

ARIZONA INDEPENDENT REDISTRICTING COMMISSION

Thursday, March 14, 2013
5:32 p.m.

Location

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

Attending

Colleen C. Mathis, Chair (via teleconference)
Jose M. Herrera, 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
Buck Forst, Information Technology Specialist
Kristina Gomez, Deputy Executive Director

Mary O'Grady, Legal Counsel (via teleconference)
Joe Kanefield, Legal Counsel (via teleconference)

Reported By:
Marty Herder, CCR
Certified Court Reporter #50162
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Phoenix, Arizona
March 14, 2013
5:32 p.m.

P R O C E E D I N G S

(Whereupon, the public session commences.)

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

Time is 5:30 p.m.

March 14, 2013.

Happy Friday, everyone.

The Pledge of Allegiance. There is a flag there,
and someone there could lead it.

(Whereupon, the Pledge of Allegiance was recited.)

CHAIRPERSON MATHIS: Okay. Thank you.

And I think we have the roll call established
either on the phone or at Evans House. We have Joe
Kanefield and Mary O'Grady, our legal counsel. And then I
know Ray Bladine is there, our executive director, and you
have Kristina Gomez.

MR. BLADINE: Yes. And actually Mary and Joe are
in Mary's office. They're not here with us in the Evans
House.

CHAIRPERSON MATHIS: Okay. Thank you.

1 Anybody else from staff that I missed?

2 MR. BLADINE: From staff? Buck. And Marty is not
3 staff, but we think of him as staff.

4 CHAIRPERSON MATHIS: He's family.

5 MR. BLADINE: Yeah.

6 MR. DESMOND: This is Willie from Strategic
7 Telemetry. I'm on the phone as well.

8 CHAIRPERSON MATHIS: Oh, great. Okay. Sorry,
9 Willie, I didn't know you were on the phone.

10 Willie Desmond, and then I think that's everybody.
11 Did I miss anyone?

12 (No oral response.)

13 CHAIRPERSON MATHIS: Hearing none, we'll go ahead
14 and move to agenda item two, legal advice, direction of
15 counsel, discussion and possible action regarding, one,
16 District Court decision on legislative privilege in the
17 matter of Harris versus AIRC, including possible appellate
18 review; two, discussion about counsel for individual
19 commissioners in pending litigation; and, three, on other
20 pending court challenges including Leach versus AIRC. The
21 Commission may vote to go into executive session which will
22 not be able open to the public for the purpose of obtaining
23 legal advice and providing direction to counsel.

24 So with that, I'll leave it to Joe and Mary to
25 tell us what they would like to tell us.

1 MARY O'GRADY: Well, our recommendation would be
2 that we would go into executive session so we can address
3 the issues in the agenda.

4 CHAIRPERSON MATHIS: Okay. Do I hear a motion to
5 go into executive session to discuss the items on the
6 agenda?

7 VICE-CHAIR HERRERA: Madam Chair, this is Jose.

8 CHAIRPERSON MATHIS: Mr. Herrera.

9 VICE-CHAIR HERRERA: Before we go into executive
10 session, is there anything that can be discussed in public
11 session from the agenda?

12 CHAIRPERSON MATHIS: Legal counsel, is there
13 anything that can be discussed in public?

14 MARY O'GRADY: We can say that the status of the
15 case, this -- the Commission, as in the agenda it is the
16 decision on legislative privilege, which the court issued in
17 the end of February. We discussed a ruling that denied our
18 motion as presented, but permitted discovery on the central
19 issues in the case.

20 And, and then I think, as you all know, we have a
21 firm trial date in that matter.

22 And so it's going to go to trial November 5th --
23 20 -- no. When? March. March 25th.

24 And so we have lots of deadlines that we're
25 meeting in order to be ready for that trial date.

1 And then, as you know, we have -- did retain
2 counsel for all the -- specific counsel for all the
3 individual -- for all the commissioners, in part as an
4 urging of the court because we were addressing the court
5 issue of waiver of privilege, and in the Harris case.

6 And we do have two other pending lawsuits. The
7 one that's mentioned in the agenda, Leach, is pending in
8 state court. And that is the challenge to the congressional
9 districts based on various state constitutional theories.

10 And we -- the court had granted part of our motion
11 to dismiss, and then there's been a new complaint filed that
12 replead some of the counts that had been previously
13 dismissed.

14 We filed a subsequent motion to dismiss because we
15 thought they were still not adequate under the court's
16 earlier ruling.

