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
CHAIRPERSON MATHIS: Good afternoon.

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

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

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

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

Vice chair Mr. Freeman.

VICE CHAIR FREEMAN: Here.

CHAIRPERSON MATHIS: Vice Chair Herrera.

VICE CHAIR HERRERA: Here.

CHAIRPERSON MATHIS: Commissioner McNulty.

COMMISSIONER McNULTY: Here.

CHAIRPERSON MATHIS: Commissioner Stertz.

COMMISSIONER STERTZ: Here.

CHAIRPERSON MATHIS: We have a quorum.

We also have legal advice with us today, and I believe Joe Kanefield is in Yuma; is that
JOE KANEFIELD: That's correct.

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

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

CHAIRPERSON MATHIS: And Jay Cabou?

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

CHAIRPERSON MATHIS: And is Kristin Windtberg on the phone?

KRISTIN WINDTBERG: I'm also here.

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

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

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

VICE CHAIR HERRERA: Yes, he is.

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

VICE CHAIR HERRERA: Yes, Buck is here.

CHAIRPERSON MATHIS: Our chief technology officer.

And then we have a court reporter. Is that Michelle?
VICE CHAIR HERRERA: That is Michelle.
And we also have Kristina Gomez.

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

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

RAY BLADINE: One citizen.

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

CHAIRPERSON MATHIS: Okay.

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

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

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

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

I have one suggestion, perhaps. I know
we have another item on the agenda, which is on the litigation with the Attorney General and some of that might be able to be covered in open session in terms of that update.

Would it make sense to do that first?

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

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

JOE KANEFIELD: Yes.

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

Mary and Jay may want to add onto my summary.

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

What that essentially has done is -- the case is now basically on hold temporarily while the judge -- I don't have the order before me, Jay or Mary may have it -- but I believe the judge indicated that the counsel -- the new counsel representing the State or the Attorney General would
need to appear by I think November 25th, and then at that point the court would probably perhaps resume the proceedings.

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

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

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

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

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

MR. CABOU: Yeah. This is Jay.

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

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

CHAIRPERSON MATHIS: Okay. Any questions, commissioners?

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

MARY O'GRADY: No.

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

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

JOE KANEFIELD: Madame Chair, this is Joe.

I sent a letter to the commissioners yesterday, which I am happy to discuss in open
session, if that's the wish of the Commission.

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

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

CHAIRPERSON MATHIS: Mr. Freeman.

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

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

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

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

So I guess I would like to maybe get some
understanding from legal counsel on that issue.

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

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

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

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

As to our ability to go into executive session, we do not specifically address the constitutional provisions. I am very confident that the Commission, even in the context of the open meeting requirement of the Constitution, have the ability to have confidential attorney/client
communication, conversations with its counsel.

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

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

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

I just have a concern that would the Commission be undermining the position it's taking in these legal proceedings if we're citing the statute, invoking it to go into executive session? I guess what I'm hearing is you don't see a problem going forward with that matter.

MARY O'GRADY: I think we are author- -- I think we should work with staff to not simply cite
the statutes, which has been the Commission's practice, but to also cite the constitutional provisions and the general attorney/client privilege.

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

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

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

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

VICE CHAIR FREEMAN: What should the
Commission be citing in its agenda if this comes up in future? What would we cite?

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

VICE CHAIR FREEMAN: Okay.

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

COMMISSIONER STERTZ: Madame Chair.

CHAIRPERSON MATHIS: Mr. Stertz.

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

MARY O'GRADY: No, I'm not concerned.

The purpose of the agenda is to give notice of what we are going to discuss at the meeting and what's going to happen at this meeting. And we've done so.

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

But I think Commissioner Freeman makes a good point that we can be clear to the -- in terms of the constitutional authority to -- that governs the Commission's conduct.
And I think we'll include the statutes, too, frankly, because we -- because it's an open question and that the court has not yet decided in terms of the interplay between the statutes and the constitutional provision.

COMMISSIONER STERTZ: Madame Chair.

CHAIRPERSON MATHIS: Mr. Stertz.

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

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

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

COMMISSIONER STERTZ: Thank you.

CHAIRPERSON MATHIS: Any other questions for counsel?
Well, is there any briefing counsel wants to give with regard to the correspondence from Governor Brewer.

JOE KANEFIELD: Madame Chair, this is Joe again.

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

VICE CHAIR HERRERA: Madame Chair. This is Jose.

CHAIRPERSON MATHIS: Mr. Herrera.

