

ARIZONA INDEPENDENT REDISTRICTING COMMISSION

October 29, 2011
4:04 p.m.

Location

Yuma City Hall
One City Plaza
Yuma, Arizona 85364

Attending

Colleen C. Mathis, Chair (telephonically)
Jose M. Herrera, Vice Chair
Scott Day Freeman, Vice Chair (telephonically)
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
Joe Kanefield, Counsel, Ballard Spahr
Mary O'Grady, Counsel, Osborn Maledon
(telephonically)
Jay Cabou, Counsel, Osborn Maledon (telephonically)
Kristin Windtberg, Counsel Osborn Maledon,
(telephonically)

PREPARED BY:

AZ Litigation Support, LLC
Michelle D. Elam, CR
Certified Reporter
CR No. 50637

Yuma, Arizona
October 29, 2011
4:04 p.m.

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4 CHAIRPERSON MATHIS: Good afternoon.

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

7 Today is Saturday, October 29th, and the
8 time is 4:04 p.m.

9 Let's begin with roll call, since some of
10 us are on the phone.

11 And we'll all try to be -- speak one at a
12 time and slowly so that our court reporter can get
13 an accurate transcript.

14 Vice chair Mr. Freeman.

15 VICE CHAIR FREEMAN: Here.

16 CHAIRPERSON MATHIS: Vice Chair Herrera.

17 VICE CHAIR HERRERA: Here.

18 CHAIRPERSON MATHIS: Commissioner
19 McNulty.

20 COMMISSIONER MCNULTY: Here.

21 CHAIRPERSON MATHIS: Commissioner Stertz.

22 COMMISSIONER STERTZ: Here.

23 CHAIRPERSON MATHIS: We have a quorum.

24 We also have legal advice with us today,
25 and I believe Joe Kanefield is in Yuma; is that

1 correct?

2 JOE KANEFIELD: That's correct.

3 CHAIRPERSON MATHIS: Okay. Mary O'Grady
4 is on the phone.

5 Mary.

6 MARY O'GRADY: Yes, I'm on the phone.

7 CHAIRPERSON MATHIS: And Jay Cabou?

8 MR. CABOU: Yes, I'm on the phone.

9 CHAIRPERSON MATHIS: And is Kristin
10 Windtberg on the phone?

11 KRISTIN WINDTBERG: I'm also here.

12 CHAIRPERSON MATHIS: Great. Okay. And
13 then is our mapping consultant here?

14 VICE CHAIR HERRERA: No. No. Willie was
15 here. He left.

16 CHAIRPERSON MATHIS: Okay. And is our
17 executive director, Ray Bladine, on the phone?

18 VICE CHAIR HERRERA: Yes, he is.

19 CHAIRPERSON MATHIS: And sounds like Buck
20 Forst; is that right?

21 VICE CHAIR HERRERA: Yes, Buck is here.

22 CHAIRPERSON MATHIS: Our chief technology
23 officer.

24 And then we have a court reporter. Is
25 that Michelle?

1 VICE CHAIR HERRERA: That is Michelle.

2 And we also have Kristina Gomez.

3 CHAIRPERSON MATHIS: Okay. And our
4 deputy executive director, Kristina Gomez.

5 Is there anyone else on the phone or in
6 person in Yuma that I have missed?

7 RAY BLADINE: One citizen.

8 VICE CHAIR HERRERA: We have one citizen
9 that's part of the audience.

10 CHAIRPERSON MATHIS: Okay.

11 VICE CHAIR HERRERA: We normally don't
12 name audience.

13 CHAIRPERSON MATHIS: Great. Well, I
14 think that concludes roll call, then.

15 Our next item on the agenda is legal
16 advice, direction to counsel, discussion and
17 possible action regarding issues raised in
18 correspondence from Governor Brewer concerning
19 Commission's conduct. The Commission may vote to go
20 into executive session, which will not be open to
21 the public for the purpose of obtaining legal advice
22 and providing direction to counsel.

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

25 I have one suggestion, perhaps. I know

1 we have another item on the agenda, which is on the
2 litigation with the Attorney General and some of
3 that might be able to be covered in open session in
4 terms of that update.

