Thursday, May 2, 2013
2:37 p.m.

Location

Evans House
1100 West Washington Street
Phoenix, Arizona 85007

Attending

Colleen C. Mathis, Chair, telephonically
Jose M. Herrera, Vice Chair, telephonically
Scott Day Freeman, Vice Chair
Linda C. McNulty, Commissioner, telephonically
Richard P. Stertz, Commissioner, telephonically
Raymond F. Bladine, Executive Director
Kristina Gomez, Deputy Executive Director
Buck Forst, Information Technology Specialist
Mary O'Grady, Counsel, Osborn Maledon
Joe Kanefield, Counsel, Ballard Spahr
Beau Roysden, Ballard Spahr

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CHAIRWOMAN MATHIS: This meeting of the Arizona Independent Redistricting Commission will now come to order.

Today is May 2nd, 2013. The time is 2:37 p.m. And why don't we start with the Pledge of Allegiance.

Vice Chair Freeman, could you lead us?

VICE CHAIR FREEMAN: Sure.

(The Pledge of Allegiance was recited.)

CHAIRWOMAN MATHIS: Great. Thank you.

We'll go ahead with roll call.

Vice Chair Freeman?

VICE CHAIR FREEMAN: Here.

CHAIRWOMAN MATHIS: Vice Chair Herrera?

COMMISSIONER MCNULTY: Here.

CHAIRWOMAN MATHIS: Commissioner Stertz?

COMMISSIONER STERTZ: Here.

CHAIRWOMAN MATHIS: We have a quorum.

And I understand that Commissioner -- or Vice Chair Herrera will be joining us around 3 o'clock. So we'll go ahead, though, and do what
we can in his absence.

Other folks in the room include our legal counsel, Joe Kanefield and Mary O'Grady.

We have our executive director Ray Bladine and deputy executive director, Kristina Gomez.

Our information technology specialist is Buck Forst. Thank you, Buck.

And Michelle is recording the proceedings today. So everyone be mindful, since we're on the phone.

I apologize for last time with me being on the cell phone. It just really didn't work well and was very hard on our recorder and everyone else. So hoping this time will be better.

Anybody I missed?

Okay. Hearing --

RAYMOND BLADINE: Madame Chair, I'm sorry.

Yes, we have Mr. Desmond here in the audience and --

CHAIRWOMAN MATHIS: Oh, great.

RAYMOND BLADINE: -- and we have Mr. Muratore, our regular, and we have --

MR. MURATORE: Peanut gallery.

RAYMOND BLADINE: Peanut gallery.
And we have Beau from Ballard Spahr.

CHAIRWOMAN MATHIS: Oh, great. Thank you.

I remember you told me about Beau. I apologize.

Okay. Well, we'll -- in looking at the agenda, item II we started to go into last time and since Commissioner Herrera isn't here to kind of talk about that, I was wondering if maybe we should start with items III and V since those are items that pertain to the executive director and the budget and things like that.

Would that work for folks?

COMMISSIONER MCNULTY: Fine with me.

COMMISSIONER STERTZ: No objection.

VICE CHAIR FREEMAN: Fine with me.

CHAIRWOMAN MATHIS: Okay. Great.

Let's go ahead with number III, report discussion and possible action regarding the Commission's fiscal year 2013 appropriations and expenditures and budget issues for fiscal year 2014.

RAYMOND BLADINE: Michelle is asking me a question.

Oh, I picked up the wrong mic. Now I understand what I did wrong.

RAYMOND BLADINE: Madame Chair, I picked up
the mic that was supposed to go to the cell phone to pick up your voice. Sorry.

I thought I would ask Kristina to do a summary of where we are on the budget now and update you with the latest information on our appropriation for supplemental appropriation for this year.

Kristina.

KRISTINA GOMEZ: Thank you.

Madame Chair, commissioners. As you all have probably heard already, Senate Bill 1482 was passed by the legislature last Thursday and it was submitted to the governor's desk and she signed that this past Tuesday. And as of this afternoon, the appropriation has been posted. So we now have access to our supplemental appropriation.

The total appropriation to the Commission was $635,000. So we're grateful that now we have money so we can now pay some bills.

So next week we will be working on fiscal year '14 appropriation. We'll be working on scheduling appointments with staff and with members to assess next fiscal year.

And, I'm sorry, Ray did you want to talk about --

RAYMOND BLADINE: Let's -- Madame Chair,
unless there's questions, I think we can -- we'll just go onto maybe do the director's report and talk about staffing.

I will tell you that at this point in time we've heard nothing on fiscal year '14. Our request is about 2 million and two hundred-some odd thousand. And I think the problem that everybody is reading in the paper right now, the legislature and the governor are tied up with the Medicaid bill and nothing seems to be happening on the budget.

But we thought next week we'll double back with, as Kristina said, the staffing and the leadership of the House and the Senate and just make sure they don't forget about us.

They did also, in the bill that Kristina mentioned, provided the ability for us to use '14 money to pay bills in '13.

We are hoping that the legislature will quickly adopt a budget for '14 so we'll have some money that we can spend against, if necessary. But I think this will -- this should get us through this fiscal year, but it is a little disconcerting that we don't see movement yet on the '14 budget. But I think we're in the same position as everybody else.

So, Madame Chair, if there's no
questions, I'll ask Kristina to go ahead and talk about the other items in the executive director's report.

CHAIRWOMAN MATHIS: Do commissioners have any questions for Mr. Bladine or Ms. Gomez on that item?

Okay. I don't have any questions either but I will just commend them for their hard work. They've been going at this for a number of weeks and I just want to thank them for their diligence and persistence and I'm very grateful that they were successful in getting some funding.

Thank you.

KRISTINA GOMEZ: Thank you.

So the next item on the memo that went out to you on April 24th, the executive director's report, staffing.

We still have with us Shane Shields, Lisa Schmelling and Anna Garcia as part of our staff.

Every month we review the workload. We were really busy with the Harris case and helping out legal counsel to keep our costs down. So Lisa Schmelling and Shane Shields did a lot of the data collection for legal counsel.

But we are reviewing month by month the workload and we're also -- we've also looked at what
may be coming up. So as far as the workload for the
Leach case and also the outcome of the District
Court will affect our staffing needs here in this
office.

So we still have the same staff here with
us and we will continue to monitor this month by
month.

Facilities. We're still renting the
Evans House from the Secretary of State's office.
The rent for each fiscal -- for the fiscal year is
$27,000. We will continue to occupy the space until
the Commission asks us to move. But we will
continue to stay here until we're told otherwise.

Technology issues. Buck Forst is still
with us and he's still recording our meetings. And
streaming, we have the option to stream at any time.
So if the Commission wished to start up that once
again, we can do that. The cost is $2,400.

And we had a question regarding the
domain name. That is good until May 5th of 2014.

The Commission's records. We were in
contact with the Arizona records and retention last
year and we have also been in contact with librarian
and archives and they are aware of our office and
they are aware that we may need to close down at
some point. So we are still in communication with those two offices.

Strategic Telemetry log. I believe that's also in your packet as well, so that's the most updated log that we have from our mapping consultants.

And the hearing transcripts and minutes. Everything is posted on the website. We also have some items, too, in boxes ready to go. So when that day comes when they ask us to close down shop, we are halfway there. We are halfway ready to send some boxes. And those meeting minutes and transcripts are -- the hard copies are in those boxes presently.

So that is about it.

If you have any questions, I would be more than -- more than happy to answer them.

CHAIRWOMAN MATHIS: Thank you, Ms. Gomez.

Any questions for Ms. Gomez?

VICe CHAIR FREEMAN: Madame Chair, this is Scott Freeman.

CHAIRWOMAN MATHIS: Go ahead, Mr. Freeman.

VICE CHAIR FREEMAN: It's been over a week since I looked at it, but Strategic Telemetry had some bills this year, I think it was 60, $70,000. I
assume that --

COMMISSIONER MCNULTY: Scott, you're going to have to speak into a microphone, please.

