

1 **ARIZONA INDEPENDENT REDISTRICTING COMMISSION**

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5

6 Monday, August 15, 2011
7 8:42 a.m.

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9 **Location**

10 Holiday Inn Commerce
11 777 North Pinal Avenue
12 Casa Grande, Arizona 85122

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14 **Attending**

15 Colleen C. Mathis, Chair
16 Jose M. Herrera, Vice Chair
17 Scott Day Freeman, Vice Chair
18 Linda C. McNulty, Commissioner

19 Raymond F. Bladine, Executive Director
20 Kristina Gomez, Deputy Executive Director
21 Buck Forst, Information Technology Specialist
22 Mary O'Grady, Counsel, Osborn Maledon
23 Joe Kanefield, Counsel, Ballard Spahr
24 Jean-Jacques Cabou, Osborn Maledon

25

PREPARED BY:

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1 Casa Grande, Arizona
2 August 15, 2011
3 8:42 a.m.

4 CHAIRPERSON MATHIS: This meeting of the
5 Arizona Independent Redistricting Commission will
6 now come to order.

7 The time is 8:42 and today is Monday,
8 August 15th.

9 Let's please rise for the Pledge of
10 Allegiance.

11 (Pledge was recited.)

12 CHAIRPERSON MATHIS: We'll go ahead and
13 start with roll call.

14 Vice Chair Herrera?

15 VICE CHAIR HERRERA: Here.

16 CHAIRPERSON MATHIS: Vice Chair Freeman.

17 VICE CHAIR FREEMAN: Here.

18 CHAIRPERSON MATHIS: Commissioner
19 McNulty.

20 COMMISSIONER MCNULTY: Here.

21 CHAIRPERSON MATHIS: Commissioner Stertz.

22 COMMISSIONER STERTZ: (No response.)

23 CHAIRPERSON MATHIS: We have a quorum.

24 Unfortunately, Mr. Stertz couldn't be
25 with us today but he will be receiving this

1 information at a later time separately.

2 So our first item on the agenda is call
3 to order. We've done that.

4 Second item, report legal advice and
5 direction to counsel regarding Attorney General
6 inquiry. The Commission may vote to go into
7 executive session, which will not be open to the
8 public for the purpose of obtaining legal advice.

9 Our legal counsel today, we have Joe
10 Kanefield and Mary O'Grady. And would you two --
11 would one of you like to give us an update on the
12 Attorney General investigation?

13 MARY O'GRADY: Sure, Madame Chair.

14 What I would like to do is give a brief
15 update and then recommend that we move into
16 executive session not for just item II, but because
17 the items are so interrelated, perhaps go into
18 executive session for the other items on which we
19 are permitted to give legal advice.

20 CHAIRPERSON MATHIS: Okay.

21 MARY O'GRADY: And let me see.

22 As everyone knows, the Attorney General
23 announced an inquiry into procurement and open
24 meeting law matters relating to the mapping
25 consultant procurement a little more than three

1 weeks ago. That was Thursday, July 21st, which, as
2 you all remember also was the first day of our
3 public hearings that just ended last -- a week ago
4 Saturday.

5 We have since then been in communication
6 with the Assistant Attorney General that was
7 assigned to the matter in an effort to work
8 cooperatively and get matters resolved. We have a
9 copy of an executive session transcript that they
10 requested and so we've been trying to work through
11 those issues.

12 They've also requested interviews of all
13 five commissioners and we wanted the opportunity to
14 fully brief the commissioners on that request as
15 well as the AG inquiry as a whole.

16 They also -- we had requested -- because
17 of the -- let me see. The initial press release
18 announcing the inquiry referred to reports of
19 concerns, so we did ask for copies of any reports
20 that prompted the inquiry.

21 There wasn't a specific written open
22 meeting law complaint, as is often the case, so we
23 asked for copies of the reports. We did receive
24 those.

25 And then also after receiving those, we

1 received last week investigative demands that
2 would -- asked for interviews of all commissioners
3 and for documents from all commissioners. And we
4 received those last Thursday.

5 And that's the current status of what's
6 going on with the investigation. And beyond that,
7 my recommendation would be that we go into executive
8 session for legal advice and direction to counsel.

