

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF ARIZONA
ARIZONA INDEPENDENT REDISTRICTING COMMISSION

P U B L I C

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PUBLIC SESSION

Phoenix, Arizona
June 3, 2004
9:30 a.m.

CERTIFIED TRANSCRIPT
COPY
ARIZONA INDEPENDENT
REDISTRICTING COMMISSION

LISA A. NANCE, RPR, CCR
Certified Court Reporter
Certificate No. 50349
Phoenix, Arizona 85019
Lisa_Nance@cox.net

1 The State of Arizona Independent
2 Redistricting Commission was noticed to convene in Open
3 Public Session on June 3, 2004, at 9:30 o'clock a.m. and
4 went on the record at 9:30 o'clock a.m., at the Offices
5 of the Arizona Independent Redistricting Commission,
6 Phoenix, Arizona, 85007, in the presence of:

7

8 APPEARANCES:

9

CHAIRMAN STEVEN W. LYNN

10

VICE CHAIRMAN ANDI MINKOFF

11

COMMISSIONER JAMES R. HUNTWORK

12

COMMISSIONER JOSHUA M. HALL (Present Telephonically.)

13

COMMISSIONER DANIEL R. ELDER (Present Telephonically.)

14

15

16 ADDITIONAL APPEARANCES:

17

18 LISA T. HAUSER, Commission Counsel

19

JOSE de JESUS RIVERA, Commission Counsel

20

ADOLFO ECHEVESTE, IRC Executive Director

21

LOU JONES, IRC Staff

22

KRISTINA GOMEZ, IRC Staff

23

LISA A. NANCE, RPR, CCR, Court Reporter

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

PAGE

SPEAKERS FROM THE PUBLIC:

Allen Tempert	5
Liberato Silva	6
Martin Victor	12
Michael Mandell	13
W. Kent Foree	27

MOTIONS BY THE COMMISSION:

43

E X H I B I T S

NO. DESCRIPTION

1	Testimony of Liberato Silva, Vice Mayor, City of Flagstaff.
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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Public Session
Phoenix, Arizona
June 3, 2004
9:30 o'clock a.m.

P R O C E E D I N G S

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

1 Commission shall request permission in advance by filling
2 out a speaker slip. Action taken as a result of public
3 comment will be limited to directing staff to study the
4 matter or rescheduling the matter for further
5 consideration and decision at a later date unless it is
6 the subject of an item already on the agenda.

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

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

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

18 COMMISSIONER ELDER: Thank you.

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

21 Mr. Tempert.

22 MR. TEMPERT: Thank you. Good morning.

23 Thank you very much for being here, to let
24 me speak very early to meet other commitments I have in
25 the area.

1 It's very simple. I was asked to come down
2 here from the County Attorney's Office since I was going
3 to be in the area and able to make it just to give the
4 opinion of Mohave County which is very interested in the
5 possible withdrawal of the Department of Justice
6 submission that is, I understand, to be considered
7 possibly at this meeting.

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

10 CHAIRMAN LYNN: Questions for Mr. Tempert?

11 Thank you, sir.

12 Next speaker, Liberato Silva.

13 Mr. Silva, Vice Mayor.

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

18 Thank you for this opportunity to speak. I
19 represent the Community of Flagstaff and Metropolitan
20 Planning Organization. We strongly recommend the
21 Independent Redistricting Commission not withdraw the
22 Section Five submission of the April 12, 2004, plan to
23 the Department of Justice for preclearance. Recent
24 events have proven that time is critical to the interests
25 of the voters of this state. The Court of Appeals will

1 take up the appeal from Judge Fields' order in the
2 ordinary course. And regardless of the result, one would
3 expect the disappointed side to file a petition for
4 review by the Arizona Supreme Court. An appeal and
5 petition for review of this complexity necessarily will
6 require significant time, certainly as much as a year,
7 and quite possibly longer. To await the unfolding of
8 this process before submission of the April 12 plan to
9 DOJ for preclearance runs the risk of a time crunch two
10 years from now.