17 The court denied our subsequent motion to dismiss,
18 and that's the status of that case.

19 That just happened within the last few weeks.

20 Joe?

21 JOSEPH KANEFIELD: Madam Chair, members of the
22 Commission, the only thing I would add is that we do have a
23 responsive pleading in the Leach case tomorrow by extension,
24 and that would be the date that we would do it, file an
25 answer.

1 MARY O'GRADY: So, then there is another case
2 pending in federal court, which is a state legislature
3 challenge of the Commission's authority to do congressional
4 redistricting at all under the federal elections clause.

5 And in that case our motion to dismiss is pending,
6 and our motion to determine whether a three judge panel is
7 appropriate in that case is pending.

8 And so with that, that's the update on the status,
9 and so I would like to provide further advice and give
10 direction in executive session.

11 COMMISSIONER McNULTY: Madam Chair, this is Linda
12 McNulty. I would move that we go into executive session for
13 the purpose of considering the items on the agenda.

14 CHAIRPERSON MATHIS: Do I hear a second?

15 VICE-CHAIR HERRERA: I second. This is Jose.

16 CHAIRPERSON MATHIS: Okay. Any discussion?

17 (No oral response.)

18 CHAIRPERSON MATHIS: All in favor?

19 VICE CHAIR FREEMAN: Aye.

20 COMMISSIONER STERTZ: Aye.

21 COMMISSIONER McNULTY: Aye.

22 VICE-CHAIR HERRERA: Aye.

23 CHAIRPERSON MATHIS: Aye.

24 We'll poll afterwards.

25 And then any opposed?

1 (No oral response.)

2 CHAIRPERSON MATHIS: Okay. I didn't hear any
3 nays, so I'm assuming all five commissioners voted aye. But
4 did anyone vote nay or abstain?

5 (No oral response.)

6 CHAIRPERSON MATHIS: Okay. So we're -- the time
7 now is 5:39 p.m. We'll exit out of public session. And I'm
8 not sure if there's public in the room there, but they'll
9 have to clear out, I guess, and come back once we go back
10 into public session.

11 MR. BLADINE: Okay. There's a few people, and we
12 will ask them to exit and promise to go tell them when
13 you're back in public session.

14 CHAIRPERSON MATHIS: Great. Sorry about that.

15 (Whereupon, the public session adjourns.)

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19 (Whereupon, the public session resumes.)

20 CHAIRPERSON MATHIS: The time is 6:19 p.m. We'll
21 enter back into public session.

22 I don't know if we still have Mr. Desmond on the
23 phone.

24 Are you there, Willie?

25 (No oral response.)

1 CHAIRPERSON MATHIS: He dropped off.

2 I guess he'd have to call back in.

3 But we are now on agenda item three, the executive
4 director will summarize recent staff activity and respond to
5 commissioners' questions.

6 I assume that will be Mr. Bladine or Ms. Gomez.

7 MR. BLADINE: Madam Chair, I'm going to ask
8 Kristina to go ahead and start, and then I'll talk later
9 about the last memo we sent out to you late today.

10 Kristina?

11 KRISTINA GOMEZ: Madam Chair, Commission members,
12 just really briefly, current staff activity, we still have
13 three staff members. We have Lisa Schmelling and Shane.

14 They've been working with legal counsel on data
15 collection, and they're still collecting public input and
16 some media clippings. So they've been really busy though,
17 mostly working with -- on the lawsuits with legal counsel.

18 And also Anna Garcia is still with us. She is
19 still in charge of processing all invoices, assisting
20 with contracts, and setting up meetings with legislative
21 members.

22 Recently we've been at the capital this past week
23 meeting with staff on a second supplemental request. So we
24 will give you an update I believe tomorrow on our staff
25 activity.

1 And just this past -- I believe this past week,
2 you've received four different e-mails from the office
3 regarding the budget.

4 You received an e-mail packet of the revised JLBC
5 report that was submitted to JLBC on March 8th. And I
6 forwarded the packet to you on the 13th.

7 The second packet that went out was the letter
8 that was submitted to President Biggs and to Speaker Tobin.
9 That e-mail I believe you received on March 11th.

10 And the third packet was an e-mail from myself and
11 from Ray on March 11th, and that is the regular monthly
12 budget packet.

13 The last e-mail that was submitted was submitted
14 this morning. And that is a budget update. Last night Ray
15 and I, and early this morning, we finally went through some
16 more analysis of the budget. And we submitted the
17 spreadsheet, the latest spreadsheet to you this morning.

18 So with that, I believe Mr. Bladine has some
19 further information regarding this budget.

20 MR. BLADINE: Madam Chair, Commission members, the
21 budget that we been working off that showed a \$551,000 need
22 for additional appropriation was based upon the direction
23 that the legislative leadership wanted us to follow, and
24 that was to develop litigation budgets for each of the cases
25 and then put those into a request for '13 and a request for

1 '14.