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

CHAIRPERSON MATHIS: Other commissioners?

COMMISSIONER MCNULTY: Madame Chair, this is Linda McNulty.

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

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

JOE KANEFIELD: Yes, that's correct.

So I thought it would make sense for me
to explain the letter in open session, if that's the
wish of the Commission, and then I would excuse
myself.

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

CHAIRPERSON MATHIS: Mr. Freeman.

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

CHAIRPERSON MATHIS: Okay.

COMMISSIONER STERTZ: Madame Chair.

CHAIRPERSON MATHIS: Mr. Stertz.

COMMISSIONER STERTZ: Yes, I happen to
concur.

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

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

The Governor is a current client of the
firm on unrelated matters and, of course, as you all
know, she's a former client of mine in my former
capacity as her general counsel.
Therefore, I've communicated to Mary O'Grady that I believe that it would be best for the Commission to be represented on the matter relating to the Governor's letter and any proceedings related to it by counsel other than me and Ballard Spahr.

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

CHAIRPERSON MATHIS: Thank you, Mr. Kanefield.

Is there any comment or discussion or questions for him?

VICE CHAIR HERRERA: Madame Chair.

CHAIRPERSON MATHIS: Is that Mr. Herrera?

VICE CHAIR HERRERA: Yes.

CHAIRPERSON MATHIS: Go ahead.

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

JOE KANEFIELD: Madame Chair, members of the Commission, it's not completely clear to me, but I think I would prefer the Commission to authorize
me to continue to represent you on all matters upon which you have contracted for me to do so with the exception of the Governor's letter and any proceedings that may follow from it. And I think that that is easy to do with Osborn Maledon and any other representation the commissioners may undertake.

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

VICE CHAIR HERRERA: Madame Chair.

CHAIRPERSON MATHIS: Any comments or questions on that?

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

I just have one question.

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

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

I haven't added a Republican to our team, but I don't know what the party affiliation is of
the folks that are on the case now, frankly --

VICE CHAIR HERRERA: Sure.

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

VICE CHAIR HERRERA: Madame Chair.

CHAIRPERSON MATHIS: Is that Mr. Kanefield?

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

CHAIRPERSON MATHIS: Sorry, Mr. Herrera.

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

COMMISSIONER STERTZ: Madame Chair --

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

COMMISSIONER STERTZ: Go ahead.

CHAIRPERSON MATHIS: Ms. McNulty.

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

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

COMMISSIONER STERTZ: Rick Stertz.

CHAIRPERSON MATHIS: Okay, Mr. Stertz.

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

COMMISSIONER MCNULTY: Madame Chair, this is Linda McNulty.

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

VICE CHAIR HERRERA: Madame Chair.

CHAIRPERSON MATHIS: Commissioner Herrera.

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

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

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

CHAIRPERSON MATHIS: Wait a minute.

MARY O'GRADY: I have some concerns, if I
may, in terms of our agenda that we need to address that issue, which I don't think we need to do by motion. It wouldn't be on today's agenda.

COMMISSIONER MCNULTY: Okay.

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

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

MARY O'GRADY: That sounds fine.

VICE CHAIR FREEMAN: Madame Chair, Scott Freeman.

CHAIRPERSON MATHIS: Mr. Freeman.

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

So I would ask that this please be put on as a future agenda item going forward just so we have the opportunity as, you know, the situation
unfolds, to address it on an ongoing basis.

COMMISSIONER MCNULTY: Madame Chair, this is Linda McNulty.

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

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

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

JOE KANEFIELD: Yes.

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

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

COMMISSIONER MCNULTY: Back to work, Mr. Kanefield.

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

COMMISSIONER MCNULTY: Back to your desk.

CHAIRPERSON MATHIS: Okay. Is there anything else that can be said in public session
about the correspondence from Governor Brewer?

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

COMMISSIONER MCNULTY: This is Linda McNulty.

So moved.

VICE CHAIR HERRERA: This is Commissioner Herrera.

I second.

CHAIRPERSON MATHIS: Any discussions?

All in favor?

VICE CHAIR HERRERA: Aye.

COMMISSIONER MCNULTY: Aye.

CHAIRPERSON MATHIS: Any opposed?

Okay.

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

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

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

CHAIRPERSON MATHIS: Okay. So Mr. Freeman is abstaining.
And did I miss anyone else?

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

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

CHAIRPERSON MATHIS: Okay. Is that -- okay.

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

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

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

CHAIRPERSON MATHIS: Thank you.