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

20 Finally, nothing is lost by allowing the
21 submission to stand. For all practical purposes, nothing
22 the Department of Justice does can affect the 2004
23 election. The stay issued by the Court of Appeals and
24 the lack of any appeal from the stay means that the 2004
25 election will be run on the 2002 plan. In contrast,

1 letting the submission stand will avoid any risk to the
2 2006 election and will avoid spending money twice on the
3 same task.

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

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

9 CHAIRMAN LYNN: Thank you, Mr. Silva.

10 Are those remarks in writing?

11 Would anyone care to ask questions?

12 COMMISSIONER HUNTWORK: May I ask
13 questions?

14 CHAIRMAN LYNN: You may indeed.

15 Mr. Huntwork has questions.

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

21 I have heard from other sources that there
22 is a question about what will happen if the Justice
23 Department were to preclear a second plan. The argument
24 is that the preclearance of the first plan would
25 automatically be revoked and that would leave us, us,

1 meaning the State of Arizona, in the situation where we
2 have one plan which the Court of appeals has found cannot
3 be implemented in time for the November election
4 precleared and another plan which can be implemented
5 which may no longer be precleared and subsequently we may
6 not be able to hold an election under any plan. Now,
7 judgment and common sense would actually say that
8 whatever we do, we must not allow ourselves to find
9 ourselves in that position.

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

14 MR. SILVA: The thought is that the
15 preclearance would probably not happen in time to affect
16 the upcoming election and that the upcoming election
17 would probably be used -- would probably refer to the
18 2002.

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

24 CHAIRMAN LYNN: Mr. Cantelme.

25 MR. CANTELME: David Cantelme, Jennings,

1 Strouss & Salmon, for Flagstaff.

2 COMMISSIONER HALL: Speak up.

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

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

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

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

19 CHAIRMAN LYNN: Mr. Huntwork?

20 COMMISSIONER HUNTWORK: I understand the
21 argument on the second submission, and all that. I don't
22 understand how you can assure us that the election can go
23 forward on the other plan. The State Court of Appeals
24 does not have authority to order an election to occur
25 under a plan that has not been precleared by the United

1 States Justice Department. How do we get past that
2 problem?

3 MR. CANTELME: Mr. Chairman, Members of the
4 Commission, Mr. Huntwork, the view of the City of
5 Flagstaff is because you have the April 12 plan
6 precleared does not prevent, does not do away with
7 preclearance for the 2002 plan. There's no reason you
8 could not do away with 2002 under DOJ. Assurance?
9 Nothing is absolutely certain. I think odds are very
10 substantial you can go forward, will go forward with the
11 2002 plan. It makes sense to do that.

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

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

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

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

21 CHAIRMAN LYNN: Thank you.

22 Mr. Silva, thank you, Mr. Cantelme.

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

25 CHAIRMAN LYNN: Mr. Hall.

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

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

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

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

15 CHAIRMAN LYNN: Other questions?

16 Thank you, gentlemen.

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

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

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

25 Open, that's pretty self-explanatory.

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

12 That's all I have to say today.

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

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

18 Mr. Mandell, good morning.

19 MR. MANDELL: Michael Mandell representing
20 the Arizona Minority Coalition for Fair Redistricting.
21 We'd echo the statements of Mr. Silva, the City of
22 Flagstaff, comments made at the hearing last week, and
23 respectfully request the Commission not withdraw the
24 submission allowing it to go forward. There are 16 days
25 remaining in the preclearance process, so we'll have a

1 decision very soon. It's one where we don't think that
2 it's likely that the Department of Justice is going to
3 provide expedited preclearance at this point, given it
4 hasn't happened yet, middle, end of June. We agree it's
5 probably likely the 2002 plan will go forward as the
6 precleared plan. So despite that, despite allowing the
7 precleared process to continue, we believe elections this
8 year will be held under the 2002 plan.

