STATE OF ARIZONA
ARIZONA INDEPENDENT REDISTRICTING COMMISSION

PUBLIC REPORTER'S TRANSCRIPT OF PROCEEDINGS
PUBLIC SESSION
Phoenix, Arizona
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COPY Certified Court Reporter
ARIZONA INDEPENDENT Certificate No. 50349
REDISTRICTING COMMISSION Phoenix, Arizona 85019
Lisa_Nance@cox.net
The State of Arizona Independent Redistricting Commission was noticed to convene in Open Public Session on June 3, 2004, at 9:30 o'clock a.m. and went on the record at 9:30 o'clock a.m., at the Offices of the Arizona Independent Redistricting Commission, Phoenix, Arizona, 85007, in the presence of:

APPEARANCES:

CHAIRMAN STEVEN W. LYNN
VICE CHAIRMAN ANDI MINKOFF
COMMISSIONER JAMES R. HUNTWORK
COMMISSIONER JOSHUA M. HALL (Present Telephonically.)
COMMISSIONER DANIEL R. ELDER (Present Telephonically.)

ADDITIONAL APPEARANCES:

LISA T. HAUSER, Commission Counsel
JOSE de JESUS RIVERA, Commission Counsel
ADOLFO ECHEVESTE, IRC Executive Director
LOU JONES, IRC Staff
KRISTINA GOMEZ, IRC Staff
LISA A. NANCE, RPR, CCR, Court Reporter
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2 Letter from Hector Flores, LULAC, to Mr. Rich, DOJ.
3 Speaker Slip for Allen Tempert.
4 Speaker Slip for Liberato Silva.
5 Speaker Slip for Martin Victor.
6 Speaker Slip for Michael Mandell.
7 Speaker Slip for W. Kent Foree.
PROCEDINGS

CHAIRMAN LYNN: Call the meeting to order.

Roll call.

Mr. Hall?

COMMISSIONER HALL: Here.

CHAIRMAN LYNN: Mr. Elder?

COMMISSIONER ELDER: Here.

CHAIRMAN LYNN: Ms. Minkoff?

COMMISSIONER MINKOFF: Here.

CHAIRMAN LYNN: Mr. Huntwork?

COMMISSIONER HUNTWORK: Here.

CHAIRMAN LYNN: The Chairman is here along with legal counsel and staff.

Ladies and gentlemen, on the agenda this morning are several items. What I'd like to do, without objection, is take public comment first, then move on to other items we may wish to cover.

So, without objection: 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. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date unless it is the subject of an item already on the agenda.

I have four speaker slips. If there are others, please make it known to us you would like to address the Commission and we would be happy to accommodate you.

For the benefit of the two Commissioners who are on the phone, I would ask, since we do not have the ability to amplify your voice this morning, speak loudly and as clearly as possible.

Mr. Elder, Mr. Hall, if it is difficult for you to hear the speaker, let us know. We'll move the phone so it picks up better.

COMMISSIONER ELDER: Thank you.

CHAIRMAN LYNN: First speaker, Allen Tempert, Director of Elections for Mohave County.

Mr. Tempert.

MR. TEMPERT: Thank you. Good morning.

Thank you very much for being here, to let me speak very early to meet other commitments I have in the area.
It's very simple. I was asked to come down here from the County Attorney's Office since I was going to be in the area and able to make it just to give the opinion of Mohave County which is very interested in the possible withdrawal of the Department of Justice submission that is, I understand, to be considered possibly at this meeting.

So, for the record, I would just like to state Mohave County is in favor of withdrawal.

CHAIRMAN LYNN: Questions for Mr. Tempert?

Thank you, sir.

Next speaker, Liberato Silva.

Mr. Silva, Vice Mayor.

MR. SILVA: Mr. Chair and Members of the Committee, thank you very much for allowing me to speak for a few minutes. Again, Liberato Silva, Vice Mayor, City of Flagstaff.

Thank you for this opportunity to speak. I represent the Community of Flagstaff and Metropolitan Planning Organization. We strongly recommend the Independent Redistricting Commission not withdraw the Section Five submission of the April 12, 2004, plan to the Department of Justice for preclearance. Recent events have proven that time is critical to the interests of the voters of this state. The Court of Appeals will
take up the appeal from Judge Fields' order in the ordinary course. And regardless of the result, one would expect the disappointed side to file a petition for review by the Arizona Supreme Court. An appeal and petition for review of this complexity necessarily will require significant time, certainly as much as a year, and quite possibly longer. To await the unfolding of this process before submission of the April 12 plan to DOJ for preclearance runs the risk of a time crunch two years from now.

Second, it is in the interests of the state taxpayers not to withdraw. Given the supplemental appropriations needed to fund the Commission's activities, prudent expenditure of taxpayers' money must be a concern. The Commission already has incurred the not unsubstantial costs of the submission and a withdrawal will waste that expenditure and will require a double expenditure if the trial court is affirmed on appeal.

Finally, nothing is lost by allowing the submission to stand. For all practical purposes, nothing the Department of Justice does can affect the 2004 election. The stay issued by the Court of Appeals and the lack of any appeal from the stay means that the 2004 election will be run on the 2002 plan. In contrast,
letting the submission stand will avoid any risk to the 2006 election and will avoid spending money twice on the same task.