VICE CHAIR FREEMAN: Yeah, I'll try to speak up but I was speaking right into it.

COMMISSIONER MCNULTY: Much better. Thank you.

VICE CHAIR FREEMAN: You bet.

They had about 60, $70,000 in bills. I assume that was related to the Harris trial.

Was that -- had that money been budgeted before? Was that anticipated?

KRISTINA GOMEZ: Madame Chair, Vice Chair Freeman, we did our best to estimate their costs. However, with the -- with the workload of the trial and everything being so -- everything that was expedited, it was kind -- it was difficult to come up with a good estimate.

We did project them to be -- I believe it was roughly 30, 35,000 and they came close to 39,000. But we did our best to estimate those costs without exactly knowing how much work would be involved in this process.

CHAIRWOMAN MATHIS: Okay. Any other questions?
I have a question for Ms. Gomez, since she was involved with the Commission last time. Just curious.

When did they close down?

KRISTINA GOMEZ: Madame Chair, they closed down July of 2009. And we received word, I believe it was in June. So we had roughly a month to pack up our boxes and to shut off the lights because they wanted us gone. Just to save money, of course.

CHAIRWOMAN MATHIS: Okay. Yeah, so it went almost the whole decade?

KRISTINA GOMEZ: Yes.

CHAIRWOMAN MATHIS: Okay. Any other questions?

RAYMOND BLADINE: Madame Chair, I might just comment on the last part of our director's report on that first page under the budget.

We did show you, as best we could, an estimate of what we had thought attorney fees might be as compared to what they actually ended up to be.

One of the things that threw everything off of our budget, of course, was once the District Court said that there was not legislative immunity and that all of the commissioners would be subject to testifying, our legal costs went up extremely
high, both for individual attorneys and also for our
Commission attorneys who had to respond and work
with an additional workload caused by that.

We should be able to, as we've talked
about, finish out this year utilizing the funds made
available and also the funds from '14.

I have been reviewing the invoices from
the attorneys, particularly looking at March 19th
on. Because at that point, we had asked all of the
attorneys to please stop work on the Leach case and
also to clear any additional work with our two
Commission attorneys and give us -- and also give us
an estimated budget.

So I have reviewed the invoices I have to
date, which are -- one is from John Munger, Brian
Bergin and Michael Mandell.

I have yet to receive -- I think I heard
today that we received a bill from Paul Charlton,
and I will do the same thing, reviewing them against
the scope of work and also against the estimates
they provided for the work beyond the 19th.

And as I pointed out in the memo to you
dated May 1st, I have asked for more information
from Michael Mandell about his bill because it was
more than he had estimated. And similarly I have
asked questions of Mr. Munger about some of his items. And also indicated that at this time, any additional work on Leach is not authorized, so I could not pay that part.

However, I would imagine that if the Commission were to approve additional individual consult after and for Leach, then some of those items could be resubmitted.

My memory is that out of his last invoice, about I think $3,000 or so, was related -- was related to Leach.

So we will now start paying off the attorneys that have some invoices and try to get caught up to date.

With that, I'm available for any questions.

CHAIRWOMAN MATHIS: Are there any questions for Mr. Bladine?

Okay. I'm not hearing any.

I will just note that, yeah, I have seen -- the press has covered some of the information regarding individual attorney expenditures and it's definitely ballooning rapidly.

And I saw also the letter from Mr. Bladine dated May 1st. I think it went to all
commissioners. It should have. We're all on the letter.

And, yeah, I guess I'm a little concerned about some of the things -- my name happened to jump out, but there is expenditures to investigate me and I don't know -- it says it's not part of the scope of work, but I found that a little interesting.

So I'm curious going forward how that's going to be addressed or handled.

But I don't know if anybody here can respond to that since I don't know if that's something Commission counsel can comment on or not.

MARY O'GRADY: Madame Chair, this is Mary.

I think the process that is being used is the one that should be used prospectively where if Ray, when he's reviewing the bills, has concerns about scope of work, that he follows up with -- with the lawyer submitting the bills and gets the justification to determine whether it's appropriate for payment.

And to the extent Commission counsel can help in terms of categories of expenditures, that makes sense.

But definitely -- and also trying to do some up-front budgeting as well going forward.
CHAIRWOMAN MATHIS: Well, I guess I would, just for the record, state that they don't seem appropriate, those expenditures, to investigate the chair, from my perspective. Probably doesn't surprise anyone.

But since that's how it's worded in the letter on May 1st, do not seem appropriate, that's what I'll -- I'll also sign onto as well.

VICE CHAIR FREEMAN: Madame Chair, this is Scott Freeman.

CHAIRWOMAN MATHIS: Go ahead, Mr. Freeman.

VICE CHAIR FREEMAN: Question for counsel.

A bill from an attorney often contains attorney/client privileged information in it. How is that privilege being protected by the Commission when individual commissioner's counsel send in these bills?

Sounds like -- I mean, is Mr. Bergin's bill to me, are they going to be discussed in Commission hearings? I mean, I know there's attorney/client information in there that should not be disclosed unless I agree to waive it.

RAYMOND BLADINE: Madame Chair, I'm going to let the attorneys answer. But we have treated the bills as not -- is client/attorney privilege.
In responding to both Mr. Mandell and Mr. Bergin, I did not send them copies of the invoice. I did summarize or I lifted specific items that I was concerned about.

I didn't know how else really to communicate it, but I think that at this point -- and I didn't -- in the case of -- in the case of Mr. Freeman, all I did was summarize in his case that the bill was $791 more than was estimated. And since I did not see that as material, I didn't submit any additional information and I simply asked -- well, I didn't actually even ask Mr. Bergin because I thought it fell within the scope of work. I looked at the dates of which he provided the activity after the 19th and the amount was fine.

In the case of Michael Mandell, his bill was not in dollar amounts but was in hours and I sent him a memo asking him to explain the difference in hours from his estimate, which was approximately the high end, 25 and I think he submitted 36 hours. But again, I didn't -- I didn't provide any of his invoice.

And in the case of Mr. Munger, I wrote him a letter and had an attachment with those specific items on the March 18th bill that I was
raising issue as to whether they were appropriate
and asked for more information.

I, again, will let the attorneys answer,
but I have tried to be careful to provide an
administrative review of the expenses without
disclosing any information.

And if I erred in that, I would certainly
change it. And the reason I provided the memo to
all of you was not to provide you copies of the
invoices, but rather to try to explain that in this
-- in these cases, there were some significant
charges that I was raising -- raising questions
about.

I would also tell you that I talked both
to Mr. Mandell and Mr. Munger about the invoices so
that we can continue to communicate.

And I guess with that, I'll let the
attorneys try to address the issue of the legality,
but I have been trying to make sure that I do my
best and not disclose things I shouldn't.

JOE KANEFIELD: Madame Chair, members of the
Commission, we have talked with Ray about the issue
that Commissioner Freeman raises and we think that
the procedure that Ray is following is appropriate
to protect the privilege for each of the individual
commissioners and their counsel.

CHAIRWOMAN MATHIS: Okay. Thank you.

Any other comments or questions?

Okay. Well, hearing none, was -- that

was also item V, right, Mr. Bladine?

RAYMOND BLADINE: I'm looking for my agenda.

CHAIRWOMAN MATHIS: Or did you have something

additional?

RAYMOND BLADINE: No, that is item V. So

we've done really item III and item V.

CHAIRWOMAN MATHIS: And it's 3:01 p.m. and no

sign of Mr. Herrera, I take it?

RAYMOND BLADINE: Haven't heard anything at

our end.

CHAIRWOMAN MATHIS: I'm just looking.

We have public comment. I don't know if

anybody wants to say anything in the public.

Is there any request to speak forms?

RAYMOND BLADINE: No request to speak form and

our one member of the public shook his head no.

CHAIRWOMAN MATHIS: Okay.