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

16 CHAIRMAN LYNN: Receive for the record.

17 Questions from the Commission?

18 COMMISSIONER HUNTWORK: Mr. Mandell,
19 thinking of our questions last time, and I'd just like to
20 ask, want to try to understand, on the assumption that
21 the election this fall is going to go forward on the 2002
22 plan, how would your clients then be prejudiced if the
23 Commission withdrew the pending application at the
24 Justice Department and simply resubmitted it immediately
25 following the November elections? My thought is that

1 would eliminate risk to the whole state of having a
2 preclearance occur sometime between now and the November
3 elections and thereby raise that issue and yet there
4 would then be no question that the, whatever Justice
5 Department was going to do with the judge ordered plan,
6 they would have ample opportunity to do it before the
7 2006 elections. I don't even know why it would
8 necessarily cost a significant amount of money. We'd
9 just resubmit it, say take up where you left off.

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

19 COMMISSIONER HUNTWORK: I'm --

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

25 As far as money, DOJ doesn't just pick up

1 where they left off. There will be new elections to
2 review now, require that additional data be submitted,
3 that analyzed by Department of Justice at some cost to
4 the state in providing that data as well as the
5 Department of Justice, federal taxpayers, in analyzing
6 that data, that wouldn't be spent in the next 60 days,
7 assuming they don't ask for additional information,
8 certainly the taxpayer dollars would be spent next time
9 as well.

10 COMMISSIONER HUNTWORK: Mr. Chairman, if I
11 could.

12 CHAIRMAN LYNN: Go ahead.

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

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

23 The question I'm asking is a narrow one as
24 to the specific plan ordered by the trial court. If the
25 Commission were to resubmit that plan in, say,

1 mid-November 2004, why would that not provide ample time
2 for the Justice Department to consider that plan before
3 the next election in Arizona? That would mean the
4 Justice Department had almost two full years to consider
5 the plan.

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

10 COMMISSIONER HUNTWORK: November.

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

17 COMMISSIONER HUNTWORK: Because of the
18 argument, because of the argument you made that the
19 preclearance of a second plan revokes preclearance of the
20 first plan. Arizona would be in a situation that it
21 cannot proceed under the 2002 plan, because it's not
22 precleared, and we have the findings of the Court of
23 Appeals, which I personally agree with, that it's too
24 late to implement the judge ordered plan in time for 2004
25 elections, a horrendous result for the State of Arizona,

1 which can be avoided, we can avoid that prejudice to the
2 state and at the same time, by your own statement, not
3 create any prejudice for the court ordered plan if we
4 simply withdraw it now and resubmit in November.

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

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

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

1 COMMISSIONER HUNTWORK: Thank you.

2 CHAIRMAN LYNN: Ms. Hauser, Ms. Minkoff.

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

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

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

20 What does "probably" mean in that
21 situation?

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

25 MS. HAUSER: Okay.

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

6 MS. HAUSER: I agree with that.

7 Could you agree the Commission this morning
8 could provide absolute certainty to the voters and
9 candidates for the election, to the candidates, to the
10 state, if it were to withdraw the submission of the April
11 12 plan?

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

21 MS. HAUSER: Okay.

22 MR. MANDELL: Let DOJ go forward.
23 Resubmission of the plan, taxpayer dollars will be
24 wasted, the process is only 14 days away from completion,
25 if that isn't allowed to go forward.

1 MS. HAUSER: The financial argument, the
2 same argument could be made if the Commission were
3 completely successful on appeal that, you know, a great
4 deal of taxpayer money was wasted in requiring
5 development of a plan in the first place when it's clear
6 now the Commission was correct in February there is
7 insufficient time to implement it.