Under these circumstances, it only makes common sense and good judgment not to withdraw the submission.

Again, I thank you very much for hearing me out this morning in hopes you will not withdraw.

CHAIRMAN LYNN: Thank you, Mr. Silva.

Would anyone care to ask questions?

COMMISSIONER HUNTWORK: May I ask questions?

CHAIRMAN LYNN: You may indeed.

Mr. Huntwork has questions.

COMMISSIONER HUNTWORK: Mr. Silva, we've been recently, it's been more the custom to stop and ask people testifying for clarification when we hear something that may be inconsistent with what we have heard from other sources.

I have heard from other sources that there is a question about what will happen if the Justice Department were to preclear a second plan. The argument is that the preclearance of the first plan would automatically be revoked and that would leave us, us,
meaning the State of Arizona, in the situation where we have one plan which the Court of appeals has found cannot be implemented in time for the November election precleared and another plan which can be implemented which may no longer be precleared and subsequently we may not be able to hold an election under any plan. Now, judgment and common sense would actually say that whatever we do, we must not allow ourselves to find ourselves in that position.

Would you, would you comment on the source or authority for your statement that there's no problem having two precleared plans and it would have no effect on the November election?

MR. SILVA: The thought is that the preclearance would probably not happen in time to affect the upcoming election and that the upcoming election would probably be used -- would probably refer to the 2002.

COMMISSIONER HUNTWORK: The question is if it happened any time before the November election, would that not cancel preclearance of the plan and we'd not be able to hold elections under the new precleared plan with cancellation of the plan?

CHAIRMAN LYNN: Mr. Cantelme.

MR. CANTELME: David Cantelme, Jennings,
Strouss & Salmon, for Flagstaff.

COMMISSIONER HALL: Speak up.

MR. CANTELME: David Cantelme, Jennings, Strouss & Salmon, counsel for the City of Flagstaff.

If I may speak to the question of Mr. Huntwork.

Mr. Chairman, Mr. Huntwork, the view of the City of Flagstaff is if this plan is allowed to remain with DOJ for its consideration and it is precleared, the election will still go forward on the 2002 plan; it will not prevent the 2002 plan from being implemented, going forward. It is, in fact, the only plan we could go forward with given the stay issued by the Court of Appeals.

I think what we should focus on is the future and don't get back in this situation in 2006, don't spend money twice on a second submission which will necessarily waste all the money already spent.

CHAIRMAN LYNN: Mr. Huntwork?

COMMISSIONER HUNTWORK: I understand the argument on the second submission, and all that. I don't understand how you can assure us that the election can go forward on the other plan. The State Court of Appeals does not have authority to order an election to occur under a plan that has not been precleared by the United
States Justice Department. How do we get past that problem?

MR. CANTELME: Mr. Chairman, Members of the Commission, Mr. Huntwork, the view of the City of Flagstaff is because you have the April 12 plan precleared does not prevent, does not do away with preclearance for the 2002 plan. There's no reason you could not do away with 2002 under DOJ. Assurance? Nothing is absolutely certain. I think odds are very substantial you can go forward, will go forward with the 2002 plan. It makes sense to do that.

COMMISSIONER HUNTWORK: Do you have any authority, any case law that stands for the proposition a state can have two precleared plans at the same time?

MR. CANTELME: I don't have any citations with me.

COMMISSIONER HUNTWORK: Do you know where Department of Justice is on that?

MR. CANTELME: I don't know if they've stated their position.

CHAIRMAN LYNN: Thank you.

Mr. Silva, thank you, Mr. Cantelme.

COMMISSIONER HALL: I have a question for Mr. Cantelme.

CHAIRMAN LYNN: Mr. Hall.
COMMISSIONER HALL: Mr. Cantelme, are you saying the City of Flagstaff, if the Commission does not pull the April 12 plan and DOJ were to preclear it, are you saying that the City of Flagstaff is willing to stipulate to the 2004 elections operating under the current plan?

MR. CANTELME: The City of Flagstaff is not objecting to go forward under the 2002. We've not taken a position on the Court of Appeals' position. I think we've accepted it.

COMMISSIONER HALL: You'd be willing to put that in writing?

MR. CANTELME: If you are willing to vote our way, we will.

CHAIRMAN LYNN: Other questions?

Thank you, gentlemen.

Next speaker, Martin Victor. Mr. Victor, a candidate for Senate.

MR. VICTOR: Martin Victor, not a candidate for Senate, three-year residency, short of, had to withdraw candidacy, 4613 West Greenway Road.

I'm here today to speak to the principles of democracy. I believe in democracy, believe in open, fair debate.

Open, that's pretty self-explanatory.
Everybody ought to have their opinion voiced, heard. Fairness is more difficult, requires things be well-balanced. Any Committee, any Commission, any Legislature, what happens when you don't have balance? You eliminate the compromise portion of debate. Right now in Arizona, there's a six percent advantage of one party in the Legislature, yet one control, command of the Legislature. There's imbalance. It needs to be corrected. The Court in Arizona ruled it is unconstitutional. It is up to the Commission to show us they represent the principles of democracy.

That's all I have to say today.

CHAIRMAN LYNN: Thank you for that, Mr. Victor.

The last speaker slip I have this morning is Michael Mandell, represents the Arizona Minority Coalition.

Mr. Mandell, good morning.