RAYMOND BLADINE: Unless Willie is part of the

public. He didn't shake his head.

Wow, now we've got another item done.

CHAIRWOMAN MATHIS: Great. Yeah, we're done
with III, V and VI, so we've got II and IV.

Yeah, it seemed like II, they are kind of important topics and I would presume that Mr. Herrera would want to be a part of them, but I guess we can just -- we can either recess or we can just go ahead and start talking and if he's coming. Maybe if someone wants to check in with him and see if he's on his way or close.

RAYMOND BLADINE:  Madame Chair, Attorney Kanefield is suggesting we could do item IV, too, and have that off the agenda, which was advice, direction to counsel on our budget.

CHAIRWOMAN MATHIS:  Oh, okay.  Great.

RAYMOND BLADINE:  I'll now turn it over to Mr. Kanefield, since it was his idea.

JOE KANEFIELD:  Madame Chair, I believe this item was put on the agenda in the event that there were any issues with respect to the Commission's request for a supplemental appropriation from the Arizona legislature.

But as we know now, the legislature has come through with the supplemental appropriations as requested -- summarized by Kristina earlier.

So I don't think there's any legal action to consider at this point.
CHAIRWOMAN MATHIS: Okay. Great.

Any questions for Mr. Kanefield?

Okay. We've gotten through the agenda, except for number II.

RAYMOND BLADINE: Madame Chair, we did just text Commissioner Herrera to see if we could get any ideas to timing but have not heard back.

CHAIRWOMAN MATHIS: Okay. Thank you.

Okay. Well, item II, legal advice, direction to counsel, discussion and possible action regarding Harris versus IRC; counsel for individual commissioners and ongoing lawsuits and Commissioner Stertz's request for separate counsel; Leach versus IRC; State Legislature versus IRC; and finally, access to Commission documents including documents subject to attorney/client privilege or work product protection and the executive session transcripts. The commission may vote to go into executive session, which would not be open to the public for the purpose of obtaining legal advice and providing direction to counsel.

COMMISSIONER MCNULTY: Madame Chair, I move that we go into executive session for this discussion. I think we need to hear from our attorneys in executive session.
CHAIRWOMAN MATHIS: Is there a second?

Okay. I'm not hearing --

COMMISSIONER MCNULTY: Not hearing a second, I would request that we recess until Mr. Herrera is available.

CHAIRWOMAN MATHIS: Okay. Any other comments from other commissioners?

COMMISSIONER STERTZ: Madame Chair.

CHAIRWOMAN MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: This is a question for legal counsel.

Do you feel that there is anything regarding the discussion of the Leach case that needs to be said in executive or can you bring us up to speed on that in public session?

MARY O'GRADY: Commissioner Stertz, Madame Chair, the only additional update from last session is that we did serve our initial disclosures yesterday. And then anything else we would recommend that we discuss in executive session.

CHAIRWOMAN MATHIS: Okay. Any other comments or questions?

Okay. Well, I agree with Ms. McNulty, that we wait until Mr. Herrera comes.

And it's now 3:06 p.m. So if we could
enter into recess and hopefully we'll be back shortly.

COMMISSIONER STERTZ: Madame Chair.

CHAIRWOMAN MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: Would you please give me a call when Mr. Herrera either arrives or calls?


COMMISSIONER STERTZ: Well, that's fine. I'm just not going to sit on hold waiting for Mr. Herrera to arrive.

CHAIRWOMAN MATHIS: Okay.

COMMISSIONER STERTZ: Thank you.

RAYMOND BLADINE: Commissioner Stertz, what number would you like us to call you at?

(A recess was taken from 3:07 p.m. to 3:19 p.m.)

CHAIRWOMAN MATHIS: The time is 3:19 p.m. and we'll exit out of recess and back into public session.

Let's do a roll call, just to make sure everybody is on the line.

Vice Chair Freeman?

VICE CHAIR FREEMAN: Here.

CHAIRWOMAN MATHIS: Vice Chair Herrera?
VICE CHAIR HERRERA: Here.

CHAIRWOMAN MATHIS: Commissioner McNulty?

COMMISSIONER MCNULTY: Here.

CHAIRWOMAN MATHIS: Commissioner Stertz?

COMMISSIONER STERTZ: Here.

CHAIRWOMAN MATHIS: Great. We have a quorum. We're all present.

And we are on agenda item II.

Mr. Herrera, just for your information, we covered the rest of the agenda in the first 35 minutes. So we're now -- we went out of order and now we're going back to agenda item II.

And Ms. McNulty put a motion on the table to go into executive session to obtain legal advice on the five items listed in the agenda and it was not seconded. So that's kind of where we are.

Is there any --

COMMISSIONER MCNULTY: Madame Chair --

CHAIRWOMAN MATHIS: Go ahead.

COMMISSIONER MCNULTY: I understood from legal counsel that it's their recommendation that we discuss agenda item II in executive session and that they just gave us the update they felt they could give us in public session.

Is that correct, counsel?
MARY O'GRADY: Madame Chair, Commissioner McNulty, that's correct. It's our recommendation that the discussion be in executive session.

COMMISSIONER MCNULTY: Well, I would move, again then, that we go into executive session for the purpose of obtaining legal advice and giving direction to counsel on agenda item II.

VICE CHAIR HERRERA: (Inaudible).

COMMISSIONER MCNULTY: Was that Mr. Herrera?

VICE CHAIR HERRERA: (Inaudible.)

THE COURT REPORTER: I'm sorry, Mr. Herrera. I can't hear you.

VICE CHAIR HERRERA: I second that motion.

CHAIRWOMAN MATHIS: Okay. Any discussion?

All in favor?

COMMISSIONER MCNULTY: Aye.

VICE CHAIR HERRERA: Aye.

CHAIRWOMAN MATHIS: Aye.

Any opposed?

COMMISSIONER STERTZ: Nay.

VICE CHAIR FREEMAN: Nay.

CHAIRWOMAN MATHIS: Okay. With that, there were three ayes, McNulty, Herrera, Mathis and two nayes, Freeman and Stertz.

So with that, we'll go into -- exit out
of the public session and go into executive session once the public has cleared of the room.

It's now 3:21 p.m.

(Whereupon the public session recessed and executive session ensued.)

* * * * * *

(Whereupon the public session resumes.)

CHAIRWOMAN MATHIS: Okay. We'll enter back into public session.

The time is 4:35 p.m.

I want to thank our legal counsel for providing us advice in executive session on the different matters that are on the agenda.

I'll entertain a motion, if there is one.

COMMISSIONER MCNULTY: Madame Chair, this is Linda.

I would move that we direct legal counsel to proceed in accordance with our discussion in executive session. And in particular that we direct them to pursue legal avenues to release the executive session transcript associated with our selection of Strategic Telemetry, the date of which they are aware of but I'm not. But I'm referring to
the one that the trial court in Harris directed us to discuss in court.

CHAIRWOMAN MATHIS: Thank you.

Is there a second?

Okay. Well --

VICE CHAIR HERRERA: Madame Chair.

CHAIRWOMAN MATHIS: Mr. Herrera.

VICE CHAIR HERRERA: I would like for, if at all possible, to either Joe or Mary explain why these records are being released, these particular records because we met many times in executive session, so why these particular records.

And if he -- if Mary or Joe can elaborate on that, I would appreciate that before I decide to vote either way.

CHAIRWOMAN MATHIS: So can we have that discussion before the motion is seconded?

JOE KANEFIELD: Madame Chair, this is Joe.

I would suggest that we have that discussion after there's a second.

CHAIRWOMAN MATHIS: Am I allowed to second it?

JOE KANEFIELD: Madame Chair, our opinion is that you have all of the rights of the other members of the Commission. So you may second the motion for purposes of discussion.
CHAIRWOMAN MATHIS: Okay. I'll second the motion.

So any discussion?

JOE KANEFIELD: Madame Chair, members of the Commission, this is Joe.