5 Would it make sense to do that first?

6 CHAIRPERSON MATHIS: Yes, I think that's
7 a great idea.

8 MARY O'GRADY: So if we go to that issue,
9 Joe, would you want to give the update there?

10 JOE KANEFIELD: Yes.

11 Madame Chair, members of the Commission,
12 I'll give a quick update.

13 Mary and Jay may want to add onto my
14 summary.

15 On Friday, yesterday, the court in the
16 consolidated case granted the motion to disqualify
17 that was filed by the individual commissioners.
18 This was a motion to disqualify the Attorney
19 General.

20 What that essentially has done is -- the
21 case is now basically on hold temporarily while the
22 judge -- I don't have the order before me, Jay or
23 Mary may have it -- but I believe the judge
24 indicated that the counsel -- the new counsel
25 representing the State or the Attorney General would

1 need to appear by I think November 25th, and then at
2 that point the court would probably perhaps resume
3 the proceedings.

4 There was a deadline, a filing deadline I
5 think on Tuesday for the parties to file, at least
6 the Commission to file a reply brief to the motion
7 for summary judgment.

8 The court has essentially delayed that
9 filing until new counsel appears.

10 And also the court canceled the hearing
11 that was scheduled -- the oral argument that was
12 scheduled I believe for November 7th.

13 So at this point in time, the matter is
14 still -- the case still exists. The Attorney
15 General has been disqualified.

16 He -- Attorney General Horne on Friday,
17 shortly after the order came out, issued a press
18 release indicating that he would not pursue an
19 appeal of that disqualification, but instead he
20 would refer the case to Maricopa County Attorney
21 Bill Montgomery. And he indicated in the press
22 release that he has done so. We have not heard from
23 Maricopa County Bill Montgomery as of yet, but this,
24 of course, all happened yesterday. So I suspect we
25 will hear something next week.

1 Mary, Jay, did I get all of that right?

2 MR. CABOU: Yeah. This is Jay.

3 The thing I would add is the court has
4 scheduled a status conference to discuss the new
5 briefing schedule and the new oral argument date.
6 That conference is November 30th at 11 a.m.

7 MARY O'GRADY: I don't have anything
8 further to add on that point.

9 CHAIRPERSON MATHIS: Okay. Any
10 questions, commissioners?

11 Okay. Well, hearing none, I think now we
12 can go back to agenda item 2, unless there's
13 anything else.

14 MARY O'GRADY: No.

15 CHAIRPERSON MATHIS: Okay. So we're on
16 legal advice, direction to counsel, discussion and
17 possible action regarding issues raised in
18 correspondence from Governor Brewer concerning
19 Commission conduct.

20 Is there anything that anyone -- legal
21 counsel wants to say in public session?

22 JOE KANEFIELD: Madame Chair, this is
23 Joe.

24 I sent a letter to the commissioners
25 yesterday, which I am happy to discuss in open

1 session, if that's the wish of the Commission.

2 CHAIRPERSON MATHIS: Does anyone have any
3 questions for Mr. Kanefield on his letter?

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

6 CHAIRPERSON MATHIS: Mr. Freeman.

7 VICE CHAIR FREEMAN: I have some concerns
8 about the Commission going into executive session in
9 light of the legal positions the Commission has
10 taken with respect to the AG investigation.

11 It's my belief, based on a quick review
12 of at least one of the briefs, that the Commission
13 is taking the position that the open meeting laws do
14 not apply to it.

15 And if that's the case, I mean, our
16 agenda cites, I believe, a section from the --
17 Arizona's open meeting law to justify going into
18 executive session.

19 So I'm a little concerned about that --
20 to get legal advice. So I'm a little concerned
21 whether, at this point, we can do anything in
22 executive session in light of the fact that the
23 Constitution says the Commission will conduct its
24 business in public meeting.

25 So I guess I would like to maybe get some

1 understanding from legal counsel on that issue.

2 MARY O'GRADY: Okay. I'll respond. Joe,
3 if you want to supplement.

4 We have been, through the history of the
5 Commission, citing the statutes, as Commissioner
6 Freeman indicated.

7 We are -- as we've looked at it in terms
8 of our recent dealings with the Attorney General,
9 have come to the conclusion that the better approach
10 really is that the constitutional provisions that
11 govern the Commission itself that are in Proposition
12 106 are the principles that govern the Commission's
13 conduct.

