Friday, May 13, 2011
4:17 p.m.

Location
Evans House
1100 West Washington
Phoenix, Arizona 85007

Attending
Colleen C. Mathis, Chair
Jose M. Herrera, Vice Chair
Scott Day Freeman, Vice Chair
Linda C. McNulty, Commissioner
Richard P. Stertz, Commissioner
Raymond F. Bladine, Executive Director
Kristina Gomez, Deputy Executive Director
Buck Forst, Information Technology Specialist
James E. Barton II, Assistant Attorney General

REPORTED BY:
Marty Herder, CCR
Certified Court Reporter
CCR No. 50162
Phoenix, Arizona
May 13, 2011
4:17 p.m.

(Whereupon, Chairperson Mathis, Commissioner Stertz, and Commissioner McNulty appear via videoconference.)

PROCEEDINGS

(Whereupon, the public session commenced.)

CHAIRPERSON MATHIS: So, it's 4:17 p.m. -- I mean, yes, p.m., and I'd like to call this meeting back to order from recess.

This is the Arizona Independent Redistricting Commission.

Today is Friday, May 13th. And I will go ahead and take a roll call since it's been such a long period since our recess, but I can see you guys.

Vice Chair Freeman?

VICE CHAIR FREEMAN: Here.

CHAIRPERSON MATHIS: Vice Chair Herrera?

COMMISSIONER HERRERA: Here.

CHAIRPERSON MATHIS: Commissioner Stertz?

COMMISSIONER STERTZ: Here.

CHAIRPERSON MATHIS: Commissioner McNulty?
COMMISSIONER McNULTY: Here.

CHAIRPERSON MATHIS: We have a quorum.

And I believe, I can't see if there's public there, but I see our executive director, Ray Bladine.

And would you mind, Ray, saying who else is over there on your end?

RAY BLADINE: We have from the purchase -- procurement office, we have Jean Clark. And, I am sorry, I don't know her assistant's name.

Then we do have the public, members of the public, about 10 or 12.

We have several reporters.

Would you like me to try to detail that more?

CHAIRPERSON MATHIS: No, that's okay. Thank you. I just wanted to make sure we did have procurement here too.

RAY BLADINE: Yes.

CHAIRPERSON MATHIS: Thank you, Jean Clark, for being with us today.

We are on agenda item seven from our meeting, and this is a continuation of our discussion of responses to the RFP for legal counsel.

We had a really great day yesterday interviewing six candidates, and went into executive session to begin discussions about our thoughts on those six.
And I'd like to entertain a motion to go back into executive session to continue our discussions.

COMMISSIONER STERTZ: So moved.

COMMISSIONER FREEMAN: Second.

CHAIRPERSON MATHIS: Second? Okay.

All in favor?

("Aye.")

CHAIRPERSON MATHIS: Any opposed?

(No oral response.)

CHAIRPERSON MATHIS: Okay. We will go into executive session.

The time is 4:19 p.m.

COMMISSIONER HERRERA: Colleen, we'll have to wait about a minute or so for the members of the public to clear out.

CHAIRPERSON MATHIS: Will do. You can let me know.

COMMISSIONER HERRERA: I will let you know.

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

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(Whereupon, the public session resumes.)

CHAIRPERSON MATHIS: It's 5:33 p.m. We'll enter
back into public session.

Thank you, public, for attending today's late Friday afternoon meeting.

We just had a good discussion that continued from yesterday regarding the six firms that were short listed to provide legal services, legal counsel to the Commission.

And I want to thank all the commissioners for their input, because it's all valid and good.

And we were really fortunate in that we have a number of great responders, and they all did a great job yesterday in answering our questions and helped us all to formulate our opinions.

And I thank the firms and the responders, all of them, for being interested in serving us. And we all think you're great.

So we're very lucky. I said this to the commissioners, that I think it was an embarrassment of riches, that I really am impressed with the level of credentials that these people that responded.

With that said, if there is no objection, I propose that the Commission select Ballard Spahr and Osborn Maledon to serve as its counsel.