9 CHAIRPERSON MATHIS: Okay. Did anyone
10 have any questions this time or comments?

11 COMMISSIONER MCNULTY: I do have one
12 question.

13 UNIDENTIFIED SPEAKER: Excuse me, could
14 you turn that up so we can hear you?

15 COMMISSIONER MCNULTY: Thank you.

16 My battery is dead.

17 Thank you.

18 The report -- Mrs. O'Grady, I have a
19 question about the reports that you received.

20 Are those public?

21 MARY O'GRADY: We received them through a
22 public records request. So those would be public
23 record.

24 COMMISSIONER MCNULTY: Okay. And they
25 consisted of yellow sheet reports and some e-mails.

1 MARY O'GRADY: Yes, they had yellow sheet
2 reports and some e-mails from citizens. And it was
3 largely comments that were similar to what's been in
4 the public com- -- some of the public comment,
5 primarily concern about conflicts of interest,
6 allegations related to the chair, which have been
7 discussed previously in open session.

8 There wasn't a specific -- the only
9 references to the open meeting law, and I found
10 three, there was a reference in a yellow sheet to
11 placing -- that we would be providing open meeting
12 law training on a future agenda.

13 There was a reference as to how the
14 Commission had spent a lot of time in executive
15 session during the procurement process, and then
16 there was a general reference to allegations of open
17 meeting law violations, but nothing specific, just a
18 general statement.

19 But the rest was mostly alleging
20 conflicts of interest and then expressing concern
21 about the -- Strategic's work for Democrats in the
22 past.

23 COMMISSIONER MCNULTY: And these were
24 e-mails that expressed concerns that are similar to
25 the sorts of things we have heard in our public

1 meetings?

2 MARY O'GRADY: That's right.

3 COMMISSIONER MCNULTY: Thank you.

4 CHAIRPERSON MATHIS: Any other comments
5 from commissioners?

6 VICE CHAIR FREEMAN: Madame Chair.

7 CHAIRPERSON MATHIS: Mr. Freeman.

8 VICE CHAIR FREEMAN: Just for clarity's
9 sake, the purpose of the E session will be for the
10 Commission to get specific legal advice, that is,
11 facts applied to the law on the subjects of agenda
12 items II, III, IV, and V. So it's a
13 question-and-answer session; commissioners to
14 lawyers and no action will be taken in the E
15 session, correct?

16 MARY O'GRADY: Madame Chair, Commissioner
17 Freeman, we also have on -- no action will be taken,
18 but I have one clarification to that.

19 In addition to legal advice, which is
20 noticed for item II and item III, there is the
21 opportunity to give direction to counsel in E
22 session under the executive session that's noticed
23 for paragraph four.

24 And so they can provide that direction to
25 counsel in executive session. So that does permit

1 discussion under that provision. So it's not just
2 legal advice. There is discussion and direction to
3 counsel.

4 VICE CHAIR FREEMAN: Thank you.

5 CHAIRPERSON MATHIS: Any other questions?

6 Okay. Do I hear a motion to go into
7 executive session for the purpose of obtaining legal
8 advice and to cover agenda items II, III, IV, and V
9 and we'll also be discussing and possibly giving
10 some direction to counsel.

11 VICE CHAIR HERRERA: I make that motion.

12 CHAIRPERSON MATHIS: Okay.

13 Is there a second?

14 COMMISSIONER MCNULTY: Second.

15 CHAIRPERSON MATHIS: All in favor?

16 ("Aye.")

17 CHAIRPERSON MATHIS: Any opposed?

18 (No oral response.)

19 Okay. Hearing none, we will go into
20 executive session.

21 The time is now 8:50, and, unfortunately,
22 I think we have to do that in this room. There is
23 no private room that we can go into. So I'm afraid
24 we'll have to ask the public to step out during this
25 time. I apologize for the inconvenience.

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

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6 (Whereupon the public session resumes.)

7 CHAIRPERSON MATHIS: Okay. This meeting
8 of the Arizona Independent Redistricting Commission
9 will now enter back into public session.

10 The time is 11:04 a.m.

11 Thank you to members of the public for
12 being patient with us while we were in executive
13 session to discuss the agenda items II through V on
14 our agenda today.

15 Do I hear a motion to -- with regard to
16 agenda item V, discussion, legal advice and possible
17 action approving expenditures for counsel.