14 Now, as a reference point in implementing
15 those constitutional provisions, for the most part,
16 we are also referring to the statutory provisions
17 whenever possible because there is some legal
18 uncertainty. That issue hasn't been resolved by the
19 courts yet. It's pending.

20 As to our ability to go into executive
21 session, we do not specifically address the
22 constitutional provisions. I am very confident that
23 the Commission, even in the context of the open
24 meeting requirement of the Constitution, have the
25 ability to have confidential attorney/client

1 communication, conversations with its counsel.

2 That it means that in order to, you know,
3 give counsel -- to give advice and give direction to
4 its attorneys and review legal advice. So even
5 though it's not specifically outlined in the
6 Constitution, that long-standing attorney/client
7 privilege needs to be preserved and this is how you
8 would preserve it.

9 He makes a good point that I think we
10 should work with staff to revisit how we are
11 noticing our meetings. So we'll do that to
12 elaborate a little better in terms of the basis for
13 the privilege of the executive session.

14 VICE CHAIR FREEMAN: Madame Chair and
15 counsel, I -- certainly you don't have to explain to
16 me the importance of the need to have confidential
17 attorney/client communication.

18 I just have a concern that would the
19 Commission be undermining the position it's taking
20 in these legal proceedings if we're citing the
21 statute, invoking it to go into executive session?

22 I guess what I'm hearing is you don't see
23 a problem going forward with that matter.

24 MARY O'GRADY: I think we are author- --
25 I think we should work with staff to not simply cite

1 the statutes, which has been the Commission's
2 practice, but to also cite the constitutional
3 provisions and the general attorney/client
4 privilege.

5 But as a matter of open meeting
6 principles, I think that the agenda gives notice of
7 what we are discussing and gives notice of the
8 possibility of executive session. And we certainly
9 have the authority to go into an executive session.
10 I think even under our -- I think the court would no
11 doubt recognize that under the constitutional
12 provision to get attorney/client advice.

13 So I think we should be able to continue
14 as we have and go into executive session.

15 VICE CHAIR FREEMAN: Are there other
16 instances where a constitutional provision can be
17 sort of modified or trumped by sort of a common law
18 principle regarding attorney/client privilege
19 communications?

20 MARY O'GRADY: I don't view this as
21 trumping the constitutional requirement. I view
22 this as candidly -- I don't think that's the correct
23 way to look at it. It's applying those
24 constitutional principles in this context.

25 VICE CHAIR FREEMAN: What should the

1 Commission be citing in its agenda if this comes up
2 in future? What would we cite?

3 MARY O'GRADY: How about I get back on
4 that and -- I think -- and we'll develop appropriate
5 citations.

6 VICE CHAIR FREEMAN: Okay.

7 CHAIRPERSON MATHIS: Okay. Any other
8 questions and any questions for Mr. Kanefield on his
9 letter?

10 COMMISSIONER STERTZ: Madame Chair.

11 CHAIRPERSON MATHIS: Mr. Stertz.

12 COMMISSIONER STERTZ: With that being
13 said, is there a concern that we have not properly
14 noticed this meeting in regards to the Commission to
15 go into executive session?

16 MARY O'GRADY: No, I'm not concerned.
17 The purpose of the agenda is to give notice of what
18 we are going to discuss at the meeting and what's
19 going to happen at this meeting. And we've done so.

20 There's no problem with lack of notice to
21 the public of what we are doing at this meeting.

22 But I think Commissioner Freeman makes a
23 good point that we can be clear to the -- in terms
24 of the constitutional authority to -- that governs
25 the Commission's conduct.

1 And I think we'll include the statutes,
2 too, frankly, because we -- because it's an open
3 question and that the court has not yet decided in
4 terms of the interplay between the statutes and the
5 constitutional provision.

6 COMMISSIONER STERTZ: Madame Chair.

7 CHAIRPERSON MATHIS: Mr. Stertz.

8 COMMISSIONER STERTZ: I guess my question
9 is, and I would like to make sure that we're getting
10 a clear answer from counsel.

11 Will there be any opportunity for any of
12 the decisions that come out of today's hearing,
13 based on the sense of uncertainty, whether or not
14 that we would be wanting to provisions later on in
15 other notices to the public that any decisions today
16 that need to be made or considered would be subject
17 to challenge?

