

**ARIZONA INDEPENDENT REDISTRICTING COMMISSION**

**PUBLIC SESSION**

Thursday, October 24, 2013  
2:00 p.m.

Location

**Evans House  
1100 West Washington Boulevard  
Phoenix, Arizona 85007**

Attending

Colleen C. Mathis, Chair (via teleconference)  
Cid R. Kallen, Vice Chair (via teleconference)  
Scott Day Freeman, Vice Chair  
Linda C. McNulty, Commissioner (via teleconference)  
Richard P. Stertz, Commissioner (via teleconference)

Ray Bladine, Executive Director  
Kristina Gomez, Deputy Executive Director

Mary O'Grady, Legal Counsel  
Joe Kanefield, Legal Counsel  
Beau Roysden, Legal Counsel  
Kristin Windtberg, Legal Counsel

Reported By:  
Marty Herder, CCR  
Certified Court Reporter #50162  
[www.CourtReportersAz.com](http://www.CourtReportersAz.com)

Phoenix, Arizona  
October 24, 2013  
2:00 p.m.

P R O C E E D I N G S

(Whereupon, the public session commences.)

CHAIRPERSON MATHIS: Great. Then we'll go ahead  
and get started.

Good afternoon. This meeting of the Arizona  
Independent Redistricting Commission will now come to order.  
Today is Thursday, October 24th, and the time is 2:01 p.m.

If everyone would please rise, I'd like to ask  
Vice-Chair Freeman to lead us in the Pledge of Allegiance.

(Whereupon, the Pledge of Allegiance was recited.)

CHAIRPERSON MATHIS: Great. Thank you.

Did somebody just --

ANDREW DRESCHLER: Hi. It's Andrew from Strategic  
Telemetry.

CHAIRPERSON MATHIS: Oh, great. Okay. Hi,  
Andrew. This is Colleen. We just had the Pledge of  
Allegiance.

We're go through roll call.

Vice-Chair Freeman.

COMMISSIONER FREEMAN: Here.

1 CHAIRPERSON MATHIS: Commissioner Kallen.

2 COMMISSIONER KALLEN: Here.

3 CHAIRPERSON MATHIS: Commissioner McNulty.

4 COMMISSIONER McNULTY: Here.

5 CHAIRPERSON MATHIS: Commissioner Stertz.

6 COMMISSIONER STERTZ: Here.

7 CHAIRPERSON MATHIS: We have a quorum.

8 Other participants in today's meeting include our  
9 executive director Ray Bladine, our deputy executive  
10 director, Kristina Gomez, legal counsel Joe Kanefield and  
11 Mary O'Grady.

12 And our court reporter, Marty Herder, is there.

13 And any staff there, any other staff?

14 COMMISSIONER FREEMAN: Not in the room with us.

15 CHAIRPERSON MATHIS: Okay. And Andrew Drechsler  
16 from Strategic Telemetry is on the line.

17 Anybody else that I've missed?

18 COMMISSIONER FREEMAN: No.

19 CHAIRPERSON MATHIS: Okay. So, let me see the  
20 agenda. The call to order, we're done.

21 Number two, discussion and possible action  
22 regarding the burglary of September 16th, 2013, at the Evans  
23 House.

24 The Commission may vote to go into executive  
25 session, which will not be open to the public, for the

1 purpose of obtaining legal advice.

2           So I'll just tee this up. Sometime between  
3 3:00 p.m. Friday the 13th of September and Monday morning  
4 the 16th at 7:50, 7-5-0, in the morning, the Evans House  
5 where the IRC offices are was broken into.

6           A number of laptops were taken including the one  
7 issued to me, which I used for IRC purposes.

8           And currently this investigation -- the  
9 investigation into this burglary is being handled by the  
10 major crimes division in the general investigation unit at  
11 the Arizona Department of Public Safety.

12           And I tried to have the lead investigator come  
13 today and present the latest. That would have been my  
14 preference. But I was told that because this is still an  
15 active investigation they can't present in a public meeting.

16           So what happened instead is Ray, Kristina, and I  
17 had a meeting with the lead investigator, and he gave us a  
18 rundown of kind of what happened, which you have in the  
19 police report that was sent out to everybody.

20           And then kind of gave us some update of what's  
21 happened since then.

22           And, yeah, there are some troubling details  
23 associated with the whole thing, and it's unfortunate.

24           Because it's an active investigation, I can't  
25 really talk a lot about the different things that they've

1 learned, but they're going to continue to follow up. And as  
2 long as we keep coming in they will consider it an active  
3 investigation.

4           So I know that I intend to continue to follow up,  
5 and I'm sure staff will as well.

6           And that's really kind of the story.

7           I don't know if, Ray, do you want to add anything  
8 from our meeting?

9           RAY BLADINE: Madam Chair, I think you really  
10 covered it.

11           I do believe that listening to the sergeant in  
12 charge that they are going to follow up until they can't  
13 follow -- they don't have any more leads to follow up on.  
14 So I think you covered it.

15           CHAIRPERSON MATHIS: Yeah, I wish I could say -- I  
16 didn't ask of the sergeant if there was a reward for any  
17 additional information, but if anybody has any details, if  
18 they learn anything, definitely pass them along to DPS.

19           Any questions from commissioners or comments about  
20 the break-in?

21           COMMISSIONER STERTZ: Madam Chair.

22           CHAIRPERSON MATHIS: Mr. Stertz.

23           COMMISSIONER STERTZ: You had used the word  
24 troubling. Could you explore that, please?

25           CHAIRPERSON MATHIS: Unfortunately I can't.

1 COMMISSIONER STERTZ: Then why did you use the  
2 word?

3 CHAIRPERSON MATHIS: Because there are troubling  
4 details, that they are personally troubling to me.

5 I don't know if they would be to you or to  
6 Commissioner Kallen or anybody else on the Commission, but  
7 they were to me.

8 COMMISSIONER STERTZ: Doesn't that leave an open  
9 thought to anybody listening to this conversation that -- or  
10 in the audience that might want to interpret that in a way  
11 that it could also be considered troubling?

12 CHAIRPERSON MATHIS: Um, I don't know how anyone  
13 else wants to interpret it.

14 But that's my interpretation. And I am the one  
15 who had the meeting, and so did Ray and Kristina were there.

16 They may not have found it troubling, so --

17 COMMISSIONER STERTZ: How did the break-in take  
18 place? Was it a break-in or was it an error in judgment?

19 CHAIRPERSON MATHIS: Well, first I requested that  
20 the sergeant, I don't know had his official title, come to  
21 the meeting, as I said, and actually brief everybody in  
22 public.

23 And then we were notified by DPS that that's not  
24 possible, because it's an active investigation. And so they  
25 said they could though, you know, talk to me or to Ray. So

1 both of us got on a -- we had the meeting with him and --  
2 and Kristina was there too.

3 And that's how it happened.

4 COMMISSIONER STERTZ: So was it a breaking and  
5 entering or was it an error in judgment?

6 CHAIRPERSON MATHIS: I don't understand your  
7 question.

8 COMMISSIONER STERTZ: Well, I'm trying to -- is  
9 the police report public knowledge?

10 CHAIRPERSON MATHIS: Oh, yeah. The police report  
11 is public.

12 Right, Mary and Joe?

13 RAY BLADINE: Yes, it is. In fact, the copy we  
14 got, we got from the press.

15 COMMISSIONER STERTZ: So do you want to explain to  
16 the audience what had happened?

17 COMMISSIONER McNULTY: Well, it's in our packet,  
18 isn't it? I think it's part of what was submitted for this  
19 meeting, so it's probably public report.

20 CHAIRPERSON MATHIS: Yeah.

21 COMMISSIONER STERTZ: Okay.

22 COMMISSIONER FREEMAN: Madam Chair. Scott  
23 Freeman.

24 CHAIRPERSON MATHIS: Commissioner Freeman.

25 COMMISSIONER FREEMAN: What steps have we

1 undertaken to make sure the Evans House is secure and safe  
2 for everyone that works here?

