Aye."

CHAIRMAN LYNN: Chair votes "Aye."

Motion carries unanimously.

(The slide visually depicted on the screen
upon which the motion was based for the
definition of "significant detriment" was
written into the record by the reporter:
"Significant detriment has been defined as
any damage, injury, harm or impairment of a
redistricting criterion which the IRC
determines, based on the record before it,
to be material and substantial, but not
which the IRC determines to be minimal or
inconsequential.")
CHAIRMAN LYNN: My understanding is lunch
is available and ready.
MR. ECHEVESTE: And getting cold.
COMMISSIONER HALL: Pretty good for salad.
That's fine.
CHAIRMAN LYNN: It's a good time for a
lunch break. I suggest we take a lunch break, for our
convenience and the public, but try to keep it to five
minutes. I'd like to do that as soon as possible.
Mr. Hall.
COMMISSIONER HALL: Question, Mr. Chairman.
Is it the intention to go into Executive Session today?
CHAIRMAN LYNN: I don't know. I don't
think there's a need for an Executive Session at the
moment. Certainly there may be a call for one later
today.

COMMISSIONER HALL: The point is, if we're going to go, let's do it during lunch.

MR. RIVERA: At this point, no.

MS. HAUSER: Unless you have some reason.

COMMISSIONER HALL: I don't.

CHAIRMAN LYNN: I don't have a scheduled issue.

Without objection, the Commission will stand in recess for lunch until 1:45.

(Whereupon, the Commission recessed at 12:44 p.m. and a lunch recess was taken. Open Public Session resumed at 1:55 p.m.)

CHAIRMAN LYNN: Commission will come to order. For the record, all Commissioners, with exception of Ms. Minkoff, are present, along with legal counsel and consultants.

When we were last together, we had adopted a definition, broad definition, of significant detriment. We have two options at this point, it seems to me. One is to simply be satisfied with that general definition or, in the alternate, to work on definitions that would be more specific with respect to the individual goals contained.
To the extent that some of those goals may require their own definition of significant detriment or their own application of the definition, either do that or move on to adopt a definition for compactness.

What is your pleasure, Mr. Huntwork?

COMMISSIONER HUNTWORK: I think that whether we -- I think we will need to do some further clarification, at some point. And the only question in my mind is whether this is the point.

I would like to have as much information as possible, myself, before adopting further refinement.

But if, in order to move the process along, for example, when we adjourn this weekend, to leave our consultants with adequate instructions as to what they are to do next; if it will be necessary to have accepted more definite definitions, I think we need to go ahead and do it.

CHAIRMAN LYNN: I that's a requisite given the schedule between now and the end of the Monday. We have to have given the consultants as much information as we possibly can between now and the end of the Monday, whenever Monday ends.

COMMISSIONER HUNTWORK: In that case, then, I would propose that we at this point consider subdefinitions with respect to -- well, actually,
Mr. Chairman, I suggest we finish by defining compactness, so we have a basic definition of each term; then we consider what would be an appropriate subdefinition.

CHAIRMAN LYNN: Then without objection, let's move compactness for a moment.

As a recap, last week when this definition was considered, there were two points of view and three Commissioners. And it was late in the evening, therefore, we're not going to have three affirmative votes for either point of view. The two methodologies that were being discussed at that time were the perimeter test and the Polsby-Popper test.

I wonder, for the sake of Mr. Hall and Mr. Elder, if we get those two definitions up on the board, certainly, not precluding any of the other tests that are available. And there are, I think, seven or eight that are actually available. And that can be run using Maptitude in a relatively quick manner as you are mapping.

But the discussion last time was that we had settled on those two to look at. And the discussion was whether or not they could be used jointly at all times or whether we needed to adopt one as the primary and run the other for informational purposes, just as we
have determined previously that our test for
competitiveness was going to be JudgeIt within the
parameters of the 7 percent; but that we would still look
at AQD and registration as we went forward looking at
proposed maps.

So if that is a fair synopsis of where we
were, why don't we first take a look at the definitions
of at least those two methodologies and maybe a quick
review of the others. We may settle on something else at
this point.

MR. JOHNSON: I don't know if I can steal
the attorneys' microphone there if it's tied down over
there.

CHAIRMAN LYNN: It may not reach, but you
can try it.

MR. JOHNSON: This will work.

MR. JOHNSON: Okay. Actually, let me just
quickly run through the little presentation we did
before.

CHAIRMAN LYNN: You might want to turn it
on.

MR. JOHNSON: That helps, I guess.

We did. What we presented last week, I'll
show you quickly, review of academic literature on all
these terms. For compactness, first one came up,
obviously, visual test, use eye and intuition, decide
does that appear to be compact?

There's also a number of tests developed,
named after people that came up with them, the Roeck
test, Schwartzberg test. The perimeter test, as you are
familiar, measures the perimeter of each district, sum of
all perimeters, and whole plan. And Polsby-Popper, which
measures the district shape compared to a circle.

Other tests that came up, there are also
two population-based tests, the population polygon test
and population circle test. Rather than looking at area,
look at densities of population, and the Ehrenburg test.

These are all the ones in Maptitude. And
also, ones came up in our academic research test. So, I
mean, the other piece we presented last week is five
eamples of districts. Just to avoid any implication
from current plans, all districts from the 1990s numbers
which came up by different measurements. These go in
order of improving Polsby-Popper scores. First one is
this district, which is a Polsby-Popper of 0.1. See
population polygon, .17; population circle, .49.

One piece of the discussion last week
talked about how these tests -- because they are
measuring different elements or different ways of looking
at compactness -- can sometimes be contradictory. Sample
to Polsby-Popper went up .19 for population; polygon
score went down, was .17, now .019.

Sample three now getting a little more
compact districts, Polsby-Popper up 2.3 on this,
perimeter in rural were in very rural.
Sample four, Polsby-Popper up 2.4.
Sample five, Polsby-Popper now up 2.6.
That's to give you a feel what different
scores mean in terms of shapes. Polsby-Popper is
measuring the shape as is perimeter to a degree.

COMMISSIONER HALL: So perfect core is 1.0?
MR. JOHNSON: Yes. 1.0 on Polsby-Popper,
perfect circle, perfectly compact circle, it's impossible
to draw a plan of circles, but is theoretical for
compactness.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: I want to try to
understand some of the differences between definitions a
little bit better. But before doing that, I want to ask
a very general question.
Would it be possible to do all the other
work first and then last apply the compactness criteria
with the instruction that the consultants are to find the
compactness test which has the least impact on the
districts that we've created using all the other
criteria?

It seems to me that if -- since compactness is not defined in the statute, and since we are dealing -- in the Constitution, and since we are dealing with the need to be consistent, first and foremost; and secondly, we are told that, you know, we -- we're not to do significant detriment to the other criteria, if we can help it, it seems as if, theoretically, the way to best accomplish those things is pick a definition of compactness that has the least impact on other criteria rather than creating one operatory that has tremendous impact on other criteria.

That's the logical way to approach it. the question is whether it's a feasible way to approach it.

CHAIRMAN LYNN: It seems to me that the definition might not have the impact because here we're talking about a methodology of determining, but rather the application of that definition. And I'm not even sure that would matter.

COMMISSIONER HUNTWORK: Well, I can see, for example, if we -- well, I mean, given that the tests can contradict each other, if you take a look at the districts that were displayed on the screen that we created to reflect communities of interest in northern Arizona, it appears to me that, you know, one test
would -- the change we wanted to make might pass the test
if we were defining, you know, the area of those
districts as, say, a .1 under the population polygon
test, I think it was. If one of them came in at a .9, it
would have passed that standard of compactness versus the
perimeter test, where it went off the charts.

I mean, it's just -- it is a fact that,
which standard we select for compactness may strongly
influence our ability to achieve the other goals.

CHAIRMAN LYNN: Mr. Hall.

COMMISSIONER HALL: My concern, I'm
concerned about prioritizing the remaining goals of the
contiguity, geographic features, and compactness.

In other words, making an implicit decision
arbitrarily, one, that's been a subject of some
discussion thus far; and, two is -- I don't think that
there is a clear indication that there is a priority.

I guess my point is, Mr. Huntwork, that I
think that we ought to be as practicable as possible
in -- through this process, not only because of the time
constraints we're under, also because, where possible, we
ought to seek to agree. Because there's going to be
plenty of areas where we disagree with those that
disagree with us.

So my point is that, if the plaintiffs,
attorney representing the plaintiffs in this case
presently have proposed utilization of the Polsby-Popper
test, why not? Why not at least get on the same page of
a measuring devise?

Now, whether or not we agree with what
measure -- see, that's the whole issue, really, is not
what tool you use, but how you use the tool. So while
they've made a recommendation relative to what the range
would be, I'm not suggest -- I think that's a whole other
discussion with regard to this Commission, what range of
that test constitutes significant detriment? That's a
whole other discussion. What tool we use, as long as
we're consistent, I think that this particular tool is a
relatively accurate and relatively easy-to-use tool.
Then I don't know why we should spend time at this point,
you know, really discussing the merits of the tool.

I think that the real meat of the
discussion is what range of the tool is relevant, one;
and, in my opinion, once we decide on the tool and the
range of the tool, then we -- my opinion, we should apply
all of them either at the same time or we should do so
randomly to avoid any implicit or any inferred intent on
the part of this Commission to make a decision that would
predict an end result that we had somehow foreseen.

There were some inferences that, even in
our decision relative to the starting point of the grid
and what directly we went -- we decide that had some end
result. That was ludicrous. We had inferences we all
waited so Ms. Minkoff wouldn't be here. Someone hired
Oliver Stone relative to a new conspiracy theory on any
given day.

My point is, I want to avoid those red
herrings all together and get right back to the meat of
what we're really about doing. That's my perspective.

CHAIRMAN LYNN: Mr. Elder.

COMMISSIONER ELDER: I suppose this is a
request for Mr. Johnson, as well as a comment to Mr. Hall
as we get into the discussion of this a little further.

You mentioned in your presentation there
were -- you could see the difference and ease of getting
compactness of urban areas as opposed to rural areas. We
have distinct urban areas in the state as well as rural
areas.

Does one of the options between population
polygons give an easier way of handling urban and rural
districts as well as compactness goes?

MR. JOHNSON: No. Any time you move rural
area or rural district blend with urban area, you are
going to be able to make it more compact. So --

COMMISSIONER ELDER: I was thinking the way
you apply it, all wholly rural, all wholly urban, get
diversity between the way various options present
compactness.

Is there one of them that is better
portraying compactness in both instances, given the
context of rural-to-urban placement?

MR. JOHNSON: If you are -- so if you are
comparing to plans to see which one is more compact --

COMMISSIONER ELDER: No.

MR. JOHNSON: As long as both have the same
number rural districts or urban districts, either
Polsby-Popper or perimeter, same measurement.

COMMISSIONER ELDER: Perimeter key,
perimeter length in rural or urban -- some urban, freeway
to nearest bridge crossing, an area where there's not a
bridge going across the Verde River. That very compact
area or way a district may function is very linear
because that's the way the transportation system works.
Or Grand Canyon, other barriers in the state, mountain
ranges, both sides of the mountain makes it compact,
doesn't seem to give a real good picture of compactness,
how population of the people seem to work.

MR. JOHNSON: Yes. One thing I found in my
review of academic research is Mr. Young kind of looked
at a whole bunch of different measures. In the end, came
around, said each has some value, but none of them are
good. So, ultimately, comes down to looking at what a
district looks like, knowing that kind of thing, making a
decision on it.

Given our situation as we sit here today,
that, my understanding is, is as nonlawyers, that's not
really an option for us. So, none of the measurements
we're talking about would take into account the factors
you are talking about.

COMMISSIONER ELDER: Then going back to, I
believe, one of Mr. Mandell's statements and some of the
attorneys' opinions and whatever during the case, they
were looking for a way of applying something uniformly
across the state to all districts. Because of the
disparity between, you know, the way systems look at
compactness, can we apply it evenly, or can we, you know,
say, in urban areas, works wonderfully, well, compactness
seems to work; rural areas, other factors seem to play
and place -- the lower area where we place for hierarchy
of review or approval.

MR. JOHNSON: Looking at the whole plan,
measuring the whole plan, perimeter, gives you -- the
perimeter test will give you the quickest way of
evaluating those two plans.

The Polsby-Popper will also be quick.
Challenge Polsby-Popper gives a good average score for whole plan. You also need to look at how many end, how many max, Polsby-Popper. Each has advantages and disadvantages.

COMMISSIONER ELDER: Last area relation says, in 106, geographical compactness, any area, six options take in a density factor.

In other words, if you had 70, 80 percent of the population in -- let's just use Flagstaff went over here, picked up 5 percent population, 2 percent in another area, something almost like a centroid of mass, if you took all the people as one weight, where is that centroid? And then the distance to the perimeter, does that ever get into play?

MR. JOHNSON: Yes. Population circle, population polygon do measure population density type things, not as common, in particular, takes a lot more computer power to run. And -- I mean, they didn't -- wasn't this debate in the trial, all parties looked at perimeter and Polsby-Popper? Those two do what you are talking about.

COMMISSIONER HUNTWORK: I just wanted to say what I proposed earlier. Number one was not referring to the priority of compactness, or I didn't think that it was. It certainly was not referring to the
consistency. Once we pick a standard, whether we apply it -- it will be applied, the standard would be applied statewide.

So I'm still intrigued by the question of whether there is one that might allow us to have the districts evaluated as compact.

See, this is not -- this is not trying to get around compactness. Compactness is an undefined term. And we are going to define it. So why -- it seems to me we're almost obligated to pick a definition that impacts the other criteria as little as possible if in fact it's possible and meaningful to do that.

CHAIRMAN LYNN: Mr. Huntwork, we're not defining it as we're picking a way to measure that definition.

COMMISSIONER HUNTWORK: No.

CHAIRMAN LYNN: Let me just finish, because I think we may disagree on this. And that's fine. I think all of the methodologies that have been proposed are ways of getting at the concept of compactness, however you define it. And it's defined by virtue of each of the methodologies approaches that constant in whatever academic scrutiny was applied during the development of each of those formula.

COMMISSIONER HUNTWORK: Right.
CHAIRMAN LYNN: And, frankly, I don't think it matters. And I'll tell you why.

I think as long as we are consistent with whichever definition we pick -- and I, like Mr. Hall, feel very strongly that because -- let's remember what we are doing here. We're trying to comply with the court's order and trying to look back at what the court said to do. And the fact of the matter is, if I believe that if we sat here today and said, look, from the standpoint of complying with the order and from the standpoint of evaluating any map that we might complete in reference to other maps that might have been drawn by some other process or by this Commission earlier in our deliberations, that if we settled on Polsby-Popper because it seems to have common acceptance and simply use it as our measurement, not definition, but measurement of compactness, we have comparative measurement. And that's all we need to do. I don't think we need to do anything more than that. I don't want to talk about it anymore. I would love to have a motion that says, let's use Polsby-Popper. Let's get on with it.

COMMISSIONER HALL: So moved.

CHAIRMAN LYNN: Is there a second?

Nice try.

CHAIRMAN LYNN: Mr. Elder.
COMMISSIONER ELDER: Mr. Chairman, I believe my concerns -- I'm not so sure I'm ready to stop discussion on it, because we have so many areas -- we have like 80, 90 percent of this state that is rural. I -- just as you were speaking, why did the framers of Proposition 106 put in geographical compactness as an issue? What were they concerned with before they brought this to the fore. One is, we saw several of the districts either were presented to us or we did ourselves that some of the people says, how would we ever campaign in this district? It would take us two days to drive from the southeast corner of the state to the southwest corner. Factor density of rural population of district. Somehow have to get that in. That's where compactness factor came in. That's where people relate, interact, get to and from places of polling. They can go to debates, whatever it might be, to get participation. Really needs to be considered from that standpoint. I'm not so sure Polsby-Popper does that.

CHAIRMAN LYNN: I disagree. My reading, why we're doing this has nothing to do with rural and urban. It has everything to do with political gerrymandering. That's why noncompact districts are formed because you can put certain groups or individuals
or incumbents or others in a district and not worry about how compact it is.

One of the measurements of doing something objectively, how compact it is. Just like contiguity, don't have odd connectors or odd trails running through mountain ranges that connect very disparate areas other than for what seems obvious purpose, it you state people who should be together and communicate with one another and be represented by an individual. But I have to tell you, that for the purposes of what we're doing right now and for the purposes of complying with the court's order, I don't think that the Polsby-Popper test advantages rural or urban districts in any specific way that would cause me any harm to use it.

MR. JOHNSON: Mr. Chairman, if I might have one comment, might clarify things, too.

CHAIRMAN LYNN: Mr. Johnson.

MR. JOHNSON: If we were to be asked what is the best approach, the Commission used the best approach the first round. Academic research is clear each test has its strengths, weaknesses, and none achieve what are truly the goals.

How we have compact districts measuring a gerrymander, preventing a gerrymander for some unmentioned reason, each has its problems. You have to
apply your judgment, look at them. As Professor Young
said, compare the results and apply your own judgment and
look at the district as well.

That is what the academics say is the best
approach. That's what, if asked, is the best approach;
but that is not one we can do under this order.

CHAIRMAN LYNN: Mr. Hall.