MR. MANDELL: Michael Mandell representing the Arizona Minority Coalition for Fair Redistricting. We'd echo the statements of Mr. Silva, the City of Flagstaff, comments made at the hearing last week, and respectfully request the Commission not withdraw the submission allowing it to go forward. There are 16 days remaining in the preclearance process, so we'll have a
decision very soon. It's one where we don't think that it's likely that the Department of Justice is going to provide expedited preclearance at this point, given it hasn't happened yet, middle, end of June. We agree it's probably likely the 2002 plan will go forward as the precleared plan. So despite that, despite allowing the precleared process to continue, we believe elections this year will be held under the 2002 plan.

One thing, one of the questions I got last week was in regards to minority support for the Commission's April 12 plan. I'd refer to some letters submitted by the Coalition to the Department of Justice. I have a letter to the Department from LULAC as well as a letter submitted to the Department of Justice I'd provide to the Commission for edification.

CHAIRMAN LYNN: Receive for the record.

Questions from the Commission?

COMMISSIONER HUNTWORK: Mr. Mandell, thinking of our questions last time, and I'd just like to ask, want to try to understand, on the assumption that the election this fall is going to go forward on the 2002 plan, how would your clients then be prejudiced if the Commission withdrew the pending application at the Justice Department and simply resubmitted it immediately following the November elections? My thought is that
would eliminate risk to the whole state of having a preclearance occur sometime between now and the November elections and thereby raise that issue and yet there would then be no question that the, whatever Justice Department was going to do with the judge ordered plan, they would have ample opportunity to do it before the 2006 elections. I don't even know why it would necessarily cost a significant amount of money. We'd just resubmit it, say take up where you left off.

MR. MANDELL: Mr. Chairman, Mr. Huntwork, the assumption of 2006 and ample time is a falsity. I think what is going to happen is because of the appeal and time required -- we don't know when the Court of Appeals will rule. Probably sometime in 2005 briefing will occur in the Supreme Court and a decision will occur sometime in late 2005 or early 2006. If the trial court is upheld, we're in the exact same position we are in now.

COMMISSIONER HUNTWORK: I'm --

MR. MANDELL: Or if required to redraw and come back, redraw that and preclear that, the circumstance that 2006 is so far away, not a problem, I think that is wishful thinking. I think we'll be facing the exact same scenario in 2006 as we're facing now.

As far as money, DOJ doesn't just pick up
where they left off. There will be new elections to
review now, require that additional data be submitted,
that analyzed by Department of Justice at some cost to
the state in providing that data as well as the
Department of Justice, federal taxpayers, in analyzing
that data, that wouldn't be spent in the next 60 days,
assuming they don't ask for additional information,
certainly the taxpayer dollars would be spent next time
as well.

COMMISSIONER HUNTWORK: Mr. Chairman, if I
could.

CHAIRMAN LYNN: Go ahead.

COMMISSIONER HUNTWORK: Take the second
point, understand that. The first point, I think we may
have miscommunication.

I understand, agree with your statement we
don't know what the Court of Appeals is going to do. It
may uphold the Commission's original case, we would be
completely done. It may agree what the trial court did
was wrong, disagree with the methods imposed by the trial
court, or result, order us to do it again under new,
different rules, or uphold the trial court completely.

The question I'm asking is a narrow one as
to the specific plan ordered by the trial court. If the
Commission were to resubmit that plan in, say,
mid-November 2004, why would that not provide ample time for the Justice Department to consider that plan before the next election in Arizona? That would mean the Justice Department had almost two full years to consider the plan.

MR. MANDELL: Mr. Chairman, Huntwork, if that were the scenario before the Commission, I don't think there would be any prejudice by the Commission in resubmitting in December --

COMMISSIONER HUNTWORK: November.

MR. MANDELL: November. The only question is why the Commission would do that. We're 14 days away from a decision now. Why would you want to restart the clock again, have 60, 120 days, however many days it takes, force expenditure of additional taxpayer dollars for additional review the same year?

COMMISSIONER HUNTWORK: Because of the argument, because of the argument you made that the preclearance of a second plan revokes preclearance of the first plan. Arizona would be in a situation that it cannot proceed under the 2002 plan, because it's not precleared, and we have the findings of the Court of Appeals, which I personally agree with, that it's too late to implement the judge ordered plan in time for 2004 elections, a horrendous result for the State of Arizona,
which can be avoided, we can avoid that prejudice to the
state and at the same time, by your own statement, not
create any prejudice for the court ordered plan if we
simply withdraw it now and resubmit in November.

MR. MANDELL: Mr. Chairman, Mr. Huntwork, I
think at this point we all agree it's too late for any
other plan to be implemented this election cycle without
dates being pushed off, other things changing. It's
unlikely any other plan could be used this election cycle
regardless of whether precleared or not.

COMMISSIONER HUNTWORK: Are you now saying
there's no risk, contrary to what I thought you said two
weeks ago, or last week, sorry, are you now saying there
is no risk, if the Justice Department preclears the Court
ordered plan, there is no risk that that would revoke the
 preclearance of the 2002 plan, no risk whatsoever?