3 CHAIRPERSON MATHIS: That's an excellent question.

4 Mr. Bladine, I'm going to ask you to answer that.

5 RAY BLADINE: The -- part of the -- let me go  
6 back.

7 The entry into the building was made through an  
8 unlocked window.

9 And what we have found is that even after the  
10 police came and had secured the building, there was an  
11 unlocked window.

12 These are the old casement-type windows that slide  
13 up and down.

14 And if the top window isn't all the way up, then  
15 you can't lock the bottom window to it. So it's very easy  
16 to think the window is locked when it isn't.

17 Up until the break-in, we had had a lot of contact  
18 with the general facilities office of the state about the  
19 fact the alarm would work, not work, would not connect.

20 Anna had a number of calls with the alarm people.

21 After the break-in, Bill Hernandez, who is a  
22 deputy director of the Department of Administration, took it  
23 upon himself to directly work with us to make sure that a  
24 alarm system that properly functioned would be installed.

25 They replaced, as I understand it, the main board

1 for the alarm system.

2           They came out, fixed door locks.

3           And at this time, from everything we can tell, the  
4 alarm system does work, and it does ring to DPS, either at  
5 the capital police building or DPS directly.

6           I'm not sure which one of those.

7           We did have an incident here last week, where  
8 someone was hit out in the street.

9           We got rather concerned since it didn't seem  
10 anybody was coming to help the gentleman.

11           So we used our panic button, and it worked.

12           So we know that our panic button works, so we  
13 assume our alarm is working.

14           It's kind of closing the barn door after the horse  
15 has left, but it is the best we can do. And right now we do  
16 think we've got the building secured.

17           Part of the problem, of course, that we can't do  
18 much about is this location.

19           And we do have a lot of transients that hang  
20 around the building, will come up on the porch, and on the  
21 weekend it's kind of a tough place to be.

22           We also try and make sure that we don't leave at  
23 night one person here, or during the day. Try to make sure  
24 that our staffing is so that there's at least two people  
25 here.

1           And I think at this point, unless Kristina can  
2 think of anything, that's pretty much what we've done to  
3 make sure the building is secured and to protect the staff.

4           CHAIRPERSON MATHIS: Any other comments or  
5 questions?

6           COMMISSIONER STERTZ: Madam Chair.

7           CHAIRPERSON MATHIS: Mr. Stertz.

8           COMMISSIONER STERTZ: Ms. Gomez and Mr. Bladine,  
9 thank you very much. That was exactly what I was hoping to  
10 hear was the more extrapolated discussion about what had  
11 happened and why.

12           And it wasn't a lack of judgment. It was that  
13 this was a window problem that we didn't -- that they -- as  
14 it says -- as it's described in the police report, it makes  
15 it sound like we left a window open.

16           And what we was actually not a lack of judgment or  
17 leaving a window open, it was a problem that some folks  
18 decided to take advantage of.

19           So thank you, Mr. Bladine.

20           RAY BLADINE: You're welcome, Mr. Stertz.

21           CHAIRPERSON MATHIS: Any other comments or  
22 questions on the break-in?

23           Okay. I just have one, and that's that I want to  
24 acknowledge Buck Forst, formerly known as our chief  
25 technology officer. I don't know if Buck is there today.

1 But, anyway, he's currently on contract to help the  
2 Commission still with its IT needs. And I understand he was  
3 pretty instrumental in getting the Commission back up and  
4 running after the break-in. And I just want to thank him  
5 for his help.

6 So that concludes agenda item two.

7 Number three, discussion and possible action on  
8 Leach discovery requests including possible executive  
9 session transcript release.

10 We've got another possible executive session  
11 transcript -- I mean, executive session that could happen  
12 with the next agenda item too.

13 I don't -- and we probably just want to go in  
14 once.

15 So I don't know how many members of the public we  
16 have there today.

17 Anybody want to let me know?

18 RAY BLADINE: We have three members of the press  
19 here, Jeremy Duda, Mary Jo Pitzi, and Howie Fischer.

20 And that is our audience.

21 CHAIRPERSON MATHIS: Okay. Yes, so it probably  
22 would be good to have just one executive session, if we  
23 could.

24 Mary and Joe, did you have any thoughts on how to  
25 proceed? Do you want to just go in order or do you want to

1 try to lump these together so that we do it in one executive  
2 session?

3 JOSEPH KANEFIELD: Madam Chair, this is Joe  
4 Kanefield.

5 One suggestion that we would have as counsel is if  
6 Ray and Kristina could give at least a portion of their  
7 executive director's report that deals with the budget prior  
8 to our discussion on agenda items three and four. That way  
9 the public would have the benefit of that information before  
10 we went into executive session. It would also be helpful  
11 for those agenda items.

12 CHAIRPERSON MATHIS: So take number four now, and  
13 then three, and then executive session.

14 JOSEPH KANEFIELD: I'm sorry, Madam Chair. Yes,  
15 that's correct. It would be agenda item four ahead of  
16 agenda item three.

17 CHAIRPERSON MATHIS: Okay.

18 Let's do discussion and possible action then on  
19 regarding obtaining the necessary appropriation to fund  
20 litigation regarding the defense of the maps. The  
21 Commission may vote to go into executive session, which will  
22 not be open to the public, for the purpose of obtaining  
23 legal advice and providing direction to counsel.

24 So everyone should have gotten a pretty detailed  
25 memo that Ray and Kristina put together.

1           Not only on our budget, but on just kind of -- the  
2 subject is supplemental appropriation required. Dated  
3 October 18th, a four-page memo.

4           And then I think today they also kind of sent out  
5 a budget outline that's a one-pager that's pretty helpful,  
6 just kind of a snapshot of where things are as of today.

7           RAY BLADINE: Madam Chair, would you like me to  
8 briefly summarize the report and highlight those parts of it  
9 that seem most important?

10           CHAIRPERSON MATHIS: That would be great. Thanks,  
11 Mr. Bladine.

12           RAY BLADINE: I think in presenting this report,  
13 our plan would be to break it into three parts.

14           I'll talk about some of the history getting up to  
15 our current situation with regard to what staff has done.

16           Then I'll ask Kristina to go over the details of  
17 how we came up with the revised budget that's in your  
18 packet, which is summarized by the one-sheet handout that we  
19 just completed.

20           And then ask Joe Kanefield to talk about the  
21 status of litigation.

22           And then finally have just a summary and open it  
23 up for discussion of alternatives with the Commission.

24           With that, I think everyone's aware that there's  
25 been an ongoing struggle for funds for the Commission since

1 it was created.

2 We've had many supplemental requests. We've had  
3 many times that we've had to go back to the Legislature for  
4 assistance.

5 Originally the Department of Administration had  
6 recommended a \$10.2 million appropriation for the life of  
7 the Commission. The initial year, that was reduced to  
8 500,000 for fiscal '11, and 3,000,000 for fiscal '12.

9 To date, we've spent -- we've been appropriated  
10 7,900,000.

11 So I just would point out that we're not far off  
12 of what was thought to be a reasonable appropriation back  
13 when the Commission started.

14 The last Commission spent about 9,400,000. For  
15 inflation, it wouldn't appear that we're extremely outside  
16 of what would be a reasonable amount for the Commission to  
17 be spending.

18 This year we requested \$2.26 million, based upon  
19 the estimated work that would be done in defending the maps.  
20 That's the primary activity that the Commission's involved  
21 in.

22 We've received an appropriation of 1,115,000.

23 The governor had recommended 1.4.

24 As you all are aware, the Legislature had a very  
25 tumultuous session last year.

1           At one point we heard the Senate was going to  
2 recommend an appropriation of 800,000.

3           We got in contact with senate leadership and told  
4 them that 800,000 probably wouldn't get us out of the  
5 summer.