18 MARY O'GRADY: I don't see any risk that
19 the decisions based on the issue that we've been
20 discussing would be subject to challenge. And the
21 decisions that are made are going to be made in open
22 session.

23 COMMISSIONER STERTZ: Thank you.

24 CHAIRPERSON MATHIS: Any other questions
25 for counsel?

1 Well, is there any briefing counsel wants
2 to give with regard to the correspondence from
3 Governor Brewer.

4 JOE KANEFIELD: Madame Chair, this is Joe
5 again.

6 As I mentioned earlier, with the
7 Commission's permission, I would like to address the
8 Commission with respect to the letter I sent.

9 VICE CHAIR HERRERA: Madame Chair. This
10 is Jose.

11 CHAIRPERSON MATHIS: Mr. Herrera.

12 VICE CHAIR HERRERA: If Mr. Kanefield
13 feels this is an appropriate time for us to hear
14 this letter in open session, I would love to hear
15 him.

16 CHAIRPERSON MATHIS: Other commissioners?

17 COMMISSIONER MCNULTY: Madame Chair, this
18 is Linda McNulty.

19 That's fine with me. If that's
20 Mr. Kanefield's preference.

21 I would understand his letter to mean
22 that he would not be participating in executive
23 session, is that correct, Mr. Kanefield?

24 JOE KANEFIELD: Yes, that's correct.

25 So I thought it would make sense for me

1 to explain the letter in open session, if that's the
2 wish of the Commission, and then I would excuse
3 myself.

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

6 CHAIRPERSON MATHIS: Mr. Freeman.

7 VICE CHAIR FREEMAN: I definitely think
8 this should be discussed in open session.

9 CHAIRPERSON MATHIS: Okay.

10 COMMISSIONER STERTZ: Madame Chair.

11 CHAIRPERSON MATHIS: Mr. Stertz.

12 COMMISSIONER STERTZ: Yes, I happen to
13 concur.

14 CHAIRPERSON MATHIS: Okay. Over to you,
15 Mr. Kanefield.

16 JOE KANEFIELD: Madame Chair, members of
17 the Commission, very briefly, yesterday,
18 October 28th, I sent you all a letter indicating
19 that as a result of the Governor's letter dated
20 October 26th, this has presented a conflict of
21 interest for me and my law firm, Ballard Spahr.

22 The Governor is a current client of the
23 firm on unrelated matters and, of course, as you all
24 know, she's a former client of mine in my former
25 capacity as her general counsel.

1 Therefore, I've communicated to Mary
2 O'Grady that I believe that it would be best for the
3 Commission to be represented on the matter relating
4 to the Governor's letter and any proceedings related
5 to it by counsel other than me and Ballard Spahr.

6 I understand that Osborn Maledon is
7 prepared to undertake this representation and that I
8 would be happy to continue representing the
9 Commission as before on all other matters in
10 accordance with our contract with the permission of
11 the Commission.

12 CHAIRPERSON MATHIS: Thank you,
13 Mr. Kanefield.

14 Is there any comment or discussion or
15 questions for him?

16 VICE CHAIR HERRERA: Madame Chair.

17 CHAIRPERSON MATHIS: Is that Mr. Herrera?

18 VICE CHAIR HERRERA: Yes.

19 CHAIRPERSON MATHIS: Go ahead.

20 VICE CHAIR HERRERA: Now, do we need to
21 accept -- how does that work? Do we need to -- can
22 you --

23 JOE KANEFIELD: Madame Chair, members of
24 the Commission, it's not completely clear to me, but
25 I think I would prefer the Commission to authorize

1 me to continue to represent you on all matters upon
2 which you have contracted for me to do so with the
3 exception of the Governor's letter and any
4 proceedings that may follow from it. And I think
5 that that is easy to do with Osborn Maledon and any
6 other representation the commissioners may
7 undertake.

8 But ethically it would give me a lot more
9 comfort knowing that I have the permission of the
10 body to continue.

11 VICE CHAIR HERRERA: Madame Chair.

12 CHAIRPERSON MATHIS: Any comments or
13 questions on that?

14 VICE CHAIR HERRERA: Yeah, Madame Chair,
15 this is Commissioner Herrera.

16 I just have one question.

17 When we move forward with this motion and
18 we have someone -- or we have the -- Mary O'Grady's
19 law firm representing us in this matter, will there
20 be a Republican attorney filling in the shoes of
21 Mr. Kanefield from Osborn Maledon?