I think first thing I would note is Commissioner McNulty mentioned that she didn't have the specific dates. I think the dates that she was referring to of the executive session discussions were June 15th, June 24th, and June 29th of 2012.

Sorry, 2011. I'm losing track of time.

And the -- Commissioner Herrera had asked for clarification as to why this issue -- why these specific transcripts are the subject of possible release.

The reason, as we understand it, is that these particular executive session transcripts involved the discussion of the selection of the Commission's mapping consultant, including evaluations of the proposals by the mapping consultant companies that were wishing to do business with the Commission.

The open meeting law prohibits executive session transcripts from being released except under very limited circumstance, which arguably don't
necessarily apply here.

The reason that -- as we understand it that the Commission is considering releasing or seeking legal avenue to release these transcripts is because in the federal proceedings in Harris versus Arizona Independent Redistricting Commission, during the trial the last week of June, questions were asked of the commissioners who were called as witnesses by the plaintiff with respect to these executive session transcripts and discussions.

The Commission -- counsel for the Commission had been asserting all along that these transcripts were not public record, that they were deemed confidential by virtue of the open meeting law.

The -- and that argument was made to the three-judge panel that -- noting that during the depositions of the commissioners, counsel for the plaintiffs respected the Commission's assertion of confidentiality with respect to those transcripts.

But in trial, questions were asked by plaintiff's counsel with respect to these transcript -- executive transcript discussions.

Counsel for plaintiffs argued to the panel that to the extent that these transcripts were
confidential, the confidentiality no longer existed because the discussion of confidential documents, which were procurement documents of sealed bids at the time were no longer sealed after the decision to select Strategic Telemetry was made.

And also the counsel for -- in fairness to the plaintiffs -- argued that the Commission has asserted, during the course of the procurement for both outside counsel and the mapping consultant that the procurement code, although be it followed by the Commission, did not apply to the Commission.

So therefore, to the extent that documents are confidential under the procurement code and the exception under the open meeting law for discussions in executive sessions with respect to confidential documents did not apply in this situation.

Nevertheless, the court agreed with plaintiffs and allowed questions to be asked of the individual commissioners with respect to these executive session discussions. And many questions were, in fact, asked.

So not all, of course, but a lot of the discussion in those sessions was discussed in open court during the federal proceedings in Harris.
versus the Arizona Independent Redistricting Commission.

So at this point, because the issue with respect to these discussions may, in fact, be relevant in the Leach case that's coming up and also in fairness to all involved in those discussions, that -- I understand the direction through this motion would be to pursue releasing these transcripts. And the direction is to counsel to pursue legal avenues to do that, which we would -- which we would do if the Commission so directs us to do.

CHAIRWOMAN MATHIS: Thank you, Mr. Kanefield.

Any questions from commissioners or comments?

VICE CHAIR HERRERA: Madame Chair, I do have a follow-up question to Mr. Kanefield.

CHAIRWOMAN MATHIS: Go ahead.

VICE CHAIR HERRERA: Mr. Kanefield, if we start releasing executive session meeting minutes, what stops the attorneys, whether the opposing -- they keep asking for more information in executive session.

We've already released these transcripts, why not -- why not more? I think -- I don't know if
that's a question, but I guess I'm a little worried about that. Once we start releasing these transcripts -- and I was told every time we start a meeting, there's -- you know, everything is confidential, remains with the people that are in the meeting, but it seems less and less of that is true, and I'm a little concerned about that.

JOE KANEFIELD: Madame Chair, Commissioner Herrera, that's a fair question.

I understand that the motion is specific to these particular transcripts because of the unique circumstances that we find ourselves here with the federal court's allowing of questions to be asked about confidential discussion in executive session.

So other than -- I don't know how to answer your question about whether others may pursue release of executive session transcripts. All I can say for now is that these executive session transcripts and discussions are specifically deemed confidential under the open meeting law.

We know now clearly that the open meeting law does govern the proceedings of the Commission as a result of the Court of Appeals decision in State V. Mathis and that -- and that -- and we can't even
say for sure whether there is a legal -- there is necessarily a legal avenue to release these transcripts in light of the prohibition on release of executive -- I'm sorry, in light of the confidentiality for executive session transcripts.

So I think that -- my understanding is this would be a very narrow, limited request for us to look into and only because of the federal court's decision to allow questions to be asked in trial with respect to these transcripts over the objections of the Commission.

VICE CHAIR HERRERA: Madame Chair, can I have a follow-up question to Mr. Kanefield?

CHAIRWOMAN MATHIS: Sure. Go ahead.

VICE CHAIR HERRERA: These transcripts are being released because we have commissioners that spoke about them in court. So it's very possible that their attorneys can be asking questions about something -- some other meeting that happened in executive session.

These commissioners could talk about it and it pretty much the same -- we could probably get the same result.

Is that -- I mean, that's also a possibility.
So I guess what I'm asking -- my question is to you, what would be the negative consequence by us not releasing these documents or voting -- not voting to release them to the public?

JOE KANEFIELD: Madame Chair, Commissioner Herrera, I'm not sure what the consequences would be if the Commission decides not to. We're just taking direction from the Commission.

My understanding, as counsel in just listening to the discussions, is that because the discussions in these executive sessions are now public in some respect but not in all respects, that perhaps it may make sense for the whole entire discussion to be made public.

But we will respect whatever direction the Commission gives us because, you know, it is our position and our advice that executive session transcripts and discussions must remain confidential except under the very limited exceptions provided in the open meeting law, which we don't believe necessarily apply here.

VICE CHAIR HERRERA: Thank you.

CHAIRWOMAN MATHIS: Any other questions or comments from other commissioners?

COMMISSIONER MCNULTY: I do have a comment,
Madame Chair.

CHAIRWOMAN MATHIS: Go ahead.

COMMISSIONER MCNULTY: Following up on what Mr. Herrera said.

I think he raises -- what he raises is very important. I support -- well, first of all, let me clarify my motion by saying that in requesting counsel to pursue legal avenues to release the transcripts, I am not requesting that they release them unless the Commission votes to release them after receiving advice back on what they have determined.

I also think -- but I do -- I would, at least as I sit here now, prefer to release them because they have been partially released and I think it's important that folks understand the entirety of what's in those transcripts.

I think we've been hamstrung from defending ourselves for a lot of months in a way that was unnecessary and would be resolved if those were released.

Having said that, though, I think that we as a Commission should vigorously pursue a violation of the open meeting law, if it occurs, in connection with any future transcripts.
So I wouldn't want -- in pursuing legal avenues to release those, I wouldn't want to in any way suggest that we're agreeing to release the other transcripts.

We don't have the time to go through them. We can't -- we don't have the resources to make our lawyers go through them and see what's attorney/client privilege and what's legislative privilege.

And we all, you know, were in executive session at the direction of our legal counsel and the direction of the State procurement office and I'm not suggesting and don't want us to take any action that somehow suggests that that's no longer relevant.

JOE KANEFIELD: Madame Chair --

VICE CHAIR HERRERA: Madame Chair.

CHAIRWOMAN MATHIS: Did Mr. Kanefield want to say something first?

JOE KANEFIELD: Yes, Madame Chair. I'm sorry, to interrupt you, Mr. Herrera -- Commissioner Herrera, I just -- I wasn't -- I don't recall if the motion indicated that the attorney/client privileged advice in those transcripts should be redacted. And that would be our advice and that may require an
amendment to the motion.

COMMISSIONER MCNULTY: I didn’t address that in the motion, Mr. Kanefield, because -- I mean, my understanding is that we wouldn't be releasing anything now. We would make that decision at a later time once you determine whether there was an avenue pursuant to which we could release them.

CHAIRWOMAN MATHIS: That was my understanding as well.

JOE KANEFIELD: Got it.

Thank you, Madame Chair. Thank you, Commissioner McNulty.

CHAIRWOMAN MATHIS: Mr. Herrera, did you have something?