MR. MANDELL: Mr. Chairman, Huntwork, I
never say no risk at all. I can say the risk is probably
very minuscule. We've not appealed the Court of Appeals
decision to the Supreme Court, likely because we wouldn't
get a hearing before the 9th or 10th, or who knows when.
The same situation, it's already too late, by the time
the court took it up and decided that issue. So we don't
feel that will be a problem for this election regardless
of whether it stays with DOJ or does not.
COMMISSIONER HUNTWORK: Thank you.

CHAIRMAN LYNN: Ms. Hauser, Ms. Minkoff.

MS. HAUSER: Mr. Mandell, just a couple questions. You mentioned a minute ago that it's too late, really, to move dates. I know during the stay proceedings I heard Mr. Eckstein argue dates could be moved or should be moved, one of the things argued to the Court of Appeals. I want to check now what I'm hearing, that it's the Coalition's current position it is too late to move.

MR. MANDELL: Mr. Chairman, Ms. Hauser, after June 9, it is too late to move dates.

MS. HAUSER: The other question I have, in your comments to the Commission this morning, prior to Mr. Huntwork's question, you said that the elections for this year will probably be held under the 2002 plan previously enjoined. That doesn't sound very certain to me. So I want to double-check what you mean by "probably." I may have a follow-up question to that.

What does "probably" mean in that situation?

MR. MANDELL: Mr. Chairman, Ms. Hauser, as a lawyer, I can't provide absolute certainties, don't know what absolute certainties is.

MS. HAUSER: Okay.
MR. MANDELL: I don't know a hundred percent what the Department of Justice, federal court, state court, or what exactly happens in that circumstance, haven't done research, haven't found another scenario where this occurred.

MS. HAUSER: I agree with that.

Could you agree the Commission this morning could provide absolute certainty to the voters and candidates for the election, to the candidates, to the state, if it were to withdraw the submission of the April 12 plan?

MR. MANDELL: Mr. Chairman, Ms. Hauser, I agree if the Commission pulled the plan, one plan were available, that's true. I don't think going forward, allowing the submission to continue would affect it, either. Like I said, I can't give you a percentage of my certainty, but I think it's pretty strong, unlikely, anything is going to affect the 2004 elections at this point regardless of whether the Commission leaves the plan or pulls the plan.

MS. HAUSER: Okay.

MR. MANDELL: Let DOJ go forward.

Resubmission of the plan, taxpayer dollars will be wasted, the process is only 14 days away from completion, if that isn't allowed to go forward.
MS. HAUSER: The financial argument, the same argument could be made if the Commission were completely successful on appeal that, you know, a great deal of taxpayer money was wasted in requiring development of a plan in the first place when it's clear now the Commission was correct in February there is insufficient time to implement it.

That said, let me ask you this question: Probabilities you are talking about, you've indicated you are unable to give absolute certainty. If in fact the Commission leaves the plan at DOJ and sometime before the election, certainly June 21 is one cut-off date, in my experience DOJ has a habit of sometimes very close to the end of the period sometimes asking for additional information and could bump it another 60 to 120 days, start up with a new 60-day period from the time they get the information, which you have 60 days to give to them. It's unclear something might happen, sometime before the election preclear the April 12 plan. Can you on behalf of your clients give a hundred percent guarantee that the Coalition would not go to court in some fashion to disrupt the use of the 2002 Commission plan that was previously enjoined and the injunction is now lifted for the 2004 elections? Can you give that guarantee?

MR. MANDELL: Mr. Chairman, Ms. Hauser, we
are meeting with the Coalition today, can provide more
information later today after we have met with the
members of the Coalition. Unfortunately we were not able
to have that meeting before this meeting, although we
discussed this with some of them. Those we discussed it
with were in favor of not doing anything this election,
allowing that to go forward.

We represent a group of people, so we have
to talk to all members before we have a solidified
position. Having said that, I think it extremely
unlikely we'd move to challenge the 2004 elections. All
the people we represent are elected officials, for the
most part. They are running in this election as well.
They need certainty, need to know where they are running,
what they are doing. Their constituents want to know.
It is extremely unlikely that the Coalition would vote to
move forward and bring an action to enforce their plan,
assuming it gets precleared.

MS. HAUSER: Right.

MR. MANDELL: June 21st or --

MS. HAUSER: You don't represent everybody.

You can't speak to what everybody would do. You only
represent the Coalition.

COMMISSIONER MINKOFF: Mr. Mandell, this
perspective, scenario, concerns all of us. Whatever plan
we believe is the map that should be used, whatever political orientation, all of us are interested that we conduct the 2004 elections, move absolutely, and that the people of the State of Arizona know what district they live in and who the candidates are and who their choices are in the general election. I don't think anyone does not want that kind of scenario.

I'd like to get your perspective on something that has concerned us. We've certainly felt, I've been led to believe, that if the Department of Justice preclears the current map before them, the map we approved in April of this year, that they will then take the position that it is the only acceptable map, that, in effect, it trumps all prior precleared maps, and that the map that was created in 2002 would no longer be precleared. That is their position. Therefore, according to Department of Justice, we cannot use the 2002 map. However, according to the Court of Appeals of the State of Arizona, we cannot use the map that is currently before the Department of Justice. So if preclearance comes through, we are concerned that DOJ is going to say this is the map you have to use, the Court of Appeals of the State of Arizona is going to say this is the map you have to use, they're not the same maps. There is an election to hold. The people need some sort
of certainty. If that occurs, what do you see as the resolution that gives certainty to the people of Arizona for the coming election?