18 VICE CHAIR HERRERA: I will make that
19 motion, if that's okay. In the spirit of
20 cooperation with the AG's office, I would move that
21 we -- that counsel proceed as directed in the
22 executive session. Is that the --

23 CHAIRPERSON MATHIS: This is with regard
24 to approving expenditures for counsel to provide
25 legal services in connection --

1 VICE CHAIR HERRERA: It's -- I'm sorry,
2 Linda. It's the -- were you going to make that
3 motion?

4 COMMISSIONER MCNULTY: I'll make a
5 motion, although it may not be necessary and you may
6 not be able to hear me -- although it may not be
7 necessary and may not be applicable, in an abundance
8 of caution, I would move that we authorize payment
9 of attorney's fees for representation of the
10 Commission pursuant to A.R.S. 38-431.07(B).

11 CHAIRPERSON MATHIS: Is there a second?

12 VICE CHAIR HERRERA: I second that.

13 CHAIRPERSON MATHIS: Any discussion?

14 VICE CHAIR FREEMAN: Madame Chair.

15 CHAIRPERSON MATHIS: Mr. Freeman.

16 VICE CHAIR FREEMAN: I can't support the
17 motion as it was made because it just seems to be
18 sort of carte blanche authority that the Commission
19 is potentially granting to approving expenditure for
20 counsel under the statute.

21 If the motion was limited, and I
22 understand the caveats and reservations made in the
23 motion, but if it was limited to the circumstances
24 that the Commission is facing now, which is a
25 preliminary investigation by the AG and strictly to

1 that with no enforcement action having been filed, I
2 could support it. But as the motion is made, I
3 cannot support it.

4 COMMISSIONER MCNULTY: I would amend the
5 motion to say that it's made in connection with the
6 investigation by the Attorney General -- the
7 current investigation by the Attorney General.

8 CHAIRPERSON MATHIS: Okay. Is there a
9 second for the amended motion?

10 VICE CHAIR HERRERA: I'll second that,
11 but I would make a comment. When we hired our
12 attorneys, we hired them to represent us as
13 commissioners, not as individuals. So anything --
14 any legal proceeding regarding the Commission,
15 Commission work, they will be representing us.

16 So I think this motion is redundant and
17 unnecessary. So changing the motion really I guess
18 I'm not understanding, but I'll go ahead and second
19 the motion even though, again, I think it's
20 unnecessary.

21 CHAIRPERSON MATHIS: Any other
22 discussion?

23 COMMISSIONER MCNULTY: Only that the
24 statute applies to legal action. And so I think --
25 my understanding is that the very prestigious group

1 of lawyers that are sitting in front of me right now
2 are authorized to represent the Arizona Independent
3 Redistricting Commission. But out of an abundance
4 of caution and even though the statute may not apply
5 to us, there is a statute that deals with payment of
6 attorneys' fees in connection with a legal action
7 commenced under the open meeting law, which has not
8 occurred. But if it were to occur, my motion would
9 be to authorize these attorneys to represent us in
10 connection with that legal action pursuant to A.R.S.
11 38-431.07(B).

12 CHAIRPERSON MATHIS: Mr. Freeman.

13 VICE CHAIR FREEMAN: Madame Chair, and my
14 position will be that if there is legal action
15 instituted by the AG's office, then the Commission
16 needs to revisit this issue. Right now we're pretty
17 much making the decision going forward as to any
18 legal action that the Commission may face, and I
19 just don't think it's appropriate to make the motion
20 to craft it that broadly at this time.

21 MARY O'GRADY: Madame Chair, just for --
22 I don't have a mic.

23 Just to understand, the language of the
24 statute only applies to legal actions that are
25 commenced under the open meeting law. And as

1 Commissioner Herrera indicated, our contract covered
2 open meeting law issues for the Commission.

3 I just want to make sure I understand the
4 limitation. And that's why it probably doesn't
5 apply at all to the AG inquiry, because there's not
6 a legal action that's been commenced, there's this
7 preliminary inquiry.

8 So I'm not sure I fully understand the
9 difference between the motion that Commission
10 McNulty has made and Commissioner Freeman's
11 limitation. I just want to make sure I understand.