VICE CHAIR HERRERA: I do. It's either Ms. O'Grady or Mr. Kanefield can answer this question.

Have any other the commissioners violated open meeting laws in any other testimony or in any discussions they have had in the open? Because if they have -- I mean, this is something that we need to address.

I mean, we had executive meetings -- executive meetings and every time we always have executive meetings, our chairwoman has the
disclaimer at the beginning.

So there's a reason why she has -- she mentions that disclaimer or that -- let's say a warning.

But I guess I want assurance from you guys, from both our attorneys, that none of the commissioners have violated open meeting laws.

JOE KANEFIELD: Madame Chair, Commissioner Herrera, I think your question is by virtue of your testimony in federal court, did you violate the open meeting law? Is that what you're asking?

VICE CHAIR HERRERA: Not necessarily.

I mean, that could be part of the question, but I'm also asking, has there been -- has there been information given to the public or to attorneys that did not have the privilege because they were participating in executive session that -- I think those questions weren't even asked.

These commissioners chose to voluntarily release this information. So I -- it's more than just, you know, what happened in the trial. It's more than that. It's talking about, you know, did commissioners voluntarily release information when they were -- when they weren't even asked questions that pertained to that, meaning they just started
talking about stuff in executive session, knowingly
that that violated open meeting law.

JOE KANEFIELD: Madame Chair, Commissioner
Herrera, I don't -- I'm drawing a blank. I'd have
to go back and look at the transcript from the
trial.

I thought that the questions asked were
answered appropriately and objections were made if
the person -- or the witness testifying went beyond
the scope of the question.

So I just -- I really don't feel like I'm
in a position to give you an answer as to whether
something was revealed that was outside the scope of
what the court ordered to be revealed through the
questioning at trial.

VICE CHAIR HERRERA: Mr. Kanefield, then can
you at the next meeting -- before the next meeting
do some research on that to see if that is indeed
the case, none of the commissioners violated the
open meeting law.

And, again, I'm not referring to
questions that were asked and you opposed and then
the judge -- the panel agreed -- decided with the
commissioners -- you know, with commissioners'
attorneys that that is not privileged information.
Again, I'm referring to any other information that, again, was not even asked. These commissioners chose to voluntarily release this information, whether to the press, whether to whomever and these individuals had no -- really no right to be -- had no privilege to executive meeting information.

So I would appreciate it if you at the next meeting give me a definite answer.

JOE KANEFIELD: Madame Chair, Commissioner Herrera, I'll just answer for myself. I don't -- I don't think it would be appropriate for me to go conduct -- to looking into whether arguably a commissioner violated the open meeting law unless the Commission as a whole specifically directs me or Mary or both of us to do that.

I think if you're asking in the scope of the trial, well --

VICE CHAIR HERRERA: No, I was not. I was not.

What is the point in having executive session meetings if they are really not confidential and you can't even guarantee me that.

So I think this is very appropriate.

Again, before we go into executive meetings, if the
chair really wants to read that paragraph she always reads, for us to be reminded, I would love for her to do that.

But if you can't guarantee me that these meetings are truly confidential and talking about them to the public violates the open meeting law, if you cannot assure me that, then why bother going into executive meetings?

COMMISSIONER McNULTY: Madame Chair, just a comment on I think the motion on the floor. Do I need to re-- if I need to restate that at any point, let me know.

My understanding was that the court, the judges, at least in this case, made that comment that we could testify, if asked about that, transcripts. And so I think that came from the bench. But that's probably not on our agenda here right now.

VICE CHAIR FREEMAN: Madame Chair, this is Scott Freeman.

CHAIRWOMAN MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: A couple of things. Perhaps if Commission's counsel is going to follow Commissioner Herrera's directive, they need to identify themselves as persons with
knowledge of potentially relevant facts in the ongoing litigation.

I would like to know from Commissioner Herrera what specifically -- what specific facts is he aware of? What is he insinuating?

Because I know I was at trial. I remember it very well and a three-judge panel directed me to go ahead and answer the question that was posed to me.

So what specifically are you referring to that is outside the context of the recent trial?

VICE CHAIR HERRERA: And, Commissioner Freeman, that's a valid question. I don't know the answer to that. That's why I'm asking our attorneys to -- ask them a very simple question.

Can you assure me that none of the -- I'm including myself in this -- none of the commissioners have violated open meeting law.

And if they have, we need to know about it because I want to make sure it doesn't happen again.

VICE CHAIR FREEMAN: Well, I assume your question --

VICE CHAIR HERRERA: Can I finish? Can I finish?
VICE CHAIR FREEMAN: I thought you were. Keep going.

VICE CHAIR HERRERA: Well, I am not. Thank you.

I'm not asking our attorneys to drop the hammer on these commissioners, because it could be me. I could be one of those people.

But I do know want to know if these -- if commissioners -- I'm including myself, there's five of them, have violated open meeting laws. And I'm not talking about what happened in the court at trial, but, again, talking to the press, talking about things that happened in executive session and -- when they really shouldn't be.

I think -- again, I'm not referring to the trial because if it is happening, I want to make sure that that stops. And I'm including myself in this. I'm not excluding myself in this at all.

I'm one of the commissioners. So I'm not insinuating anything. What I am doing is making sure that we -- that we follow procedure. If we go into executive session, I want to be comfortable as well as the other four commissioners want to be comfortable, that anything discussed in there stays within those individuals that are part of the
discussion in executive session.

    I think it's a very -- to me a very
legitimate question to ask. And I want to feel
comfortable when we go to executive sessions that
the information does stay with the attorneys and the
commissioners and the other individuals that are
attending these open -- these executive session
meeting minutes.

    VICE CHAIR FREEMAN: Madame Chair.

    CHAIRWOMAN MATHIS: Mr. Freeman.

    VICE CHAIR FREEMAN: Well, a couple of things.

    Perhaps then we either need to have the
Commission retain the services of a private
investigator to conduct that, because I don't
believe the Commission's counsel can do that, or,
two, perhaps we should enter some sort of consent
decree with the County Attorney and allow him to
reopen his investigation of alleged violations of
open meeting laws for the entire span of the
Commission.

    VICE CHAIR HERRERA: They were alleged and
they weren't proven. So, yeah, if you want to
rehash that over again and waste State money, then
go ahead.

    But what I'm getting at is I want to be
assured that when I go into an executive meeting with our attorneys, with the commissioners, and the ASPCA (sic) staff, Ray and Kristina, that things that we discuss in these executive sessions are truly confidential. And we won't be releasing these transcripts just because some -- because a commissioner brings it up in public outside of the court.

VICE CHAIR FREEMAN: Madame Chair.

CHAIRWOMAN MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: Well, I'm responding to your concerns, Commissioner Herrera. I would like -- let's go ahead -- if you've got these grave concerns, I want to respect those concerns.

Let's go ahead and reapproach the County Attorney and propose some sort of consent order that would allow him to reinstitute any and all investigations of alleged violations of the open -- State's open meeting law by this Commission or any commissioners.

VICE CHAIR HERRERA: I think you're misunderstanding me. I don't have any particular allegation in mind because there hasn't been any that I know of.

But what I do want to know is if our
attorneys feel comfortable saying, no, no violation has occurred. If they can tell me that -- because I trust our attorneys, Mary and Joe. If Mary and Joe can assure me that no violations have occurred that they are aware of, you know what, I'll move on.

VICE CHAIR FREEMAN: Madame Chair.

VICE CHAIR HERRERA: So I'm not alleging -- I'm not alleging anything happened. What I am asking is for our attorneys that we hired and pay that I have full confidence in to reassure me that no meeting -- open meeting laws have been violated, I'm going to move on from this issue.

MARY O'GRADY: Madame Chair, Commissioner Herrera, I think this is far afield from our agenda item today. And so I'd be happy to follow-up with you after the meeting on this issue but I do think we're getting far afield from the motion that's been made and the agenda that we have here.