6           They came back with 1.4 -- I mean, I'm sorry, 1.1.  
7 We told them based on past experience, it would be lucky we  
8 would make it to when they got into session.

9           We tried to work to get a minimum of the 1.4 the  
10 governor recommended. But frankly in the last days of the  
11 legislative session, I don't think we were the highest  
12 priority for them to be working on.

13           On August 2nd when we realized that we really were  
14 not going to be able to make it to the end of the fiscal  
15 year, we sent a letter to John Arnold, who's head of the  
16 Office of Strategic Planning and Budgeting, telling him that  
17 we need a \$1.25 million supplemental.

18           We also then went and met with Senator Biggs,  
19 Senate President Biggs and his staff, and talked to him  
20 about the possibility of a special session and what our  
21 financial situation was.

22           He basically indicated that he didn't see that a  
23 special session would be feasible, requested we see what we  
24 could do to make it to January when the Legislature would be  
25 in session, and at that time a supplemental appropriation

1 could be made.

2 He also acknowledged that he was fully aware of  
3 the constitutional requirement that the Legislature must  
4 provide adequate funds and reminded us that in the past they  
5 have provided supplemental appropriations when we have  
6 requested them.

7 He also suggested that we hold off on paying some  
8 of the attorney bills, but keep the litigation moving.

9 Following that, we informed House Speaker Tobin of  
10 the same situation. He asked us to meet with his staff.

11 We did meet with Mr. -- Speaker Tobin's staff, and  
12 they also indicated a special session did not seem likely,  
13 and try to go as long as we could to get to January when the  
14 Legislature is back in session.

15 At the same time we asked the Office of Strategic  
16 Planning and Budget to reallocate our fourth quarter funding to  
17 the current quarter.

18 As you recall, the past several years we've had  
19 allotments that break out what we can spend by quarters.  
20 We've had discussion in the past as to whether that should  
21 apply to us or not, when we have a lump sum appropriation.  
22 And up until this year that, the fact that we had allotments  
23 was sticky.

24 However, they had indicated they may be willing to  
25 do that, but under their understanding of -- or budget

1 analyst's understanding we could not transfer salaries and  
2 related operating costs that are related to salaries to any  
3 other category.

4           So that door at that point was closed to us.

5           Then we worked with the Joint Legislative Budget  
6 Committee to provide financial projections in the format  
7 requested and answered their questions about how we got our  
8 estimates and provided them detail.

9           We also talked to JLBC about transferring salary  
10 and other costs to fund outside consulting and legal. They  
11 believed that we should be able to do so since we had a lump  
12 sum appropriation.

13           Recently, the Office of Strategic Planning and  
14 Budgeting confirmed in writing that we could transfer funds.

15           So, I want to mention that, that part of what  
16 Kristina will present, we have proposed taking what funding  
17 we can from activity passed for legal activity up until  
18 January and for other operating costs to March, anything but  
19 that we've transferred forward to be used to pay legal bills  
20 as much as we can between now and January.

21           We also met with the state controller to discuss  
22 how -- what he might think we could do. He reaffirmed that  
23 without an appropriation that he can't pay bills.

24           So at that point we asked our attorneys to, one,  
25 review all of our budget estimates for timing as to given

1 the most recent information from court cases, is our  
2 timing still right in terms of the monthly expenditures;  
3 and, second, to take what action they could to defer all of  
4 the possible costs that could be deferred until after  
5 January.

6 We really at the same time notified all of the  
7 attorneys that we had that they needed to stop work due to a  
8 lack of your appropriation. That state law requires  
9 agencies to stay within the current appropriation. And  
10 informed them that if they were to do any other work, they  
11 would be doing that at their own risk.

12 That then, taking those actions, the delaying of  
13 legal work costs, which we're calling a lockdown approach of  
14 trying to minimize what we need to do without jeopardizing  
15 our defense of the maps, resulted in reduced legal costs for  
16 the last two months. And that helped provide us an  
17 additional amount of money that could help get us to the  
18 possibility of January.

19 As I mentioned, we transferred all of the  
20 available funding that we thought reasonable to transfer to  
21 professional and outside legal services, and maintained  
22 budgetary salary and operating costs to March.

23 I guess I could say that as we get closer to March  
24 and we see the possibility of a supplemental activity  
25 happening in January, February, some more of those funds

1 could be transferred.

2 But in the past March seemed to be about the time  
3 we actually got action.

4 I know we're not the highest priority in the  
5 Legislature when they come back in session, so it's hard to  
6 know if they could really meet a January deadline.

7 The spreadsheet that Kristina will present also  
8 presumes no significant unexpected legal costs, that there  
9 wouldn't be a decision on Harris, and that we would be able  
10 to maintain this reduced level of activity.

11 All of those things, of course, or those  
12 activities in particular are outside our ability to control,  
13 so I think it's sketchy as to whether or not we can make it  
14 to January.

15 It could be possible, but it's not necessarily  
16 something that I can say, yeah, we will.

17 I'd like to ask Kristina to just run over how we  
18 developed our estimates because I think it's important for  
19 everybody to know the kinds of things we've done to try to  
20 get to January and the assumptions behind that.

21 And then when Kristina is done, if Joe could just  
22 summarize the court cases. And then I'll be glad to kind of  
23 make a conclusion and open it up for the chair to have  
24 discussion.

25 So with that, Kristina, would you like to go ahead

1 and present the budget findings?

2 KRISTINA GOMEZ: Sure.

3 Madam Chair, commission members, if I can have you  
4 all look at Exhibit 3, along with the budget outline, which  
5 is in a blue table.

6 Now, this format is the same format that we used  
7 in January of 2013 when JLBC re-requested additional  
8 information regarding our first supplemental request last  
9 legislative session.

10 So they asked us to go ahead and to continue using  
11 this format and to revise our estimates for fiscal year '14.

12 So we're going to start off in the orange column.  
13 It's fiscal year 2014, actual, July through September.

14 Now, first of all, our appropriation is  
15 \$1,115,100.

16 If you take the columns from July through  
17 September, that will give you a sum of \$518,204.

18 If you subtract that sum from our starting  
19 appropriation, that will leave us with a remaining balance  
20 of \$596,896.

21 Next is the gray column, which is October. And  
22 the reason why this is separate is because these are pretty  
23 firm estimates. However, they're not final yet. They won't  
24 be final until November 1st.

25 So if you sum up the October column, that's

1 \$111,649.

2           If you subtract that from the remaining balance  
3 above of the \$596,896, we're left with a remaining balance  
4 of \$445,247.

5           Next, if we go ahead and we sum up the November  
6 estimates for -- I'm sorry, if we go ahead and sum the  
7 November and December estimates, that's a total of \$289,200.

8           Once again, we would subtract that from the  
9 remaining balance above, and that would leave us with a new  
10 balance of \$196,047.

11           Next, we went ahead and we summed up salaries and  
12 other operating expenses for January through March. That's  
13 a total of 99,500.

14           Once again, you would subtract that from the  
15 previous remaining balance, and that would leave us a  
16 balance of \$96,547.

17           And, finally, if we sum the column that says  
18 professional and outside services, January through March,  
19 that's a sum of \$37,500.

20           Once again, if you subtract that from the previous  
21 remaining balance, that would leave us exactly roughly,  
22 \$59,047.

23           The reason why we did this was because, as you  
24 have seen from the reading material, we are trying to -- we  
25 are complying with A.R.S. 1-254.

1           So we are working within our appropriation that  
2 has been allotted for this fiscal year '14.

3           This approach right here may work if we continue  
4 with our lockdown approach until January, March -- or, I'm  
5 sorry, until January.