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

25 MR. MANDELL: Mr. Chairman, Ms. Hauser, we

1 are meeting with the Coalition today, can provide more
2 information later today after we have met with the
3 members of the Coalition. Unfortunately we were not able
4 to have that meeting before this meeting, although we
5 discussed this with some of them. Those we discussed it
6 with were in favor of not doing anything this election,
7 allowing that to go forward.

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

19 MS. HAUSER: Right.

20 MR. MANDELL: June 21st or --

21 MS. HAUSER: You don't represent everybody.
22 You can't speak to what everybody would do. You only
23 represent the Coalition.

24 COMMISSIONER MINKOFF: Mr. Mandell, this
25 perspective, scenario, concerns all of us. Whatever plan

1 we believe is the map that should be used, whatever
2 political orientation, all of us are interested that we
3 conduct the 2004 elections, move absolutely, and that the
4 people of the State of Arizona know what district they
5 live in and who the candidates are and who their choices
6 are in the general election. I don't think anyone does
7 not want that kind of scenario.

8 I'd like to get your perspective on
9 something that has concerned us. We've certainly felt,
10 I've been led to believe, that if the Department of
11 Justice preclears the current map before them, the map we
12 approved in April of this year, that they will then take
13 the position that it is the only acceptable map, that, in
14 effect, it trumps all prior precleared maps, and that the
15 map that was created in 2002 would no longer be
16 precleared. That is their position. Therefore,
17 according to Department of Justice, we cannot use the
18 2002 map. However, according to the Court of Appeals of
19 the State of Arizona, we cannot use the map that is
20 currently before the Department of Justice. So if
21 preclearance comes through, we are concerned that DOJ is
22 going to say this is the map you have to use, the Court
23 of Appeals of the State of Arizona is going to say this
24 is the map you have to use, they're not the same maps.
25 There is an election to hold. The people need some sort

1 of certainty. If that occurs, what do you see as the
2 resolution that gives certainty to the people of Arizona
3 for the coming election?

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

21 COMMISSIONER MINKOFF: Are you saying that
22 the burden is on the Department of Justice to initiate a
23 court action to require us to use a new plan rather than
24 on the State of Arizona to initiate a court action
25 allowing use of the 2002 plan?

1 MR. MANDELL: I don't think the State of
2 Arizona is forced to go to court to use a plan already in
3 place, continue on with someone else, or some other
4 entity telling them they can't go forward.

5 COMMISSIONER MINKOFF: DOJ.

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

8 COMMISSIONER MINKOFF: Okay.

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

11 CHAIRMAN LYNN: Other questions for
12 Mr. Mandell?

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

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

20 MS. HAUSER: Yes.

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

1 CHAIRMAN LYNN: Mr. Hall.

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

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

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

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

24 COMMISSIONER HALL: What kind of document
25 do you propose that may be, in the event it did occur?

1 MR. MANDELL: Mr. Chairman, Mr. Hall, in
2 the event it did occur, a stipulation, sign, waive the
3 right to sue to bring that action.

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

6 CHAIRMAN LYNN: Thank you, Mr. Hall.
7 Mr. Mandell, thank you.

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

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

19 We can get into the same position again is
20 the point I'm trying to make, the Court of Appeals end up
21 sending it back for further consideration and new
22 processing, and you can end up now with the April 12
23 precleared plan, you are stuck with later held
24 unconstitutional under state law basis because you didn't
25 follow proper procedures. The trial court ordered

1 certain things, didn't always follow those. The trial
2 court didn't always follow. Still, there's serious state
3 law questions about the April 12 map. End up disrupting
4 it, just like ended up happening with the 2002 map, end
5 up unconstitutional after a two-year period.

6 Lake Havasu takes the position, the April
7 12 map given, becomes rush on that, not given proper
8 opportunity to challenge it, not given opportunity to
9 cross-examine witnesses in front of evidentiary hearing,
10 in front of trial court, serious error, may very well
11 lead to invalidation of that map if the Court of Appeals
12 gets to that, which it hopefully won't, hopefully will
13 uphold the Commission's 2002 work and uphold the 2002 one
14 on constitutionality.