COMMISSIONER FREEMAN: I object,

Madam Commissioner.

COMMISSIONER HERRERA: Can you object to the --
Madam Chair, can you add the part that we would be allowing or giving SPO permission to negotiate the hourly rates with the two that have been nominated?

CHAIRPERSON MATHIS: That's true.

I should probably amend that motion to say that if there is no objection, I propose that the Commission select Ballard Spahr and Osborn Maledon to serve as its legal counsel and to appoint a procurement officer from state procurement to negotiate or harmonize the rates between the two firms.

Thank you, Mr. Herrera, for helping me with that.

COMMISSIONER HERRERA: I second that motion -- or I make that motion.

CHAIRPERSON MATHIS: Well, so, it sounded like there was an objection from Mr. Freeman.

COMMISSIONER FREEMAN: Yes.

CHAIRPERSON MATHIS: Okay. So then I will entertain a motion to select Ballard Spahr and Osborn Maledon to serve as legal counsel to the Commission and appoint a procurement officer to serve as our negotiator to help harmonize the rates between the two firms.

COMMISSIONER HERRERA: I make that motion.

COMMISSIONER McNULTY: I second it.

CHAIRPERSON MATHIS: Any discussion?

COMMISSIONER FREEMAN: Madam Chair?
CHAIRPERSON MATHIS: Yes, Mr. Freeman.

COMMISSIONER FREEMAN: Madam Chair, if this Commission had been presented with proposed counsel that was purely independent, non-partisan, without any partisan taint, we might be in a different situation.

But I think we would agree that all of the counsel that we interviewed, all the embarrassment of riches that we had before us, came with them certain partisan taint.

And I think looking at the -- what the last Commission did is the road to go.

As a Republican, I am willing to give deference to and accept as counsel for the Democrats, the Democrat counsel, any of the three interviewees so long as I would be given the same deference on my part.

My pick for counsel for Republican counsel is Lisa Hauser and the Gammage Burnham firm.

She is in my view beyond dispute the most qualified candidate of the six we interviewed, with direct first chair experience on every issue we are likely to face.

Like I said, I would accept any of the three Democratic interviewees despite reservations I may have about them and their background and their partisanship.

I don't think this is about partisanship. I think, like I said, absent a truly independent counsel presented with us, this is about getting, as the first
Commission did, the best legal counsel among the Republicans that the Republicans are comfortable with and as well qualified and the same thing for the Democrats and their counsel.

I think with the motion that's been put before the Commission, we struck a highly partisan tone and there's a highly partisan objective here.

Despite statements of praise about all the candidates yesterday made in public session, I think what we end up with is a result where the Democratic members of the Commission get to exercise a veto over who the counsel at least I would choose as Republican counsel.

In so doing they unfortunately put the chair in an untenable position, one that I would -- one where the chair is being forced to align with one side or another when it really isn't necessary.

We could proceed in a fair manner and allow the Republicans to pick their counsel and the Democrats to pick theirs, but now we're faced with the result where the chairman's going to have to decide -- side with one side or another in public session.

I think that could end up being harmful to this Commission as we move forward, and I don't want to see that happen.

Like you said, we had an embarrassment of riches
before us.

I also heard one of my Democratic colleagues on the Commission yesterday state, repeatedly I believe, at least once to my recollection, that he would be comfortable with any of the Republican candidates, at least in public session.

So I'm going to vote no on this motion.

And I wish we could proceed as outlined.
And I know we have really worked hard to try to resolve the issue, and I appreciate all the other comments and efforts by my fellow commissioners on this.

CHAIRPERSON MATHIS: Thank you, Mr. Freeman.

Other comments from anyone, any other discussion?

COMMISSIONER McNULTY: Madam Chair.

CHAIRPERSON MATHIS: Ms. McNulty.

COMMISSIONER McNULTY: I would like to say that I think that the combination of Ballard Spahr and Osborn Maledon presents us with the highest and best expertise and ability to provide us with their impartial and balanced representation.