(Whereupon the public session recessed and executive session ensued.)
(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.
CHAIRPERSON MATHIS: Okay. I am hearing -- I heard Ms. McNulty and Mr. Freeman --

VICE CHAIR FREEMAN: No, that's --

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

Are there any nays?

VICE CHAIR FREEMAN: Nay.

COMMISSIONER STERTZ: Nay.

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

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

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

VICE CHAIR FREEMAN: Madame Chair, Scott Freeman.

CHAIRPERSON MATHIS: Mr. Freeman.

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

CHAIRPERSON MATHIS: Ms. O'Grady, can you advise on that?
MARY O'GRADY: Well, the motion is to direct me to proceed as directed in executive session. And so I will -- I will do so, and that includes any follow-up with staff that might be necessary and candidly don't really want to at this point go into any substance of what was discussed in executive session.

CHAIRPERSON MATHIS: Okay. Any other questions or comments?

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

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

Okay. That takes us to the next item on the agenda, which is legal advice, discussion and possible action regarding retaining counsel for individual commissioners to address allegations under Article IV, part 2, section -- I'm sorry, section 1. The Commission may vote to go into executive session, which will not be open to the public for the purpose of obtaining legal advice and direction to counsel.
Is there anything counsel wanted to say in public on this matter?

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

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

COMMISSIONER MCNULTY: This is Linda McNulty.

I make that motion.

CHAIRPERSON MATHIS: Is there a second?

VICE CHAIR HERRERA: This is Jose Herrera.

I second the motion.

CHAIRPERSON MATHIS: Any discussion?

All in favor?

VICE CHAIR HERRERA: Aye.

COMMISSIONER MCNULTY: Aye.

CHAIRPERSON MATHIS: Any opposed.

COMMISSIONER STERTZ: Abstaining.

(Multiple speakers.)

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

COMMISSIONER STERTZ: I abstain for
reasons previously stated.

CHAIRPERSON MATHIS: Okay. Mr. Stertz abstains.

VICE CHAIR FREEMAN: Madame Chair.

(Multiple speakers.)

CHAIRPERSON MATHIS: Go ahead. I'm sorry.

Mr. Freeman.

VICE CHAIR FREEMAN: I'm sorry, too. Madame Chair, I abstain as well.

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

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

The time is 5:08 p.m.

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

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(Whereupon the public session resumes.)

CHAIRPERSON MATHIS: Let's enter back into public session. The time is 5:58 p.m.
And I would just like to do a roll call to make sure we have all commissioners still on the phone.

So Vice Chair Freeman.

VICE CHAIR FREEMAN: Here.

CHAIRPERSON MATHIS: Vice Chair Herrera.

VICE CHAIR HERRERA: Here.

CHAIRPERSON MATHIS: Commissioner McNulty.

COMMISSIONER MCNULTY: Here.

CHAIRPERSON MATHIS: Commissioner Stertz.

COMMISSIONER STERTZ: Here.

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

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

CHAIRPERSON MATHIS: And also Kristin Windtberg?

KRISTIN WINDTBERG: Yes, I'm still here.

CHAIRPERSON MATHIS: Great. Okay.

So we just had executive session on
agenda item 3.

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

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

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

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

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

CHAIRPERSON MATHIS: Mr. Freeman.

VICE CHAIR FREEMAN: Madame Chair, I have concerns about the subject matter of this agenda item. The Governor has sent us all a letter wherein she details a number of concerns she has, serious concerns about the manner in which the Commission
has conducted its business and the manner in which commissioners have conducted their business.

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

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

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

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

Indeed, I think -- I have some concern
whether it would compound the concern set forth in paragraph number 7 in the Governor's letter.

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

COMMISSIONER MCNULTY: Thank you, Commissioner Freeman.

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

CHAIRPERSON MATHIS: Yes, I would entertain a motion.

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

VICE CHAIR HERRERA: Madame Chair, I second that motion, and I agree exactly with the wording that Commissioner McNulty said.
CHAIRPERSON MATHIS: Any discussion?

All in favor?

VICE CHAIR HERRERA: Aye.

COMMISSIONER MCNULTY: Aye.

CHAIRPERSON MATHIS: Aye.

Any opposed?

COMMISSIONER MCNULTY: Nay.

COMMISSIONER STERTZ: Nay.

CHAIRPERSON MATHIS: Okay.

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

Any other discussion or comment on that agenda item?

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

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

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

Thank you.

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

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MICHELLE D. ELAM
Certified Reporter
Certificate No. 50637