6           Now, if I could go ahead and have you look at the  
7 legal services for November and December, you'll notice that  
8 if you add up the legal services in November, that's exactly  
9 \$100,000.

10           And then December, that's 100,000 as well.

11           So in November -- in October right now, currently,  
12 we have budgeted \$100,000 for legal services.

13           Those bills will actually be billed to us in  
14 November.

15           And legal services done in -- next month in  
16 November will be billed in December.

17           So that's why we're able to cover those expenses  
18 for now.

19           However, in the month of December, we have roughly  
20 59,000 for legal activity, which would be billed in January.

21           And also the reason why we left money, and Ray  
22 mentioned this as well, the reason we left money for  
23 salaries and other operating expenses in January and March,  
24 is because we need money to go and approach the Legislature  
25 for a supplemental.

1           So we need to have available funds to pay someone,  
2 Ray, to go down and to try to seek a supplemental.

3           Also we do need money to keep our phones going and  
4 to keep the regular operations of this office going.

5           If we don't have money, then we have to close down  
6 shop.

7           And furthermore, for professional and outside  
8 services, we also need money to be able to pay for our court  
9 reporter whenever we do have our meetings, we need money to  
10 pay for our IT services, and we also need to have some funds  
11 available to pay our mapping consultant as well.

12           And I believe that covers the budget for now.

13           CHAIRPERSON MATHIS: Well, thank you, Ms. Gomez,  
14 and for all the work you did to pull all this stuff  
15 together, we really appreciate it.

16           I'm curious to know, are we still -- does Clark  
17 Partridge, the state comptroller, still monthly check in on  
18 us and do a review of all of our expenditures?

19           RAY BLADINE: Yes. Yes, we did get a letter  
20 yesterday perhaps that -- pardon me?

21           KRISTINA GOMEZ: This past week.

22           RAY BLADINE: This past week we got a letter  
23 indicating they reviewed our expenditures and didn't find  
24 anything that was inappropriate or improper.

25           CHAIRPERSON MATHIS: Yeah, well, I have in front

1 of me the letter. I don't have that one, but I have the  
2 September 12th one that he sent to the Honorable Don Shooter  
3 and the Honorable John Cavanagh at the  
4 state appropriations -- I'm sorry, the Senate Appropriations  
5 Committee and House Appropriations Committee, respectively.

6 And I've seen a lot of these. Every month we get  
7 one. And it says during the course of our review of the  
8 expenditures no matters came to our attention that appear to  
9 be either unlawful or unnecessary.

10 And I also want to state for the record in that  
11 letter it says all expenditure data for the Commission is  
12 available on the State of Arizona transparency website,  
13 which is Open Book, this says .AZ.gov. So it's Open Books,  
14 plural, .AZ.gov.

15 You know, it's no surprise when you hear someone  
16 like Kristina present all this information to us that, you  
17 know, we're getting these good checkups every month.

18 I think they've done a pretty stupendous job of  
19 keeping us informed and also everyone else informed.

20 So it's certainly not easy.

21 And it's -- the 59,000 that's showing up now as  
22 the bottom line that's remaining, I guess I'll be interested  
23 to hear what folks have to say about what our alternatives  
24 are.

25 I know you guys have kept a great record also of

1 your attempts to engage in good faith with a lot of folks in  
2 the Legislature. And so far there's, you know, no  
3 appropriation forthcoming.

4 RAY BLADINE: Madam Chair, would you like to,  
5 before we go on to a discussion of this, let Joe talk about  
6 the status of the current cases?

7 CHAIRPERSON MATHIS: Is that this agenda item?

8 RAY BLADINE: It's a part of our report just to  
9 give the status.

10 CHAIRPERSON MATHIS: Oh, yeah. Okay. We can.

11 RAY BLADINE: Okay. Then we can come -- then if  
12 you like I can summarize and we can come back to talking  
13 about the alternatives and what the Commission would like to  
14 have us do.

15 CHAIRPERSON MATHIS: Sure. Sounds good.

16 JOSEPH KANEFIELD: Thank you, Madam Chair, members  
17 of the Commission.

18 I'll briefly go through the three -- status of the  
19 three lawsuits.

20 The first lawsuit to discuss is Harris versus the  
21 Redistricting Commission. And this is -- the summary is set  
22 forth in the materials. It's Exhibit 2.

23 I believe that was also made available to the  
24 public.

25 This, the Harris lawsuit, as you recall, is the

1 Federal District Court lawsuit challenging the population  
2 deviations in the legislative map as being unconstitutional,  
3 allegedly because of partisan bias.

4 We have an expedited trial in March, the end of,  
5 on March 29th.

6 There was some post-trial briefing after that.

7 And then the court took the matter under  
8 advisement.

9 At some point over the summer the court asked us  
10 for additional briefing as a result of the United States  
11 Supreme Court's decision in Shelby County is the decision  
12 that struck down the coverage formula under the Voting  
13 Rights Act, Section 4 of the Voting Rights Act, which was  
14 done.

15 So at this point we are still waiting for the  
16 court's decision. And as a result of that, we have not  
17 incurred many legal fees, if any at all, while we wait to  
18 hear from the court.

19 That, of course, could change, as soon as the  
20 court opinion comes out. And we would expect that any day.

21 Of course, we've been saying for that some time,  
22 so it's hard to predict when the court is going to rule.

23 The next case is the Leach versus Redistricting  
24 Commission case. This is the case that was filed in  
25 Maricopa County Superior Court.

1           This suit challenges the congressional lines based  
2 on various state constitutional theories, which are all set  
3 forth in the summary. I won't go through unless you would  
4 like me to.

5           We moved to dismiss several of those claims.  
6 Three of the claims in the original complaint were  
7 dismissed.

8           The plaintiffs filed an amended complaint  
9 resurrecting two of the dismissed claims.

10           We are now -- on August 19th, we moved -- we had  
11 moved to dismiss the individual commissioners in their  
12 official capacity, and that motion was granted.

13           And now we are in the process of discovery. Which  
14 the plaintiff was served a number of discovery requests  
15 asking for various documents we've been gathering, and we're  
16 moving that process along.

17           After the discovery is complete, we anticipate  
18 that there would likely be summary judgment briefing. But  
19 at this point in time no trial date has been scheduled in  
20 the case.

21           The last case that's ongoing is this Arizona State  
22 Legislature versus the Redistricting Commission case. You  
23 may recall this is the lawsuit filed in federal court in  
24 front of a three-judge panel that claims that are provision  
25 in Proposition 106 that creates the Commission in the

1 Arizona Constitution violates the election clause to the  
2 extent it removes the authority to draw the congressional  
3 maps from the Arizona Legislature.

4 The provision in the United States Constitution  
5 that the Legislature cites is what we call the election  
6 clause. And, as I mentioned, the matter's pending before a  
7 three-judge panel.

8 We long ago filed a motion to dismiss that was  
9 responded to by the Legislature, replied to that briefing,  
10 that briefing was complete, and the court hasn't set oral  
11 argument or obviously decided that motion.

12 Recently on September 20th the Commission -- I'm  
13 sorry, the Legislature moved for preliminary injunction of  
14 the law, which essentially is a motion asking for the court  
15 to stop the law from going into effect or continuing in  
16 effect until the court can resolve the merits of the case.

17 We have responded to that motion, which I believe  
18 we filed last Friday.

19 The Legislature will have another week or so to  
20 reply to that motion.

21 And we anticipate at some point that the court  
22 will schedule oral argument likely on both the Commission's  
23 motion to dismiss and the preliminary injunction motion.

24 I should note that in the preliminary injunction  
25 motion, the first factor that you have to argue is

1 likelihood of success on the merits.

2           So the issue of whether the United States  
3 Constitution preempts the State of Arizona from -- and the  
4 citizens from empowering this Commission to draw  
5 congressional lines was briefed both in the motion to  
6 dismiss and the motion for preliminary injunction, was the  
7 same -- essentially the same legal arguments in terms of the  
8 Legislature's theories and the defense offered by the  
9 Commission.