MR. MANDELL: Mr. Chairman, Ms. Minkoff, this circumstance, as far as we can tell, has not occurred before, where a state has two plans precleared, a state has one it wants to use, one it doesn't want to use. Department of Justice, in order to preclear a plan, force the State of Arizona to use a plan, has to take the Commission to federal court to do so, and the Secretary of State. It's unlikely, once the election machinery starts to go, that a federal court is going to undo that machinery, once it's begun the process, once ballots get printed, once the process gets moving. It's very difficult to change at that time. I don't believe a federal court is likely, at least on an interim basis, to force the State of Arizona to use a plan that will change boundaries of precincts and change boundaries of voting districts at the time when ballots have already been printed and some may have already been mailed.

COMMISSIONER MINKOFF: Are you saying that the burden is on the Department of Justice to initiate a court action to require us to use a new plan rather than on the State of Arizona to initiate a court action allowing use of the 2002 plan?
MR. MANDELL: I don't think the State of Arizona is forced to go to court to use a plan already in place, continue on with someone else, or some other entity telling them they can't go forward.

COMMISSIONER MINKOFF: DOJ.

MR. MANDELL: DOJ can say it, can't enforce it, absent the courts forcing it.

COMMISSIONER MINKOFF: Okay.

MR. MANDELL: Go to court forcing the State of Arizona doing it.

CHAIRMAN LYNN: Other questions for Mr. Mandell?

COMMISSIONER HUNTWORK: I'd like to ask a question of Mr. Mandell, our counsel, as well.

Couldn't any citizen raise a question, have two precleared plans, or revocation of a plan, Justice doesn't have to initiate it, the Coalition doesn't have to initiate it, couldn't any voter in the State of Arizona raise it?

MS. HAUSER: Yes.

COMMISSIONER HUNTWORK: The second point, if there were such litigation, that would have cost associated with it. The Commission is painfully aware of how expensive litigation can be, especially when ordered to pay counsel of all parties involved in litigation.
CHAIRMAN LYNN: Mr. Hall.

COMMISSIONER HALL: My question, Jim hit on it, Mr. Mandell, wouldn't you agree the continued costs far exceed, any continued cost to rectify any legal ambiguity far exceed any cost of resubmission?

MR. MANDELL: Yes. That would assume somebody brings an action.

COMMISSIONER HALL: Are you -- I don't know the appropriate instrument, and I know you have a meeting today with your clients. I guess the question I have: Is the Coalition willing to stipulate, with a legal binding instrument, whatever is appropriate, they would not do, take any action to obstruct or interfere with the conduct of the election for this upcoming election?

MR. MANDELL: Mr. Chairman, Mr. Hall, it's in the interests of my clients the elections go forward in a smooth manner. From speaking with the members of the Coalition, discussions with members I had, I do believe those members are leaning toward, would lean toward signing such a document. Until I get chance to meet with all of them and get complete approval, I can't give a statement based on -- to bind the Coalition, don't have authority yet to make that.

COMMISSIONER HALL: What kind of document do you propose that may be, in the event it did occur?
MR. MANDELL: Mr. Chairman, Mr. Hall, in the event it did occur, a stipulation, sign, waive the right to sue to bring that action.

COMMISSIONER HALL: That's all I have, Mr. Chairman.

CHAIRMAN LYNN: Thank you, Mr. Hall.

Mr. Mandell, thank you.

Next is W. Kent Foree, City Attorney for Lake Havasu.

MR. FOREE: Lake Havasu would like to come from some different points, to the plan currently on appeal, the one with the trial court's approval, the other, the trial court's ruling unconstitutionality. Lake Havasu objected to the second plan, the second plan taken by the Commission. We feel there are serious legal challenges, issues with how the whole thing came about. I submit to the Commissioners there is a very real chance, even if the trial court is --

We can get into the same position again is the point I'm trying to make, the Court of Appeals end up sending it back for further consideration and new processing, and you can end up now with the April 12 precleared plan, you are stuck with later held unconstitutional under state law basis because you didn't follow proper procedures. The trial court ordered
certain things, didn't always follow those. The trial
court didn't always follow. Still, there's serious state
law questions about the April 12 map. End up disrupting
it, just like ended up happening with the 2002 map, end
up unconstitutional after a two-year period.

Lake Havasu takes the position, the April
12 map given, becomes rush on that, not given proper
opportunity to challenge it, not given opportunity to
cross-examine witnesses in front of evidentiary hearing,
in front of trial court, serious error, may very well
lead to invalidation of that map if the Court of Appeals
gets to that, which it hopefully won't, hopefully will
uphold the Commission's 2002 work and uphold the 2002 one
on constitutionality.

Lake Havasu's need is to withdraw
submission of the 2004 plan at this time, safe options,
otherwise leading down a path to total confusion, which
plan is used.

I was born and raised in Yuma County. I'm
familiar with the fact elections have been thrown out for
noncompliance with preclearance requirements and the
Voting Rights Act. It doesn't take a stipulation from
the Coalition, does not do any good, unless a stipulation
from every voter in the State of Arizona, and that's not
feasible or possible.
CHAIRMAN LYNN: Thank you, Mr. Foree.

Other members of the public wishing to be heard at this time? If not, I'll close public comment.