COMMISSIONER HALL: I think my -- I think
that if we used a measuring tool, and whatever that is,
and Polsby-Popper is fine with me, that this Commission
still has the discretion to, in the event we were to
determine that a particular district exceeded whatever
standard we said with respect to whatever tool we used to
measure it, that we have the discretion to state why we
feel that a particular district may or may not.

And if, for example, a compactness measure
caused significant detriment to communities of interest,
that ought to so be stated on the record. We make an
exception and move on. I don't think we're handcuffed by
the tools utilized. I agree, we pick a tool, move
again -- again make a motion for the Polsby-Popper tool,
then we discuss what is the range we utilize in utilizing
that tool as a measurement device.

CHAIRMAN LYNN: There's a motion. Is there
a second?
Second.

Thank you, Mr. Elder.

Discussion on the motion.

Mr. Huntwork.

Mr. Chairman, you know, I apologize that my earlier comments caused frustration. We're -- remember, we're all working to the same goal and all doing it to the best of our ability and intellectual capacity. And my comment, I still believe, was accurate. And I put it forward in the utmost good faith. I'm sorry that -- I'm sorry that the Commission found it so irritating.

However, what I find difficult is to adopt any particular application that I do not understand at all. And here I would like to simply ask our consultants to take a simple example and explain to me how it would be evaluated using a number of different factors.

And the example I would like you to use is to take a big square and right in the middle of it put, population density. That dissipates evenly as it radiates out from the center of the square. And show me now, compare, as far as I'm concerned, compare two different approaches using two different tests. One test, draw a line right straight down the middle of the square so you have two correct angles of equal
population, which obviously is not the least perimeter.

And the other example would be to take a little square in the middle, in the densest part that contains the maximum -- an equal population, contains exactly half the population, and tell me how that would score under each of those tests, and any other test that might be particularly helpful in comparing those two things.

Obviously -- it seems obvious to me the population polygon test would do best with the second one. But perhaps I don't understand it well enough. But it certainly is obvious the perimeter test, line down the middle would flunk the perimeter test as compared to the small square in the middle.

Theoretically, the line down the middle is the full length of one of the sides. Square in the middle is a little, tiny square, very short perimeter, right?

MR. JOHNSON: Well, I mean -- fair comparison of the two, you have to include the outer boundary of the whole region, because otherwise, you are really comparing the line down the middle, a border of two districts to the small circle, which is only the border of one district, or doubling --

COMMISSIONER HUNTWORK: You double both
MR. JOHNSON: That depends --

COMMISSIONER HUNTWORK: One line, very
short one, very long, perimeter line down the middle
flunks, obviously --

MR. JOHNSON: It's driven by how I set up
the test, how quickly population density is spread, very
dense immediately dropped off. Yeah, square would be
very small; but if you did a more gradual spread -- I
mean -- the more gradual spread of population in the
inner square get larger, take in half the population.

COMMISSIONER HUNTWORK: Okay.

MR. JOHNSON: Depending how I set up, comes
out differently.

COMMISSIONER HUNTWORK: I take a very rapid
decrease once you get to a certain point.

MR. JOHNSON: Again, however I set up the
test is going to drive the result. So --

COMMISSIONER HUNTWORK: Mr. Chairman, I
think we have to do this. To me, this is finding out --
if I understand how these things work in this example,
I'll understand the answer to the question asking. It's
not that complicated a question. Honestly not. I
understand your answer.

Fine, assume the population density in the
middle which is very great and ends abruptly at the
periphery.

MR. JOHNSON: The square will beat two
rectangles.

COMMISSIONER HUNTWORK: Under perimeter. I
understand perimeter. Explain the other tests to me. I
don't understand any of them.

MR. JOHNSON: Okay. I can do that.

Actually, last week, understanding the
difference that Polsby-Popper does better on a circle,
perimeter does better on square, being familiar with
that, we talked about that. The difference between a
population polygon, population circle, is essentially
exactly the same.

A population polygon will give a better
score for a square district and population circle better
for circle. Density drops off under both those tests.

COMMISSIONER HUNTWORK: What is the
influence? How does -- under -- under Polsby-Popper and
under the population density test, whether it's a polygon
or circle, I don't care, is the little square in the
middle more compact or are there tests under which the
little square in the middle is the test that is most
compact?

MR. JOHNSON: I don't know of one where the
little square would be less compact.

COMMISSIONER HUNTWORK: Okay.

CHAIRMAN LYNN: Mr. Hall.

COMMISSIONER HALL: Jim, I -- there's lots of times I really admire intellectual capability.

COMMISSIONER HUNTWORK: I have to understand what you're talking about.

COMMISSIONER HALL: I'm saying, I'm kind of a practical -- old cowboy from the mountains. And so I -- but let's just say, for example, you and I decide to play basketball, decide every basket four points apiece, all right? Both agree, then we play. So who cares? If we -- if we all agree, and my point is, a practical point, that the plaintiffs are fine with this particular measuring devise, whatever we're going to measure or score the game with, pick a measuring point, score game with and go see what we need to do. Who cares?

COMMISSIONER HUNTWORK: I do. I care very much. I need to tell you why.

COMMISSIONER HALL: Okay.

COMMISSIONER HUNTWORK: I'm sorry, you know, don't want to step too far back. But I thought Proposition 106 was bringing together five ordinary citizens to make common-sense judgments.

What Proposition 106, under the court
order, turns into is five citizens and now four, which is
a major problem, not having the balance that is called
for while we are making these decisions. But -- but four
citizens defining rules in the abstract, which are turned
over to a panel of experts to apply the rules. And we
are then held to a standard, not of common sense, but of
strict scrutiny. And this is now not a common sense,
ordinary citizen process. It is an expert process. That
strict scrutiny standard turns this into an expert
process.

I only have input at one point, which is
laying down the rules that they are going to apply. If I
can't make intelligent input at that point, I can't do
anything. I'm out of it. The Commission is out of it.
So the very minimum that I want to have is an
understanding of what rules we're asking them to apply.

COMMISSIONER HALL: But I disagree with
that analysis. And maybe from a pure -- and probably,
Jim, probably that's due to my own legal ignorance.
While we all agree the issue of strict scrutiny is a bad
ruling, I am still convinced, and my full intentions are
that at some point near the end of this process that we
are to exercise our judgment. I totally agree that is
why we're hired. I think I know that's what I intend to
do. If I'm told that I can't inject some common sense,
say, you know what, we may be X percent over a
compactness standard, but it's for the following reasons,
which are clearly what we have heard or what we think is
right, that's what I intend to do still. And if I'm
wrong in doing that, Jim, and if the highest courts say
that I'm wrong, then I'm wrong.

I totally agree with you in principle. But
I'm saying -- I'm saying, at this point, I think we just
need to pick a tool and then utilize that tool to measure
so we can move forward and have an opportunity to
exercise our judgment. I don't think our role is to
completely turn it over to the experts, even though the
purest interpretation of the judge's ruling may say that.
I don't agree with that. That's not what I intend to do.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Mr. Chairman, I
think that the -- I would respectfully disagree with the
judge in this way.

To the extent that there are subrules to be
created, I believe that the legal process ought to be
that the court would make those rules and then we would
apply them. But to the extent that the court has said as
part of its order that we are to make those rules, I just
do not feel that I can fulfill that part of the order
without understanding the rules that I am making.
And so --

CHAIRMAN LYNN: Did the example that you
and Mr. Johnson discussed help you understand those rules
any better?

Or asked in the alternate, what more can we
provide that would get you in a position where you would
be comfortable looking at one or another of these
measurements?

COMMISSIONER HUNTWORK: Well, perhaps if we
went to one of the examples where the decisions that we
made show improvement on 164 and detriment on the other,
and if I could understand why it did, it would help me
choose which of those standards I would prefer to use.

MR. JOHNSON: Mr. Chairman, Commissioner
Huntwork, I'm not aware of any time in our process where
perimeter and Polsby-Popper disagreed. I think they
followed each other. There may be some out there that
I'm not thinking of. In 10, 12 reports I summarized in
the trial, they went hand in hand.

COMMISSIONER HUNTWORK: I may be truly
confused. I thought you started out, produced opposite
paradoxal results.

MR. JOHNSON: Actually, slides showing here
differences, population circle test, let me go back to that,
Polsby-Popper and population polygon conflicted. That
actually can happen.

COMMISSIONER HUNTWORK: That's what I'm saying -- said. Can you explain to me why that happened?

What is the mechanism that caused that to happen, so I can try to see if it's important in my thinking about that?

MR. JOHNSON: Sure. Polsby-Popper is graphical. This district is less compact. When looking at it, then this one, so by Polsby-Popper -- had it backward. This one is more compact when you look at it than the example one. On just an area -- that's Polsby-Popper only.

COMMISSIONER HUNTWORK: But why -- you say, "when I look at it." Polsby-Popper, tell me again why it's more compact under Polsby-Popper.

MR. JOHNSON: This one fills more of the circle than would be drawn around it. If you drew a circle that kind of went all the way around the district and touched at each corner, essentially, this district fills more of that circle than this one does.

COMMISSIONER HUNTWORK: Okay.

MR. JOHNSON: This one population polygon measure higher than the example to this one's population is much more focused. Its population is heavily Flagstaff, then comes out here and gets a piece of
Bullhead; comes up here, gets this rural area, population, whatever it is, 170,000 or whatever the population was. Is fairly compact in the Flagstaff area; whereas, sample 2 has a lot of people at Navajo and a lot of people at Kingman.

So its population is spread considerably, have a hundred thousand in the Navajo Nation, 50, 60 thousand way over here on the end. So it's population is spread all over the place. And so its population measure, population polygon score comes out considerably lower. Does that help?

COMMISSIONER HUNTWORK: Yes, it does. That helps tremendously.

MR. JOHNSON: Okay.

CHAIRMAN LYNN: Further discussion on the motion?

Mr. Huntwork?

COMMISSIONER HUNTWORK: Mr. Chairman, you know, understanding the distinction, or understanding why there is a difference is extremely helpful. I have to say now that I would greatly appreciate it if you could bear with me a little while, while I kind of integrate that information.

Bear in mind that, you know, Mr. Elder has made some important points about, on the one hand, making
the districts convenient, you know, population so people
can come and hear the candidates; so a candidate elected
by the central area might have -- the population center
might have something in common with the, you know, all
other people in outlying portions of the district.

There are important considerations involved
in choosing one of these tests over the other. And it --
and I think that when it comes time to apply the test, we
will have some discretion to weigh one factor against
another. But at the same time, we will be having to make
decisions that maximize the benefit under both tests.

So it's not -- it's not as if the test we
choose is truly neutral. It will draw everything toward
it. And I would just like to think a little bit about
the difference between a population-centered test and a
purely abstract-geometrical test.

I mean, my quick instinct is that the
population-centered test seems a lot better to me, that
this is -- this process is about people, not about
geometry. We had some fun with the, you know, with the
grid, knowing that it was ultimately -- we were going to
be looking at the human factors to adjust it. But here
is one that is an anchor. This is one that has weight
and substance. It's going to pull the whole result
toward itself. I would rather -- I think I would rather
pull it toward people than toward -- than toward geometry.

CHAIRMAN LYNN: Mr. Elder.

COMMISSIONER ELDER: Mr. Chairman, would the maker of the motion, since he's looking for just one process, change his motion to population polygon as an item to select?

COMMISSIONER ELDER: Did you want to answer for me?

MS. HAUSER: No.

MS. LEONI: Can we offer -- Chairman Lynn, could we offer some information that you may like to have while that motion is being discussed?

CHAIRMAN LYNN: Motion is still being discussed. Want to delay your answer in light of information we might get.

MS. LEONI: Little information.

CHAIRMAN LYNN: Ms. Leoni, Mr. Johnson.

MR. JOHNSON: Mr. Elder and Mr. Hall.

Polsby-Popper and perimeter, population polygon take 20 minutes or so to run, at each step to run.

COMMISSIONER HALL: That is the answer I was going to run. Each step in process, not just I finish, run the test.
COMMISSIONER HALL: If you recall in the past process, we would always analyze competitiveness, wait for JudgeIt, and -- again, folks, Jim, I -- frankly, and respectfully, I think you are overplaying this whole deal.

I disagree. It's going to pull its weight in a significant matter. Downtown Maricopa, believe me, I was just there, is pretty dense. It's not like pockets of people are not there. Hell, I can't get through traffic in an hour. That's where the heart of this is going to go. You are overdoing this.

As a practical matter, the reason I feel most the appropriate test. One, plaintiffs proposed it; two, quick, easy to run; three, relatively accurate measurement.

So that's -- hey, don't know how else -- that's where I'm at.

COMMISSIONER HUNTWORK: Well, we had --

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: We had discussions about the compactness of some districts that really did work their way into the metropolitan area where we put -- we had the choice between creating two districts with more open space or one district that was much more dense. And the one that -- and so these measurements affected
decisions that we made.

I fail to see how it could not have an impact on this if we take it as a serious consideration. I want to understand, when we run the competitiveness tests, how long does that take it, when we do it -- do you run a competitiveness test? I don't mean Arizona Quick and Dirty, we decided to use, you know, the other test. Do you do that every time you redraw a line or do you do it kind of in a frame after you've made a group of changes?

MR. JOHNSON: We make a group of changes, looking in one area where we think we can make an improvement, play around with it, actually watching AQD numbers --

COMMISSIONER HUNTWORK: AQD -- not consult it, not test. We adopted, adopted another one?

MR. JOHNSON: As making small changes in an area or big changes. I'm watching AQD as kind of a ballpark. If it's getting close, then we stop, send it off to Dr. McDonald, or in the case of this, we hand it to him, because he's been with me, he runs JudgeIt scores.

COMMISSIONER HUNTWORK: How long does it take?

MR. JOHNSON: When he's there with me, 20,
30 minutes.

MR. RIVERA: About 45 minutes.

COMMISSIONER HUNTWORK: 45 minutes. You have a simple proxy test, gives you some idea, test identify what the outcome is going to be. When we adopted the JudgeIt standard, didn't we say, well, it's going to take 40 minutes to run it, every time we run it, therefore we ought to run AQD because it's instantaneous? Now we're getting that argument for justification, selecting what may be inferior or inappropriate --

CHAIRMAN LYNN: Not from me. I want that on the record. This is not about expediency, it's about relevance.

Let me try it one more time. When Flagstaff came in this morning, gave us a map, Flagstaff in an attempt to show their map, was at least as compact and slightly more so than the current Legislative map ran Polsby-Popper, see numbers of .3 to .32, .32, .32, slightly more compact.

We have a number of maps on which, as a whole, not district by district, but as a whole, have relative numbers of compactness as an average of the individual district compactness formula that Polsby-Popper gives us. The only -- and remember, we're
not doing this in isolation, we're doing it in combination with five other factors.

So the issue here would be, when we draw a map, we can analyze it and say that it is either more or less compact as a map than some other map. And so when we're finished with this process, that is either more or less compact than any other map we've drawn. And it's that comparative information that is useful to me.

Now, other information may be information useful to you and to Mr. Elder and to Mr. Hall and Ms. Minkoff, if she were here. For me, all I care about is making a judgment whether the map is sufficiently compact to comport with other alternatives we've discussed, and whether or not the court would see it as a compact map relative to other choices. Beyond that, I'm not sure I care. And it doesn't have anything to do with expediency.

COMMISSIONER HUNTWORK: Mr. Chairman, I want to, so I understand you, if the population polygon test produced that same result for you, you would find it equally acceptable to Polsby-Popper?

CHAIRMAN LYNN: I might. Only difference is, I don't know, nor do I have any reason to believe, that the plaintiffs or judge would, A, be familiar with the test; B, understand its application; or C, accept its
results.

I do know, however, plaintiffs and court are at least passingly familiar with Polsby-Popper and accept it. And that, to me, is a good enough reason to choose it.

Ms. Hauser.

MS. HAUSER: I lost a microphone here.

COMMISSIONER HALL: That's on purpose. I'm kidding.

MS. HAUSER: Mention one other thing.

COMMISSIONER HALL: It's not on.

MS. HAUSER: Thanks.

Compactness criteria does not have to be absolute. You'll evaluate it against other criteria, may cause significant detriment at this time.

You mentioned taking the entire plan, seeing if the map compact is enough as compared to other maps. Different maps, different criteria going on. You have to focus on causing -- whether or not competitiveness is causing significant detriment to compactness criteria or whether or not you choose to sacrifice compactness to achieve some other neutral goal.

CHAIRMAN LYNN: In order to do that, my point is, all we need is simple measurement consistently applied across the mapping process to do it.
MS. HAUSER: Correct.

CHAIRMAN LYNN: I think Polsby-Popper

passes the test, just to be particularly illustrative.

On the motion, further discussion?

Mr. Elder.

COMMISSIONER ELDER: Mr. Chairman, you

say -- made the comment just now that it would be applied

across the board evenly. And if one of the tests

provides better continuity between an urban rural

situation than that would be applied evenly where there

is disparity between rural population and rural areas and

urban areas, then I don't believe that it does get

applied evenly across the entire state.

For that reason, I would prefer a different

process or a different way of evaluating the compactness,

something that provides us with a better handle on what

is compact across the state, looking at the various

disparities or differences between the urban and rural

areas.

CHAIRMAN LYNN: Let's ask Mr. Johnson that

question specifically.

Mr. Johnson, does the Polsby-Popper

disadvantage, in terms of its application, rural versus

urban districts?