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

19 I was born and raised in Yuma County. I'm
20 familiar with the fact elections have been thrown out for
21 noncompliance with preclearance requirements and the
22 Voting Rights Act. It doesn't take a stipulation from
23 the Coalition, does not do any good, unless a stipulation
24 from every voter in the State of Arizona, and that's not
25 feasible or possible.

1 CHAIRMAN LYNN: Thank you, Mr. Foree.

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

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

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

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

23 If no member of the Commission wishes to
24 entertain Executive Session, I'll pause to see if there
25 is.

1 COMMISSIONER HUNTWORK: We can have one
2 later, if an issue comes up.

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

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

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

13 COMMISSIONER ELDER: This is Mr. Elder.
14 Yes.

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

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

22 CHAIRMAN LYNN: Is there a second to the
23 motion?

24 COMMISSIONER HUNTWORK: Second.

25 MS. HAUSER: Submitted April 12.

1 CHAIRMAN LYNN: For clarity sake, the April
2 12 plan?

3 COMMISSIONER ELDER: Correct.

4 CHAIRMAN LYNN: Moved and seconded.

5 Discussion on the motion?

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

19 CHAIRMAN LYNN: Further discussion on the
20 motion?

21 Mr. Huntwork?

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

1 COMMISSIONER ELDER: That is the intention.
2 You know, we -- I don't know your discussion earlier on.
3 I caught most of the words. Resubmit right after
4 September elections?

5 CHAIRMAN LYNN: November.

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

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

18 COMMISSIONER ELDER: No. Pulled.
19 Hopefully faith in the court system will be reinstated.
20 The appeal, a year to 18 months, or whatever the time
21 frame was, I can't believe a system that archaic, inept.

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

25 CHAIRMAN LYNN: Amend the motion.

1 Acceptable to the motion?

2 COMMISSIONER ELDER: Amend?

3 CHAIRMAN LYNN: Immediately.

4 COMMISSIONER ELDER: Immediately, even date

5 stamp it.

6 COMMISSIONER HUNTWORK: I accept that

7 change.

8 CHAIRMAN LYNN: All right.

9 COMMISSIONER HUNTWORK: Another question of

10 counsel relating to the motion. Is this something

11 counsel could do, counsel withdraw, or does the Chairman

12 have to sign on behalf of the Commission? How exactly

13 does it work?

14 MS. HAUSER: Counsel submits the Section

15 Five preclearance on your behalf. Counsel can withdraw.

16 The DOJ regulation requires it simply be a withdrawal in

17 writing.

18 COMMISSIONER HUNTWORK: Mr. Chairman, on

19 the motion as so amended, I would just like to make a

20 couple comments.

21 CHAIRMAN LYNN: Please.

22 COMMISSIONER HUNTWORK: Firstly, I would

23 like to know whether the court ordered plan will preclear

24 or not. It is my intention at a later date, although I

25 support this motion, it is my intention at a later date

1 to support the motion, resubmit that plan if nothing
2 happened at the Court of Appeals to upset viability by
3 that time.

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

22 At this point, in my mind, the issue is
23 that the Commission can provide certainty for the current
24 election for everyone, the voters, also the candidates
25 and individuals that make up the Coalition, who

1 Mr. Mandell has stated also have an interest in certainty
2 and being able to proceed with the current election. I
3 think that's in everybody's interest. The one and only
4 way I think the Commission can help to achieve that is
5 by, for the time being, withdrawing the current
6 application.