12 VICE CHAIR FREEMAN: Well, I'll do the
13 best I can explaining it, but perhaps for purposes
14 of this preliminary inquiry which concerns alleged
15 violation of open meeting law and procurement
16 violations, if this motion were limited to
17 authorizing counsel, whether it's required --
18 authorization is required or not, I could support
19 it, but if there's a subsequent action filed against
20 the Commission, I don't know what that action --
21 legal action might entail, what issues might
22 entailed in that investigation or legal action.

23 The scope of it -- it makes a big
24 difference and it could entail a substantial
25 expenditure by this Commission. And I'm just

1 thinking hypothetically, you know, who knows what
2 could come down the pike. And I have no
3 foreknowledge of that, but I think it would be
4 appropriate at that time for the Commission to
5 discuss that, perhaps get budgets, understand the
6 scope of any subsequent -- my concern right now is
7 we are going forward prospectively carte blanche,
8 the lawyers are going to be authorized to represent
9 the counsel on any subsequent legal action.

10 Does that --

11 VICE CHAIR HERRERA: Madame Chair,
12 Commissioner Freeman, but you are comfortable with
13 us doing the representation that's necessary, the AG
14 inquiry, and if there is any legal action related to
15 the AG inquiry that we are describing now that's
16 referenced in agenda item II. So the motion is as
17 to legal fees in relation to the inquiry and any
18 litigation that may be commenced in regard to agenda
19 item II?

20 VICE CHAIR FREEMAN: I guess there's an
21 issue as to what the nature and the scope of the
22 inquiry is, and I don't know if I fully understand.
23 And I suppose that could change, which is why if
24 legal action was subsequently commenced, I think it
25 would be more appropriate for the Commission to

1 address this issue at that time.

2 COMMISSIONER MCNULTY: I appreciate
3 Mr. Freeman's comments; however, that's not my
4 motion. If we need to read the motion back in order
5 to be clear about what it was, we can do that. But
6 I just want to be clear -- I believe that the motion
7 was clear that it would be legal fees in connection
8 with any legal action commenced pertaining to the
9 Attorney General's Office investigation.

10 VICE CHAIR HERRERA: I agree with that.
11 One quick comment.

12 If Commissioner Freeman has his own
13 motion, can he make his own motion if you don't
14 agree with Commissioner McNulty's motion? Because
15 I'm assuming what she said is what you want. But if
16 not, I would like you to make your own motion.

17 VICE CHAIR FREEMAN: This is the
18 discussion on the motion that's before the
19 Commission right now.

20 MARY O'GRADY: And Madame Chair, you can
21 vote on the motion. There's been discussion and you
22 can vote on the motion on the table.

23 CHAIRPERSON MATHIS: Should we have the
24 motion read back, though, by the court reporter? Is
25 that possible?

1 COMMISSIONER MCNULTY: At this point I
2 think I may have restated it three times so she may
3 have a little trouble finding it.

4 I would call the question, Madame Chair.
5 I would call the question for vote of the motion.

6 CHAIRPERSON MATHIS: Well, we have a
7 seconded amended motion, I believe, is what that
8 was.

9 VICE CHAIR HERRERA: The amended motion.

10 COMMISSIONER MCNULTY: My amended motion
11 was -- I'll restate it one more time because I
12 understand what it is that I believe I'm trying to
13 accomplish.

14 Although it may not be necessary and it
15 may not be applicable to this body in an abundance
16 of caution, I move that we authorize payment of
17 attorney's fees for representation of the Commission
18 by our attorneys in connection with any legal action
19 filed in connection with the current Attorney
20 General investigation pursuant to A.R.S.
21 38-431.07(B).

22 VICE CHAIR HERRERA: I seconded that.

23 CHAIRPERSON MATHIS: Okay. Any other
24 discussion?

25 All in favor?

1 ("Aye.")

2 CHAIRPERSON MATHIS: Any opposed?

3 VICE CHAIR FREEMAN: Nay.

4 CHAIRPERSON MATHIS: Okay. So we have --
5 and I am voting "aye," so we have three "ayes."
6 It's Herrera, Mathis, McNulty.