MR. JOHNSON: The rural districts will come
out with lower scores under Polsby-Popper. And I

couldn't agree more with Commissioner Elder that we
definitely would love to measure, take into account rural
versus urban applications. That measure has not yet been
invented. And there's desperate need. Some professor
will make a great deal of fame if he comes up with it.

At this point, noncompactness takes into
account big a unpopulated mountain in the middle of the
district, just no test that does it. That's why academic
literature concludes tests useful tools; but, ultimately,
you have to know the area and look at it to decide.

But -- but in terms of a test that we could choose and
use, there is none that achieves that.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Mr. Chairman, based

on what little I understand at this moment, it appears to
me, I'm sure this is vastly oversimplified, it appears to
me that the population polygon test would apply better in
rural areas and in areas that mix rural with urban, and
would probably not make much difference in urban areas.

And if I have to choose one test, based on what I am
understanding right now -- and the next thing anybody
says to me could easily upset that understanding because
it is not deep or firmly held -- if I had to choose one
right now, it would be population polygon. So for that
reason, I would vote against the current motion.

COMMISSIONER HALL: Let me ask you a motion, for the sake of discussion, that a rural district is .2, .2 less than urban district. My understanding is -- may be oversimplified how scores rural over urban, not particularly relevant. What is relevant is, I have to have some way to measure if competitiveness is causing significant detriment to any other goals; and in this case, compactness. So if a rural district is .5 and this is .7, what I'm measuring is not that versus this. What I'm saying, if I make this more competitive, and it makes it .4 or .35, then that -- then I then determine, pursuant our definition, that is, quote/unquote, significant detriment.

So that's why I am struggling with this whole idea, rural versus urban. It doesn't matter because we are measuring the impact of competitiveness on a particular district on its own. Right? Am I missing something here?

COMMISSIONER HUNTWORK: No. I think the impact is competitive.

COMMISSIONER HALL: Right. Why we're here, by the way, because we lost the lawsuit regarding competitiveness.

COMMISSIONER HUNTWORK: Yes. Exactly.
What I'm saying is this, that process you are describing is going to take place no matter how, no matter which test we use. But since we are going to be creating districts in the absence of other factors that are compact based on this test, I would like to use the test that naturally, by its own nature, produces the better districts.

COMMISSIONER HALL: I think that's an assumption.

COMMISSIONER HUNTWORK: But I'm being asked to make a snap decision based on what I know right now. What I know right now is that the population polygon test seems to me to make better rural districts because --

COMMISSIONER HALL: I appreciate your renewed concern about rural Arizona, I have to tell you, really, when we boil this down.

COMMISSIONER HUNTWORK: Gosh, that's not fair. I've always had that concern from the very beginning.

COMMISSIONER HALL: I'm teasing.

COMMISSIONER HUNTWORK: Well, please. I state an honest opinion, and I'm going to vote the way I am.

COMMISSIONER HALL: I call the question, Mr. Chairman.
CHAIRMAN LYNN: Question has been called for.

Any further discussion?

If not, all in favor of the motion, signify by saying "Aye."

COMMISSIONER HALL: "Aye."

CHAIRMAN LYNN: Chair votes "Aye."

All opposed, "No"?

COMMISSIONER HUNTWORK: "No."

COMMISSIONER ELDER: "No."

(Motion fails.)

COMMISSIONER HALL: For the record, I bet Ms. Hauser we'd have five two-two votes. I want to say that's one.

MS. HAUSER: I don't recall betting.

COMMISSIONER HUNTWORK: Mr. Chairman, I move we adopt the population polygon test.

CHAIRMAN LYNN: It's moved we adopt population polygon.

Second?

COMMISSIONER ELDER: Second.

CHAIRMAN LYNN: Discussion on the motion.

COMMISSIONER ELDER: Mr. Chairman, I'd like to draw an example here and ask Mr. Johnson exactly how it would affect either option that we go about selecting.
If, to get more competition, we decide that this type of composition is the way to go, that has one ramification. Then the second would be to go in and say, okay, we go in here and we do this; and then we have a district that does that. Which one of those propositions or options in compactness tells us which is more compact?

MR. JOHNSON: Are you asking which of the approaches is more compact or plans?

COMMISSIONER ELDER: We have variables, or the heart of Mr. Huntwork's square and square, and the density said could here is 160, whatever, thousand and here is 160,000, this perimeter, plus this perimeter, this district, that perimeter for that district and say this one provides you benefit.

If you go in and to get enough population, we are picking up some rural and combining with urban, and in the other example, that was the overlay, you take primarily urban and then pick up a whole bunch of rural in one district, does it affect -- which would affect the outcome between population or Polsby-Popper?

MR. JOHNSON: I mean --

COMMISSIONER HALL: Can I interrupt this real quick?

Dan, the hypothetical districts you've drawn completely violate communities of interest, right?
COMMISSIONER ELDER: It's quite possible, yes.

COMMISSIONER HALL: So if it does not meet our test of community of interest, why discuss hypothetical communities of interest, whether they violate one of the other goals?

COMMISSIONER ELDER: You come back to detriment, substantial detriment.

COMMISSIONER HALL: Right.

COMMISSIONER ELDER: All six, all six, to go down the list, and substantial detriment, compactness, if we do this thing.

COMMISSIONER HALL: But if already thrown out by community of interest --

COMMISSIONER ELDER: I don't think we can go that route, go down, say community of interest and competitiveness as the only things we're going to decide on.

COMMISSIONER HALL: I didn't say the only thing.

COMMISSIONER ELDER: The whole Proposition 106, that's where we upset the problem, not to look at these things in total, to take a look at all factors of 106, irrespective of what the judge said.

COMMISSIONER HALL: I get that. So if it
already is significant detriment of community of interest, then what the compactness score is, is irrelevant?

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Mr. Chairman, I think that, you know, we have this issue, to some extent, in the areas surrounding Phoenix, which Mr. Hall does not count really as rural because they are going to be urban. COMMISSIONER HALL: Referring to growth areas we've discussed.

COMMISSIONER HUNTWORK: Referring to growth areas and growth areas raise issues of this kind. So there isn't a community of interest problem that prevents maps that look like this from possibly arising. And as a matter of fact, you know, we have this issue in the maps that we created now. We've got this issue. And the question is, you know, is there a measure of compactness more compatible with the way the Commission viewed this problem in the past than another way?

COMMISSIONER HALL: Let me ask what you are saying, take districts, go in north?

COMMISSIONER HUNTWORK: Not one, all.

COMMISSIONER HALL: One --

COMMISSIONER HUNTWORK: Answer the
question, take all of them. Before you say take one of
them, changing the question, his question, take all of
them, is it the test that produces a more or less compact
map?

COMMISSIONER HALL: Sorry. Let's take all
of them. You are saying -- if I understand what you are
saying is, is that a Polsby-Popper score on those,
because we're measuring -- let's just say, for the sake
of this assumption, whole conversation is one major
assumption, let's say it's .75, right? One of those
districts, or all of them, average .75, right?

So you are saying, if we use the other
measuring devise, that that would help, that would help
those districts in what regard? This is where you are
losing me. Let's say, for the sake of assumption, .75
Polsby-Popper. You are saying there is another measuring
device that helps it how?

COMMISSIONER HUNTWORK: Okay, Josh, here's
what I'm saying. We have a number of important reasons.
I think maybe some districts down in Tucson may
illustrate better than --

COMMISSIONER HALL: Simple question.

COMMISSIONER HUNTWORK: But it doesn't
necessarily have a simple answer. If you want an answer
to the question, you have to listen to the answer.
One proposal in Tucson, take area north of Tucson. That is quite open.

COMMISSIONER HALL: Right.

COMMISSIONER HUNTWORK: And bring down and put a tip of it in an area that is very, very urban.

COMMISSIONER HALL: Okay.

COMMISSIONER HUNTWORK: In order to achieve competitiveness. And my question is: Is there a measure -- obviously, under the, what I've heard about these tests, that is a violation of compactness, no matter how you do it.

But the question is: That makes that -- that is going to make those districts less compact, whether you use perimeter or Polsby-Popper. But I don't know -- I don't know what happens with population polygon, don't know what happens with the other tests.

I believe Commissioner Elder asked an absolutely critical question when he asked: Is there a test that gives for compactness, accepted test in the literature, that gives us greater flexibility to do things like that, or is it going to violate them all in pretty much the same way? It's a critical test to the very thing we're trying to accomplish.

COMMISSIONER HALL: I respectfully disagree, because that -- while that's neat for academic
analysis, it's not practical to what we're doing, Jim.

We're here to determine if you have ways to determine
significant detriment. In my mind it's what tool you
use. It's irrelevant why you're trying to use the
hardest tool in assuming that -- and a tool that no one
else is referring to.

I don't understand. It doesn't seem to
benefit anyone in the abstract that it could benefit.
But what we're trying to accomplish is simply a way to
measure significant detriment.

COMMISSIONER HUNTWORK: Josh, I apologize.

It's sort of a step back.

Mr. Elder raised in a more concrete way the
question I raised at the beginning, which was, is there a
test that is more compatible with what we're trying to
accomplish?

I don't think the judge's order requires us
to go into that analysis blindfolded if we can help it.
But I also don't want to frustrate and exacerbate the
feeling of pressure that we're all under to get something
done and get it done fast.

COMMISSIONER HALL: We're past that point.

But go ahead.

COMMISSIONER HUNTWORK: I'm past that
point, too.
COMMISSIONER HALL: Okay.

COMMISSIONER HUNTWORK: I'm past that point, too. And -- well, and I could make snide remarks about what other Commissioners are saying as well or better than my other Commissioners are.

COMMISSIONER HALL: No disrespect, Jim.

COMMISSIONER HUNTWORK: Fine. I don't take any insult and pleasure, I'm not going to do it. Let's respect each others' frustration. I think it's a good question, love to have an answer.

If have to act right now, again, without any more information, without knowing the answer to this question or any others based on my paper thin understanding, I still think population polygon is a superior test.

CHAIRMAN LYNN: Happens to be the motion on the floor. Population polygon test, I might share with you, is going to go down two-two. Having said that, and understanding that it is clearly a significant issue, my suggestion is, we take that vote, move to applying significant detriment to those, to those definitions that we have agreed on, and ask that any other information might be brought to bear on resolving this issue be brought to us at some point, because I don't want to sit here and discuss this for another two hours right now.
COMMISSIONER HUNTWORK: Okay.

CHAIRMAN LYNN: I think the points of view are well-defined. Simply don't comprise enough of us to pass anything. So talking about it for another hour on the same basis is not going to resolve it any more easily than we've done in the last hour.

COMMISSIONER HUNTWORK: Mr. Chairman, I call the question.

CHAIRMAN LYNN: The question has been called for on the motion to adopt the population polygon test as our measurement for compactness.

All those in favor, say "Aye."

COMMISSIONER HUNTWORK: "Aye."

COMMISSIONER ELDER: "Aye."

CHAIRMAN LYNN: Opposed, say "No."

COMMISSIONER HALL: "No."

And that's two, for the record.

Two twos.

CHAIRMAN LYNN: Would you let me vote?

COMMISSIONER HUNTWORK: I thought you were voting twice.

CHAIRMAN LYNN: Chair votes "No."

(Motion fails.)

CHAIRMAN LYNN: If you have five, you're on your way.
This is not resolved at the moment.

It's my suggestion, on those definitions where we have agreed, let's start looking for applications of significant detriment to those and try to adopt some of those definitions, unless there is some compromise I'm unaware of on the issue of compactness.

MS. HAUSER: Mr. Chairman.

CHAIRMAN LYNN: Ms. Hauser.

MS. HAUSER: This might be a really good time for the Executive Session to get legal advice on the issue.

CHAIRMAN LYNN: I'm not sure I can get three votes on that. Let me try.

Just a moment.

Is there a motion for Executive Session?

COMMISSIONER HUNTWORK: So moved.

CHAIRMAN LYNN: Is there a second?

COMMISSIONER ELDER: Second.

CHAIRMAN LYNN: Pursuant to A.R.S. 38-431.03(A)(3) and A.R.S. 38-431.03(A)(4), the Commission at this will vote on going into Executive Session.

All in favor of Executive Session, signify "Aye."

COMMISSIONER HUNTWORK: "Aye."
COMMISSIONER ELDER: "Aye."

CHAIRMAN LYNN: Chair votes "Aye."

COMMISSIONER HALL: I'm voting "Aye."

(Motion carries.)

MS. HAUSER: Mr. Chairman, let me reflect also in order to (sound system screeches) -- jeeze -- in order to give the appropriate advice to the Commission, I am going to require the attendance of Mr. Johnson in this Executive Session as well.

CHAIRMAN LYNN: Let the record note Mr. Johnson will be joining us for specific information in the Executive Session.

Ladies and gentlemen, I have no idea how long this will last. I invite you to hang out.

MR. ECHEVESTE: Mr. Chairman, I ask the Commissioners to turn their mikes off, please. Switch them off.

(Brief recess was had as the Commission secured the room and prepared to go into Executive Session.)

(Whereupon, the Commission recessed Open Public Session and convened in Executive Session from 3:13 p.m. until 3:35 p.m. at which time Open Public Session resumed.)

LISA A. NANCE, RPR, CCR No. 50349 151
CHAIRMAN LYNN: The Commission will come to order.

For the record, all four Commissioners previously present are present, along with legal counsel, consultants, and staff.

What is the Commission's pleasure with respect to the issue of compactness? Or would you like to move on to another definition at this time?

Mr. Elder?

COMMISSIONER ELDER: Mr. Chairman, I guess I need to make a motion first, then we can discuss it. I would move that we adopt the Polsby-Popper method of analyzing compactness.

CHAIRMAN LYNN: Is there a second?

COMMISSIONER ELDER: I'm going to second that.

CHAIRMAN LYNN: Discussion?

Mr. Elder?

COMMISSIONER ELDER: I look at the process on developing the compactness. And compactness is interrelated, integrated into the whole process of looking at, in my -- and this is my opinion -- in the whole process of looking at communities of interest and the ability to look at different issues within their area. Where it is compact, you get more -- shoot,
redundant, more compactness, more focus on the issues that are involved.

With that said, I'm not so sure that either one of them is going to provide me with a whole lot more of a basis upon which to make a decision. As long as we are using it, or as long as I'm using it to compare one option to another option and, according to Mr. Johnson, either process will give me that comparison, one is a little less compact or one is a little more compact, and we can run it on individual districts and not necessarily as a whole, can look at two or three districts, okay, let's look at this option. If we move this line over a little bit, what is the effect of compactness with that move so we can go through and not have to look at the ripple effect all the way through?

Until we're prepared to do that, then either process will work, in my -- for my use as a Commissioner and the way I vote. And for that reason, just to break the deadlock, I'm willing to go with the Polsby-Popper.

CHAIRMAN LYNN: Thank you, Mr. Elder.

Further discussion on the motion?

MS. HAUSER: Mr. Chairman, can we clarify what the wording of the motion would be, other than compactness is we use the Polsby-Popper test? Seems like
there needs to be a little rewording, such as compactness
is -- or -- a compact district or map is one measured
under Polsby-Popper test. I'm looking for the right
wording, but needs a little something.

COMMISSIONER HALL: Two parts to the
definition. One is, what is the instrument we use? And
two is what is the range? The qualifier of what -- you
know what I'm saying? When is it no longer compact? I
think that's a separate discussion. The intent, if I
understand it, of the maker, is what tool I think we'll
use to evaluate compactness per Ms. Hauser's,
quote/unquote, "definition."

MS. HAUSER: Okay.

COMMISSIONER HALL: That's a total separate
discussion.

COMMISSIONER ELDER: Fine with me. Select
methodology, develop definition of compactness, using
that as a tool.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Mr. Chairman, I --
I'm still going to vote against the motion. But as long
as we're doing this, I mean, it seems to me that we
should include whatever the standard for a reasonable
compact district is. Is there --

COMMISSIONER HALL: So what do you propose?
COMMISSIONER HUNTWORK: I propose to ask Mr. Johnson if there is a commonly understood notion of what a compact district is applying that test.

MR. JOHNSON: No. There is no commonly accepted definition by any of the tests.

COMMISSIONER HUNTWORK: So it's just really relative to -- relative to some other possible way of doing it. You measure the decrease in the amount of compactness, say this one is more compact than that?

MR. JOHNSON: That is the typical approach to it.

MS. HAUSER: Dispersion of --

MR. JOHNSON: One thought, if you want to be more specific, some of the other reasons for putting silhouettes up, what each one is up, if one is outside the bounds, maybe call that significant detriment.

COMMISSIONER HUNTWORK: As you did with competitiveness, each specific test, measure competitiveness, here is what a competition district is.

MR. JOHNSON: Correct.

COMMISSIONER HUNTWORK: If going to --

COMMISSIONER HALL: I think the question is a good one. Is .5 compact? I don't know. That's a question.

COMMISSIONER ELDER: Let me ask a question,
Mr. Chairman, of Mr. Johnson.

Is there something like one standard deviation away within the range? If a range is, say, within a 10th, then they're -- it's almost a moot question, both compact or relatively compact or not enough there to make a difference. Two-tenths a big difference, not compact in relation one to the other?

MR. JOHNSON: Yes. That is almost word to word what plaintiffs proposed significant detriment, change Polsby-Popper score, I think, .1.