For the benefit of my fellow Commissioners, I'll make comment. We always notice for Executive Session. Should any member of the Commission wish to have one, I'd entertain one. I didn't notice having one, don't wish to call for one. If any member would want to call one, it's their prerogative.

With respect to VI, VII on the agenda, questions raised about specificity of items and whether or not appropriate for mention on the agenda, in an abundance of caution, I agree. Although not a lawyer, play one TV, I'll dispense with VI, VII. My reading in my office, attorney in my office, suggest it's perfectly fine, could be of no consequence in terms of the open meeting law, but just for my fellow Commissioners' sake, I'm going to, in an abundance of caution, skip those items today.

I guess I should skip VIII, too, not very specific, might meet future; item IX, when we get to it, we'll do it.

If no member of the Commission wishes to entertain Executive Session, I'll pause to see if there is.
COMMISSIONER HUNTWORK: We can have one later, if an issue comes up.

CHAIRMAN LYNN: Certainly. It's on the agenda, can do that at any time during the meeting. And we could probably stop in the middle of something and do one, if it was appropriate.

Let's at this point move to Item IV. Item IV on agenda has to do with the possible removal of the April 12 plan from the Department of Justice's review.

In order to facilitate discussion on this item, I would ask if there is an affirmative motion on Item IV.

COMMISSIONER ELDER: This is Mr. Elder.

Yes.

CHAIRMAN LYNN: Go ahead and state your motion, Mr. Elder.

COMMISSIONER ELDER: Commissioner Lynn, the motion would be that I, let's see, I -- the Commission should request -- not request -- the Commission should direct the attorneys to withdraw the plan from Department of Justice under current review.

CHAIRMAN LYNN: Is there a second to the motion?

COMMISSIONER HUNTWORK: Second.

MS. HAUSER: Submitted April 12.
CHAIRMAN LYNN: For clarity sake, the April 12 plan?

COMMISSIONER ELDER: Correct.

CHAIRMAN LYNN: Moved and seconded.

Discussion on the motion?

COMMISSIONER ELDER: I believe it is the responsibility of the IRC to submit a precleared map for the election process. The risk of going in and having the appeal -- having the Appeal's Court which granted the stay of the Superior Court's ruling have the Coalition come in, or any other party come in, and contest the ability for us to implement an election under the 2002 plan as amended and precleared would cause a problem with the electorate, with the elected officials, knowing when they are to vote, where they are to participate in the process. And I don't believe under the Constitution the IRC can take the risk of not having a precleared plan in place for the use in the 2004 elections.

CHAIRMAN LYNN: Further discussion on the motion?

Mr. Huntwork?

COMMISSIONER HUNTWORK: A couple questions. I, just with regard to the motion, my understanding of the motion's direction is withdraw immediately as soon as this meeting is over. Is that your intention, Mr. Elder?
COMMISSIONER ELDER: That is the intention.

You know, we -- I don't know your discussion earlier on.

I caught most of the words. Resubmit right after
September elections?

CHAIRMAN LYNN: November.

COMMISSIONER ELDER: November elections, so
processed, and maybe integrated into the appeals process,
as far as the courts go, get us in line for any kind of
court direction as to modifying the plan, or DOJ have
questions, give them time for our response for those
questions, which still give us an orderly process, you
know, going to the 2006 elections. What I don't want to
have happen is the Department of Justice go in, hey,
precleared a plan, the other plan is off the table now,
no plan. That's not fair to the voters of the state.

COMMISSIONER HUNTWORK: Dan, you are not
saying the resubmission part of this motion.

COMMISSIONER ELDER: No. Pulled.

Hopefully faith in the court system will be reinstated.
The appeal, a year to 18 months, or whatever the time
frame was, I can't believe a system that archaic, inept.

COMMISSIONER HUNTWORK: Dan, the question
here, do we need to amend to say immediately or
forthwith? Understood?

CHAIRMAN LYNN: Amend the motion.
Acceptable to the motion?

COMMISSIONER ELDER: Amend?

CHAIRMAN LYNN: Immediately.

COMMISSIONER ELDER: Immediately, even date stamp it.

COMMISSIONER HUNTWORK: I accept that change.

CHAIRMAN LYNN: All right.

COMMISSIONER HUNTWORK: Another question of counsel relating to the motion. Is this something counsel could do, counsel withdraw, or does the Chairman have to sign on behalf of the Commission? How exactly does it work?

MS. HAUSER: Counsel submits the Section Five preclearance on your behalf. Counsel can withdraw. The DOJ regulation requires it simply be a withdrawal in writing.

COMMISSIONER HUNTWORK: Mr. Chairman, on the motion as so amended, I would just like to make a couple comments.

CHAIRMAN LYNN: Please.

COMMISSIONER HUNTWORK: Firstly, I would like to know whether the court ordered plan will preclear or not. It is my intention at a later date, although I support this motion, it is my intention at a later date
to support the motion, resubmit that plan if nothing
happened at the Court of Appeals to upset viability by
that time.