7 CHAIRMAN LYNN: Further discussion on the
8 motion?

9 Ms. Minkoff.

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

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

23 Let's assume an appellate court gives a
24 decision sometime early next year. At that point the
25 nonprevailing party goes to the Supreme Court. That will

1 have to run its course, and however long it takes, it may
2 be late 2005 or early 2006 before we have a definitive
3 decision by the Supreme Court. At that the point, if the
4 Supreme Court upholds the original map drawn by the
5 Commission in 2002, we now have the same nightmare I
6 asked Mr. Mandell about because we have a plan that the
7 State of Arizona says is the correct plan but we have
8 what the Department of Justice has presumably precleared,
9 a new plan, now says we can't the use old plan. Or if
10 the plaintiffs in this case are successful in the appeal,
11 we now have a situation we can no longer use the 2002
12 plan, have a 2004 plan that perhaps has not been
13 precleared because of certain issues, have to now go back
14 and rework that plan. Now 2006, spend the usual time it
15 takes to come up with a new map, goes back to the
16 Department of Justice, is perhaps challenged in court. I
17 see two years from now we'll be facing the same mess
18 we're facing now.

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

24 We need to know what the position is on
25 this map when the appellate process runs its course, know

1 whether using the 2002 map or some version of the 2004
2 map, get work done for a change, give people of Arizona
3 an election where they don't have to wonder what district
4 they're in, where candidates collect signatures for
5 office in 2006. I think we need to move forward and find
6 out what the Department of Justice says about the map,
7 let the appeal process go forward, get everything done as
8 quickly as we can, don't throw another election into
9 chaos two years from now.

10 CHAIRMAN LYNN: Further discussion on the
11 motion?

12 COMMISSIONER HALL: Mr. Chairman.

13 CHAIRMAN LYNN: Mr. Hall.

14 COMMISSIONER HALL: To my knowledge, all of
15 the concerns about anything DOJ, preclear the plan, all
16 the concern about one plan trumping another plan is based
17 on hearsay. I'm not aware of any authority for that
18 fear. My concern is that we're afraid of what somebody
19 may or may not be saying and if DOJ is or isn't of that
20 opinion, I think the question of enforceability of an
21 opinion is an important one. I think it's also important
22 that Mr. Mandell made one important point, a subsequent
23 submission of the April 12 plan to the Department of
24 Justice will take into account another whole set of
25 variables, namely the result of the 2002 election. I'm

1 interested in knowing the opinion of the Department of
2 Justice relative to the plan as it currently stands with
3 the current information available. And I think that is
4 pertinent for all future elections and pertinent for the
5 appeal process and pertinent for everyone to really know
6 whether or not that plan complies. I think that many of
7 the risks that have been cited are, again, pretty summary
8 in nature and really aren't based upon any case law or
9 anything I'm aware of. And counsel are certainly willing
10 to correct me if I'm wrong in that conclusion. So to me
11 I don't see -- I see the risk as minimal of dual
12 tracking, if you will, simultaneously proceeding forward
13 pursuant to the recent stay of the Court of Appeals the
14 2002 plan for election year 2004, simultaneously allowing
15 plan to obtain an opinion from Department of Justice.

16 CHAIRMAN LYNN: Thank you, Mr. Hall.

17 Further discussion on the motion?

18 Mr. Huntwork?

19 COMMISSIONER HUNTWORK: Well, Mr. Chairman,
20 approaching this at a couple points in time, personally,
21 I think Ms. Minkoff, to some extent Mr. Mandell, have
22 made arguments to the effect reintroducing the plan in
23 November following elections could result in chaos even
24 then. My view is that that is not likely to happen
25 unless something changes between now and then. Taking 60

1 to 120 days at that time to see what the view of the
2 Justice Department is of this plan is not likely to
3 introduce chaos but it is a question, I think, that has
4 to be addressed at that time.