COMMISSIONER HUNTWORK: Not talking significant detriment, talking about compact. What is compact?

COMMISSIONER HALL: Right.

CHAIRMAN LYNN: Compactness is, one more time, a relative term on a scale from zero, meaning totally noncompact, to one, meaning as compact as you can get. I don't believe, and Mr. Johnson correct me if I'm wrong, any sort of brightline between zero and one that one could say, if it's under that line, it's not compact; and if it's over that line, it is compact.

The best you can do is say it falls somewhere on that range, and that relative to other tests or other maps or other things for comparative purposes, it either compares favorably or unfavorably with those.
MR. JOHNSON: Actually, in academic research, we searched long and hard for that kind of thing to help this effort along, and the only comment we found even remotely like that one proposal, for the record you can test, suggested .4 was the brightline to use. However, when they went to test that, just theory, it was proved it's impossible to draw a plan with nothing under .4. So there is no writing in the literature that sets out any type of line.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Well, I'm trying to think this -- think about this practically, as you are. And when we give instructions to go and draw us maps that are -- that contain compact districts, to the extent practicable, then, you know, I'm not sure what we're -- what we're telling them to do. They have to have a target to shoot for. We're perfectly willing to settle for .5. They'll draw districts that are .5.

CHAIRMAN LYNN: I would not want to give that or any other instruction as qualitative to that extent.

Here's my thought. Mr. Johnson, correct me if I'm wrong. As you draw any map, when you are taking variety of factors into account, one of them being
compactness, as you apply the factors, isn't it almost
to attempt to draw that district
relative to the factors that are in play, as compactly as
you can, recognizing that that is a desirable outcome of
any map, the districts should be as compact as they can
be while treating those variables in whatever manner you
are treating them?

MR. JOHNSON: Yes. Whenever we have an
instruction to do something, we always try to do that in
the most compact manner possible, improve in a compact
manner, possible for one group, Democrats next to us, 130
miles away, because of the goal of compactness, use one
by it.

CHAIRMAN LYNN: In order to achieve
compactness on a relative scale, it's something
essentially built into the process to try to achieve it.

What we can do is measure the result of
your attempts by having either district or map tested by
one of the methods and compare it to other maps that we
might have drawn or other districts we might have drawn
how well you have done what you are trying to do.

MR. JOHNSON: Yes.

COMMISSIONER HUNTWORK: Mr. Chairman, I
have an example I think absolutely refutes that. If I
could -- I'll wait if you --
CHAIRMAN LYNN: No.

COMMISSIONER HUNTWORK: So obvious to me.

CHAIRMAN LYNN: Getting to the point, we'll vote on the motion anyway. This is the appropriate time.

COMMISSIONER HUNTWORK: We're starting out. About to get a map, or instructed you provide us a map, shows as many competitive districts as possible, taking into account only population variations, compactness plays no role whatsoever in that map. At least you were told not to apply it.

So now, if, we haven't determined yet what order we're going to do things in, if the next thing we were to do to that was to adjust it for compactness, the very first question would be how compact do you want it to be? It's not a question of relativeness. We're already automatically weighing one factor against another. And unless we say, anything over three flunks the test, .3 or whatever, you just don't know what to do as between compactness as competitiveness.

Is that correct?

MR. JOHNSON: Yes. The comments I was making earlier, because you are dead right, if the instruction improve compactness of map as the sole goal or improve compactness while preserving what is there, you are right, need measurement to shoot for. But what I
said before is also accurate because compactness always
has been done while doing other tests. We've never been
instructed purely to just go for a certain compactness
number, always used in conjunction with other goals.

COMMISSIONER HALL: I think that is the
point. Technically speak, you are correct, Jim. If we
said, okay, we're combining, you know, Democrats in South
Mountain with Republicans in southern Yavapai County,
that if we just simply said, go now and make this
district more compact, then I think you are right, I
think we'd have to have some application of a minimum
standard.

I think the point is, we're going to say we
know Yavapai County has expressed their desires with
respect to community of interest. We know the Hispanic
community in that area is community of interest. We're
asking you to respect the communities of interest. We're
asking you to make these districts more compact; also
asking you to follow geographic features, et cetera, et
cetera. The conversation makes the flow this way. I'm
doing -- thinking out loud here. Don't set specific
qualifier compactness, define compactness, general terms.

The Commission will, relative to
compactness, it comes on a case-by-case basis while, you
know -- if -- as you say, for example, in 1990, the maps,
the district with respect to the Navajo Nation at that
time was not particularly compact, but accommodated
voting rights related issues where, and this Commission,
and I think at some point on a voted basis, you know
what, granted, there is less compactness. Where I think
that the focus becomes is when we consider significant
detriment and we say, okay, putting into play all these
variables, community of interest, geographic fixtures,
compactness, in order to make it, quote/unquote, more
competitive, what constitutes significant detriment by
adjusting that?

I think, frankly, we did a very good job of
that already. The issue is, they just want it more
specifically qualified. I think we have done it in many
respects. I think it's a matter of redoing that in a
different format.

So, you know, what would be wrong with
saying something to the effect of, you know, that
compactness is, you know, is -- deals with geographic
dispersion measured by the Polsby-Popper test,
something -- some general statement relative to
definition of that particular concept.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Well, either way,
I'll vote against the motion because of the test being
applied. But I would feel a lot better about it if we tried to define a standard of what is a compact district because the statute says -- the Constitution says, Districts shall be competitive to the extent practicable. It doesn't talk about compactness. It says we favor competitiveness. And yet, even with that wording, we have said this is a competitive district.

Now we're saying they shall be compact.

And with that even more direct wording, we are not defining what we mean by a compact district, only how it would be measured. I feel that's not only an inconsistency but a definite lack. I would not do it that way.

CHAIRMAN LYNN: It's a fallacy in reasoning, Mr. Huntwork. I mean, this -- with all due respect, whereas the literature and the science allows us various bright lines in terms of competitiveness, those bright lines are absent with respect to compactness. And it's a relative term rather than an absolute term. Therefore, we have to do the best we can with what is available. And that's the best we can do.

Ms. Hauser.

MS. HAUSER: Mr. Chairman, in terms of the case law that deals with the issue of compactness, there is a lot of just reference to requirement and why it's
there. But there are a few cases that speak about
compactness in terms of really it being about the
aesthetics of a district. It is an aesthetic term. It
is one of the quotes I just pulled is that it relates to
the relative geographic dispersion of a district.

So my suggestion, take it for what you
will, in terms of furthering this discussion, is that you
do have -- perhaps, this is why I asked the question
about the motion the way it was stated -- some definition
says compactness describes the relative geographic
dispersion of a district. There is no particular ideal
of geographic compactness. But compactness shall be
measured by the Polsby-Popper test. That is a way to
deal with the general concept, and then indicate what
measure you are using. And I'm tossing that out for your
consideration.

CHAIRMAN LYNN: I ask the maker of the
motion, Mr. Elder, if that language is acceptable?

COMMISSIONER ELDER: If we -- Mr. Chairman,
if we have decided to combine it into one definition,
yes. In other words, not separate out the motion as to
the process as to what test we're going to use and then a
definition, I think that would combine it, and I so make
that motion.

CHAIRMAN LYNN: Second?
COMMISSIONER HALL: Yes.

CHAIRMAN LYNN: As amended, we're in discussion on that motion. We'll reread it at some point.

CHAIRMAN LYNN: Yes, Mr. Hall concurred.

COMMISSIONER HALL: I concur.

CHAIRMAN LYNN: I want to give Mr. Elder a moment to read it.

COMMISSIONER ELDER: Lettering capability --

I believe my motion would be amended to read: "Compactness describes the relative geographic dispersion of a district. There is no particular ideal of geographic compactness. Compactness shall be measured by the Polsby-Popper test."

CHAIRMAN LYNN: That is the motion on the floor.

Is there further discussion on the motion? If not, all those in favor of the motion, signify by saying "Aye."

COMMISSIONER ELDER: "Aye."

COMMISSIONER HALL: "Aye."

CHAIRMAN LYNN: Chair votes "Aye."

Opposed say "No."

COMMISSIONER HUNTWORK: "No."
CHAIRMAN LYNN:  Motion is passed three to one.  And that definition of compactness will be added to our list of definitions.

Now, the next question that arises -- and I hope it doesn't arise for very long -- is whether or not there is any specific measurement beyond the definition that we've just adopted that we can reasonably apply compactness for what it's worth, and it may not be worth very much.  I don't think there is, given it's a relative term and one that helps us judge either districts or maps as they are created to see how well we have comported with what we just defined.  But since there is no bright line, it's difficult for us to artificially create one.  And I would respectfully submit we shouldn't try.

COMMISSIONER HALL:  Well, let me just piggyback on that, Mr. Chairman.

I think you are right.  For example, I'm looking here at the example proposed by Mr. Eckstein last week.  You know, his example was that the district boundary, significant detriment would mean changing the matter in the map that causes the Polsby-Popper test to change less than .1.

Well, it's difficult to have that standard if you don't know changing from what.  So I agree with you.  I concur.  I think we have to analyze every
district on a case-by-case basis, that you can't set a
specific measurable standard of variation when you don't
know what you are variating from because every situation
is going to be different based upon the other factors of
community of interest and contiguity and geographic
features, and et cetera.

So I just wanted to concur with your
assessment.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Mr. Chairman, I --
you know, I think that -- the logic of saying that a
district is competitive if it falls in this range and
it's not competitive if it falls outside that range also
is the same, is what you've just discussed with
compactness.

I don't see any -- in my mind,
notwithstanding the point you made before, I don't see
any logical distinction between talking about the
competitiveness of a map versus the compactness of a map.
The overlay to say, well, you have to have a certain
number of competitive districts, and they have to be
competitive within this range is the same logic as
saying, well, in order to be compact, you have to have a
certain number of compact districts and they have to be
compact within this range.
I'm not talking about, to go backwards, I, of course, disagree with the conclusion regarding competitiveness.

CHAIRMAN LYNN: Right.

COMMISSIONER HUNTWORK: I would -- I don't disagree with the logic regarding compactness. But the same plaintiffs have told us that they expect to see a numerical difference. There is no logical difference that I can see between the two concepts. So I just feel that, despite the fact that I agree wholeheartedly with your logic, I find the inconsistency very disturbing.

CHAIRMAN LYNN: Mr. Hall.

COMMISSIONER HALL: Point well taken, Mr. Huntwork.

I think in a volume, you are 100 percent right. The difference, in my mind, is that we did not lose a lawsuit for not making enough compact districts. We lost the lawsuit for not making enough competitive districts. And the judge is the one who specifically referenced the range, specifically referenced the number of competitive districts we must have. And because that is really the issue, I think that this Commission's decision relative to that is a direct by-product of the judge. I don't think -- I know we didn't make that decision before an order while we utilized certain ranges
had discussions in regard to a variety of tests.

That's why I think from a purely analytical standpoint analysis, there are inconsistencies is absolutely right. In our world today, I think that that is the difference is that what we're really trying -- I have little confidence we're going to get hammered on for not having a district have .05 less compact more than it should have been. That's where I'm at.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: One more short point. I'm sure not going to make a motion, short additional comment, and I'll desist.

Yes, but the next case, when we -- when we have made more competitive districts and satisfied some people.

COMMISSIONER HALL: Right.

COMMISSIONER HUNTWORK: But at the expense of compactness because we didn't have a standard, the logical inconsistency between those two is quite compelling. And somebody, some plaintiff, is certainly likely to test that inconsistency.

COMMISSIONER HALL: I think there's some merit to that.

I think my question to you is, if we can't really set a, quote/unquote, standard of what is,
quote/unquote, compact, right, because certain districts
may be compact, but may be less compact than other
districts. So if you adopt, for example, the
Mr. Eckstein's proposed explanation of a variation that
significant detriment would be .12, that particular
score -- what I can't figure out, and if you can explain
this to me, hey, I think you are point here, .1 from
what? Because, in my mind, some district .5 may be good
and another one, you know, may be .7. I don't know.
Frankly, we haven't gone there yet. But
I'm just -- I'm asking how do you have a measuring
difference when you don't know what you are measuring
against?
COMMISSIONER HUNTWORK: I will -- we're
going to face this problem very graphically, very shortly
when we see a map that has made the maximum number of
competitive districts; but has not taken compactness into
account at all. And from this point forward, every map
that gets drawn and redrawn based on that will suffer
from a fatal flaw, an original sin, if you will, that we
never defined a base standard for compactness and
adjusted the competitive map to that base standard and
then adjusted and then used some other standard to
determine significant detriment from that standard. The
parallels in logic are striking almost undeniable, and
that's all. I'm not going to make an exotic motion, just
going to be defeated.

COMMISSIONER HALL: Wouldn't you agree,

Jim, when we take a map and look at it considering
primarily competitiveness in this community, knowing
where communities lie -- for example, Navajo Nation
considers themselves a community of interest, don't feel
competitiveness should override community of interest.
Commission felt that way then, probably feel that way
now, issues on compactness become subservient to
community of interest. If you apply all the issues of
community of interest, geographic features and
compactness, in many respects, they take care of
themselves, and then we are more able to determine what
is significant detriment.

MS. HAUSER: Mr. Chairman.

COMMISSIONER HUNTWORK: I think we've
discussed it enough, Mr. Chairman. I respect Mr. Hall's
point. Perhaps we can move on.

CHAIRMAN LYNN: Ms. Hauser.

MS. HAUSER: I hate to interrupt.

Sometimes things need to be clarified for the record.

There was a reference to, you know,

communities of interest, and knowing where they are at
this point. And certainly, the Commission has a record
in front of it from previous deliberations with respect
to communities of interest. Just remind everyone we have
definition community of interest, geographic boundaries
have not been presented to you as yet, you have not made
a determination which communities of interest you have
fit that definition.

CHAIRMAN LYNN: Thank you, Ms. Hauser.

Mr. Elder.

COMMISSIONER ELDER: I -- before Jim
decided to avail himself of -- anyway.

Significant difference in relation to
compactness. In my opinion, if we were to give the
instructions to NDC, we now want you to apply
compactness; and in doing so, we lose one, two, three --
going to be some level where we would lose a competitive
district, at what point then does losing the competitive
district give us a substantial detriment and, therefore,
would be the limit I would be looking at with
compactness.

If the effects of applying compactness
either affects -- it's really all the others. you have
to look at them in a complete assessment as opposed to
individually. Don't know how otherwise. Maybe sometimes
some priorities or priorities 106 take precedence, one
area may not take precedence over another. In some
areas, compactness may not make a difference to competitiveness to the area or community of interest or to geographic judicial boundaries. If so, we ought to apply it to the nth degree. With that, I don't think we can go in, apply across the board; say, apply it to the nth degree when it will, indeed, affect other factors of 106. I think to keep in compliance with the judge's order with looking at competitiveness, I believe that the compactness has got to be subservient to the other aspects of the 106.

CHAIRMAN LYNN: Just to clarify, Mr. Elder, I don't know about subservient; clearly, the issue is applying competitiveness first is what the judge is asking us to do. All of the other criteria then become secondary in the sense of their application. That is the order of there application. Not necessarily order of important, order of applying to a map. That's the process we've essentially adopted at this point.

COMMISSIONER ELDER: With that said, one, per judge's order; other for second level almost in inherently; third, fourth, the sequence we'd apply for look at this or give directions to NDC. First priority is competitiveness, second priority is, and I think that --
CHAIRMAN LYNN: We've done some of that already.

COMMISSIONER ELDER: Yes, something gave directions or Commission here on Monday, gave to NDC. I wholly fully agree with that direction.

So I think there's going to be times -- and I made mention of it earlier -- sometimes community of interest will take priority over the judicial. And that's why I ask Ms. Dworkin the question, is it the ethnic form, geometry, or is it the jurisdictional area of the Navajo Nation, jurisdictional area? That was her definition. Is that the same definition we take with the Hispanic community doesn't have jurisdictional boundaries if we go through the whole process, different criteria, different parts of the state, can't take a vote to change priorities of hierarchy, how we evaluate the various responses to a specific point.

CHAIRMAN LYNN: Thank you.

Mr. Huntwork.

COMMISSIONER HUNTWORK: Well, one of the questions you asked, Commissioner Elder, again, goes right straight to what we're about to do next, and that is with the competitive map that we'll see at some point if we can quit arguing about the definitions. The very first thing that is happen is that that competitive map
can be reduced from -- hypothetically, let's say that
that map produces 25 competitive districts.

COMMISSIONER ELDER: Go for broke, 30.

COMMISSIONER HUNTWORK: Don't think it can
because of registration difference in the state. It can
produce a lot of competitive districts.

The very first parameter I would apply
logically to that map would be compactness, because the
reason, as soon as we see it, as soon as everybody sees
it, the reason that that map is going to be unacceptable,
first and foremost, on first visual impact, is going to
be compactness. And it can be reduced, probably, if we
take any reasonable definition of compact district.

My guess, that's going to be reduced from
20 to 12 or some -- and what is left will have some
reasonable degree of visual compactness. And by failing
to do that, by failing to do that now, at the first step,
or anywhere in the process, there is, hidden in whatever
map we come up with, that very fallacy, it cannot be
eliminated unless we say something right off the bat to
say that these competitive districts that have been
created by taking a piece of Ahwatukee and a piece of
Flagstaff, or whatever it is you have to do to fail the
compactness test.

COMMISSIONER HALL: So what do you
recommend?