22 MARY O'GRADY: This is Mary. The
23 question is directed to me.

24 I haven't added a Republican to our team,
25 but I don't know what the party affiliation is of

1 the folks that are on the case now, frankly --

2 VICE CHAIR HERRERA: Sure.

3 MARY O'GRADY: -- of who I'm working
4 with. So I was planning on continuing to staff it
5 as we need to staff it without regard to party
6 affiliation.

7 VICE CHAIR HERRERA: Madame Chair.

8 CHAIRPERSON MATHIS: Is that
9 Mr. Kanefield?

10 VICE CHAIR HERRERA: That's Mr. Herrera.
11 But you were close.

12 CHAIRPERSON MATHIS: Sorry, Mr. Herrera.

13 VICE CHAIR HERRERA: You know, this may
14 not be a big issue, I just wanted to raise that
15 because we want to make sure that everyone feels
16 that they are being represented. Again, this may
17 not be a big issue but I wanted to raise it just in
18 case.

19 COMMISSIONER STERTZ: Madame Chair --

20 COMMISSIONER MCNULTY: Madame Chair, this
21 is -- go ahead.

22 COMMISSIONER STERTZ: Go ahead.

23 CHAIRPERSON MATHIS: Ms. McNulty.

24 COMMISSIONER MCNULTY: I'll defer to
25 whoever was ahead of me in line.

1 Go ahead.

2 CHAIRPERSON MATHIS: I don't know who
3 that was.

4 COMMISSIONER STERTZ: Rick Stertz.

5 CHAIRPERSON MATHIS: Okay, Mr. Stertz.

6 COMMISSIONER STERTZ: The -- both legal
7 firms represent the Commission as a body and they do
8 not represent the individual commissioners.

9 COMMISSIONER MCNULTY: Madame Chair, this
10 is Linda McNulty.

11 I agree with that, and I think that
12 Mr. Kanefield will continue to be representing us as
13 a body in all matters other than this particular
14 question. So I'm not concerned.

15 VICE CHAIR HERRERA: Madame Chair.

16 CHAIRPERSON MATHIS: Commissioner
17 Herrera.

18 VICE CHAIR HERRERA: Was that a motion
19 from Ms. McNulty -- I mean Commissioner McNulty?

20 COMMISSIONER MCNULTY: No, but I would be
21 happy to make a motion, Madame Chair, if you would
22 like one.

23 MARY O'GRADY: Well, I don't --

24 CHAIRPERSON MATHIS: Wait a minute.

25 MARY O'GRADY: I have some concerns, if I

1 may, in terms of our agenda that we need to address
2 that issue, which I don't think we need to do by
3 motion. It wouldn't be on today's agenda.

4 COMMISSIONER MCNULTY: Okay.

5 MARY O'GRADY: And I can confer with Joe
6 if he would like us to put that on a future agenda.
7 But I think it's clear that he's just recusing from
8 one piece of the representation and would continue
9 with all others under his contract.

10 COMMISSIONER MCNULTY: Ms. O'Grady,
11 perhaps a motion isn't even necessary, just a sense
12 for Mr. Kanefield from us. I think we've just given
13 him that we would want him to proceed in the way he
14 described.

15 MARY O'GRADY: That sounds fine.

16 VICE CHAIR FREEMAN: Madame Chair, Scott
17 Freeman.

18 CHAIRPERSON MATHIS: Mr. Freeman.

19 VICE CHAIR FREEMAN: I agree. I mean, I
20 have no problem with Ballard Spahr proceeding with
21 representing the Commission in other aspects, but I
22 have no idea what's to come.

23 So I would ask that this please be put on
24 as a future agenda item going forward just so we
25 have the opportunity as, you know, the situation

1 unfolds, to address it on an ongoing basis.

2 COMMISSIONER MCNULTY: Madame Chair, this
3 is Linda McNulty.

4 I would request that we add it as legal
5 counsel concluded. It's necessary in light of
6 whatever may develop, if and when it becomes
7 necessary.