10           So, with that, we would recommend as counsel that  
11 in light of the budget situation that we -- that the  
12 Commission go into executive session to receive legal advice  
13 on that situation. And also we'd be happy to answer  
14 questions in open session about the case status or any other  
15 appropriate discussions you might have to us.

16           CHAIRPERSON MATHIS: Okay. Thanks, Mr. Kanefield.  
17 Any questions or comments from commissioners?

18           COMMISSIONER McNULTY: This is Linda.

19           Mr. Kanefield, given that the Legislature is suing  
20 us, have we talked to them about putting their lawsuit on  
21 hold given that they have been unable to address the  
22 appropriations issue?

23           JOSEPH KANEFIELD: Madam Chair,  
24 Commissioner McNulty, yes, we have talked to counsel for the  
25 Legislature.

1           They are very much aware of the Commission's  
2 budget situation. And the message we got back was that they  
3 wanted to keep -- want to keep the case moving forward, but  
4 also referenced the conversations that the Legislature  
5 leadership has had with Ray and Kristina about working to  
6 accommodate the Commission and get the Commission a  
7 supplemental appropriation, but at the same time noting that  
8 that likely won't happen until the Legislature goes back  
9 into session in January.

10           CHAIRPERSON MATHIS: Other questions or comments?

11           COMMISSIONER STERTZ: Madam Chair.

12           CHAIRPERSON MATHIS: Mr. Stertz.

13           COMMISSIONER STERTZ: This is for Mr. Bladine and  
14 Ms. Gomez.

15           In looking at the contemplation for what your  
16 discussion would be with the state legislature when they  
17 come back into session the second Monday of January, it  
18 looks like based on your budget projections versus what  
19 your -- how you've been able to reallocate, in the document  
20 you distributed today, you've got about 300,000 that you are  
21 deferring from what your anticipated expense was projected  
22 for October, November, December.

23           Is that number about right?

24           RAY BLADINE: I guess I'd have to look at the  
25 table.

1           But what we did is I think most of the deferred  
2 legal costs went into the January estimate.

3           We moved them over, saying that, okay, they  
4 haven't gone away. They've just been delayed.

5           Glancing at it, it looks like you're probably in  
6 the ballpark, 300,000.

7           COMMISSIONER STERTZ: Okay.

8           So, in your estimation, in your conversations with  
9 leadership and the House and Senate, did you find -- do you  
10 feel that you were comfortable that they were going wait  
11 until the beginning of the January session to bring up your  
12 budget so that you could have it refunded.

13           RAY BLADINE: I think that in the discussions -- I  
14 think, Commissioner Stertz, I can answer it this way.

15           Both the House and Senate leadership acknowledge  
16 that there's a constitutional responsibility to provide  
17 adequate funding for the Commission.

18           And they have always indicated they'll provide the  
19 funding.

20           But they have said that they did not see a special  
21 session possible, but that they would be willing to take  
22 this up early in January.

23           So, all I can say is that they have in the past  
24 followed up and provided the appropriations. Sometimes not  
25 as quickly as we want or as large as we want, but they have

1 followed through to keep us having minimum funding.

2           COMMISSIONER STERTZ: Again, Madam Chair, as a  
3 follow-up to Commissioner McNulty's comment that it probably  
4 would behoove the Legislature in an effort to not throw in  
5 gas on spark regarding the lawsuits, that perception of the  
6 lawsuit not filing -- or not funding the opposition of a  
7 lawsuit that they placed on the Commission would not be good  
8 politics or good practice, or they would take -- that that  
9 would be a method to utilize when they -- so they hear this  
10 and get this funded out of their first action in the second  
11 week of January.

12           Is that, is that -- would that, would that ring  
13 true, Mr. Bladine?

14           RAY BLADINE: Madam Chair, Commissioner Stertz, I  
15 would think that that's a possibility, but I honestly can't  
16 say what the Legislature is going to do. And I fully  
17 believe that what the leadership told us is their intent.  
18 But I also know that they also have things thrown at them at  
19 the start of the year that can, in their mind, be things  
20 that they have to meet before us.

21           But I think your theory is a plausible one.

22           VICE-CHAIR FREEMAN: Madam Chair, it's Scott  
23 Freeman.

24           CHAIRPERSON MATHIS: Mr. Freeman.

25           VICE-CHAIR FREEMAN: I just want to sort of

1 summarize the status again of the three lawsuits.

2           So, the Legislature lawsuit against the  
3 Commission, basically all we're looking to receive now is a  
4 reply brief from the Legislature. Then we're sitting and  
5 waiting for a hearing on the pending motions, which could be  
6 set, I would think -- I guess it's possible it could be set  
7 in December, but we're probably looking at sometime next  
8 year.

9           Do you agree with that?

10           JOSEPH KANEFIELD: Madam Chair,  
11 Commissioner Freeman, I think that's accurate. The only  
12 change I mentioned is Legislature wants quick resolution.

13           They -- the motion to dismiss briefing was  
14 completed a year ago.

15           One of the -- and they have been trying to get the  
16 court's attention to resolve the matter. I think a  
17 preliminary injunction suggests that they feel that this  
18 needs to be resolved sooner rather than later, so it doesn't  
19 impact the 2014 election cycle as they desire.

20           So, it could push off the work if they were  
21 willing to do so, but my guess would be that they will want  
22 quicker resolution.

23           VICE-CHAIR FREEMAN: Did they ask for an expedited  
24 hearing date, or you're just waiting to hear from the  
25 three-judge panel?

1           JOSEPH KANEFIELD: Madam Chair.  
2 Commissioner Freeman, they haven't asked for any expedited.

3           I suppose they could ask at that point.

4           VICE-CHAIR FREEMAN: But essentially all that's  
5 been briefed. We're just waiting on a hearing. If there's  
6 a hearing there will be an oral argument. And we should be  
7 equipped to deal with that.

8           JOSEPH KANEFIELD: Madam Chair,  
9 Commissioner Freeman, yes.

10          VICE-CHAIR FREEMAN: The Harris case, a post-trial  
11 briefing is completed. We're sitting back waiting for the  
12 decision. If the Commission should prevail, and they get  
13 this decision over the next month, there's nothing for us to  
14 do except to sit back and wait to see if the plaintiffs  
15 appeal; right?

16          JOSEPH KANEFIELD: Madam Chair,  
17 Commissioner Freeman, I believe that's correct if we  
18 prevail.

19          Anything to add, Mary?

20          MARY O'GRADY: No, that's right.

21          VICE-CHAIR FREEMAN: So, and even if they were to  
22 appeal, the Commission really wouldn't have anything to do  
23 in that case probably until the first part of next year, the  
24 way that works; is that fair?

25          JOSEPH KANEFIELD: Madam Chair,

1 Commissioner Freeman, it depends on when we get the  
2 decision, I suppose, but, yes, it's very possible that every  
3 week that goes by we don't have the decision pushes off the  
4 Commission.

5 COMMISSIONER FREEMAN: They've got a certain time  
6 to file a notice of an appeal, a briefing schedule, and they  
7 would go first, and we would go second. So we're probably  
8 not doing something until the first quarter of next year, at  
9 the earliest; is that right?

10 JOSEPH KANEFIELD: Madam Chair,  
11 Commissioner Freeman, that's the scenario.

12 COMMISSIONER FREEMAN: So then we have the Leach  
13 case, which is in the state court. We're in the middle of  
14 discovery. The Commission has responded to written  
15 discovery request. I understand there has been supplemental  
16 responses going out. But I'm not aware of any  
17 communications from the plaintiffs that they're dissatisfied  
18 with the discovery responses, they're going to move to  
19 compel, or they're going to notice anyone's deposition. I'm  
20 just not aware of anything else going on that in that case.