5 At this point in time, changing now to this
6 point in time, I do not understand how it can be argued
7 that the risk is minimal or that there is, in effect, no
8 risk of creating chaos. The facts as I understand it, if
9 anybody can disagree with this, now is the time, our
10 counsel or any other Commissioner, but the facts as I
11 understand, as they've been presented to us, there's no
12 case law that says what happens when you have a situation
13 like this. And, as I understand it, our counsel has been
14 advised by counsel at the Justice Department that their
15 position is that when they preclear a plan it
16 automatically revokes preclearance of all other plans;
17 there can only be one precleared plan, which is
18 understandable. Each precleared plan, as we found out
19 when we went through the precleared plan, looks at the
20 previously precleared plan and considers the issue of
21 retrogression, so is the benchmark. I don't know how
22 many hours of testimony we've had about the benchmark.
23 Now, when we first did this, one of the questions was we
24 were ordered by the court to submit his plan for
25 preclearance. I was very concerned about whether this

1 would have this effect. The analysis was, the argument
2 would be made that where the second precleared plan
3 creates a lower benchmark it doesn't automatically repeal
4 the first one unless an issue of packing is involved.
5 Packing, at least has not been so far, involved in this.
6 This plan, stronger plan, precleared. That's now how it
7 goes with Department of Justice.

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

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

16 CHAIRMAN LYNN: Thank you.

17 Ms. Minkoff.

18 COMMISSIONER MINKOFF: I haven't always
19 been impressed by the logic that has been in place in the
20 Department of Justice. But I have been impressed by
21 logic used by the federal court system. I think the
22 worst case scenario is that the Department of Justice
23 maintains we cannot use the 2002 map, that the issue goes
24 before a federal judge. We had the same situation in
25 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

1 Justice had that not been the case two years ago. They
2 did show up, made known what deficiencies were in the
3 plan. The Court was good enough to allow us, and the
4 Coalition agreed, for use of the 2002 with changes made
5 suitable and that was used in the 2002 elections. Here
6 we are in 2004.

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

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

1 to the people of Arizona. We do what is certain on their
2 behalf.

3 I intend to vote for the motion.

4 Further discussion on the motion?

5 If not, roll call.

6 Mr. Elder?

7 COMMISSIONER ELDER: Yes.

8 CHAIRMAN LYNN: Is that "aye"?

9 COMMISSIONER ELDER: "Aye."

10 CHAIRMAN LYNN: Mr. Hall?

11 COMMISSIONER HALL: Did you call my name?

12 CHAIRMAN LYNN: I did. Were you busy?

13 COMMISSIONER HALL: Yes, I was.

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

16 CHAIRMAN LYNN: Not worried at all.

17 COMMISSIONER HALL: I vote "No."

18 CHAIRMAN LYNN: Ms. Minkoff?

19 COMMISSIONER MINKOFF: "No."

20 CHAIRMAN LYNN: Mr. Huntwork?

21 COMMISSIONER HUNTWORK: "Aye."

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

24 (Motion carries.)

25 CHAIRMAN LYNN: We've taken care of VI,

1 VII. VIII I thought was kind of wishy-washy as well.

2 Item IX.

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

5 Anything from staff or counsel that is
6 properly noticed?

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

9 Thanks, guys.

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

12

13

14

15

* * * *

16

17

18

19

20

21

22

23

24

25

1 STATE OF ARIZONA)
) ss.
2 COUNTY OF MARICOPA)

3 BE IT KNOWN that the foregoing Arizona
4 Independent Redistricting Commission Public Hearing
5 hearing was taken before me, LISA A. NANCE, RPR, CCR,
6 Certified Court Reporter in and for the State of Arizona,
7 Certificate Number 50349; that the proceedings were taken
8 down by me in shorthand and thereafter reduced to written
9 form via computer-aided-transcription by myself; that the
10 foregoing 45 pages constitute a true and accurate
11 transcript of all proceedings had upon the taking of said
12 hearing, all done to the best of my ability;

13 I FURTHER CERTIFY that I am in no way
14 related to any of the parties hereto, nor am I in any way
15 interested in the outcome hereof.

16 DATED at Phoenix, Arizona, this 23rd day
17 of August, 2004.

18

19

20

21

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

22

23

24

25