8 CHAIRPERSON MATHIS: Okay. Any other
9 comments or discussion on this?

10 So I guess, Mr. Kanefield, you'll be
11 exiting the meeting now --

12 JOE KANEFIELD: Yes.

13 CHAIRPERSON MATHIS: -- if we go into
14 executive session, I guess?

15 JOE KANEFIELD: Well, Madame Chair,
16 members of the Commission, at this point, given the
17 agenda item, I think it would be appropriate for me
18 to excuse myself and I will do so.

19 COMMISSIONER MCNULTY: Back to work,
20 Mr. Kanefield.

21 JOE KANEFIELD: I'm going to drive back
22 to Phoenix.

23 COMMISSIONER MCNULTY: Back to your desk.

24 CHAIRPERSON MATHIS: Okay. Is there
25 anything else that can be said in public session

1 about the correspondence from Governor Brewer?

2 Okay. Then I'll entertain a motion to go
3 into executive session for the purpose of obtaining
4 legal advice and providing direction to counsel on
5 this matter.

6 COMMISSIONER MCNULTY: This is Linda
7 McNulty.

8 So moved.

9 VICE CHAIR HERRERA: This is Commissioner
10 Herrera.

11 I second.

12 CHAIRPERSON MATHIS: Any discussions?

13 All in favor?

14 VICE CHAIR HERRERA: Aye.

15 COMMISSIONER MCNULTY: Aye.

16 CHAIRPERSON MATHIS: Any opposed?

17 Okay.

18 The motion carries unanimously. I didn't
19 hear any nays.

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

22 I would just like the record to reflect
23 that I abstained from that vote.

24 CHAIRPERSON MATHIS: Okay. So
25 Mr. Freeman is abstaining.

1 And did I miss anyone else?

2 COMMISSIONER STERTZ: Yes. I'm sorry, I
3 had my mute on as I was saying "I abstain."

4 I understand and recognize the opinion of
5 our legal counsel, but for the purposes of what's
6 going on and the different briefing -- briefs that
7 have been filed and when this meeting has been
8 noticed, I'm going to abstain from this vote.

9 CHAIRPERSON MATHIS: Okay. Is that --
10 okay.

11 We'll go ahead, then, say that three --
12 there were three ayes then. Commissioners Herrera,
13 McNulty, and Mathis, and two abstentions, Stertz and
14 Freeman.

15 And with that, that ends public session.

16 The time is 4:30 p.m. And once the
17 public has cleared out, we will go ahead and enter
18 executive session.

19 VICE CHAIR HERRERA: Chairwoman Mathis,
20 I'll let you know when the public has cleared out.

21 CHAIRPERSON MATHIS: Thank you.

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

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(Whereupon the public session resumes.)

CHAIRPERSON MATHIS: The time is 5:01
p.m. We'll enter back into public session.

I would entertain a motion to authorize
legal counsel to proceed as directed in executive
session.

COMMISSIONER MCNULTY: This is Linda
McNulty.

So moved.

CHAIRPERSON MATHIS: Is there a second?

VICE CHAIR HERRERA: I think Commissioner
McNulty moved it.

CHAIRPERSON MATHIS: Okay. Mary, can you
help on that one? I don't know who just said that.

VICE CHAIR HERRERA: I can second it.

This is Commissioner Herrera. I can
second it if needed.

CHAIRPERSON MATHIS: Okay. Any
discussion?

All in favor?

VICE CHAIR FREEMAN: Aye.

COMMISSIONER MCNULTY: Aye.

1 CHAIRPERSON MATHIS: Okay. I am
2 hearing -- I heard Ms. McNulty and Mr. Freeman --

3 VICE CHAIR FREEMAN: No, that's --

4 CHAIRPERSON MATHIS: Ms. McNulty and
5 Mr. Herrera say "aye."

6 Are there any nays?

7 VICE CHAIR FREEMAN: Nay.

8 COMMISSIONER STERTZ: Nay.

9 CHAIRPERSON MATHIS: Okay. So it sounds
10 like there are three ayes and two nays.

11 The three ayes are McNulty, Herrera, and
12 Mathis, and the nays are Freeman and Stertz.

13 Is there any other comment on this
14 particular item, number 2 on the agenda?

15 VICE CHAIR FREEMAN: Madame Chair, Scott
16 Freeman.

17 CHAIRPERSON MATHIS: Mr. Freeman.

18 VICE CHAIR FREEMAN: I'm not sure that
19 the last motion encompassed within it included
20 future meetings and their scheduling. I just need
21 some clarification on that. I don't know if that
22 needs to be discussed as well or can be discussed,
23 even.