VICE CHAIR HERRERA: Ms. O'Grady, this is something -- the agenda item is about releasing executive meeting minutes and that's my concern.

MARY O'GRADY: Well --

VICE CHAIR HERRERA: I think this concern that I'm voicing has everything to do with what we're talking about right now.
CHAIRWOMAN MATHIS: Well, Mr. Herrera, this -- what we're doing today is just having legal counsel pursue legal avenues to see what's even possible with releasing these particular executive session transcripts. And we'll be coming back to the Commission as a whole to have a vote as to whether or not anyone wants to release that once we have that information.

So any other comments or questions?

VICE CHAIR FREEMAN: Madame Chair.

CHAIRWOMAN MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: I guess one question I would have then is in the Leach matter, if -- are there any other executive sessions that are implicated by the allegations brought in that matter?

CHAIRWOMAN MATHIS: That's a good question. Legal counsel, do you know?

MARY O'GRADY: Madame Chair, Commissioner Freeman, we don't think so.

CHAIRWOMAN MATHIS: Okay. Any other questions?

VICE CHAIR HERRERA: Madame Chair, can Commissioner McNulty reread -- or someone can reread the motion or the amended motion?
CHAIRWOMAN MATHIS: Ms. McNulty, do you want to?

COMMISSIONER MCNULTY: I can restate it.

I move that we direct our legal counsel to proceed in accordance with the direction that we provided them in executive session and that we request that they examine legal avenues which might be available to release the transcripts concerning retention of Strategic Telemetry, dated June 15th -- Joe, you're going to have to help me here. June --

CHAIRWOMAN MATHIS: June 24th and 29th.

COMMISSIONER MCNULTY: Thank you.

-- June 24th and 29th with the understanding that they will not be released in the absence of further discussion and a vote by the Commission.

VICE CHAIR HERRERA: Thank you for clarifying. I would approve that motion.

CHAIRWOMAN MATHIS: Okay. It's already been seconded.

VICE CHAIR HERRERA: Okay.

CHAIRWOMAN MATHIS: Any other discussion? All in favor?

VICE CHAIR HERRERA: Aye.

VICE CHAIR FREEMAN: Aye.
COMMISSIONER STERTZ: Aye.

COMMISSIONER MCNULTY: Aye.

CHAIRWOMAN MATHIS: Aye.

Any nayes?

Okay. Hearing none, so unanimous decision.

So legal counsel, you'll let us know and I guess we'll have to notice a meeting once we have that information. Unless that's something you can -- yeah, I would think -- I don't know if that can be done without having a meeting or not. I would think -- I don't know if you can give us a memo.

MARY O'GRADY: Madame Chair, I think under the language of the motion, as I understand it, it would require a meeting.

CHAIRWOMAN MATHIS: Okay.

VICE CHAIR HERRERA: If I understand it correctly, the meeting would be whether we would approve the recommendation given by our attorneys once they gather whatever information they need.

CHAIRWOMAN MATHIS: Yeah.

VICE CHAIR HERRERA: That was the motion I thought. I mean, the -- so you can still send us information for us to review before the meeting.

Is that -- am I understanding correctly?
COMMISSIONER MCNULTY: Although we may want to have -- they may decide that that's something we should receive in executive session. So let's--

VICE CHAIR HERRERA: Okay.

CHAIRWOMAN MATHIS: Okay. Other comments or questions from anyone?

COMMISSIONER MCNULTY: I got to go do some work.

CHAIRWOMAN MATHIS: I have a comment I would just like to make before we close, because a lot was said last week on this particular agenda item in public session.

And even though we all agreed that silence did not mean consent, I just want to say a couple of things.

One is that Mary and Joe and your fellow attorneys at Osborn Maledon and Ballard Spahr respectively, you were hired to defend the decisions of the Commission because you are representing the Commission as a whole.

And some of those decisions include, of course, two maps, a legislative map and a congressional map, that got approved by the majority of the commissioners.

You have done a superb job under
extremely difficult conditions in representing the Commission as a body. And if I could do it all over again, even knowing everything I know today as well, I would make the same decision.

And I just want to thank you and your fellow attorneys and counsel for just giving us great advice and sticking with us this through this -- through really difficult conditions.

So thank you.

JOE KANEFIELD: Thank you.

VICE CHAIR HERRERA: Madame Chair.

CHAIRWOMAN MATHIS: Mr. Herrera.

VICE CHAIR HERRERA: Yeah, I think I probably made those same comments as you did, probably not as eloquent, the last time and, you know, the Commission will in ten years or nine years from now, whatever the -- I think it's eight now, will hire -- will go through this whole process again. And they will hire -- they will go through -- select a Commission, unless something changes drastically, which it might, but if it doesn't, if everything stays the same, they will go through a hire -- they will select commissioners, maybe five, maybe more, and after that they will select their legal counsel.

And I -- if asked, I don't even -- I may
not be asked, but if asked, I would recommend Mary and Joe over again. And that's even recommending Mary over my favorite attorney.

But I would even do that in eight years from now. I think they did a superb job, Mary representing the Commission and Joe representing the Commission.

Again, we elected them as -- selected them as a Democratic Commission -- attorney and a Republican Commissioner, but I never felt that way. I never felt that Joe was a Republican, therefore I couldn't talk to him and Mary was a Democratic attorney, therefore I needed to have more faith in her. Never felt that way.

And I hope in the next -- when they select the Commission next time, I hope I am asked. And I will highly recommend that they hire these two attorneys and their law firms because they did -- they did the best job they could. This is a difficult position they were put in.

And, yeah, I'm extremely happy with the services and the advice they provided me and I would love to have them again as attorneys. I would recommend them again as attorneys for the Commission.
So I echo those same comments.

Thank you.

CHAIRWOMAN MATHIS: Thank you.

COMMISSIONER MCNULTY: Madame Chair, I'll just add -- I'll thank you for making those comments.

I agree with everything you said and will add that Joe and Mary put partisanship aside to represent this Commission in a professional way and that's what lawyers are supposed to do. And I, too, would make the same decision again. I think it's one of the best decisions we made as a group.

VICE CHAIR HERRERA: And, Madame Chair, one last comment and I'll stop talking.

The same for me goes for Strategic Telemetry. Again, they were -- all of these insinuations that they were a Democratic mapping consultant. And, again, they did a job that, you know, that I was expecting but they went above and beyond.

I really think that they were fair and impartial and I would also recommend them as well.

So they -- again, I think I reminded everyone last time that our maps were approved on the first trial -- precleared on the first time that has never happened before.
Again, I think it's easy for us to forget all of this and pat ourselves on the back when all of these lawsuits are taking place. But, again, our attorneys and our mapping consultants, we couldn't have hired better ones. And, again, I can't thank them enough.

CHAIRWOMAN MATHIS: I would agree with that and I would also just add our staff, to pile on.

VICE CHAIR HERRERA: Oh, of course.

CHAIRWOMAN MATHIS: So I think the entire team that we put together was superb and I am grateful for all of their continued work on the Commission's behalf.

Any other comments or questions?

VICE CHAIR FREEMAN: Madame Chair.

CHAIRWOMAN MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: Unfortunately, I -- in my opinion, commissioners were not independent and -- as they were supposed to be pursuant to the constitutional provision that gave life to this Commission.

We were often lectured and told during Commission hearings about how many times the Constitution uses the word "independent" to describe this Commission and commissioners. Over 30 times.
And yet one thing the Harris trial did is it shined just a little bit more light on what transpired and sort of gave credence to, I think, comments that I made and one I think everyone really knew at the time, was that the Commission was implementing partisan maps.

So I -- before we leave agenda item II, I'm not sure if we're -- if I'm completely comfortable just leaving it because I'm not sure whether we've completely addressed the issue of a potential conflict of interest or things of that nature with respect to representation of individual commissioners who have been served with process and who are parties in their official capacity in the lawsuit.