And I think that we are not just Democrats and Republicans on this Commission. We are two Democrats, two Republicans, one Independent. We each have a vote. And we're each exercising that vote in front of you.

COMMISSIONER HERRERA: Madam Chair?
CHAIRPERSON MATHIS: Yes, Mr. Herrera.

COMMISSIONER HERRERA: For the record, and I don't know if the public has access to this information, which was our evaluation summary based on the RFP or the responses to the RFP. And there were two firms that were clearly on top. They were Ballard Spahr and followed by Osborn Maledon.

So I think we're being consistent.

I am not getting my number one choice, so I -- and I think Ms. McNulty would say the same thing -- or I'm not going to speak on her behalf.

My number one choice was Michael Mandell, for the record.

But I'm willing to negotiate and sacrifice my number one choice for someone who is equally as competent but not my number one choice. That would be Osborn Maledon.

COMMISSIONER STERTZ: Madam Chair.

CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: I will I go ahead and offer a substitute motion with the same terms and conditions, and offer a motion where Gammage and Burnham and Mandell Law Firm are the two firms of selection for the Commission.

COMMISSIONER HERRERA: Madam Chair, I don't think you can offer an alternate motion when there's an actual motion on the table seconded. We need to vote on that one motion before we entertain a second motion.
This is not a unanimous consent motion, let's remind the Commission. This is a motion that was -- that is a vote, a roll call vote, not a unanimous consent.

So unless I'm wrong, you cannot do that,

Commissioner Stertz.

COMMISSIONER STERTZ: A substitute motion can be made. It has to be made by --

COMMISSIONER HERRERA: Mr. Stertz, we have our attorney who is wanting to speak.

JAMES BARTON: Commissioners, this is Jim Barton.

Commissioner Stertz is right.

He can offer, he can offer -- he can move to amend the motion, and then you can have a second on that and vote on his amendment. It's not necessarily a countermotion. He can just move to amend the motion. If he gets a second, then you can vote on it. And if he prevails, then the motion is amended. And if he doesn't, then the motion stands as is.

COMMISSIONER HERRERA: Okay.

Mr. Stertz, did you hear that?

COMMISSIONER STERTZ: So what you're suggesting is that I offer not a substitute motion but an amendment to the motion, substituting Gammage Burnham for Ballard Spahr, and Mandell Law Firm for Osborn Maledon.

COMMISSIONER HERRERA: Is that your amendment?
COMMISSIONER STERTZ: My offer of amendment, yes.

COMMISSIONER FREEMAN: I'll second that.

COMMISSIONER HERRERA: So it's been seconded.

Ms. Chair, it's been seconded. Should we vote?

CHAIRPERSON MATHIS: Any discussion?

COMMISSIONER HERRERA: None from me.

CHAIRPERSON MATHIS: I would just like to say that we have, from the very beginning, all five of us said that whatever counsel we choose, whether it was the AG office or one firm or two firms, that they represent all of us. And that there is no -- I think all of us would agree that we have all said that and believe that.

I would like it if we could all obviously get behind the two firms that have been stated by me in my original suggestion.

But, I also believe that the Independent voice does need to be heard in this.

If there were a Legislative caucus among -- then candidates Republicans and Democrats and pure partisan representation of those two parties makes total sense. But the way this proposition and amendment to the Constitution is stated, you guys are stuck with me as the Independent.

And, there is a hugely growing group of Independents in this state, the fastest growing group, as we all know. And I think their voice needs to be heard.
And I think public perception is important, and I think that they strongly value bipartisanship behavior. And I think the two firms that I mentioned have great track records in those regards, the lead counsel for those two firms that are being proposed to us.

And for that reason I continue to stick by my original choices.

So I'm trying to figure out how we now move with this -- we've got a substitute --

COMMISSIONER HERRERA: Madam Chair, I think the attorney, Mr. Barton, was clear that Commissioner Stertz can amend the motion, and it's been seconded by Commissioner Freeman --

JAMES BARTON: I'm having difficulty hearing on the speaker phone.