21 JOSEPH KANEFIELD: Madam Chair,  
22 Commissioner Freeman, yes, I think that's an accurate  
23 characterization of the status of discovery.

24 We have communicated to counsel for the plaintiffs  
25 about the budget situation, and we've asked them to consider

1 working with us to address the situation to keep our costs  
2 down, to keep costs for the individual commissioner counsel  
3 down.

4 That could be done through possibly agreeing to  
5 the stay.

6 But you're right, there hasn't been any motions  
7 filed by the plaintiffs with respect to discovery at this  
8 point.

9 But we are having to incur costs gathering  
10 discovery, a significant amount of documents that they've  
11 requested. It takes a lot of legal time, as you know, going  
12 through those documents.

13 So that's the current status.

14 VICE-CHAIR FREEMAN: I know that for sure.

15 And I know things can change as well.

16 But, at least right now there's not a whole lot  
17 going on in the three cases, at least that strikes me, and  
18 I'm open to be educated on this, but there's a shot at least  
19 we could get it into January.

20 JOSEPH KANEFIELD: Madam Chair,  
21 Commissioner Freeman, yeah, I think that's possible. And  
22 that's a result of -- a result of the good fiscal management  
23 of staff, as well as the lawyers, doing their best to keep  
24 costs down and a somewhat fortuitous timing in terms of the  
25 case status.

1           So, yes, there is certainly a possibility.

2           The problem would be if something comes up in  
3 litigation, there could be some motion filed, or a decision,  
4 anything that could require a significant amount of legal  
5 work in a very short amount of time.

6           That's really the underlying issue.

7           VICE-CHAIR FREEMAN: Yeah, and I understand that  
8 too.

9           And in Leach, the Leach case, in state court, do  
10 we have a scheduling order in place? And if we do, you  
11 know, when is the discovery cutoff? When is the next  
12 deadline of any significance?

13           JOSEPH KANEFIELD: Madam Chair,  
14 Commissioner Freeman, we do not have any hard deadlines.  
15 We're working obviously hard to accommodate the opposing  
16 counsel's discovery request in accordance with the rules of  
17 civil procedure.

18           VICE-CHAIR FREEMAN: Thank you.

19           CHAIRPERSON MATHIS: Any other questions or  
20 comments?

21           COMMISSIONER McNULTY: This is Linda.

22           I'd like to hear a little discussion, maybe from  
23 counsel, about the statute that precludes us from incurring  
24 costs if they haven't been appropriated, and whether we --  
25 who it would, who it would be to enforce that, and

1 whether -- you know, what's the likelihood of that becoming  
2 an issue, if what we're trying to do is just have a bridge  
3 to January.

4 JOSEPH KANEFIELD: Madam Chair,  
5 Commissioner McNulty, what we would as counsel advise is  
6 that we have that conversation in executive session, because  
7 it does involve legal advice in terms of Commission's rights  
8 and potential legal action with respect to the Commission's  
9 resources. So, and perhaps after we provide you advice and  
10 come out of session, you can direct us or discuss the  
11 matter, but not until you've received our advice.

12 CHAIRPERSON MATHIS: Joe, I'm having -- this is  
13 Colleen. I'm having a hard time hearing you. You're  
14 dropping -- cutting out, kind of.

15 JOSEPH KANEFIELD: I'm sorry, Madam Chair, I'll  
16 try to talk directly into the microphone.

17 My response to Commissioner McNulty was suggesting  
18 that the Commission consider going into executive session to  
19 receive advice on the issue involving the Commission's  
20 resources and the legal rights of the Commission should the  
21 appropriation be exhausted prior to a supplement  
22 appropriation being passed by the Legislature.

23 And then after you receive our advice, then in  
24 open session you can deliberate as appropriate.

25 VICE-CHAIR FREEMAN: Madam Chair, it's Scott

1 Freeman.

2 CHAIRPERSON MATHIS: Mr. Freeman.

3 VICE-CHAIR FREEMAN: Counsel, would -- if the  
4 Commission were to file an action as suggested in the  
5 document that was Exhibit 2, I think, to the packet, would  
6 it be taking the same position the Commission did ten years  
7 ago when it filed a special action, same legal, same  
8 arguments, same legal position?

9 JOSEPH KANEFIELD: Well, Madam Chair,  
10 Commissioner Freeman, those are issues we'd like to give you  
11 advice.

12 Obviously if the Commission would like to receive  
13 that advice in open session, we will accommodate. But our  
14 recommendation is that in terms of legal strategy, legal  
15 theories, arguments made by the last Commission versus what  
16 this Commission decides to do, would be issues, legal issues  
17 that we would suggest we have an opportunity to advise you  
18 on as counsel and then we can.

19 VICE-CHAIR FREEMAN: Okay. Fair enough.

20 But the last Commission's position, I think,  
21 was -- and really the Legislature and the governor had  
22 nothing to do with it. It was a lawsuit brought against the  
23 treasurer and DOA, I believe. Saying, arguing that the  
24 Commission has independent constitutional authority to  
25 basically have unfettered access to the fist, in essence,

1 and should be appropriated directly to those entities  
2 whatever money it needed to carry out it's function.

3           JOSEPH KANEFIELD: Madam Chair,  
4 Commissioner Freeman, I believe that's correct. It was a  
5 special action filed at the Arizona Supreme Court when the  
6 last Commission exhausted its appropriation and no  
7 supplemental appropriation was forthcoming.

8           But as I also recall, Mary knows better than I,  
9 the issue was never addressed by the court, because the  
10 Legislature did provide supplemental appropriation and  
11 mooted the question.

12           But as I recall, and I have the lawsuit saved on  
13 my iPad somewhere. I can pull it up. That it was a special  
14 action brought against the treasurer, the director of the  
15 Department of Administration, the -- both obviously have a  
16 role with respect to the resources of the state, and on the  
17 theory that under the Arizona Constitution and provisions  
18 governing this Commission that the Commission must be  
19 provided the resources it needs to do its work.

20           And without a appropriation from the Legislature  
21 or in the absence of an appropriation, the Commission has  
22 standing under the Arizona Constitution to bring a legal  
23 action regarding the sufficiency of its resources in what  
24 really amounted to, you could call it, constitutional  
25 appropriation of sorts.

1           So these are obviously issues that we know what  
2 the counsel for the last Commission, what their position  
3 was, what their legal theories were.

4           Perhaps theories we would advise on may be the  
5 same or may not be the same, may have evolved in light of  
6 other more recent precedent, those kind of things.

7           But those are the kinds of things the Commission  
8 would be well advised to have that discussion as counsel in  
9 executive session.

10           CHAIRPERSON MATHIS: I'm sorry, this is Colleen  
11 again.

12           It's -- there's kind of a weird echo thing  
13 happening.

14           I don't know where it's coming from, if others  
15 that on the line hear it as well.

16           VICE-CHAIR FREEMAN: Colleen, I think it's the AC  
17 unit snapped on here, and it's making a blowing noise.

18           CHAIRPERSON MATHIS: Thank you.

19           COMMISSIONER McNULTY: And Joe's mic is really  
20 problematic.

21           CHAIRPERSON MATHIS: Yeah, I agree.

22           JOSEPH KANEFIELD: Madam Chair --

23           COMMISSIONER STERTZ: Madam Chair --

24           CHAIRPERSON MATHIS: I think I heard Joe first.

25           JOSEPH KANEFIELD: Madam Chair, I'm just

1 apologizing again. I'm doing my best to talk into the  
2 microphone, but there may be an issue for everyone on the  
3 phone. So I apologize if you can't hear me.