So I would just like to make a motion that for any commissioner who feels it is necessary that the Commission approve that the engagement of their individual counsel can be expanded such that that counsel can advise them on all aspects of the litigation and appear as counsel of record for that individual Commission or commissioners with the provision that that counsel is only authorized to articulate -- in addition to what they are already authorized to do, which is advise on issues of
privilege and discovery matters, but beyond that, they are only authorized to articulate a position of that individual commissioner in the matter where appropriate and under governing law.

CHAIRWOMAN MATHIS: Okay. Is there a second?

COMMISSIONER STERTZ: Second the motion.

CHAIRWOMAN MATHIS: Any discussion?

VICE CHAIR HERRERA: Madame Chair.

CHAIRWOMAN MATHIS: Mr. Herrera.

VICE CHAIR HERRERA: I do have some discussion.

I think Commissioner McNulty said she needed to leave, so I don't know how much time we have. I was hoping we would devote more time than this than at the very end of the meeting.

You know, I think Commissioner -- excuse me, Ray Bladine sent out an e-mail not that long ago. I may have looked at it yesterday, about some of the questions that came up in the billing -- some of these billings that our attorneys submitted. And one of the attorneys submitted a billing for investigating Commissioner Mathis.

You know, at the last meeting, I was more than okay with getting -- with allowing commissioners to get their own representation, but
not for a witch-hunt. I would never approve that. I think it is a waste of State money.

And if that's what these -- what our motion will be, is to allow these attorneys to do their own thing, to do a witch-hunt of a commissioner, do some research on -- opposing research on the chairman, then, no, I wouldn't approve the motion and I won't.

I was not happy with what I saw in that letter and I would not support this motion if it's this broad and allows attorneys to do pretty much what they want without really defining what they will be doing, what work they will be doing and what work they can bill for and what they cannot.

So those are my comments.

CHAIRWOMAN MATHIS: Thank you.

Other comments?

COMMISSIONER MCNULTY: Madame Chair.

CHAIRWOMAN MATHIS: Ms. McNulty.

COMMISSIONER MCNULTY: My only comment is that if we're going to spend money like that, then we as a Commission should be spending money to investigate who it is that is paying the plaintiffs and their lawyers and has been paying them for three years now to try and bring this entire Independent
Redistricting Commission down.

And we should also investigate Mr. Mills and his relationship to Commissioner Stertz and Commission Freeman and his relationship to the people who are paying the plaintiff, Mr. Cantelme and Mr. Liburdi and Ms. Hauser.

We don't need to be investigating one another on Commission money.

And I'll just make one more statement to Mr. Freeman.

He enjoyed making sanctimonious statements about how independent he was and the light that was shed on what went on on this Commission.

I made my own independent decisions. I did not submit any partisan maps of any kind. And if we want to have, you know, a real full disclosure of everyone -- that everyone talked to in relation to working on the maps, maybe someday we can get to that.

But the fact that any of us had conversations to educate ourselves or to make ourselves better able to do the job we were supposed to do does not in any way mean that we were not independent.
And I know there is probably no one there to listen or who cares about that, but that's my only comment.

I'll vote no on this motion also and I've got to drop off pretty soon.

VICE CHAIR HERRERA: Madame Chair, I have one more comment then I will also -- I won't say anything after that.

You know, I -- this is a record that -- we can easily look at the record. There's been -- there was multiple times when we were voting on certain topics, on certain issues that Commissioner McNulty didn't side with me. She sided with the Republicans or commissioner -- or Chairwoman Mathis.

And even after -- you know, in meetings and wanting to let her know the reasons why I was voting a certain way, usually -- especially if those are votes that I was opposed to and she was for or vice versa, she maintained that independent streak. She didn't vote the way I voted. I'm going to say the majority of times we had disagreement.

And, again, the record is pretty clear. There's probably no one on the Commission probably more independent than McNulty. And that's odd that I say that because -- considering she's a Democrat.
So I -- for anybody that impugns her record or reputation is really -- is not being honest. I have the most respect for Commissioner McNulty and I wish she would have voted with me a hundred percent of the time but that wasn't the case. And it was frustrating for me, as it was frustrating working with Commissioner Mathis on certain things, because she -- again, Independent.

And I'll admit, I probably -- out of the three people that I just mentioned, including myself, I'm probably the most biased but I did everything I could to maintain -- to be as independent as possible. And in seeking input from pretty much anyone that would talk to me during the meetings.

But again I want to make sure that was pretty clear for the record that Commissioner McNulty is extremely independent. Very bright. And I think she did, I think out of all commissioners, better research before she came to meetings. And I think the transcripts prove when she would talk about areas that she wasn't even familiar with because she didn't live in the area, she knew them well because she did her research, not because she was handed a map to recite things that somebody else
did, not even close.

She knew her stuff because she did her research before the meetings. And that's how she approached every meeting. And I was very honored to have served by her. And I think I learned a lot from her.

And I think most commissioners, if not all commissioners, that served with me probably learned a lot from Commissioner McNulty.

So if anybody accuses her of not being independent, not doing her own work, is not being honest.

CHAIRWOMAN MATHIS: Thank you, Mr. Herrera.

MARY O'GRADY: Madame Chair --

CHAIRWOMAN MATHIS: Any other comments?

MARY O'GRADY: Madame Chair, if it's -- I'm trying to understand kind of the scope of the motion and describe kind of what -- from Commission counsel we view because we do think there's an appropriate role in Leach for -- as there was in Harris, for commissioner counsel.

And, again, back in December the court auth- -- or this Commission, you know, authorized separate counsel for an independent -- for commissioners. So we do think it's appropriate to
have commissioner counsel on the issue of legislative privilege and waiver, as they did in Harris and for certain discovery-related work.

Also --

COMMISSIONER McNULTY: Madame -- Ms. O'Grady, we already discussed that and that was embodied in the motion we gave you to proceed in accordance with the direction we gave you in executive session.

MARY O'GRADY: Okay. So that was unanimously approved.

So we will pursue the role of counsel and so that's part of the reason for my confusion. This scope -- since that was approved, we'll move forward with that.

This would then add for all commissioners the authority to have a lawyer who would serve as their advocate, their personal advocate for their personal positions in the litigation and use the Commission's budget for that purpose.

As I understand the motion, that goes, you know, well beyond what the motion was approved and the role of the counsel -- commissioner counsel.

So I just -- because that motion had been approved, I just wanted to make sure that I was clear in terms of how far beyond this motion we'll
go from what the Commission has already adopted.

VICE CHAIR FREEMAN: Madame Chair, it's Scott Freeman.

CHAIRWOMAN MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: Not quite.

I mean, I think it was within the context of the litigation and under governing law. So you used the word "individual" and that's what maybe I'm quibbling -- it's a quibble, but it -- every commissioner has been named in their official capacity in the lawsuit and this would allow the individual counsel, if a commissioner so wanted, to expand the scope of engagement from what it currently is. It would allow those individual counsel to assert positions on behalf of the individual commissioner, not on behalf of the body, and to make -- and to appear in the lawsuit.

Would you like me to read it again?

CHAIRWOMAN MATHIS: Yeah, go -- I would like you to read it again. Go ahead.

VICE CHAIR FREEMAN: Well, I was looking at notes, I wasn't -- but I'll try to reconstruct that as best I can.

The motion was that for any commissioner who so chooses to pursue this option, that the scope
of engagement for the individual counsel that the Commission has already retained for them be expanded such that that individual counsel could advise that commissioner on all aspects of the litigation and appear as counsel of record for the individual commissioner or commissioners; however, that counsel is only authorized to articulate positions of the individual commissioners as they are named in the lawsuit, before the court and where appropriate and under governing law.