Perhaps if they could take the phone off of speaker and just relay questions to me, that might be easier.

RAY BLADINE: Jim, I think we all at this end understand that all he has to do is make an amendment to the motion that was seconded. You would vote on that first. If that fails, then you vote on the second.

COMMISSIONER HERRERA: On the original.

RAY BLADINE: I don't think that Colleen heard that.
CHAIRPERSON MATHIS: Yeah, I can't hear Jim at all.

RAY BLADINE: I did say what you said correctly?

JAMES BARTON: You did, yes.

CHAIRPERSON MATHIS: Okay. Great.

I could hear Mr. Bladine.

So we need to vote -- unless there's more discussion, we need to vote on the amended motion that Mr. Stertz gave to substitute Gammage and Burnham for Ballard Spahr and Mandell Law Firm for Osborn Maledon.

Is that correct?

COMMISSIONER HERRERA: So the amendment would be voting for Gammage and Burnham and Michael Mandell.

CHAIRPERSON MATHIS: Correct.

COMMISSIONER HERRERA: And it's been seconded.

CHAIRPERSON MATHIS: It was seconded. Mr. Stertz made the amended motion, and Mr. Freeman seconded it.

COMMISSIONER HERRERA: Correct.

CHAIRPERSON MATHIS: Okay. Any other discussion?

COMMISSIONER HERRERA: No.

CHAIRPERSON MATHIS: All in favor?

COMMISSIONER FREEMAN: Aye.

COMMISSIONER STERTZ: Aye.

CHAIRPERSON MATHIS: So, and we'll need to do a roll call vote on this obviously since we're in different
places and it's hard to grasp.

    Any opposed?

    COMMISSIONER HERRERA: Aye.
    COMMISSIONER McNULTY: Aye.
    CHAIRPERSON MATHIS: And aye.

    So we have, if I heard it correctly, two for the amended motion. That was Commissioner Stertz and Vice Chairman Freeman. And three opposed, Vice Chair Herrera, Commissioner McNulty, Chairman Mathis.

    So the motion fails -- the amended motion fails,

    I'm sorry.

    Thank you.

    So we have another motion that's out there, the original one that has been seconded.

    Any other discussion?

    COMMISSIONER HERRERA: None.
    CHAIRPERSON MATHIS: Okay.

    All in favor?

    COMMISSIONER HERRERA: Aye.
    CHAIRPERSON MATHIS: Aye.
    COMMISSIONER McNULTY: Aye.
    CHAIRPERSON MATHIS: Any opposed?

    COMMISSIONER FREEMAN: Nay.
    COMMISSIONER STERTZ: Nay.
    COMMISSIONER HERRERA: Commission McNulty, did you
We couldn't hear Commission McNulty.

COMMISSIONER McNULTY: I voted aye.

COMMISSIONER HERRERA: Thank you.

CHAIRPERSON MATHIS: So the vote stands with Vice Chair Herrera, Commissioner McNulty, Chairman Mathis voting aye, and Commissioner Freeman -- or Vice Chair Freeman and Commissioner Stertz voting no.

And the motion carries, which is we will be selecting Ballard Spahr and Osborn Maledon to serve as legal counsel to this Commission and we are giving the authority to the state procurement officer to harmonize rates between those two firms.

COMMISSIONER HERRERA: Well said.

CHAIRPERSON MATHIS: Does anyone have any other things that they'd like to say?

COMMISSIONER FREEMAN: Madam Chair.

CHAIRPERSON MATHIS: Mr. Freeman.

COMMISSIONER FREEMAN: I -- perhaps not, because I think we've moved on that agenda.

I was thinking out loud of when our next hearing would be and whether we had confirmed it would be on the 26th or in the following week.

CHAIRPERSON MATHIS: Good question.

We have set a meeting for May 26th, in Phoenix,
9:30 in the morning, which was our plan a couple weeks ago.

We probably should discuss now if we're done with this agenda item seven, sounds like we are, unless anyone -- I'm sorry, before we move on, let me -- Ms. McNulty would like to say something.