24 CHAIRPERSON MATHIS: Ms. O'Grady, can you
25 advise on that?

1 MARY O'GRADY: Well, the motion is to
2 direct me to proceed as directed in executive
3 session. And so I will -- I will do so, and that
4 includes any follow-up with staff that might be
5 necessary and candidly don't really want to at this
6 point go into any substance of what was discussed in
7 executive session.

8 CHAIRPERSON MATHIS: Okay. Any other
9 questions or comments?

10 MARY O'GRADY: I guess I can say apart
11 from, you know, this motion -- well, without
12 disclosing anything in executive session, you know,
13 we may well have follow-up meetings on this and
14 related issues and we'll work with staff to do that.

15 CHAIRPERSON MATHIS: Okay. Thanks, Mary.
16 Any other comments or questions?

17 Okay. That takes us to the next item on
18 the agenda, which is legal advice, discussion and
19 possible action regarding retaining counsel for
20 individual commissioners to address allegations
21 under Article IV, part 2, section -- I'm sorry,
22 section 1. The Commission may vote to go into
23 executive session, which will not be open to the
24 public for the purpose of obtaining legal advice and
25 direction to counsel.

1 Is there anything counsel wanted to say
2 in public on this matter?

3 MARY O'GRADY: No. I think it's more
4 appropriate for executive section.

5 CHAIRPERSON MATHIS: Okay. I would
6 entertain a motion to go into executive session to
7 obtain legal advice and provide direction to counsel
8 on this agenda item 3.

9 COMMISSIONER MCNULTY: This is Linda
10 McNulty.

11 I make that motion.

12 CHAIRPERSON MATHIS: Is there a second?

13 VICE CHAIR HERRERA: This is Jose
14 Herrera.

15 I second the motion.

16 CHAIRPERSON MATHIS: Any discussion?

17 All in favor?

18 VICE CHAIR HERRERA: Aye.

19 COMMISSIONER MCNULTY: Aye.

20 CHAIRPERSON MATHIS: Any opposed.

21 COMMISSIONER STERTZ: Abstaining.

22 (Multiple speakers.)

23 CHAIRPERSON MATHIS: I couldn't hear.
24 There were two people talking.

25 COMMISSIONER STERTZ: I abstain for

1 reasons previously stated.

2 CHAIRPERSON MATHIS: Okay. Mr. Stertz
3 abstains.

4 VICE CHAIR FREEMAN: Madame Chair.

5 (Multiple speakers.)

6 CHAIRPERSON MATHIS: Go ahead. I'm
7 sorry.

8 Mr. Freeman.

9 VICE CHAIR FREEMAN: I'm sorry, too.

10 Madame Chair, I abstain as well.

11 CHAIRPERSON MATHIS: Okay. So three are
12 in favor of going into executive section and there
13 are two abstentions. The two abstentions are
14 Commissioners Freeman and Stertz.

15 And so with that, we will exit out of
16 public session and go into executive session once
17 the public has cleared out.

18 The time is 5:08 p.m.

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

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1 (Whereupon the public session resumes.)

2 CHAIRPERSON MATHIS: Let's enter back
3 into public session. The time is 5:58 p.m.

4 And I would just like to do a roll call
5 to make sure we have all commissioners still on the
6 phone.

7 So Vice Chair Freeman.

8 VICE CHAIR FREEMAN: Here.

9 CHAIRPERSON MATHIS: Vice Chair Herrera.

10 VICE CHAIR HERRERA: Here.

11 CHAIRPERSON MATHIS: Commissioner
12 McNulty.

13 COMMISSIONER MCNULTY: Here.

14 CHAIRPERSON MATHIS: Commissioner Stertz.

15 COMMISSIONER STERTZ: Here.

16 CHAIRPERSON MATHIS: Okay. Great. And
17 I'm here, too, and I know Yuma is there, so are the
18 legal counsel and then we have Jay Cabou on the
19 line, I think.

20 MR. CABOU: Yes, Madame Chair, I'm here.

21 CHAIRPERSON MATHIS: And also Kristin
22 Windtberg?

23 KRISTIN WINDTBERG: Yes, I'm still here.

24 CHAIRPERSON MATHIS: Great. Okay.

25 So we just had executive session on

1 agenda item 3.