COMMISSIONER HUNTWORK: I recommend creating a parameter that says that a district that isn't -- doesn't at least pass this muster, is not compact.

CHAIRMAN LYNN: What parameter is that?

MR. JOHNSON: Mr. Chairman, if I may, maybe help with that. One thing, I have the summary of compactness measurements, various plans we looked at in the past. Give you a reference point, including the 1990's plan and grid you see by the Polsby-Popper test where they fall, if that would be useful to you.

CHAIRMAN LYNN: Do you think that's useful, Mr. Huntwork?

MR. JOHNSON: Or space it out.

COMMISSIONER HUNTWORK: Might be. In the original grid, we used county boundaries, for example, to stop the random flow of directions. We've never done anything quite like this before. And not having some mechanism to control the --

COMMISSIONER HALL: What is the minimum score in the current adopted map? What is the minimum score?

CHAIRMAN LYNN: For a district?

COMMISSIONER HALL: Right.
MR. JOHNSON: The one Judge Fields just ruled on. Here, let me put it up on the screen. Here. The way to read this is the number, each row shows a number of districts in that plan below that score. By Polsby-Popper, a .25 score, no districts in the grid plan fall under that, to just above it, which is why I started there.

In the 2001 plan, plan adopted November 9th, 2001, nine; in the 2002 plan, ten, and so on.

Then we go down. Let's look at Polsby-Popper, .2 scores how much districts, each plan fell below that. Zero, again, for the grid, four, six, six, kind of reflects how compactness really is a flag for gerrymandering. You see that showing up here when you look at the 1990 plan. And then you get .2, .15, or .1.

And so these could be, one of these points might be something you might want to use as significant detriment would be district falling below that.

As discussed before, we might also want to include relative measure in there, just because above .2, if it drops from .22, .3, may also be a significant detriment.

CHAIRMAN LYNN: If I understand the chart, you would be suggesting if we were to adopt anything as a
relative standard, it would be .2, or below, given that that is a threshold of some significant. But it seems to me that on a scale of zero to one -- and I understand that these are not geometric progressions in terms of going from .12, .2, but they are -- but they are calculated in some fashion, much the same way I understand that earthquakes are calculated on that scale. That a 7 is not just a little worse than a 6. It's a lot worse than a 6. So -- that .2 might functionally be the place to draw the line. But it doesn't seem to be particularly compact.

And so it's not a very big hurdle to get over. It just means that, based on what we've looked at or might look at, we might be able to cross that threshold. That's my point about not having a specific threshold to cross.

COMMISSIONER HALL: Six districts below that.

MS. HAUSER: Score the plan, not individual districts.

MR. JOHNSON: Number of districts that fall below that point.

If you choose --

CHAIRMAN LYNN: Plan overall average score or composite?
MR. JOHNSON: Average.

COMMISSIONER HALL: Six districts below .2.

CHAIRMAN LYNN: May have six districts above .8.

MR. JOHNSON: If you settle for significant detriment district falling below .2, essentially, everything above grid the would fail, if you set one five.

COMMISSIONER HALL: One seven five. I'm asking --

MR. JOHNSON: I can do -- Doug.

COMMISSIONER HALL: Don't have that yet.

MR. JOHNSON: In about two minutes. Floor .15, all plans listed in the past, except for the 1990's plan; but you are right, we would also think about including a relative measure as well.

COMMISSIONER HUNTWORK: Mr. Chairman, it seems as if an absolute measure is how you define compactness and a relative measure how you define significant detriment.

And it also seems as if the fact that there are some districts that fail is good because we're -- in some cases, we had to make districts noncompact in order to accomplish other margins. Not talking something absolutely passes, talking about something reasonably
reflects what our concept of compactness is so that we can do something to separate the ridiculous from practical.

COMMISSIONER HALL: What I was suggesting, we said a floor.

COMMISSIONER HUNTWORK: Uh-huh.

COMMISSIONER HALL: So if all maps cleared 1.75, what is wrong is if a set has been at a floor of 1.75, it in my opinion addresses your concern, so it is completely ridiculous that districts stretch one end of the state to another. That automatically brings us to the floor. We then may have different variables relative to significant detriment. In my mind, that is a whole other issue.

COMMISSIONER HUNTWORK: Gosh, I'm saying first about the old process.

COMMISSIONER HALL: Right.

COMMISSIONER HUNTWORK: No doubt, we considered compactness all the way through it and in adopting districts.

COMMISSIONER HUNTWORK: We knew we'd be making some exceptions to compactness. I don't think we'd adopt a compactness standard. All districts were created even, though, ones we knew were not being compact, they'd pass the test, that's not compact.
COMMISSIONER HALL: Wouldn't a floor eliminate the ridiculous districts?

COMMISSIONER HUNTWORK: Some districts have just in terms of compactness alone are pretty --

COMMISSIONER HALL: I'm saying if 100 percent of our districts as currently exist, we can make exceptions for other --

COMMISSIONER HUNTWORK: Yeah.

COMMISSIONER HALL: -- to accommodate other criteria, wouldn't a floor, some reasonable floor, just be an immediate elimination of districts completely ridiculous. I'm asking --

COMMISSIONER HUNTWORK: Willing to think about that approach.

COMMISSIONER ELDER: Mr. Chairman,

Mr. Johnson, let me -- I'm going to a specific area of the state; but it probably is a good example.

If we look at an area or community of interest, that was primarily the river communities, Yuma all the way to the north, and it extended in three, four, five miles, picks up enough population to be a district, would that fall under the floor we've been discussing right there because so long, narrow?

MR. JOHNSON: I don't know. I'd have to --

COMMISSIONER ELDER: The reason I ask
that -- I don't want to get a definition if we come up
with three or four other items out of 106, that are
criteria of 106, that that really predominate in this
area, it is imperative that we make a district that looks
like this.

MR. JOHNSON: Right.

COMMISSIONER ELDER: Say, because we set a
floor, set a number on compactness, oh, no, significant
detriment comes back. No, you can't do it. That does
not make sense to me.

MR. JOHNSON: One thing that might help
that, let the attorneys jump in, if I might state that.
Comparing compactness communities of interest, comparing
to the extent practicable -- to the extent practicable,
significant detriment only kicks in when comparing one
set of criteria to community?

MR. JOHNSON: All .45, see differences
between different plans there.

COMMISSIONER HALL: I don't understand.

There's not an average of any districts beneath 1.75.

MR. JOHNSON: Couple minutes. 1.75.

COMMISSIONER HALL: Absolute floor on our
plan.

MR. JOHNSON: Oh.

COMMISSIONER HALL: It's above 1.5 and
MR. JOHNSON: We have a one seven, a couple of one nines, one eights, one eight, one eight --

COMMISSIONER HALL: The floor right now is one eight, one eight.

MR. JOHNSON: One seven. The --

COMMISSIONER HALL: Is that the border district?

MR. JOHNSON: Didn't get enough sleep last night. I think it is the river district. Yes. So it's District 3, the Arizona strip and river. .17 is District 3.

COMMISSIONER HALL: Okay. River district.

You were on it, Dan.

COMMISSIONER HUNTWORK: Reasonable hypothesis, any district less compact than -- least compact than districts we created in adopted plan would be significant detriment. That would be a way of --

COMMISSIONER HALL: But -- what I was thinking --

COMMISSIONER HUNTWORK: Two steps at once.

To say any district that you create by your ultimate competitiveness map that is less compact than the least compact district that we create for other reasons, would be significant detriment to compactness.
COMMISSIONER HALL: Well, I think I agree with what you are saying. I want to make sure. Here's how my mind was thinking.

If we had a floor for minimum compactness, that would automatically eliminate ridiculous districts.

I think the second question is, in my mind is, do we have to have a measurement, though, when we are actually saying, does favoring competitiveness cause significant detriment to this goal? Then I wonder if we need another measuring quantifier, if you will, to determine what is significant detriment.

In my mind, clearly based on information we've seen, .1 is way too high.

COMMISSIONER HUNTWORK: Yeah.

COMMISSIONER HALL: Heavens, some only .17.

So, I mean -- but what I'm asking, is that not -- may need a subsequent measuring variable.

COMMISSIONER HUNTWORK: Logic, as we talk about this, what occurred to me is, we balanced other goals against competitiveness as we went along. And because of a community of interest, or, you know, some other factor, we were willing to come up with districts that were as noncompact as 1.7.

CHAIRMAN LYNN: .17.

COMMISSIONER HUNTWORK: .17.
COMMISSIONER HUNTWORK: So the only question then is, you know, would we -- since we are to favor competitiveness at least as much as the other goals, I guess, would that not make sense as being on equal balance with the other goals?

I hate to --

COMMISSIONER HALL: No. I understand. My question to you would be -- and maybe it's not a question counsel wants you to answer -- but I'm just asking, is --

COMMISSIONER HUNTWORK: Ask them.

MR. RIVERA: I'm out. Executive Session.

COMMISSIONER HALL: I'm just --

MS. HAUSER: Pause before you answer.

COMMISSIONER HALL: I'm asking if the judge or the legal system would have difficulty with us utilizing the standard based upon a map that they didn't agree with. I'm just asking.

MR. RIVERA: You know, I don't know the judge has difficulty. There's -- if this thing plays out and there's litigation sometime afterwards, all you are doing is bringing in old maps --

MS. HAUSER: No. Let me confer before you say anymore.

(Discussion off the record between.)
MR. RIVERA: And what happens is you are looking at something that the judge has already referred a different standard. I'm not sure if you want to start comparing old maps as opposed to setting up a different standard or specific guideline you can do here without referencing back to someplace else.

COMMISSIONER HALL: In other words, what if we said .17 is our floor?

MR. RIVERA: That's your decision, decision you need to make.

CHAIRMAN LYNN: By the same token, isn't that number arbitrary?

MR. RIVERA: Define definition. Define why coming up with the number, be consistent on it.

MS. HAUSER: May I --

CHAIRMAN LYNN: Please.

MS. HAUSER: I agree with that. I also think that in terms of researching what is the appropriate level of concern with respect to compactness, that it is permissible for you to draw on your prior experiences in map drawing and looking at the particular comfortable level you had with the relative compactness of districts that you are familiar with.

So to the extent that that analysis, that
research leads you to conclude that gee, you are not
comfortable with things that go too far away from .175.
I think that is something that you can consider, and it's
not arbitrary.

COMMISSIONER HALL: So I guess my question
is, what is wrong with us saying that, pursuant to
Mr. Huntwork's suggestion, that any district that falls
below a Polsby-Popper compactness score of, whatever it
is, of .17, is significantly detrimental? Is that the
intent of what you are saying?

COMMISSIONER HUNTWORK: Yes. I think it's
important to include significant detriment to --

CHAIRMAN LYNN: Is there a motion to that
effect?

COMMISSIONER HALL: Yeah.

CHAIRMAN LYNN: Second?

COMMISSIONER HUNTWORK: Yeah.

CHAIRMAN LYNN: Discussion.

MR. JOHNSON: If I may. Very good
discussion for an issue, makers of the motion, makers
relative to changes. Comfortable with anything above .17
or change .6 to .3 is also a concern.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: When we -- we will
be having to discuss relative changes as we talk about
other factors, as well as just talking about

competitiveness. Compactness weighs against all of the

factors.

COMMISSIONER HALL: Right.

COMMISSIONER HUNTWORK: If we are to

achieve compactness to the extent practicable, just as we

are to achieve, you know, to respect communities of

interest to the extent practicable.

COMMISSIONER HALL: And I agree with that,

Mr. Huntwork, because we've defined competitiveness,

which I think we're required to do. Now, basically, set

a floor on what that is. I just don't know, Doug, if we

have enough information, really, or expertise, frankly,
to do that. Because, you know, if you had told me, pick

a number, identify .7, 70 percent, or C little D, I

know -- who knows, I don't know if we have any districts

over .7. I think us not knowing, really -- it's
difficult for us to set a standard when really we don't

have, I think, a relative understanding of the overall

impact of a standard. But I'm --

COMMISSIONER HUNTWORK: See, if I were

going to set a base standard -- Mr. Chairman, I'm sorry.

CHAIRMAN LYNN: Go ahead.

COMMISSIONER HUNTWORK: -- it would be --

it wouldn't be this number. This is one that includes

LISA A. NANCE, RPR, CCR No. 50349
the significant detriment. My idea of a compact district
is more compact than some of the ones that we created in
order to balance one of our mandatory criteria against
another one.

And so this number merely reflects a
feeling about how far we have been willing to go in the
past with respect to other issues. And to that extent, I
think is an interesting and useful summary of where we've
been.

CHAIRMAN LYNN: Motion is to set a floor of
.17.

COMMISSIONER HALL: One seven.

CHAIRMAN LYNN: .17.

COMMISSIONER HALL: In other words, to
restate the motion: That significant detriment to
compactness occurs when a district falls below a .17
Polsby-Popper score.

MS. HAUSER: That's --

COMMISSIONER HALL: That's exactly what I
just said.

MS. HAUSER: No, it's not.

CHAIRMAN LYNN: Ms. Hauser, want --

MS. HAUSER: Significant detriment to
compactness occurs when a district is below a
Polsby-Popper score of 0.17.
COMMISSIONER HALL: I said "falls" and she says "is." Major difference there.

CHAIRMAN LYNN: Is that acceptable to the maker and seconder of the motion?

COMMISSIONER HUNTWORK: I can't remember.

It's acceptable to me.

CHAIRMAN LYNN: You are one of them.

Mr. Hall is the other.

COMMISSIONER HALL: (Nods.)

COMMISSIONER ELDER: Yes.

CHAIRMAN LYNN: Discussion on the motion just stated.

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

COMMISSIONER HUNTWORK: "Aye."

COMMISSIONER ELDER: "Aye."

COMMISSIONER HALL: "Aye."

CHAIRMAN LYNN: Chair votes "No."

Motion carries three-one.

COMMISSIONER HALL: Want to explain the motion?

CHAIRMAN LYNN: No. My explanation is throughout the record, no reason to explain it.

Any more to do with compactness, gentlemen, or may we move on?

Fair enough.
Let's -- it seems to me that that completes our list of definitions. We still have to go back and determine whether or not the application of significant detriment to definitions needs to be any further defined, and if it does, in which cases it does. I understand consultants may have information that may be helpful in that regard.

Is that where you would like to go next?

MR. RIVERA: Break?

CHAIRMAN LYNN: Break. I'm sorry. Time flies when having fun. A quick hour and a half. Let's take 10 minutes.

CHAIRMAN LYNN: I say 10, 15. If I say 15, it's an hour. We'll try to take actually 15 minutes.

(Recess taken.)

CHAIRMAN LYNN: The Commission will come to order.

For the record, all four Commissioners are present. For the record, Commissioner Minkoff continues to be, for the month, excused.

We have now completed the -- most of the definitions we need to deal with. There are, I believe, two or three other applications of significant detriment we might want to consider. Then I'd ask for us to look at the definitions in total, as we have looked at them...
completely, and see if at that point there's anything
anyone wishes to alter before we finally adopt them and
pass them along to the consultants as our definitions for
the purpose of this exercise.

I should put on the record, at every one of
these meetings, that the Commission restates that what we
are doing is solely and specifically to comply with the
order of the court, and that we do so under protest, and
we are actively seeking not only a stay, but an appeal of
the judge's ruling.

So let's look at significant detriment to
contiguity.

MS. LEONI: Thank you, Chairman Lynn, and
Members of the Commission.

These are additional proposals for
discussion of supplemental definitions in your
conversation of what constitutes significant detriment in
your requirement to favor competitiveness. This applies
only to competitiveness.

Each one of these slides, and there's just
three more, start out with a definition you adopted of
particular criterion. The adopted definition for
contiguity is very loose, very broad. And it would seem
from our -- what we would propose for our discussion --
for discussion by you is a noncontiguous is one which is
not in physical contact.

COMMISSIONER ELDER: So moved.

CHAIRMAN LYNN: Is there a second?

COMMISSIONER HUNTWORK: Second.

CHAIRMAN LYNN: Discussion?

Mr. Huntwork.

COMMISSIONER HUNTWORK: Well, having made

the definition so broad, I agree. I -- you know, the

natural reaction is to say significant detriment is

something that is not, you know, insubstantial contact,

and so on; but, actually, we have compactness to deal

with that issue. And that's why we adopted the broad

definition of contiguity. So this seems to me to be

consistent with the logic we applied with the original

definition.

CHAIRMAN LYNN: Other discussion? If not,

all those in favor of the issue signify by saying "Aye."

COMMISSIONER HUNTWORK: "Aye."

COMMISSIONER ELDER: "Aye."

COMMISSIONER HALL: "Aye."

CHAIRMAN LYNN: Chair votes "Aye."

Motion carries and is so ordered.

Next, Ms. Leoni.

MS. LEONI: Thank you, Chairman Lynn.

The next criterion that we have prepared a
slide for is significant detriment to the equal
population standard.

On the 3rd, you adopted the definition,
"Precise equality: Plus or minus one person with each
deviation justified on the record."

I think that is an accurate statement of
it. A proposed definition of significant detriment would
be: Anything more than the minimum deviation from equal
population necessary to achieve another redistricting
goal and comply with constitutional mandates.