COMMISSIONER McNULTY: I just have a question about whether the procurement officer will contact the two firms or whether Mr. Bladine will.

RAY BLADINE: Will you contact them.

JEAN CLARK: Yes, we will contact them.

We would like to wait until Monday, or do you want them contacted now?

COMMISSIONER HERRERA: Commissioner Mathis, Jean Clark said she would like to contact them on Monday, if that's okay.

JEAN CLARK: Unless you would like it tonight, if I can get ahold of them, but I . . .

RAY BLADINE: I can do that. I have a couple asking to be called.

CHAIRPERSON MATHIS: I would like if you could contact them tonight.

JEAN CLARK: We'll do it tonight. We'll do it tonight.

CHAIRPERSON MATHIS: Okay.

COMMISSIONER HERRERA: Jean Clark said that she
will do it tonight.

CHAIRPERSON MATHIS: Oh, good. Okay.

Thank you, Jean. I appreciate it.

Any other comments before we leave agenda item seven?

COMMISSIONER HERRERA: Madam Chair.

CHAIRPERSON MATHIS: Yes, Mr. Herrera.

COMMISSIONER HERRERA: I just wanted to say this was not an easy process, and I don't think anybody got what they wanted exactly, but that's what it means when you negotiate. You're not going to be happy with what you get, and we need to respect the decision that was made. It was 3-2, the majority.

And, like I said, it wasn't easy, but I think it was the right decision. And I sacrificed, and so did -- we all did.

So I appreciated the vote, and let's move forward.

CHAIRPERSON MATHIS: Thank you, Mr. Herrera.

Any other comments from anyone?

COMMISSIONER FREEMAN: Madam Chair.

CHAIRPERSON MATHIS: Mr. Freeman.

COMMISSIONER FREEMAN: I disagree with what Chairman Herrera said. But I think -- why don't we adjourn.

CHAIRPERSON MATHIS: But what?

COMMISSIONER FREEMAN: I was just suggesting let's
adjourn.

CHAIRPERSON MATHIS: You don't want to hang out longer?

COMMISSIONER HERRERA: Well, let's decide on the meeting. We will be meeting on the 26th or will we not?

CHAIRPERSON MATHIS: The 26th is Thursday, so next week we know that -- I know Mr. Bladine and I both have conflicts with next week, so our next meeting is scheduled for Thursday of the following week.

I hope we're okay with leaving as it is right now. Do we expect to get the responses to the mapping services RFP back sometime that week? Tuesday, I believe. So we probably won't have much time to review it, you know, before Thursday's meeting.

So we could move that meeting out until we have time after Memorial Day weekend to actually review responses.

But I'm happy with leaving it on the 26th too. It's up the commissioners.

COMMISSIONER HERRERA: Madam Chair, we could leave it as is and maybe change it later on. We do have plenty of time.

So I don't think we're going to come up with a date now, but let's keep the date. If it doesn't work later on, as long as we have 48-hour notice, we can make the
CHAIRPERSON MATHIS: Okay. Great. That sounds good to me.

Okay. Any other comments?

And the tabled agenda items from yesterday will remain tabled and will carry forward to whenever we meet next.

And I appreciate everyone's time this evening. And it's now 5:54 p.m., and this meeting is adjourned.

COMMISSIONER HERRERA: Thank you.

CHAIRPERSON MATHIS: Thank you.
STATE OF ARIZONA       )
    ) ss.
COUNTY OF MARICOPA      )

BE IT KNOWN that the foregoing meeting was held before me, Marty Herder, a Certified Court Reporter, CCR No. 50162, State of Arizona; that the foregoing 20 pages constitute a true and accurate transcript of all proceedings had upon the public session of said meeting, all done to the best of my skill and ability.

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

DATED at Chandler, Arizona, this 22nd day of May, 2011.

_________________________________
Marty Herder, CCR
Certified Court Reporter
Certificate No. 50162
AZ Litigation Support Court Reporters