7 Freedom is voting no.

8 VICE CHAIR HERRERA: Madame Chair.

9 CHAIRPERSON MATHIS: Mr. Herrera.

10 VICE CHAIR HERRERA: I was -- just out of
11 curiosity what -- for Commissioner Freeman, what
12 motion could have McNulty made that would have --
13 that you would have supported? I'm confused because
14 I think she amended it to reflect your concerns,
15 which I disagreed with, but I respect that. So I'm
16 baffled.

17 VICE CHAIR FREEMAN: I was just going to
18 say, Madame Chair, when you run the hearings.

19 CHAIRPERSON MATHIS: Did you have a
20 comment, Ms. O'Grady?

21 MARY O'GRADY: Oh, Madame Chair,
22 certainly Commissioner Freeman can respond if he
23 would like to, but also the vote has been taken and
24 you can go on to the next issue.

25 CHAIRPERSON MATHIS: So is there a

1 motion -- do I hear a motion to authorize counsel to
2 proceed as we had discussed during executive
3 session?

4 VICE CHAIR HERRERA: I make that motion.

5 COMMISSIONER MCNULTY: I second that
6 motion.

7 CHAIRPERSON MATHIS: Any discussions?

8 VICE CHAIR FREEMAN: Madame Chair.

9 CHAIRPERSON MATHIS: Mr. Freeman.

10 VICE CHAIR FREEMAN: I just want to make
11 it clear that -- I mean, the Commission had pretty
12 extensive and wide-ranging discussion with counsel.
13 I can't, of course, discuss that and there was
14 certain recommendations made.

15 I can support the Commission going
16 forward on this motion with the understanding that
17 we're endorsing the recommendations that constitute
18 the entire body of that discussion and that the
19 Commission is working to have a follow-up hearing
20 perhaps on Wednesday, perhaps on Thursday, it's
21 going to depend on logistics, to have follow-up on
22 this issue, the Commission vis-a-vis the AG's
23 investigation. So that having been said, I could
24 support the motion.

25 CHAIRPERSON MATHIS: Any other

1 discussion?

2 All in favor?

3 ("Aye.")

4 COMMISSIONER HERRERA: Any opposed?

5 (No oral response.)

6 Okay. The motion carries unanimously.

7 To follow up on Mr. Freeman's point, yes,
8 we will be -- this will be an agenda item that we
9 are going to either be discussing on Wednesday or
10 Thursday of this week. We are planning on meeting
11 at this point on both days. So Mr. Bladine, our
12 Executive Director, will be working hard to get that
13 noticed.

14 And is there any other comments from the
15 commissioners?

16 Oh, I would like to introduce Jay Cabou.
17 He is with Osborn Maledon and works with Mary
18 O'Grady and is advising us on this particular
19 matter. So thank you, Jay, for your help and being
20 with us today.

21 JEAN-JACQUES CABOU: My pleasure. Look
22 forward to working with all of you. Thank you
23 Madame Chair, members of the Commission.

24 COMMISSIONER MCNULTY: I would just like
25 to thank all three of you. I know this is -- this

1 is complex material and involves a lot of hard
2 thinking and we appreciate it. And we're glad you
3 are here.

4 CHAIRPERSON MATHIS: I echo that. Thank
5 you.

6 VICE CHAIR HERRERA: Same here. We
7 couldn't have hired two better attorneys. And
8 adding Jay to the mix, be able to work with issues
9 that come up, whether it be the AG's office or
10 anybody else, I think we have two very competent
11 attorneys that are very willing to cooperate and
12 help out and make things easier for not only us, but
13 also the AG's Office.

14 So thank you so much for your help and
15 your time.

16 CHAIRPERSON MATHIS: Any other thoughts,
17 comments?

18 Okay. That takes us to agenda item VI,
19 which is you adjournment. So I declare this meeting
20 adjourned.

21 The time is 11:18.

22 Thank you all.

23 (The meeting concluded at 11:18 a.m.)

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4 I, MICHELLE D. ELAM, Certified Reporter
5 No. 50637 for the State of Arizona, do hereby
6 certify that the foregoing 128 printed pages
7 constitute a full, true, and accurate transcript of
8 the proceedings had in the foregoing matter, all
9 done to the best of my skill and ability.

10
11 WITNESS my hand this 23rd day of August,
12 2011.

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17 MICHELLE D. ELAM
18 Certified Reporter
19 Certificate No. 50637
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