CHAIRMAN LYNN: Before we consider that as
a motion, I need to ask a question, because it occurs to
me in that proposed definition, one of the things that is
included in there is going to be readily discernible;
that is to say, we can make a determination as to whether
or not achieving another redistricting goal has been
accomplished by deviating from a very tight definition of
equal population.

Less obvious is what constitutes a
constitutional mandate. And even though there is case
law that suggests margins, until that is tested, I don't
know that we can fairly determine it.

MS. LEONI: Chairman Lynn, you've broken my
cover. There is debate in this state about the meaning
of a term. And our record, your record in these
proceedings reflects that. And the definition begs that question.

You are also correct that other states have chosen standards. I know of at least two that have an overall deviation of no more than one point up and down. But I have no basis of recommending that to you in Arizona.

CHAIRMAN LYNN: Ms. Hauser.

MS. HAUSER: Mr. Chairman, you previously took the approach with equal population that, although other states sometimes are able to tolerate deviations up to even 10 percent, that the way the Arizona Constitution is worded, that you would attempt to achieve population, more population balance more along the lines or closer to what you would have to achieve with respect to Congressional, unless compliance with some other goal made it necessary for you to deviate. And then you justified each of your deviations on the record.

So I think in order to -- if you were to continue along that, with that approach, this definition, minus, with a period after "redistricting goal" would suffice.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Mr. Chairman, I am also in the school that says that equal population means
equal population. And whatever the Arizona mandate was
before Proposition 106 was adopted, it's now equal
population. And it is equal population to the extent
practicable. And with the data and, you know, computer
programs that are available today, that is very, very
equal indeed.

Now, having said that, we have allowed
development in our own maps previously to achieve primarily
the Voting Rights Act solutions. Voting Rights Act is
pseudo-generous, in my opinion, which means a unique
problem because it's federal. And the federal trumps the
state rule, even the state constitutional rule.

Because -- so I don't believe that we can say that the
deviations that we use in order to minimally comply with
the federal Voting Rights Act would be applicable to any
other purpose.

What I do believe we could say, what I
believe we could do is look at the question of whether we
allowed population variations for any other reason and
focus on how much of a variation we allowed. Because I
do not believe that we could comply with the judge's
order by failing to adjust for competitiveness as much as
we had adjusted for community of interest, let us say,
although I -- you know, I think -- I don't agree with the
logic, but I do think in order to comply with the order,
that we need to consider that. Rather than leaving it vague, I would ask the question, how far did we deviate for a purpose other than to achieve a voting rights compliance?

MS. LEONI: We'll have that information for you, Commissioner Huntwork, in just one moment.

CHAIRMAN LYNN: Ms. Hauser.

MS. HAUSER: Mr. Chairman, Commissioner Huntwork, I do have a detailed summary of every plan made. Doug has a summary of those deviations, if interested in other deviations, which were some of those other than the Voting Rights Act.

MR. JOHNSON: Mr. Chairman, Mr. Huntwork, the largest deviations in the 2004 plan, other than for voting rights reasons, were in the East Valley. We had districts that were 2.1 -- yeah, the largest, 2.17 percent overpopulated, the reason being, the impact on community of interest required for those through the whole plan.

So those are the largest deviations we have. Some part -- some part of that were carryovers from the interim plan.

COMMISSIONER HUNTWORK: As you think about this, too, they were -- you know, they were forced on us. Always a question, is there no other way to protect it?
So significant detriment in this context wasn't necessarily an absolute number. It was really a balancing, a balancing test.

MR. JOHNSON: Let me go back.

CHAIRMAN LYNN: Jim, could you relate that to the proposed definition, either supporting it or quarreling with it?

COMMISSIONER HUNTWORK: Let me see the proposed definition again with the period taken off, with the less taken off --

MR. JOHNSON: Let me add one other note. I went back, it's on the screen now, it's hard to read, is what was adopted November 9th, 2001, so it didn't have the impact of the interim plan on it, the largest deviation here in a nonvoting rights related situation, 1.74 percent overpopulation.

COMMISSIONER HUNTWORK: I see everything we did was a result of the voting rights.

MR. JOHNSON: Right.

COMMISSIONER HUNTWORK: In that case, it may have been as well. You are looking at that. Now, what district was that?

MR. JOHNSON: It changed the East Valley.

It's either Mesa or Chandler.

CHAIRMAN LYNN: Mr. Johnson qualified that
as a nonvoting rights deviation.

COMMISSIONER HUNTWORK: From the 2001 plan.

But I -- I just want to make sure. There is a record why
we did it, which I cannot recall at this moment. It did
have to do --

MS. HAUSER: I have it here, if you want

it.

MR. JOHNSON: Yeah, it was District 18,

which was the Mesa District.

COMMISSIONER HALL: Mesa.

COMMISSIONER HUNTWORK: Okay. And then,

Lisa, do you have -- are you looking at the record to --

MS. HAUSER: I'm going through about 5,000

trial exhibits to find -- trying to search for --

CHAIRMAN LYNN: Comment is, right here

among many.

MS. HAUSER: Right here among a bunch of

stuff.

CHAIRMAN LYNN: Not at your fingertips.

MS. HAUSER: Hang on. I'll find it.

CHAIRMAN LYNN: If you could, Mr. Johnson,

go back to definition. I'd like to move that along as

Ms. Hauser is trying to get that answer.

So if -- I mean, if you can envision that

definition with a period after "goal."
COMMISSIONER HUNTWORK: Okay. Then looking at that, I would disagree with that definition because it seems to subordinate equal population.

In other words, if in order to protect a community of interest, we had to make one district 15 percent bigger or 15 percent smaller than another, where is the tradeoff? Anything more -- we -- 15 percent, no problem, because we're achieving another goal.

CHAIRMAN LYNN: But let me remind you that the only measurement for significant detriment is as between competitiveness and another goal, not communities of interest. It's competitiveness, and in this case, equal population.

COMMISSIONER HUNTWORK: Mr. Chairman, I do understand. But I'm looking at a definition that says that we may be able to have districts of -- with a 15 percent difference in order to achieve competitiveness because it's, you know, anything to achieve competitiveness.

CHAIRMAN LYNN: Ms. Leoni.

MS. LEONI: I thank you, Chairman Lynn.

Commissioner Huntwork, the intent of the last clause of this definition was to capture, at the outside, at least the federal constitutional bounds which are less than 10 percent.
Now, the Arizona bounds may be far narrower and, indeed, this Commission has been operating as if they are far narrower than that. It has not been tested by a court. That language, as inartfully drafted as it is, was drafted to capture at least federal. I think if the competitiveness adjustment took the deviation above that, there would be quite a bit of federal difficulty with the plan.

COMMISSIONER HUNTWORK: We could replace that by saying, in no event no greater than 1.7 percent that would create the gap.

CHAIRMAN LYNN: Mr. Hall.

COMMISSIONER HALL: I'm districts with respect to voting rights, issues over 1.7 percent.

COMMISSIONER HUNTWORK: Correct.

COMMISSIONER HALL: I'm not sure I understood what you said.

COMMISSIONER HUNTWORK: If voting rights, the voting rights changes were unique because they were necessary to comply with federal law.

COMMISSIONER HALL: Right.

COMMISSIONER HUNTWORK: Which trumps all provisions of the Arizona Constitution, even with respect to competitiveness.

COMMISSIONER HALL: Right.
COMMISSIONER HUNTWORK: We are comparing one Arizona criteria to another.

COMMISSIONER HALL: Right.

COMMISSIONER HUNTWORK: And so I'm saying that we should go as far as we did to accommodate any other of the Arizona criteria, but not the federal voting right's criteria. That was my -- that's why I said that.

CHAIRMAN LYNN: Ms. Hauser.

MS. HAUSER: The deviation in District 18 overpopulated 3,567 persons was to get to a zero population deviation which would require shifting all the population. We looked at it in the tests on August 13 and the Commission decided not to do that. Because of its other impacts, it largely follows major roads.

So, again, because of -- the record is more detailed than that, but because of -- it's one of those things where following a major road would --

COMMISSIONER HUNTWORK: Which was geographical boundaries and barriers and things.

CHAIRMAN LYNN: Yet another criteria.

COMMISSIONER HUNTWORK: I think the number, then, was it 1.7?

MR. JOHNSON: 1.74. 1.74.

COMMISSIONER HUNTWORK: Then I think the definition makes sense if we replace the language that is
highlighted with the phrase, "but in no event greater
than 1.74 percent."

CHAIRMAN LYNN: Are you offering that as a
motion?

COMMISSIONER HUNTWORK: Well, I think it
should say, "to achieve competitiveness." Because that's
the only goal that this is being used for.

MR. JOHNSON: You want it at the end?

COMMISSIONER HUNTWORK: In the middle where
it says, "to achieve another redistricting goal." It
should say, "to achieve the goal of competitiveness."

Mr. Chairman, I would offer that,
reluctantly; because if it were up to me, I wouldn't
allow any population deviation. And those we did, you
know, were a result of compromises; so on that, the
Commission had to make previously, in order to get the
job done. I'm against -- I'm against any population
deviation to the extent we can possibly avoid it.

Nevertheless, because of the situation
we're in, I'll move that we adopt that definition for
purposes of complying with the current order.

CHAIRMAN LYNN: Is there a second?

COMMISSIONER HALL: I second that.

CHAIRMAN LYNN: Thank you.

By way of discussion, Mr. Huntwork, I'm not
sure I should tell you what I would do if it were up to me. I wouldn't even be here.

Mr. Elder.

COMMISSIONER ELDER: State again why or how we came up 1.74 as opposed to rounding it off to 1.7 or 1 -- isn't it 1.75 or something? Was this a specific number that came out in testimony that said we had to be or that is what was precleared and that was the maximum they would allow --

CHAIRMAN LYNN: Didn't have anything to do with it.

COMMISSIONER HUNTWORK: The reason I suggested it, Mr. Elder, is because it is a deviation that this Commission previously approved as a tradeoff to equal population in order to achieve one of the other criteria set forth in Proposition 106, which was not mandated by overriding federal law.

COMMISSIONER ELDER: Okay.

CHAIRMAN LYNN: Further discussion on the motion?

Ms. Leoni.

MS. LEONI: Thank you, Chairman Lynn. I just wanted to clarify what your consultants are understanding: That that is 1.74 deviation in a single district; it's not the overall deviation.
COMMISSIONER HUNTWORK: Yes. That is correct.

CHAIRMAN LYNN: That is. And I think perhaps adding that language might be appropriate.

MS. HAUSER: In a district.

CHAIRMAN LYNN: In a single district.

COMMISSIONER HUNTWORK: Yes.

MS. HAUSER: I'll read you -- it's not a complete sentence there.

CHAIRMAN LYNN: Would you like to try some better language?

MS. HAUSER: It's not a complete sentence. Doesn't say anything.

CHAIRMAN LYNN: I've been constitutionally against fragments for a long time.

MS. HAUSER: Significant detriment. So significant detriment to equal population in a district is anything more than the minimum deviation from equal population necessary to achieve the goal of competitiveness, in no event greater than 1.74 percent.

COMMISSIONER HUNTWORK: At the end.

MS. HAUSER: 1.74 percent.

"Significant detriment to equal population is anything more than the minimum definition from equal population necessary to achieve the goal of
competitiveness, but in no event greater than 1.74 percent in any district."

COMMISSIONER HUNTWORK: 1.74 should be 1.75.

CHAIRMAN LYNN: Motion made and seconded, 1.75.

COMMISSIONER HALL: Yeah.

CHAIRMAN LYNN: 1.75.

COMMISSIONER HALL: Hundredths of hairs.

CHAIRMAN LYNN: Discussion on the motion?

If not, all in favor of the motion, signify by saying "Aye."

COMMISSIONER HALL: "Aye."

COMMISSIONER ELDER: "Aye."

COMMISSIONER HUNTWORK: "Aye."

CHAIRMAN LYNN: Chair votes "Aye."

Motion carries unanimously.

MS. LEONI: Do be encouraged, this is the last slide.

Significant detriment, community of interest definition, which was adopted by the Commission on the 3rd of February. And for your discussion and consideration, a proposed definition of significant detriment to communities of interest in its fragmentary form violation of -- a violation of community boundary
that significantly undermines the ability of the
community of interest to promote its interests
legislatively.

Now, the original definition we had, and we
can definitely put that up, it had such qualifiers as
fair with regard to representation and raised some
question. So we tried to redesign a definition that
still brought in the -- the thought of -- the
representational quality of the community of interest.

CHAIRMAN LYNN: At a minimum, it seems to
me, I throw this out just for a suggestion, that to the
extent that each of these is being defined, vis-a-vis
competitiveness, and another goal --

MS. LEONI: Yes.

CHAIRMAN LYNN: -- that each of the
constructions of the definitions of significant detriment
should clearly make that point, as we just did with the
last one. This one should also be modified in that same
manner.

MR. HALL.

COMMISSIONER HALL: I would add the word
before promote "adequately promote."

MS. LEONI: To adequately promote, split
the infinitive.

MR. JOHNSON: To promote adequately.
CHAIRMAN LYNN: I think the word "adequately" is dangerous, subject to all sorts of interpretation.

COMMISSIONER HALL: Every word up there is.

CHAIRMAN LYNN: That one in particular.

COMMISSIONER HALL: Not hard to undermine the ability to promote.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Before we wordsmith this one, there was another one on the board this morning.

MS. LEONI: We'll reproject that.

COMMISSIONER HUNTWORK: Please reproject that. Much better approach and more similar to what plaintiffs were proposing as well.

MS. HAUSER: Mr. Chairman, this particular definition uses the word "significant" within it, using the same term.

COMMISSIONER HUNTWORK: Yes.

MS. HAUSER: Whatever you do needs to avoid that.

COMMISSIONER HUNTWORK: The other one.

CHAIRMAN LYNN: Third from the left.

COMMISSIONER ELDER: Hey, eagle eye.

I don't ever mean to be flip about
anything; but if I've not learned anything in three years
of doing this, ladies and gentlemen, this is -- next
Friday is our third anniversary as a Commission. If you
don't keep your sense of humor, you probably would have
been hanging by a tree from now, self-imposed, --

MR. RIVERA: Top door.

COMMISSIONER HUNTWORK: Self-imposed.

CHAIRMAN LYNN: Three years is about it for
me.

Take your time. Finding it will shortcut
the process, I am confident.

Since we're not meeting next Friday, I
invite each of you celebrate our anniversary any way you
choose.

MS. HAUSER: Jose and I have plans.

CHAIRMAN LYNN: Clearly, everything you do,
do responsibly. If you don't touch adult beverages, you
just don't get the sense of what we've gone through.

MR. RIVERA: Mayor Donaldson is going to
have something at his house.

CHAIRMAN LYNN: To which none of us are
invited.

I didn't mean that, Mr. Mayor.

All right. Let's see what this brings.

MS. HAUSER: Bring shirts.
MR. RIVERA: And we'll all bring shirts.

COMMISSIONER HALL: There is fair and significant.

MS. HAUSER: That's not the one.

COMMISSIONER HUNTWORK: I think that the problem with the way this works is that it's not intended to be a complete redefinition. I think the idea would be significant detriment in the context of communities of interest entails significant detriment by which we mean the original broad definition; not, you know, not substantial, and so on.

Just use the original broad definition, "Significant detriment to the ability of that community to have" -- and I like the word "suggested" by Mr. Mandell -- "to have effective representation or deprive a significant portion of that community of effective representation."

CHAIRMAN LYNN: Just so we all understand what you are -- what you might be proposing, could you start with that definition and end where you wanted to and see if it applies?

COMMISSIONER HUNTWORK: Yeah. This definition would be read, in effect, in a single paragraph with the original definition. Start out with, "The definition of significant detriment," and then you
say, "in the context of."

CHAIRMAN LYNN: Communities of interest.

COMMISSIONER HUNTWORK: "Communities of interest, significant detriment means."

MR. JOHNSON: Let me get this here.

COMMISSIONER HUNTWORK: I need the -- the one that you started with.

MS. LEONI: The one -- which one do you need?

COMMISSIONER HUNTWORK: I need the one just up on the board. I was almost reading from it and now it's gone.

MR. RIVERA: You were going to quickly.

COMMISSIONER HUNTWORK: Okay. So start with the text there and put the cursor at the beginning of the text.

In the context of, "With respect to communities of interest: Significant detriment means significant detriment to," and then delete everything down to the word -- that's it -- "ability of that community to have," and then I would like to suggest we say, "effective representation or deprives a significant portion of that community of effective representation."

COMMISSIONER HALL: Should we change the word "significant"?
COMMISSIONER HUNTWORK: I want to use the defined term there specifically to avoid defining it in terms of something else. You know, it's a drafting technique. But we have defined it. It means all of these things. So by using it again, we're not undercutting or modifying what we mean by it.

MS. HAUSER: I think he's talking about the use of the word "significant portion."

COMMISSIONER HALL: What is a "significant portion"?

COMMISSIONER HUNTWORK: Ah.

COMMISSIONER HALL: Is it "substantial"?

"Material"? I'm just asking. It seems to me that if I say, you know, 15 percent of that community of interest is significant, and you say 25 -- you know what I'm saying?

COMMISSIONER HUNTWORK: I do think that that is the sense of what you are saying is, yes, we want to capture these same thoughts when we use the word "significant" there.

MS. HAUSER: Jim, just for purposes, Jose and I will be dealing with these definitions a lot. How is the latter part of that, "depriving a significant portion of the community" really different than depriving the community? Or detriment of the ability to the
community as a whole?