MARY O'GRADY: Madame Chair -- and I don't know the where appropriate and under governing law. Mr. Kanefield previously has explained what we view as appropriate and governing law, which would be inconsistent with the scope of -- with the description that Commissioner Freeman has given because we view -- as Joe explained, the Commission -- the commissioners are named in their official capacities as proxies for the organization and its really inseparable in this type of official capacity litigation that challenges the maps and seeks relief only against the Commission and seeks to enjoin only the maps. Seeks no relief against individual commissioners. That where applicable law means the real party in interest here is the Commission as a
And so that's why the clause "where applicable" seems inconsistent with the scope that is described in the earlier part of the motion.

CHAIRWOMAN MATHIS: Okay. Any other comments or questions?

All in favor?

COMMISSIONER STERTZ: Aye.

VICE CHAIR FREEMAN: Aye.

CHAIRWOMAN MATHIS: Any opposed?

COMMISSIONER MCNULTY: I'm opposed.

VICE CHAIR HERRERA: I'm opposed as well.

CHAIRWOMAN MATHIS: I'm opposed as well.

That's -- so sounds like Stertz and Freeman are voting aye and Mathis, McNulty, Herrera voted no.

So there is a role for individual counsel, as we all know, and that's already been approved back when we were talking about our defense in Harris. And so that continues. Same thing goes in Leach.

If in the future an individual commissioner -- if something else arises that, you know, we just can't foresee at this time in terms of, you know, another charge or something that
requires independent counsel, I think at that time we can get together as a Commission and talk about, you know, whether that warrants an expansion of scope for individual counsel for that particular commissioner or commissioners.

But I think we really have to be mindful of what is happening with our budget since we -- it's been strained significantly through what's happened in this past trial with everybody having individual counsel and some charges that I find quite surprising and not necessarily something that was approved as part of the scope.

So we'll just have to -- I think we'll have to deal with things on a case-by-case basis moving forward.

VICE CHAIR HERRERA: Madame Chair.

CHAIRWOMAN MATHIS: Mr. Herrera.

VICE CHAIR HERRERA: Yeah, my -- I believe the A/C in my office has been turned off, so I will have to hang up because I'm -- it's hot.

But what I want to do just quickly -- any -- any invoices that are submitted that are -- that have questionable charges, I would like for Mr. Bladine to present those to the board before they get paid. Because, again, to me it's not an
issue that the State doesn't have money because I think if it's important for the Commission and the individual attorneys, we should get them paid.

But my main issue is -- my main concern is spending money on things that we did not approve. And, again, investigating the chair is not something that I would have -- well, that I do believe strongly that it is not what we -- what was intended for in getting individual attorneys.

So maybe he's already doing this, but, Mr. Bladine, if there's any questionable charges like the one you e-mailed to us, that you continue to do so because I want to be made aware of that.

Because the reason I changed my mind -- I was so ready to vote for this but then I received that e-mail and that really was disturbing. And I don't want to say disgusting, but I guess it was close to disgusting, if not disgusting. And that -- I would never approve that. I would never allow a commissioner's attorney to -- basically conduct a witch-hunt of another commissioner, whether they are Republican, Democratic or Independent, that's not what we're here for.

So hopefully Mr. Bladine has heard what I said and will bring those -- when they do come up,
will bring those questionable charges back to the Commission.

VICE CHAIR FREEMAN: Madame Chair.

CHAIRWOMAN MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: Well, perhaps you've forgotten already, Commissioner Herrera, but one of the charges was for your attorney. So I would expect to find out what those questionable charges were about --

VICE CHAIR HERRERA: Sure.

VICE CHAIR FREEMAN: -- just as everyone has learned about what allegedly the charges by Commissioner Stertz's attorney were about.

VICE CHAIR HERRERA: Madame Chair, the charges for -- there is a sentence in there that my attorney went over what was projected, which I would love to know what any questionable charges -- definitely, share them. Share them with everybody.

But there was no amount given to Commissioner Stertz's attorney in terms of how much he went over by. And that -- to me, that's a concern.

So in the future, Mr. Bladine, when you mention things like that, that they were -- that they went over budget, I want to know by how much.
You've stated how much I went over budget, or my attorney did, at least the number of hours, which I would like more detail, including for my own attorney.

So I want to be as consistent as possible. I agree with Commissioner Freeman. This pertains to me as well. If there's any questionable fees that my -- that the attorney representing me submitted, I want to be made aware of that.

I wasn't made aware of that only by that couple of sentences. So in the future, or even for the one -- the last e-mail we received, more detail for me is best.

RAYMOND BLADINE: Madame Chair.

CHAIRWOMAN MATHIS: Mr. Bladine.

RAYMOND BLADINE: I think it's the responsibility of the executive director to review invoices and approve them, or if there is a significant issue, bring it to the Commission. And I realize that I am not going to always make everyone happy.

I tried to do that with this memo. I haven't had issues in the past that were of this scope.

I keep -- the individual billings have
been kept as confidential. I think if we get into too much detail of this, we'll start to have problems with legislative privilege on the materials and client/attorney privilege.

I believe we talked about this quite a bit before Mr. -- Commissioner Herrera was able to be here. I certainly will continue to review them. And if I see something that's significant, bring it forward.

I'm still -- I contacted the two attorneys involved and there may be a good explanation for things. If there are, I believe that I should have the authority to make a decision about whether they are paid or not. And if I deny it, the attorney can always bring it forward to the Commission and have you decide.

But I think we have to be very careful of not having the Commission approving all of the invoices for all of the attorneys because it will get very, very messy.

VICE CHAIR HERRERA: Madame Chair, I will have to go after I make this comment.

My intention was not for you, Mr. Bladine, to bring up every -- every billing, every invoice to the Commission because I trust you
enough to make your own -- to make a decision to approve them.

But as you did with this particular -- these particular invoices, you did send the Commission some of the questionable ones that you thought -- or at least if they went over, okay, but then you addressed the questionable fee -- questionable charge and that's all I'm asking.

I think you are already doing that and I apologize if I meant -- if I confused the issue. I think you are already doing that and I appreciate that.

But I would want -- when I do follow up, I would want some more information. And I won't always want information about everything, but if it's something you feel -- you as a professional feel that these are questionable, then, yes, I want to know.

But then -- again, I didn't mean to add more -- to add more duties to you since I think you're already doing what I was talking about.

But, again, there's no A/C here so I'm going to have to leave and --

CHAIRWOMAN MATHIS: Before you go --

Mr. Herrera, before you go, I think it's important
that each commissioner reviews his or her own
invoice that they have with their individual counsel
to ensure that, you know, it's accurately reflecting
their recollection of what occurred.

I know I do that with mine and I just
think it's important that each individual in this --
and this isn't just being given to Mr. Bladine to
do.

VICE CHAIR HERRERA: No. I -- thank you.
You're right. And I have reviewed the invoices. I
didn't see any questionable charges. But the -- it
went over projected amount, but the reasons why he
went over projected to me were extremely reasonable.

But I think when Mr. Mandell contacts
Mr. Bladine, I think he'll realize -- or he'll know
the reasons why he went over a projected amount.

So the air is out. Thank you.

CHAIRWOMAN MATHIS: Thank you.

Any comments or questions from anyone
else?

RAYMOND BLADINE: Can I go home?

CHAIRWOMAN MATHIS: Just wait until we
adjourn.

RAYMOND BLADINE: Okay, Madame Chair.

CHAIRWOMAN MATHIS: Okay. I'm not hearing any
other comments or questions.

    The time is 5:31 p.m. and this meeting is adjourned.

    Thank you.

    VICE CHAIR HERRERA: Thank you, guys. Take care.

    (The meeting adjourned at 5:31 p.m.)
I, MICHELLE D. ELAM, Certified Reporter
No. 50637 for the State of Arizona, do hereby
certify that the foregoing 127 printed pages
consistute a full, true, and accurate transcript of
the proceedings had in the foregoing matter, all
done to the best of my skill and ability.

WITNESS my hand this 8th day of May,
2013.

______________________________
MICHELLE D. ELAM
Certified Reporter
Certificate No. 50637