4 CHAIRPERSON MATHIS: Thanks.

5 Mr. Stertz.

6 COMMISSIONER STERTZ: Okay. Let me see if I can  
7 do a recap.

8 In my -- and please correct me if I'm wrong.

9 I just heard from Commissioner Freeman, going  
10 through this with Joe Kanefield and I believe with Ray  
11 Bladine, that unless something extraordinary happens between  
12 now and the end of the year, the money that we are able to  
13 move from one category to another, based on the latest okay  
14 from the governor's office telling us that it's appropriate  
15 to do so from the Office of Strategic Planning and Budget,  
16 that we can move the money around for our own needs because  
17 it's a lump sum appropriation, that we have found a way to  
18 get to the end of the year with our expenditures, knowing  
19 that there will be some potentially deferred expenses that  
20 will be moved into the January and February needs request  
21 from an additional appropriation that we would go to the  
22 Legislature in January to request it.

23 Is that a good summary, Mr. Kanefield and  
24 Mr. Bladine?

25 JOSEPH KANEFIELD: Madam Chair,

1 Commissioner Stertz, I think that's a good summary.

2           The only thing I would mention is I just -- that  
3 was certainly -- I think I categorize it as a likely  
4 scenario, but my only concern is that things could heat up  
5 very quickly.

6           We could get a lengthy decision from the federal  
7 district court, three-judge panel tomorrow, or the  
8 plaintiffs in the Leach case could file motions.

9           So there is always a possibility that the legal  
10 work could increase significantly in the next three months.

11           But what you summarized is a, you know, a possible  
12 scenario if things sort of continued on the status quo.

13           My only -- again, my only concern is just the  
14 unknowns that come with when you have three active lawsuits  
15 that any one of them could erupt with a lot of legal work at  
16 any moment.

17           COMMISSIONER STERTZ: Okay.

18           Madam Chair, let's follow up on that. If, let's  
19 say one, two, or three all erupt, and we know that there's  
20 going to be a massive need for costs, that sort of  
21 extraordinary condition, in my opinion, would be a  
22 legitimate reason to request the governor to call a special  
23 session for bringing appropriation.

24           Because it is the constitutional -- Legislature's  
25 constitutional requirement to make appropriation by the

1 majority vote to fund this Commission's needs, including  
2 defense of these lawsuits.

3 But as it stands right now, it would be -- we'd be  
4 asking for 90 people to come back and their staff to come  
5 back for a vote on something that we're not sure but we just  
6 want to make sure that if in case, that maybe if it  
7 happens -- do you follow what I'm saying?

8 RAY BLADINE: Commissioner Stertz, is that  
9 directed to me to try to answer?

10 COMMISSIONER STERTZ: Sure. Please.

11 RAY BLADINE: I think that as Kristina and I tried  
12 to pull together this report, and be as fair and balanced as  
13 we could about what can we do and what couldn't we do, our  
14 goal was to comply, and she mentioned it, with the state law  
15 that says when you know you've got a budget problem, you got  
16 to try to take every action you can to stay within your  
17 appropriation.

18 And that's what the spreadsheet we developed shows  
19 you.

20 It anticipates two things with regard to the  
21 legal. One, we don't spend more than 100,000 a month on  
22 legal expenses.

23 And that's clearly a possibility.

24 So to that extent, that would take care of  
25 October, November.

1           It would show then for December activity, we'd  
2 have about \$59,000 that we could spend in January for  
3 December billing.

4           Will we need 100,000 in December? I don't know.

5           Could we find a few more dollars as we get closer  
6 to December? Yes, that's a possibility.

7           So, that's what we struggle with.

8           Because on the one side if you ask do we have an  
9 adequate appropriation, well, right now I guess we do.

10          But tomorrow, we may not.

11          Clearly there is the possibility, and that's what  
12 we tried to do was to get us to January, at this point we're  
13 maybe a little short of doing that. But it's all based on  
14 our best projections.

15          And I can't tell you that we're 100 percent  
16 accurate.

17          So your earlier comment is it possible to make it  
18 to January, I'd say, yes, it is.

19          But I guess that's all I have to say on it.

20          COMMISSIONER STERTZ: Well, Madam Chair, the  
21 follow-up to that, here's my, here's my bigger, broader  
22 statement.

23          I know that we'll talk about the specifics and get  
24 legal recommendations in executive session, but let's just  
25 play this out.

1           Let's say the Commission decides we're going to  
2 sue the Legislature. And that then we're going to have some  
3 reason to compel these folks to come back.

4           We're going to bring 90 folks back here in the  
5 next 45 days between now and the holiday season to come back  
6 to give us an appropriation on something that we may or may  
7 not need to get to January.

8           How do you think January is going to turn out?

9           If we can find a way to have an event take place  
10 that would require the recalling back of the -- I think  
11 that -- you know, listen, my crystal ball is broken, but I  
12 believe that the leadership as well as the governor's office  
13 would have an understanding that if all three cases hammered  
14 down next Monday morning and we needed to throw \$250,000 a  
15 week of resources at it, or whatever the number would be it  
16 would be, that they would understand that we can't make a  
17 legal allocation to engage our legal team to defend these  
18 lawsuits without the appropriation being put in place.

19           So something extraordinary I think that they would  
20 understand why we would want to call -- you know, request  
21 the governor to call back the Legislature for this  
22 appropriation.

23           If we call -- if we're going to sue them to try to  
24 force them to come back on what we think may happen, or  
25 might possibly happen because we're not quite sure, even

1    though we got enough money that we've already shown on a  
2    document that's being presented in public session that we  
3    can make it to the end of the year without something  
4    extraordinary happening, I would be hard pressed to find  
5    favor that that make prudent sense.

6            COMMISSIONER FREEMAN:  Madam Chair, Scott Freeman.

7            CHAIRPERSON MATHIS:  Mr. Freeman.

8            COMMISSIONER FREEMAN:  Well, if the Commission  
9    were to decide to institute a special action, then I think  
10   we're all in.

11           Because now we're diverting resources to the  
12   prosecution of this lawsuit.

13           Has anyone done an estimate, prepared a budget as  
14   to how much it would cost to file a special action and take  
15   it up on the Supreme Court, get an order, follow through on  
16   the relief, whatever relief is ordered, what time frame, how  
17   quickly that could be expected to be accomplished?

18           Because once we go down that road, we're  
19   committed.  We're no way we're making it to January, because  
20   now we're funding this third lawsuit brought by the  
21   Commission.

22           RAY BLADINE:  Madam Chair, I can't answer the  
23   whole question there, but I think in the discussions that  
24   I've had with legal counsel that if we were to file some  
25   action, the chances of us getting any decision before

1 January is very unlikely.

2 I do recall we had talked last time we needed to  
3 do this about some possible budget costs, but we didn't  
4 really -- we had not really addressed those in terms of  
5 whether that's realistic, and I would have to ask the  
6 attorneys to talk to it.

7 But, yes, the problem is that we would have to  
8 reallocate resources to file that lawsuit. And we can only  
9 do that with your direction, of course.

10 CHAIRPERSON MATHIS: Okay.

11 Any other comments or questions?

12 Okay. Hearing none, was there anything else --  
13 have we essentially covered everything in agenda item three  
14 as well with regard to each discovery request?

15 RAY BLADINE: Madam Chair, I don't believe so. I  
16 think that there was a need for a discussion on that with  
17 attorneys on Leach in executive session.

18 CHAIRPERSON MATHIS: Okay. So there's nothing in  
19 public that we want to talk about now on number three.

20 RAY BLADINE: I think that's correct. Both  
21 attorneys are shaking their heads now, so.

22 CHAIRPERSON MATHIS: Okay.

23 Okay. Well, I'd entertain a motion to go into  
24 executive session to obtain legal advice on both agenda  
25 items three and four.

1 COMMISSIONER McNULTY: So moved.

2 COMMISSIONER KALLEN: Second.

3 CHAIRPERSON MATHIS: Any discussion?

4 (No oral response.)