COMMISSIONER HUNTWORK: I think it's an excellent question. What I'm thinking is, number one, the court recognized the obligation, if we can, to recognize the whole community, if we can. We recognized it, we had pointed out early and often where splinters of the community had been excluded. And when they tried to go to there representatives. They found that he truly represented somebody else and could care less about their problems.

So we have considered it to be one of our goals. And the judge, I think, clearly endorsed that to keep from, you know, lopping off significant portions of the community in order to achieve the other goals. And I believe we are entitled, and even obligated, to do the same thing in order to achieve the goal of competitiveness. And the judge as much has said so.

COMMISSIONER HALL: What would be wrong with putting a period right after "representation"?

MS. HAUSER: The first "representation"?

COMMISSIONER HALL: Right.

COMMISSIONER HUNTWORK: That doesn't deal with the problem of fragmenting a community.

COMMISSIONER HALL: Yeah, it does.

COMMISSIONER HUNTWORK: The judge told us
we weren't allowed to fragment a community.

MS. HAUSER: He did not. I disagree.

COMMISSIONER HUNTWORK: Put up the --

CHAIRMAN LYNN: He said to the extent you are going to.

MS. HAUSER: Favor.

CHAIRMAN LYNN: Put a community of interest in a district. And again -- well, and again, this is relative to competitiveness.

COMMISSIONER HUNTWORK: That's correct.

CHAIRMAN LYNN: That, certainly, a whole community of interest can go within a district, so long as we have geographically defined what that whole is.

COMMISSIONER HUNTWORK: That's correct.

And that's what I'm saying. I think he even said more than that. I think he said we should.

CHAIRMAN LYNN: I think he said a lot more than that. In fact, one of the things he also said was that, if you put a community of interest in a district, that in order to make a competitive district, you might also put a different, not similar, community of interest in the same district. And to the extent that those two communities not only cancel each other out, but one is substantially more powerful than the other; yes, they are disparate and, yes, it's a competitive district; but what
you've essentially done, if you talk about effective
representation, is cancel one group's representation by
the imposition of the other group.

MS. HAUSER: Mr. Chairman, let me just
point out what the judge said, Inclusions of Law,
paragraph 34 that, "The Commission's discretion to
protect a community of interest is limited to include
placing the entire community within the boundaries of a
Legislative District."

He's not saying you can't split one for
whatever reason you choose, but you are -- your desire to
protect the community is limited to keeping it together,
not combining it. He raised that in connection, not
combining it with other similar communities to create
homogeneous districts.

COMMISSIONER HUNTWORK: Right. That's what
I and I believe Chairman Lynn are saying. That phrase at
the end reflects our ability under the judge's order to
preserve the entire community of interest in a single
district.

CHAIRMAN LYNN: Mr. Hall.

COMMISSIONER HALL: I just have a problem
defining significant detriment with significant
detriment. What is wrong with respect to some
communities of interest substantial or material reduction
in the ability of that community to have effective
representation, period?

COMMISSIONER HUNTWORK: In my opinion, as
you know, I spent a lot of time drafting legal documents,
not necessarily laws; this is definitely a new experience
for me as it is for all of us. But in drafting legal
documents, when you introduce new words, you introduce
ambiguity.

COMMISSIONER HALL: We already did with the
larger definition.

COMMISSIONER HUNTWORK: You didn't reuse
them all.

COMMISSIONER HALL: I did material and
substantial.

COMMISSIONER HUNTWORK: You didn't say,"not minimal or inconsequential."

CHAIRMAN LYNN: Ms. Hauser, I --

COMMISSIONER HUNTWORK: To that extent, you
weaken --

MS. HAUSER: Mr. Chairman, I have drafted a
lot of legislation. In this context, Mr. Huntwork is
correct. It is okay to take a term that you have, an
entire term that you've completely defined, "significant
detriment" is defined, so that you would then sort of
lift that definition previously created by the Commission
and place it in the context of this.

What is difficult to do is to just take a word, "significant," you know --

CHAIRMAN LYNN: In a different context.

MS. HAUSER: -- away from the definition and use that.

COMMISSIONER HUNTWORK: I agree with that.

Now that that is focused on, we need to fix that. Not taking the thought out, clarifying the thought.

CHAIRMAN LYNN: What we are doing here is not changing the definition of significant detriment. What we're doing is embellishing it, if you will, to specifically apply it to communities of interest.

COMMISSIONER HUNTWORK: Correct.

CHAIRMAN LYNN: We've defined it and then we are embellishing that definition as it relates to communities of interest.

The question is whether or not we should, by similar construction, embellish it on the others as well or for the other goals, as well. That's a different question. But we are where we are.

COMMISSIONER HUNTWORK: I believe that's what we were doing. And all I meant -- I didn't mean literally that we staple it on right here. I mean, when we read all the other definitions, in effect, it means
this same thing. It is a supplement to this general
definition, not a replacement for it.

CHAIRMAN LYNN: All right. We're down to
perhaps substitution for the next to the last line in
terms of the significant portion.

COMMISSIONER ELDER: Mr. Chairman.

CHAIRMAN LYNN: Mr. Elder.

COMMISSIONER ELDER: I have some problems
with that from the standpoint that we have overlapping
communities of interest in many areas. And it could very
well easily be determined that you would have significant
detriment to a specific community of interest. You know,
Lisa is looking at me. Why could that possibly be? You
take an area as an example. I'm trying to think.

CHAIRMAN LYNN: Central Phoenix.

COMMISSIONER ELDER: Central Phoenix. We
have historic Phoenix overlap areas we may end up for
competitive needs or because of maybe there's an overlay
of Hispanic area with part of the Historic district with
part of the school district with part of something else
to say, gosh, we have to look at each one of these
overlapping communities of interest, have geographic
boundaries and cannot do significant damage to a portion.
That's where I get the problem, a significant portion of
a community of interest. We've got to take those and
work with them together.

So I would prefer to have that last two sentences or two lines taken out.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Mr. Chairman, the -- you know, in many cases, we haven't been able to fully accommodate communities of interest because of the conflicting communities of interest that we have. But this is only as -- as the factor of competitiveness is added to that equation. This is to say -- this is simply to say that we're not going to break up community -- a community of interest solely to achieve competitiveness. And the court has told us that we are allowed to do that.

CHAIRMAN LYNN: Ms. Hauser.

MS. HAUSER: Mr. Huntwork, what I'm trying to understand, then, is if you have -- if by a competitiveness change you are splitting a portion, splitting off a portion of a community and that causes significant detriment to a portion of the community's ability to have effective representation, has it not -- if you hid that point that it's a substantial portion of the community, is it not also covered already under the ability of the community to have --

COMMISSIONER HALL: That's my point.

MS. HAUSER: -- effective representation.
COMMISSIONER HUNTWORK: I don't believe it is. Let me give you an example.

The Navajo Nation. I believe that, you know, if we were to conclude that the Navajo Nation could elect at a lower percentage than including the whole nation in one district; and if we were to conclude that by splitting the Navajo Nation we could achieve a more competitive district in northeastern Arizona, I still believe that we would not be entitled to take a significant portion of the Navajo Nation and throw it to the wolves to be represented by whomever, so that when they called their representative -- and I don't think significant in this case means -- you see, the whole point is, I'm trying to create two different issues. The ability of the Navajo Nation to elect one representative is covered by the first part. You are trying -- I understand what you are trying to do. And bear with me here.

This is too complicated to say verbally very well. But you are trying to say that the significance in the second part means the same thing as in the first part. And it doesn't. It's addressing two entirely different problems. The ability of the Navajo Nation to elect one representative is covered by the first part. But how do you protect, you know, 20, 30,000
individual Navajos who may be thrown off into a district that has a representative that could care less about their problem?

CHAIRMAN LYNN: Mr. Huntwork, to the extent -- and I think this brings up a very interesting point, and there's no answer, per se; but it's an interesting discussion, because to the extent that -- and let's use the Navajo Nation as an example. With 100,000 population, give or take in that community of interest, it is quite conceivable to me to split that community of interest between two districts insofar as a significant percentage of that population would still have the ability to elect representation.

Therefore, representing the entire community, even though some parts of that community reside full time in another district and, therefore, because we're not dealing with city council or board of supervisors, we're dealing with state legislation at this point, it affects, the entire state affects the entire area as it is put together. And one could argue, I'm not saying I'm arguing it, but one could argue that the entire nation is represented, even though some portion of it is outside of that district because the majority of that district is represented and, therefore, representatives are looking out for their interests at
the state Legislature.

COMMISSIONER HUNTWORK: And absolutely one
could argue that. That is not consistent with what
people have come to us to say; including, you know, many
of the people who are plaintiffs in the current lawsuit
brought in examples of parts of the Hispanic community
that had been lopped off and were not --

CHAIRMAN LYNN: I agree with you.

COMMISSIONER HUNTWORK: It is not
consistent with what the Navajo Nation has said to us.

CHAIRMAN LYNN: I agree with you a hundred
percent. All I meant by making that statement is that
we're in a situation now where a judge has told us --

COMMISSIONER HUNTWORK: Right.

CHAIRMAN LYNN: -- that it is perfectly
acceptable to do that if we are, in doing so, creating
more competitive districts.

COMMISSIONER HUNTWORK: Mr. Chairman, this
is the crux of the matter right here. That's why I asked
to reread what the judge said because the judge
specifically allowed us to keep the community together.
And this is why. I am very confident that the judge
understood this issue and was doing exactly what I'm
proposing to do, which is completely consistent with how
this Commission has wanted to do it all along. We are
not required by the judge to, in this instance, to go
against our own better judgment. And I would prefer not
to do so. But in order to protect it, we need to make
sure the definition has this caveat.

CHAIRMAN LYNN: So how would you propose --
COMMISSIONER HUNTWORK: I would propose
that we say: That deprives a material and substantial,
ot minimal or inconsequential, portion of the community.

COMMISSIONER HALL: Well, let me ask you
this: Given that position, what if someone came to us
and says, "We want to be split"? Our definition would
preclude that.

My point is that the first part allows us
to determine whether or not what occurs constitutes
significant detriment to the ability of that community to
have effective representation, and it does not add as a
caveat: Anytime somebody is split off, that constitutes
the same thing when if, in fact, we did receive some
testimony saying they wanted to be split off, that would
be evidence that splitting off would help them in their
effective representation.

So -- I agree with Lisa's former
perspective that the larger -- the former statement, the
larger umbrella, that is inclusive enough, and why would
we add another restriction when we don't really know what
people may say?

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: I think in the situation you described, the community says, we want to be split -- Sun City is an example of somebody that wanted to be split in a particular way, and a good example.

The point is, that does not deprive a material and substantial portion of that some community of effective representation. They have come to us and told us that that actually increases the effectiveness of their representation and that's why they wanted to do it. We would have to listen to, and we heard conflicting stories from Sun City.

COMMISSIONER HALL: Right.

COMMISSIONER HUNTWORK: And we today use our best judgment as to which one made the most sense to us and for them. We had to weigh one story against another and come to a logical conclusion. But this definition allows us to do that.

COMMISSIONER HALL: Well, the part that didn't want to be split would come in and they said you followed your own definition because it was substantial, and we think it was material, and that was arbitrary to your definition.
CHAIRMAN LYNN: Again, this is only applied, number one, when we wish to favor --

COMMISSIONER HUNTWORK: Try.

CHAIRMAN LYNN: -- when we wish to favor a community of interest. And the judge is talking about --

COMMISSIONER HALL: I thought it was to favor competitiveness.

CHAIRMAN LYNN: In what Lisa read from the trial court --

COMMISSIONER HALL: I'm sorry.

CHAIRMAN LYNN: -- if the Commission intended to favor a community of interest, it could only do so by including all of it within a district. And --

MS. HAUSER: No way.

MR. JOHNSON: Mr. Chairman, it's to respect a community of interest rather than favor it.

CHAIRMAN LYNN: Pardon me. To respect a community of interest. So once we've determined a list of communities of interest, if we intend to respect any one of them, our limit on respecting them is simply to keep them whole within a district. It doesn't extend to matching them up with other like communities of interest for additional representation, if you will; but rather once a community is placed within a district, if we are respecting it, we keep it whole and then we're in -- the
intent is to actually find disparate communities of interest which would make a heterogeneous district which would theoretically be more competitive.

COMMISSIONER HUNTWORK: I agree.

CHAIRMAN LYNN: So, I'd like to make some progress with this definition. And I'm wondering if either Mr. Huntwork, Ms. Hauser, Mr. Johnson, Ms. Leoni, anybody in the audience, could offer a definition that we might at least get on the floor and vote on.

COMMISSIONER HUNTWORK: I move we adopt this definition as is refinement of the general definition as applies.

CHAIRMAN LYNN: Go ahead and read it.

COMMISSIONER HUNTWORK: "Specifically, with respect to communities of interest, significant detriment means, significant detriment to the ability of that community to have effective representation, or" --

COMMISSIONER HALL: Deprives in a --

CHAIRMAN LYNN: No.

COMMISSIONER HUNTWORK: -- "or, deprivation of a material or substantial, but not a minimal or inconsequential portion, of that community of effective representation."

CHAIRMAN LYNN: Is there a second?

COMMISSIONER ELDER: I need to read it.
COMMISSIONER HUNTWORK: I'd like to put an "A" in front of means -- (a) means and significant, I'd like to put an A, in parentheses; and before deprivation, (b).

MS. HAUSER: The comma belongs after inconsequential instead of portion.

COMMISSIONER HALL: How about and/or?

COMMISSIONER HUNTWORK: I'm familiar with litigation in which courts have recently over the years castigated lawyers for and/or.

MS. HAUSER: It's terrible.

COMMISSIONER HUNTWORK: The reason, it gets you into a logical loop rather than solving the problem.

CHAIRMAN LYNN: All right. So with those modifications, that is the motion. Is there a second?

COMMISSIONER ELDER: Second.

CHAIRMAN LYNN: Discussion on the motion.

COMMISSIONER HALL: I wonder if we could make it longer.

CHAIRMAN LYNN: Given enough time, I'm sure we can.

Does it serve -- I mean, look, the test here is not that we're going to define it and leave it. The test is, we're going to define it and use it.

The question is: Does it serve the purpose
of doing what we have just discussed, be either wish to
do or wish to prevent from happening in terms of our
application of this to the communities of interest that
we identify?

Discussion on the motion? If not, all
those in favor of the motion, signify by saying "Aye."

COMMISSIONER HUNTWORK: "Aye."
COMMISSIONER ELDER: "Aye."
COMMISSIONER HALL: "Aye."

CHAIRMAN LYNN: Chair votes "Aye."

Motion carries unanimously.

(The motion as voted upon read:

"With respect to communities of interest
significant detriment means (a) significant
detriment to the ability of that community
to have effective representation, or, (b)
deprivation of a material or substantial,
but not a minimal or inconsequential,
portion of that community of effective
representation.")

MS. LEONI: Chairman, that's the end of our
presentation on definitions.

CHAIRMAN LYNN: Can't tell you how
disappointed I am you don't have more presentation on
definitions.
COMMISSIONER HUNTWORK: Mr. Chairman, I have a motion that relates to definitions, if I could.

CHAIRMAN LYNN: To all or to one?

COMMISSIONER HUNTWORK: To the definition of community of interest.

CHAIRMAN LYNN: Then let's go back to the adopted language. I don't know whether you have it, Mr. Johnson, but we have it on a handout.

COMMISSIONER HALL: I don't have it.

CHAIRMAN LYNN: A community of interest is a group of people in a defined geographic area with concerns about common issues, such as religion, political views, history, position, demography, history, culture, social -- should be socioeconomic -- socioeconomic status, trade, or other common interest that would benefit from common representation.

That I believe is where we are.

CHAIRMAN LYNN: Social is not what was in the motion adopted. Socioeconomic would make more sense.

MR. JOHNSON: Just to clarify, that term is actually right out of one of the academic writing.

CHAIRMAN LYNN: Not socioeconomic?

MR. JOHNSON: Right.

CHAIRMAN LYNN: Substantially means the same thing. I'm not going to quarrel.
Mr. Huntwork.

COMMISSIONER HUNTWORK: Mr. Chairman, I believe something is missing from this definition; and I am, of course, gravely concerned as we go along going to think of things missing from all the definitions.

One has just jumped out at me in this one, and that is, I believe we have to add at the end, "the notion that the community is not divided by other issues of equal or greater significance."

A classic example is the distinction that we made between the Hopis and the Navajos, for purposes of federal representation, and failed to make for purposes of state representation. And the argument is, well, there are many issues in common. There are, obviously, Native American rights issues, and there are issues of health care and poverty and jobs and many issues that are common. But at least at the federal level, there were supervening issues which the Hopi, in particular, made it crystal clear were overwhelmingly significant. And I want to make sure that we have in here the ability to distinguish those types of situations. And I'm not sure we do if we don't add these words.

CHAIRMAN LYNN: Ms. Hauser.

MS. HAUSER: Mr. Chairman, to that point,
the record, at least, according to the information you
received from the Hopi Tribe, was such that the Hopis
described community of interest, indicated that they did
not have these common ties with the Navajo. That was in
fact the debate. The Navajo Nation said they did have
those kinds of common ties.