To remind everyone of the history, the
Commission originally submitted a plan found by the
Justice Department to excessively dilute the minority
voting in minority districts and we were compelled by the
Justice Department to submit a plan stronger for minority
percentages. As a result of that, the trial court was
absolutely correct, that it had an impact on the overall
competitiveness of our districts, inevitably. And, you
know, the trial court was not out of touch with the
original intention of the Commission in seizing on the
new theory that might possibly have resulted -- might
possibly have resulted in a way to get back closer to the
percentages that were originally adopted by the
Commission in the original plans which failed to
preclear. I -- in which I believe then and still believe
were the correct plan for the State of Arizona under
Proposition 106. That's why we adopted it in the first
place. But that is for, my view, for a later time.

At this point, in my mind, the issue is
that the Commission can provide certainty for the current
election for everyone, the voters, also the candidates
and individuals that make up the Coalition, who
Mr. Mandell has stated also have an interest in certainty and being able to proceed with the current election. I think that's in everybody's interest. The one and only way I think the Commission can help to achieve that is by, for the time being, withdrawing the current application.

CHAIRMAN LYNN: Further discussion on the motion?

Ms. Minkoff.

COMMISSIONER MINKOFF: Mr. Chairman, I'm very concerned about the implications of this motion. I'm concerned about it because of uncertainty that Arizona has already experienced with respect to the electoral process and because of the uncertainty I think that will result if we pull the plan from the Department of Justice at this point.

Mr. Huntwork speaks about possibly resubmitting it immediately following the November election. If allowing it to be at the Department of Justice causes uncertainty, I think resubmitting in November causes the same uncertainty. We still don't have an opinion by an appellate court.

Let's assume an appellate court gives a decision sometime early next year. At that point the nonprevailing party goes to the Supreme Court. That will
have to run its course, and however long it takes, it may be late 2005 or early 2006 before we have a definitive decision by the Supreme Court. At that point, if the Supreme Court upholds the original map drawn by the Commission in 2002, we now have the same nightmare I asked Mr. Mandell about because we have a plan that the State of Arizona says is the correct plan but we have what the Department of Justice has presumably precleared, a new plan, now says we can't use old plan. Or if the plaintiffs in this case are successful in the appeal, we now have a situation we can no longer use the 2002 plan, have a 2004 plan that perhaps has not been precleared because of certain issues, have to now go back and rework that plan. Now 2006, spend the usual time it takes to come up with a new map, goes back to the Department of Justice, is perhaps challenged in court. I see two years from now we'll be facing the same mess we're facing now.

I believe there is resolution if this plan is precleared by the Department of Justice. Based on Mr. Mandell's comments, I'm comfortable we will not have a mess, will still proceed this year with the 2002 plan in place.

We need to know what the position is on this map when the appellate process runs its course, know
whether using the 2002 map or some version of the 2004
map, get work done for a change, give people of Arizona
an election where they don't have to wonder what district
they're in, where candidates collect signatures for
office in 2006. I think we need to move forward and find
out what the Department of Justice says about the map,
let the appeal process go forward, get everything done as
quickly as we can, don't throw another election into
chaos two years from now.

CHAIRMAN LYNN: Further discussion on the
motion?

COMMISSIONER HALL: Mr. Chairman.

CHAIRMAN LYNN: Mr. Hall.

COMMISSIONER HALL: To my knowledge, all of
the concerns about anything DOJ, preclear the plan, all
the concern about one plan trumping another plan is based
on hearsay. I'm not aware of any authority for that
fear. My concern is that we're afraid of what somebody
may or may not be saying and if DOJ is or isn't of that
opinion, I think the question of enforceability of an
opinion is an important one. I think it's also important
that Mr. Mandell made one important point, a subsequent
submission of the April 12 plan to the Department of
Justice will take into account another whole set of
variables, namely the result of the 2002 election. I'm
interested in knowing the opinion of the Department of
Justice relative to the plan as it currently stands with
the current information available. And I think that is
pertinent for all future elections and pertinent for the
appeal process and pertinent for everyone to really know
whether or not that plan complies. I think that many of
the risks that have been cited are, again, pretty summary
in nature and really aren't based upon any case law or
anything I'm aware of. And counsel are certainly willing
to correct me if I'm wrong in that conclusion. So to me
I don't see -- I see the risk as minimal of dual
tracking, if you will, simultaneously proceeding forward
pursuant to the recent stay of the Court of Appeals the
2002 plan for election year 2004, simultaneously allowing
plan to obtain an opinion from Department of Justice.

CHAIRMAN LYNN: Thank you, Mr. Hall.

Further discussion on the motion?

Mr. Huntwork?

COMMISSIONER HUNTWORK: Well, Mr. Chairman,
approaching this at a couple points in time, personally,
I think Ms. Minkoff, to some extent Mr. Mandell, have
made arguments to the effect reintroducing the plan in
November following elections could result in chaos even
then. My view is that that is not likely to happen
unless something changes between now and then. Taking 60
to 120 days at that time to see what the view of the
Justice Department is of this plan is not likely to
introduce chaos but it is a question, I think, that has
to be addressed at that time.