5 CHAIRPERSON MATHIS: All in favor?

6 COMMISSIONER McNULTY: Aye.

7 CHAIRPERSON MATHIS: Aye.

8 So I've heard two ayes.

9 COMMISSIONER STERTZ: Madam Chair, was there a  
10 second to the motion?

11 CHAIRPERSON MATHIS: I thought there was.

12 COMMISSIONER KALLEN: There was.

13 CHAIRPERSON MATHIS: Is that Commissioner Kallen?  
14 I can't hear you.

15 COMMISSIONER KALLEN: Yes, Madam Chair.

16 Commissioner Kallen. I seconded the motion.

17 CHAIRPERSON MATHIS: Okay. Good.

18 And then all in favor?

19 COMMISSIONER STERTZ: Aye.

20 COMMISSIONER KALLEN: Aye.

21 CHAIRPERSON MATHIS: So I think I've heard four  
22 ayes.

23 Any opposed?

24 Okay. Just for the record, can we -- because I  
25 can't tell who voted aye, can you state your name and who

1 said aye.

2 COMMISSIONER McNULTY: McNulty. Aye.

3 COMMISSIONER STERTZ: Stertz. Aye.

4 COMMISSIONER KALLEN: Kallen. Aye.

5 CHAIRPERSON MATHIS: Mathis. Aye.

6 And I guess is, Commissioner Freeman, are you  
7 abstaining or voting no?

8 VICE-CHAIR FREEMAN: I'm voting no.

9 CHAIRPERSON MATHIS: Okay.

10 So we'll -- the motion carries, and we'll go ahead  
11 and go into executive session, which means we'll have to  
12 exit out of public session, which means unfortunately the  
13 folks on the room and on the call that are not commissioners  
14 need to depart. And hopefully we'll come out soon and  
15 continue in public session.

16 But the time right now is 3:09.

17 (Whereupon, the Commission went into executive  
18 session.)

19 \* \* \* \* \*

20 (Whereupon, the public session resumes.)

21 CHAIRPERSON MATHIS: The time is 4:52 p.m., and  
22 we'll enter back into public session.

23 Do we still have members of the public with us?

24 COMMISSIONER FREEMAN: No.

25 CHAIRPERSON MATHIS: Okay. We scared them off.

1 COMMISSIONER STERTZ: Yep.

2 CHAIRPERSON MATHIS: All right. So, do any  
3 commissioners have any comments coming out of executive  
4 session that they'd like to state?

5 COMMISSIONER STERTZ: Madam Chair.

6 CHAIRPERSON MATHIS: Mr. Stertz.

7 COMMISSIONER STERTZ: I'd like to -- there's no  
8 comment. I'd like to make a motion.

9 CHAIRPERSON MATHIS: Go ahead.

10 COMMISSIONER STERTZ: I'd like to move that the  
11 Commission does not enter into litigation against the  
12 Legislature or its funding source, and we do not at this  
13 time authorize our legal counsel to prepare for such,  
14 pending a significant event, at which time we would make  
15 special requests of the Legislature and the Governor's  
16 Office to recognize their constitutional requirement to fund  
17 the Commission to defend its maps.

18 CHAIRPERSON MATHIS: Is there a second?

19 COMMISSIONER FREEMAN: I'll second it.

20 CHAIRPERSON MATHIS: Any discussion?

21 COMMISSIONER FREEMAN: Madam Chair --

22 COMMISSIONER McNULTY: I wanted to say I was a  
23 Girl Scout and I think you have to be prepared.

24 So I guess I wouldn't support directing our  
25 counsel not to prepare, but. . .

1           COMMISSIONER FREEMAN: Madam Chair, it's Scott  
2 Freeman.

3           CHAIRPERSON MATHIS: Mr. Freeman.

4           COMMISSIONER FREEMAN: I'm thinking maybe it just  
5 behooves us to sort of target, depending on comments from  
6 staff and counsel, just maybe we should just sort of  
7 tentatively plan at this point to be convening in mid  
8 December as a status check or perhaps earlier if there's  
9 some change in circumstances that we would need to -- nobody  
10 leave the country.

11                   Just don't do it the week after Thanksgiving,  
12 because I'll be on my hunt.

13                   But that's where I think we should go at this  
14 point. And I don't see a reason to direct counsel to take  
15 any affirmative action with respect to the funding at this  
16 time.

17           CHAIRPERSON MATHIS: Any other thoughts?

18           COMMISSIONER McNULTY: This is Linda. I like  
19 Commissioner Freeman's idea of being prepared to have a  
20 meeting in December.

21                   And otherwise I think counsel should proceed as we  
22 discussed in the executive session, that they don't need any  
23 particular direction one way or the other.

24           CHAIRPERSON MATHIS: Okay. So we have a seconded  
25 motion on the floor that we need to vote on, unless there's

1 other discussion.

2 Hearing none, all in favor?

3 COMMISSIONER KALLEN: Aye.

4 COMMISSIONER STERTZ: Aye.

5 COMMISSIONER FREEMAN: Aye.

6 COMMISSIONER McNULTY: No.

7 CHAIRPERSON MATHIS: And any opposed?

8 COMMISSIONER McNULTY: This is Linda. I vote no.

9 CHAIRPERSON MATHIS: Commissioner Kallen, are  
10 you --

11 COMMISSIONER KALLEN: Yes, I'm still here. I  
12 voted aye.

13 CHAIRPERSON MATHIS: Oh, I'm sorry, you voted aye?

14 COMMISSIONER KALLEN: Yes.

15 CHAIRPERSON MATHIS: So, wait, we have three ayes  
16 and one no.

17 Is that correct?

18 COMMISSIONER McNULTY: Sounds right.

19 Okay.

20 CHAIRPERSON MATHIS: And I'll vote no too, because  
21 I just think -- I agree with Commissioner Freeman's  
22 statement that we just plan to meet in December, but I don't  
23 want to say that we would, you know, not enter into  
24 litigation.

25 I think it's incumbent upon the Commission to

1 defend the maps as necessary. And if there's a need to do  
2 so that comes up before January, then we're going to need to  
3 be able to rise to the occasion.

4 So -- but the motion carries, three to two, so  
5 that's how the cookie crumbles.

6 COMMISSIONER KALLEN: Madam Chair, this is  
7 Commission Kallen.

8 CHAIRPERSON MATHIS: Go ahead,  
9 Commissioner Kallen.

10 COMMISSIONER KALLEN: I believe the fact that at  
11 least with these instructions for counsel, I don't think  
12 that any -- that in any way precludes from -- if there were  
13 a significant event that we reconvene and be able to change  
14 our decision if necessary. But, again, I think we can still  
15 meet and that we're not restricted in any way.

16 CHAIRPERSON MATHIS: Okay.

17 Thank you.

18 Any other comments from commissioners?

19 (No oral response.)

20 CHAIRPERSON MATHIS: Any other direction coming  
21 out of executive session?

22 (No oral response.)

23 CHAIRPERSON MATHIS: Okay. I'm not hearing any.

24 So, it sounds like we will -- no one leaves the  
25 country, at least in December, and be available in case we

1 need to meet again.

2           And I will just say -- one thing I wanted to say  
3 about our court reporter too before we adjourn. Marty  
4 Herder was recently named president of Arizona Litigation  
5 Support Court Reporters, and I just wanted to congratulate  
6 him. I'm sure the other commissioners echo that.

7           And other than that, thank you, everyone, for your  
8 time.

9           It's now 5:00 p.m. on the nose, so we'll adjourn.

10          Thank you.

11          COMMISSIONER FREEMAN: Thanks.

12          COMMISSIONER STERTZ: Thanks, everybody. And  
13 congratulations, Iron Man.

14          (Whereupon, the meeting was adjourned at  
15 5:00 p.m.)

16

17

18

\* \* \* \* \*

19

20

21

22

23

24

25