2 Well, as you all know, things have been going very
3 rapidly, and it became clear to us last night that that
4 budget, litigation budget, while only several weeks old, was
5 very different than what we developed before.

6 And it was obvious that Kristina and I needed to
7 try to see when we would run out of funds.

8 So the analysis we did last night and this morning
9 shows that more likely we would be in the hole \$719,000 by
10 the end of this fiscal year.

11 The biggest concern, and if you look at the
12 spreadsheet that's attached there, the biggest concern I
13 have is that we have bills, some actual and some unpaid for
14 March, but that March work is primarily for work done in
15 February, and the work that will done in March will be paid
16 in April.

17 We're usually a month behind.

18 Given the level of expenditure we've been having,
19 it appears to us that we may not even have enough money to
20 pay bills through the end of -- or through the end of March.

21 And a good part of that is I think we ended up
22 with higher individual litigation expenses than we thought.
23 We also ended up with more deposition costs than we thought
24 when the budget was developed.

25 So we put this together to get a better idea of

1 really our cash flow.

2 Just to update you on the next part of that, you
3 can see in the memo I'm suggesting that I may -- it may be
4 appropriate for me at this time to notify all of the
5 attorneys that any work that they will be doing may be
6 subject to appropriation because it does not appear as if we
7 have the funding right now that I can certify and pay bills
8 that I don't have an appropriation for.

9 I know you all remember we went through this last
10 year, and I was hoping to avoid it this year. But at this
11 point I'm pretty nervous that I need to put people on notice
12 that until we get an appropriation I can't guarantee that I
13 will pay a bill.

14 And Mary and Joe may want to comment on that.

15 This afternoon we met with Wendy Baldo, the chief
16 of staff in the Senate. And we presented the updated
17 information to her and talked to her about how critical the
18 time level was at this point.

19 She was going to try to talk to the president of
20 the Senate today. We haven't heard back from her.

21 Everybody at the State Capital basically tells us
22 they're so tied up in the AHCCCS budging issues that trying
23 to get any other attention on something else right now is
24 very difficult.

25 They all know we need the money and -- I don't

1 want to say they all. The leadership knows we need the
2 money. The leadership knows the Constitution says it needs
3 to be paid. But at this point we don't have an assurance
4 that we can get it done by April 1st.

5 We will have a meeting, I believe it's next week,
6 with President Biggs. And I think we have -- we'll have a
7 meeting next week with Representative Cavanagh in the House
8 side.

9 And in the past it was really the two of them that
10 understood our problem and helped us get supplemental
11 appropriation.

12 So we are kind of continuing the way we did last
13 year, in terms of working with the leadership, and making
14 sure they're informed, and answering any questions they
15 have. But at this time I don't have any assurance that the
16 timing is going to work for us.

17 Just to -- one final thing. I know that the
18 sticker shock of now we're already up to 715,000 is probably
19 not something that's going to sit well or be very easy for
20 leadership to provide funding on.

21 It would seem to me that if we at least got the
22 551 and an assurance that we could use '14 money in '13, as
23 we did this last year, it could get us through the end of
24 this year, and like this year we would start out a little
25 behind and we'd probably find ourselves in about the same

1 situation in March, April, January of next year.

2 But the biggest issue, we've talked about it
3 before, is it's very hard to estimate the litigation budgets
4 when it's constantly moving.

5 In the past we asked for a set aside of up to
6 500,000 to cover bills that we don't know that we'll have.
7 The legislature has been reluctant to provide that, so we
8 find ourselves trying to struggle through supplemental
9 appropriations that will allow us to meet our constitutional
10 responsibility to defend the maps.

11 So that is our report.

12 I would welcome any questions, suggestions,
13 comments, on how we're proposing to proceed.

14 VICE-CHAIR HERRERA: Madam Chair, this is Jose.

15 CHAIRPERSON MATHIS: Mr. Herrera.

16 VICE-CHAIR HERRERA: Madam Chair, you mentioned a
17 couple times here, and I think Ms. O'Grady did as well,
18 about the fees from the individual attorneys. Can you let
19 me know and give us a rough estimate of what the totals were
20 for the month of February?

21 MR. BLADINE: Madam Chairman,
22 Commissioner Herrera, the spreadsheet that I sent out to you
23 early -- or I guess midmorning indicates the actual amounts
24 we've paid by attorney for the month of March, and includes
25 all attorneys, what bills we had received but not yet

1 processed, and then what we would anticipate is bills in
2 March that we have not received yet but are likely to come
3 in March to be -- to basically pay the February amounts.