At this point in time, changing now to this
point in time, I do not understand how it can be argued
that the risk is minimal or that there is, in effect, no
risk of creating chaos. The facts as I understand it, if
anybody can disagree with this, now is the time, our
counsel or any other Commissioner, but the facts as I
understand, as they've been presented to us, there's no
case law that says what happens when you have a situation
like this. And, as I understand it, our counsel has been
advised by counsel at the Justice Department that their
position is that when they preclear a plan it
automatically revokes preclearance of all other plans;
there can only be one precleared plan, which is
understandable. Each precleared plan, as we found out
when we went through the precleared plan, looks at the
previously precleared plan and considers the issue of
retrogression, so is the benchmark. I don't know how
many hours of testimony we've had about the benchmark.
Now, when we first did this, one of the questions was we
were ordered by the court to submit his plan for
preclearance. I was very concerned about whether this
would have this effect. The analysis was, the argument would be made that where the second precleared plan creates a lower benchmark it doesn't automatically repeal the first one unless an issue of packing is involved. Packing, at least has not been so far, involved in this. This plan, stronger plan, precleared. That's now how it goes with Department of Justice.

It's not legally accurate, not factually accurate to say no risk or minimal risk, in my opinion. I'm not accusing anyone of intentionally misrepresenting, or anything else. I'm stating my conclusion that there is a significant risk of the State of Arizona finding itself in this dilemma.

I'll have to vote based on my personal assessment of that risk that it is not insubstantial.

CHAIRMAN LYNN: Thank you.

Ms. Minkoff.

COMMISSIONER MINKOFF: I haven't always been impressed by the logic that has been in place in the Department of Justice. But I have been impressed by logic used by the federal court system. I think the worst case scenario is that the Department of Justice maintains we cannot use the 2002 map, that the issue goes before a federal judge. We had the same situation in 2002. If you all recall, we did not have a precleared
1 plan. We had a situation where there was a possibility
2 of coming up without a map that could be used for that
3 election. We went before the federal court. We got a
4 very, very quick and very efficient ruling on the case
5 and the election went forward.
6 Worst case scenario would be that would we
7 have the situation, I asked Mr. Mandell about it,
8 Department of Justice says use one map, State of Arizona
9 says use one map, go before a federal court. Anybody can
10 see no logical, possible way a new map can be put in
11 place for 2004 elections. We'd get a ruling from the
12 federal court, and the election would proceed with a map
13 that the counties can all conduct elections under.
14 CHAIRMAN LYNN: Well, since it appears to
15 be two-two, let me tell you what I think. First, I think
16 the situation two years ago was different insofar as
17 there was no precleared plan but the only alternative
18 malapportioned plan was the 1990s which everybody agreed
19 could not be used. The federal court had to do something
20 to initiate a plan suitable for use in this election and
21 asked to us modify the plan we had submitted to the
22 Department of Justice, based on the Department of
23 Justice's letter forthcoming, I think largely because the
24 Court asked them to be there and asked them to weigh in.
25 I don't know that we would have heard from Department of
Justice had that not been the case two years ago. They did show up, made known what deficiencies were in the plan. The Court was good enough to allow us, and the Coalition agreed, for use of the 2002 with changes made suitable and that was used in the 2002 elections. Here we are in 2004.

What we've been discussing are what ifs. What ifs are speculative. I think this might happen; maybe this will happen; there's probably a good likelihood this will happen.

I think it's a duty of this Commission to provide certainty to the voters, candidates, and people of Arizona this election, 2004, be held under a certain set of maps everyone can look at tomorrow and determine which district they are in and where they should get signatures and where they should raise money, where they can get contributions, if running under Clean Elections, whatever it should be. Quite honestly, there's only one way to do that, only one in terms of certainty, and that is to pull the plan. That is the only way everyone understands exactly what will happen in September, November. No ifs, no maybes, no possiblies, no whatevers. It is the only way to provide certainty. It is not a matter of partisan, not a matter of geographic, not a matter of anything else, it's a matter of owing it
to the people of Arizona. We do what is certain on their behalf.

I intend to vote for the motion.

Further discussion on the motion?

If not, roll call.

Mr. Elder?

COMMISSIONER ELDER: Yes.

CHAIRMAN LYNN: Is that "aye"?

COMMISSIONER ELDER: "Aye."

CHAIRMAN LYNN: Mr. Hall?

COMMISSIONER HALL: Did you call my name?

CHAIRMAN LYNN: I did. Were you busy?

COMMISSIONER HALL: Yes, I was.

But I listened to your speech, in case you were worried.

CHAIRMAN LYNN: Not worried at all.

COMMISSIONER HALL: I vote "No."

CHAIRMAN LYNN: Ms. Minkoff?

COMMISSIONER MINKOFF: "No."

CHAIRMAN LYNN: Mr. Huntwork?

COMMISSIONER HUNTWORK: "Aye."

CHAIRMAN LYNN: Chair votes "Aye" to withdraw the plan immediately.

(Motion carries.)

CHAIRMAN LYNN: We've taken care of VI,
VII. VIII I thought was kind of wishy-washy as well.

Item IX.

Before I do, any more business to come before the Commission?

Anything from staff or counsel that is properly noticed?

If not, the Commission will stand adjourned until next call of the Chair.

Thanks, guys.

(Whereupon, the Public Hearing adjourned at approximately 10:40 a.m.)

* * * *


STATE OF ARIZONA )

COUNTY OF MARICOPA ) ss.

BE IT KNOWN that the foregoing Arizona Independent Redistricting Commission Public Hearing 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 written form via computer-aided-transcription by myself; that the foregoing 45 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 23rd day of August, 2004.

_______________________
LISA A. NANCE, RPR, CCR
Certified Court Reporter
Certificate Number 50349

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