So in that situation, it was -- probably
had more to do with rather than -- if I understand what
you are saying correctly, it would be as if the
Commission determined that they were a community of
interest combined, combined community of interest with
respect to one situation but not another. And the record
that the Hopi Tribe made would be to the contrary.

COMMISSIONER HUNTWORK: Of course that is
ture, Ms. Hauser; but by the same token, the record that
the Navajo Tribe made was that they had these issues in
common and the Commission, as with many cases of
conflicting evidence, had to use our own knowledge and
wisdom and common sense to decide what was correct and to
what extent.

But also I think it's critically important
to understand that, at least for me, a part of the
equation was the issues that divided as well as the
issues that unite. And so without specifying and saying
I agreed on this, disagreed on that, and so on and so
forth, the lack of community with respect to some
critically important issues helped to solidify the
decision that there was not a -- that there was not a
community of interest for federal purposes. I voted
against for state purposes as well. You may recall,
although the record did not indicate, it showed a
four-one vote, it was a three-two vote. Perhaps this is
the opportunity to clarify that particular record.

CHAIRMAN LYNN: Well, with respect to
adding to the definition to amending the definition,
would you state it again so I see if there is a second?

COMMISSIONER HUNTWORK: I would like to add
at the end, "and which is not divided by other issues of
equal or greater importance that would benefit from
separate representation."

CHAIRMAN LYNN: Is there a second?

COMMISSIONER ELDER: Second for discussion.

I'm not quite sure I understand the addition as to why we
would need that again.

COMMISSIONER HUNTWORK: Well, in my mind,
you know, in my mind, the Navajo and the Hopi are
merely -- are merely the most obvious example. And I
thought, I actually thought by focusing on them, it would
be obvious why this was needed.

Ms. Hauser makes a technical argument that
perhaps that is not why we did what we did in that case. But, in any event, this definition would, I think, you know, say that all people in a particular socioeconomic class are in the same community of interest, even though they may been in different -- from different cultural backgrounds, different geographical areas. Because they may be united by economic status. And they might in fact benefit from common representation. But they have many other things that are completely dividing them and separating them. And I just think that the notion of what is at the core, there are more things uniting them than dividing them is at the core of defining a community of interest.

MS. HAUSER: Again, we don't have any, Jose and I have no position with respect to which way you should to go on this particular question; but only the desire to be able to implement and carry these definitions forward.

The question I have is, for example, in a homeowner or neighborhood association-type community of interest, we would hear speakers talk about the issues that they had in common that they want to address legislatively; but they may have many differences of opinion on a wide variety of other issues.

I mean, they -- from -- I mean, you name
it, but there may be something that unites them legislatively. If this is added to the definition, would we then need to have a record made anytime somebody comes forward to ask them about the things that divide them as well so that you can make that evaluation?

That is -- I guess that's my question and concern as to the level of record you would need to create to substantiate this definition.

CHAIRMAN LYNN: And I think the converse. I'll get to you, Mr. Hall.

COMMISSIONER HALL: Uh-huh.

CHAIRMAN LYNN: Just as you get to me most of the time.

I think -- I think the point Ms. Hauser makes to me clarifies my position against adding the wording because this is something that is either promoted by testimony, somebody comes in and says, please consider us as community of interest; and if there's conflicting testimony, that too will be on the record. And that it is then up to the judgment of the Commission as to which and how those communities are to be treated based on the totality of the record and the information that is available.

And in fact, what we did was make that determination on the basis of a number of things, even
though there were a number of similarities between the
two communities, there certainly were a number of
differences that were pointed out as well. The problem
that I have is sort of proving the negative, proving what
doesn't have in common. And I'm concerned if you
don't have ready testimony where that is the case, you
simply don't address it. And I'm not sure we can make
that determination on a case-by-case basis.

I frankly like the definition the way it
is, and I'm not inclined to change it.

Mr. Hall.

COMMISSIONER HALL: I agree with that,
Mr. Chairman. I think we have a determination. We can
determine ourselves, Mr. Huntwork, if they would benefit
or if they would not benefit from common representation.
But I think that the added information simply complicates
the matter and does not help us any.

CHAIRMAN LYNN: Mr. Huntwork.

COMMISSIONER HUNTWORK: Mr. Chairman, I
hear that. I think Mr. Hall's argument is that it's
implicit anyway.

COMMISSIONER HALL: Right.

COMMISSIONER HUNTWORK: And if that is the
case, it certainly doesn't hurt to make it explicit.

But here is what I think is the crux of the
matter. If we -- I am concerned about the record as well. And I agree with you that we make the decision on the record. But if we don't allow -- if our definition simply makes it irrelevant that there are differences, then it's not going to matter whether people come in and say, "But there are all these differences." We're going to say it doesn't matter. If we're going to logically consistently apply our definition, you guys are a community of interest, you don't get to tell us about the differences. We're here to hear about the similarities, not about the differences.

The only argument that has any weight with me, I think we have to allow that. The only argument that even makes me stop for breath in all this argument, it may be implicit anyway. If it's not implicit anyway, we have a disastrous argument.

CHAIRMAN LYNN: If it's implicit we make a finding based on these things, we will in the next couple days, it's my fervent hope, get to the place we'll be reaffirming findings we have previously made and attacking geographic definitions as well to those communities.

So I think it is a matter of making findings depending on, I do think it is implicit.

Any further discussion on the motion? The
motion is to amend, using Mr. Huntwork's language. All those in favor of the motion, signify by saying "Aye."

COMMISSIONER HUNTWORK: "Aye."

CHAIRMAN LYNN: Those opposed, say "No."

COMMISSIONER ELDER: "No."

COMMISSIONER HALL: "No."

CHAIRMAN LYNN: Chair votes "No."

Motion defeated, one to three.

COMMISSIONER HUNTWORK: Mr. Chairman, I'd like to say, at least two of the Commissioners voted against the motion on the ground the notion was implicit anyway, therefore, the amendment is not necessary. Is that correct?

CHAIRMAN LYNN: In part.

COMMISSIONER HALL: Yes.

COMMISSIONER HUNTWORK: Okay.

CHAIRMAN LYNN: Okay. Are there any more definitions or applications of definitions we need to address this evening in order for NDC to feel that they have gotten specific definitions which, when asked to apply them, can be applied?

MR. JOHNSON: Mr. Chairman, I think we're all set.

CHAIRMAN LYNN: That's scary.

CHAIRMAN LYNN: Mr. Hall.
COMMISSIONER HALL: Mr. Chairman, can I request before we move, whenever that is, to a study session, we get an update?

MS. HAUSER: Yes, I have one.

COMMISSIONER HALL: Thank you.

CHAIRMAN LYNN: What I suggest at this point we do the following. This is the suggestion for the remainder of the evening. I want to make this overall suggestion so not only members of the public clearly find something better to do on Saturday night, and the Commission can be clear about where we're going and how we're going to get there.

I suggest, first of all, we take a break. We're coming up on the time to do that, anyway.

Let's have this break be minimal, 15 minutes. And following the break, NDC will make a presentation with respect to the geographic configuration of communities of interest. That presentation will be made available to the Commission in hard copy.

And I would suggest we take our own time this evening, which otherwise would be used for sleep, in all probability, to review in detail that presentation, and return tomorrow afresh at some hour that we will determine to begin discussing which of those communities we wish to reaffirm with geographic boundaries.
And to do that in the most efficient fashion, I would ask NDC simply go through that presentation, we answer any very general questions about how they came to include something or not; and then that we recess at that point for the evening and reconvene tomorrow morning at a time that you would suggest.

Does that seem reasonable to the Commission?

Mr. Huntwork.

COMMISSIONER HUNTWORK: Mr. Chairman, I add to emphasize initial presentation be as brief and succinct as possible in detail. I'll figure that when I have time finally to sit down, look at things rather than all slowed down by --

CHAIRMAN LYNN: Given that, what I would ask, Mr. Johnson, is that the primary portion of your presentation be concerned with how you arrived at what you are handing out. Because what you are handing out is self-evident. You are handing out a number of maps with designated maps, and so on. And that going through the list is perhaps superfluous. We'll go through it tomorrow in detail.

Address how you came to arrive at whatever you are handing out and then hand it out and we'll go from there.
Chairman Lynn: Mr. Johnson.

Mr. Johnson: Did you want to take a 15-minute break?

Chairman Lynn: I'm sorry. Thank you. It's been a long day. 15-minute break. Please let's try to be back at 6:20. We might be able to get out of here by 7:00. We'll recess for 15 minutes.

(Recess taken.)

Chairman Lynn: Commission, come to order. All four Commissioners present, counsel, consultants and staff.

Mr. Johnson: Mr. Chairman, pursuant to instructions to revisit very quickly where we are in the process last week, Commission adopted a process, first step adopting definitions. Actually, I guess we're in stages two and three, adopting communities of interest based on definitions and NDC defining communities of interest and their boundaries.

That's what this step is, us attempting to go through the record in the time that we've had and bring up a list of communities of interest that were discussed before and present to you information on them from which you can decide whether or not they meet your definition of community of interest.

We were interested, to prepare this list,
in including and identifying their boundaries to whatever
extent possible, and to map each one of them in a
stand-alone geographical depiction, not a plan or map of
the state, individual maps of each area in question.

So that's -- the other instructions listed
here are things for, I guess, tomorrow. The adopt
definition, this is one we've reviewed considerably
today. I'll skip over that. And let me put this in
context before I get into any details, and I'm not going
to go into a lot of detail at this point.

I should point out, hundreds of people
commented throughout this process in meetings, through
e-mail, writing the Commission in all different forms,
pretty much any form you can imagine, the Commission took
comments. What I'm presenting on these slides are
representative quotes. This is certainly by no means
exhaustive. And there are many, many more than I'm going
to show here.

EACO, Tri Cities, Cochise, Hopi, Navajo,
and many others had hundreds of comments on that one
community. This is a representative sample, our quick
review. I fully expect the Commissioners will have
differing views on what the record reflects and what
would be a more representative opinion. This is a
presenting from our review.
We certainly expect discussion and perhaps
disagreement with how we chose with the quotes we chose
or definitions of communities that they describe. And
this is presented as a review of the record. NDC is not
presenting these communities to say these meet the
definition or don't meet the definition, simply reporting
on the record. And as we've discussed, this is three
years of Commission work, reviewed over essentially the
last five days. So this is not an exhaustive list, but
it should be a good one to get us going and jumping into
this process.

The presentation I have and that has been
handed out presents these communities in two groups in
roughly alphabetical order. It differs from alphabetical
order if three, four communities in the same location,
and I put those together. So you'll see them together.

The first group is essentially the
presentation from July of 2001 of Arizona units of
representation. That -- the maps, the same maps you saw
there, and the list of communities, and that is what came
out of that July 2001 discussion, then the second group
is other communities of interest.

Obviously, the Commission's consideration
of communities did not stop with the July AUR
presentation, and then the use of those AURs to build the
first draft map. Commission continued to take input on communities of interest. And while, just to clarify one thing, the AUR, a couple communities of interest, but there are -- the AUR list does not encompass all communities of interest. Many other communities of interest came up after you build AURs for the building block of the draft.

First step, AUR'S. Second step, walking through other communities of interest we captured in our review. Quotes, representative quotes, presented grouped into groups. One is looking at quotes, define the identity. What makes that community? And second is a note, either a note or quote on what are the boundaries of that community.

So I think, if it's all right with the Commission, I think I'll just run through the list so that the public and people here get a big picture view of what is in here, and then leave the details and individual quotes for your review this evening and discussion tomorrow, if that pleases the Commission.

CHAIRMAN LYNN: Without objection, if you want to go through them fairly quickly, Mr. Johnson.

MR. JOHNSON: Yes.

COMMISSIONER HUNTWORK: I sort of have an objection in that I can go through them, we can hand them
out to the people here if they are interested in them.

And -- you know, I'd like to get busy looking at them rather than just having them listed. Because that's where there is real work, in effect.

CHAIRMAN LYNN: What is your pleasure, gentlemen, in terms of Mr. Johnson's presentation?

COMMISSIONER HUNTWORK: I just as soon skip any reading or listing once identified in this so we get busy with it. Maybe enter a copy of this in the record so it shows what we're all going to be looking at, at an opportunity, and making copies for any member of the public interested in them.

MR. JOHNSON: Sounds good. One thing I mentioned, for the members at a break, since it's hard to read, per my slide, if any member of the public wants to, I'll e-mail the presentation to them from right here. It won't hurt my feelings not to.

CHAIRMAN LYNN: Okay. Then without objection, we'll --

Ms. Leoni.

MS. LEONI: Thank you, Chairman Lynn. I'm not objecting. I do want to note on the record on the presentation on process second, the third bullet point, which are in incorrect order. We're well aware of that. So it's in the record. This is intended to correct that.
CHAIRMAN LYNN: Thank you.

Then we will consider that Mr. Johnson has completed his presentation this evening.

MR. RIVERA: Very succinct and to the point.

CHAIRMAN LYNN: And we will take these under advisement and look at them tomorrow morning.

Now, I'm --

COMMISSIONER ELDER: Mr. Chairman, will that constitute a -- how he arrived at these particular boundaries?

CHAIRMAN LYNN: It could, or include any other number of questions you might ask relative to any one of these as they come up.

Mr. Johnson.

MR. JOHNSON: Very quickly, how we arrived at this list, off the July 1st list, AUR's from a five-day review of the record and my recalling key communities as we went through this process. Obviously, I don't think I did a perfect review.

MR. RIVERA: And definitions.

COMMISSIONER ELDER: Mr. Johnson, I was more interested, second, third page says, "Hispanic, Maricopa, and Southern." We have some very specific boundaries there. How are those boundaries delineated or
defined? Is that what we will do tomorrow morning?

MR. JOHNSON: I would say that -- the AUR section, those maps are -- they were discussed and adopted in July of 2001. I wasn't there. I can't give specifics of that. I would add that it may very well be in all the hearings and testimony we received since then you would choose to modify those borders.

COMMISSIONER ELDER: Okay.

CHAIRMAN LYNN: Is there anything more that we need to consider this evening?

I want to -- I am tempted -- I even want -- I shouldn't bring it up, I guess. I am tempted to have a call to the public. A long day, had one to start the day, no people here -- I would ask -- anybody want to address the Commission this evening as opposed to tomorrow morning?

MS. LEONI: Judy.


Without objection, Ms. Dworkin. One thing I never tried to do is restrict public comment. We often ask the public to provide us with their input at various times during the meeting. So I'm delighted to give that opportunity. If you would, since you don't have a yellow slip, at this point, state your name and affiliation for
the record.

MS. DWARKIN: Judith Dworkin, counsel for
the Navajo Nation.

Simply I'd like to clarify a point I made
in response to a question to Mr. Elder this morning that
has come up in discussion during the day and is now very
relevant with respect to the handout on communities of
interest.

The question came up as to whether or not a
community of -- into the Navajo Nation was concerned
with, and I'm only paraphrasing, was jurisdictional or
was ethnic. I said "jurisdictional," and it was the
boundaries of the reservation.

When you review your handout this evening,
you will see that clearly, one, community of interest is
each of the tribal reservations defined by the boundaries
of the reservation. And my answer this morning was
specific to that community of interest. But under your
definition of community of interest, there are other
communities of interest that the Navajo Nation considers
itself a part of. One is a community of interest of
Indian Reservations within it's geographical boundaries,
that is a community of interest of the Navajo Nation and
the Hopi Tribe. And another broader is a community of
interest of Native Americans with respect to and
particularly the reservations of the Apache Tribes.

And so when I discuss community of interest, I know that you all understand. But wanted to clarify for the record that there are these overlapping communities of interest, like an onion skin, the most critically important to the Navajo Nation is that of its jurisdiction.

Thank you.

CHAIRMAN LYNN: Thank you, Ms. Dworkin.

Any other members of the public wish to address the Commission at this time? If not, let me ask the Commission for a time to begin tomorrow. We are -- we are noticed, I believe, for an 8:30 start. And unless there is some reason to deviate from that time, I would suggest that we begin then.

I certainly want to begin as early as we can, because it's going to be a long day and a long Monday as well. Without objection, 8:30 tomorrow morning? Very well. Is there any other business to come before the Commission today?

MR. ECHEVSTE: Mr. Chairman, just housekeeping. Doug asked me to print out that presentation on single pages. It's being done right now. If you would all just hang around for a little while, while it's being printed so I can give it back to you.
CHAIRMAN LYNN: Or can you deliver it to
our rooms or whatever if we're not here?

MR. ECHEVEST: Okay.

CHAIRMAN LYNN: We're all somewhere in this
facility, except Mr. Huntwork.

COMMISSIONER HUNTWORK: How long? When
will it be done?

MS. JONES: Being printed.

CHAIRMAN LYNN: How long before being done?

10 minutes? Hour? Three hours?

MR. ECHEVEST: Hopefully, 10 minutes or
so. Can't guarantee it. Have to check and see.

CHAIRMAN LYNN: Okay. Any further business
from Commissioners? From counsel?

All right. The Commission will recess
until 8:30 tomorrow morning. I believe the same
location. I think we're in the same room tomorrow
morning. The Commission will stand in recess.

(Whereupon, the Commission adjourned at
approximately 6:39 p.m.)

* * * *

LISA A. NANCE, RPR, CCR No. 50349 248
BE IT KNOWN that the foregoing Arizona Independent Redistricting Commission 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 248 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 15th day of April, 2004.

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