2 Is there any discussion or motion arising
3 from our executive session?

4 COMMISSIONER MCNULTY: Madame Chair --
5 or, Ms. O'Grady, are we able to have discussion
6 before we have a motion?

7 MARY O'GRADY: You can discuss the
8 motion. I guess you can -- you can typically
9 discuss an agenda item generally or ask questions of
10 one of the agenda items, if that's necessary, before
11 you formulate a motion.

12 COMMISSIONER MCNULTY: I guess I would
13 like to ask Vice Chair Freeman and Commissioner
14 Stertz if they would want to make a motion
15 requesting that we all be represented by legal
16 counsel in connection with any matters related to
17 Article IV, part 2, section 1, paragraph 10?

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

20 CHAIRPERSON MATHIS: Mr. Freeman.

21 VICE CHAIR FREEMAN: Madame Chair, I have
22 concerns about the subject matter of this agenda
23 item. The Governor has sent us all a letter wherein
24 she details a number of concerns she has, serious
25 concerns about the manner in which the Commission

1 has conducted its business and the manner in which
2 commissioners have conducted their business.

3 I think these concerns are not just the
4 Governor's, I think they are shared by a lot of
5 people in the public, and I take all of them very
6 seriously.

7 I think the Constitution requires the
8 Commission to conduct its business in public
9 meetings. It also states -- I don't have the
10 language in front of me, but about the commissioners
11 committing themselves to conduct themselves on a
12 fair and honest and impartial manner and to commit
13 themselves to conduct themselves in a manner that
14 would build confidence in the public and the
15 integrity of the process.

16 I think it is in the best interest of the
17 Commission for the commissioners to respond to the
18 Governor's letter as she requested and has been --
19 address the concerns.

20 At this point, I don't think it's
21 appropriate at this time to take the step of
22 authorizing the expenditure of additional public
23 funds to have additional legal representation for
24 individual commissioners.

25 Indeed, I think -- I have some concern

1 whether it would compound the concern set forth in
2 paragraph number 7 in the Governor's letter.

3 So I'm not prepared to make a motion at
4 this time.

5 COMMISSIONER MCNULTY: Thank you,
6 Commissioner Freeman.

7 I would, then, Madame Chair, if you would
8 accept it, make a motion.

9 CHAIRPERSON MATHIS: Yes, I would
10 entertain a motion.

11 COMMISSIONER MCNULTY: I would move that
12 we authorize Commissioners Herrera, Mathis, and
13 McNulty to obtain representation for any matters
14 related to or rising out of Article IV, part 2,
15 section 1, paragraph 10 of the Arizona Constitution,
16 and I would do that because we, I believe, have made
17 every effort and have successfully made every effort
18 to conduct ourselves in an honest, independent, and
19 impartial fashion, and I think it's critical for the
20 integrity of this constitutional body that we be
21 represented in order to respond to these
22 allegations.

23 VICE CHAIR HERRERA: Madame Chair, I
24 second that motion, and I agree exactly with the
25 wording that Commissioner McNulty said.

1 CHAIRPERSON MATHIS: Any discussion?

2 All in favor?

3 VICE CHAIR HERRERA: Aye.

4 COMMISSIONER MCNULTY: Aye.

5 CHAIRPERSON MATHIS: Aye.

6 Any opposed?

7 COMMISSIONER MCNULTY: Nay.

8 COMMISSIONER STERTZ: Nay.

9 CHAIRPERSON MATHIS: Okay.

10 The vote was Commissioners McNulty,
11 Herrera, and Mathis voted aye. Commissioners
12 Freeman and Stertz voted nay.

13 Any other discussion or comment on that
14 agenda item?

15 Okay. Let's see. I've got to pull up
16 the agenda.

17 Okay. That covers all of the agenda
18 items as listed except adjournment.

19 And the time now is 6:04 p.m. and I
20 declare this meeting adjourned.

21 Thank you.

22 (The meeting adjourned at 6:04 p.m.)

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I, MICHELLE D. ELAM, Certified Reporter
No. 50637 for the State of Arizona, do hereby
certify that the foregoing 83 printed pages
constitute 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 3rd day of November,
2011.

MICHELLE D. ELAM
Certified Reporter
Certificate No. 50637