4 So if you take a look at March unpaid, in red, you
5 can see that we have had about \$33,000 in one case, 16 in
6 another, 31 in another, right now I'm guessing maybe 16,000
7 each in the other two.

8 VICE-CHAIR HERRERA: Mr. Bladine, I don't have --
9 I don't have those forms in front me. Can you read to me
10 who those charges are for?

11 MR. BLADINE: Madam Chairman,
12 Commissioner Herrera, the March -- the March actual which in
13 the first -- let's see, how am I going to do this.

14 Ballard Spahr was paid 68,000 in March.

15 We expected --

16 VICE-CHAIR HERRERA: I was referring to the
17 individual commissioners, not necessarily Ms. O'Grady.

18 MR. BLADINE: Okay.

19 VICE-CHAIR HERRERA: Thank you.

20 MR. BLADINE: Let me see, the -- we have not had a
21 bill yet from Coppersmith Schermer. I'm estimating it at
22 16,000.

23 We don't have a bill yet from Gallagher Kennedy.
24 I'm estimating it at 16,000.

25 We have a minor bill from Tim Nelson for 620.

1 Brian Bergin has submitted an invoice for 33,000.

2 Michael Mandell has --

3 VICE-CHAIR HERRERA: Mr. Bladine, can you stop.
4 For 33,000, I don't recognize the attorney, and what is this
5 for?

6 MR. BLADINE: Mr. Bergin is the attorney that's
7 providing legal service to Commissioner Freeman.

8 VICE-CHAIR HERRERA: 33,000?

9 MR. BLADINE: That is correct.

10 VICE-CHAIR HERRERA: Okay. Go ahead.

11 MR. BLADINE: Then Michael Mandell, of course, is
12 providing service to you, and our bill for him was \$16,043.

13 John Munger, who provides legal services to
14 Commissioner Stertz, has billed 31,714.

15 I would expect since that bill was for the first
16 part of February that we'll probably have additional charges
17 in March, but I didn't estimate at this time because I'm not
18 sure.

19 So those are basically the attorneys representing
20 the individual commissioners.

21 CHAIRPERSON MATHIS: Mr. Bladine, this is Colleen.

22 MR. BLADINE: Madam Chair.

23 CHAIRPERSON MATHIS: Something you said concerned
24 me, and that was that there's no assurance that the timing
25 will work out this time.

1 And that's a little concerning.

2 Is there any movement -- have you talked to legal
3 counsel or what do people suggest so that we're able to
4 defend ourselves properly in the lawsuit?

5 MR. BLADINE: Madam Chair, perhaps Mary or Joe
6 would care to comment.

7 I keep -- I will keep working to get some
8 assurances about timing over the next few days.

9 I do think at this point the only thing I can
10 think of is to legally notify the attorneys that their pay
11 is going to be subject to appropriation and hope that they
12 will continue to do what it is knowing that at some point
13 the legislature will fulfill its constitutional duty.

14 But obviously I'm not an attorney and I don't know
15 what sort of problems that may commit for all of them in
16 terms of their own operations.

17 JOSEPH KANEFIELD: Madam Chair, members of the
18 Commission, this is Joe. We've been asked this question
19 before, and the answer that we've given in the past is that
20 Ray and Kristina should continue to work with the
21 legislature.

22 There's been two occasions now where we've been in
23 this situation with some uncertainty, and on both occasions
24 the legislature has provided a supplemental appropriation to
25 the Commission.

1 So rather than speculate at this point about what
2 legal remedies would be available should the legislature not
3 provide supplemental funding, we would prefer a discussion
4 of working with the legislature.

5 As Ray mentioned earlier, he had several meetings
6 with key legislators and staff that are tuned into the
7 issue. And they do have the authority to move a
8 supplemental appropriation along.

9 The key is just making sure we're communicating
10 with the right people, which we are doing.

11 So at this point I wouldn't -- I would rather not
12 speculate as to what would happen if they don't do the
13 appropriation.

14 We, of course, will continue to work on preparing
15 for trial and try not to let this be a distraction.

16 But should we be in that situation where there
17 isn't a supplemental appropriation, then we may very well
18 want to call and suggest that the Commission reconvene and
19 discuss legal options at that time.

20 CHAIRPERSON MATHIS: And for the record, Joe does
21 not think that a legal remedy be pursued at this time, but I
22 am concerned, and I -- having been down this road before, we
23 do know that we're not supposed to be making expenditures
24 past our appropriation or over our appropriation.

25 And I am just trying to be mindful of that, and

1 also be pragmatic that we need to defend ourselves and we
2 need the funding for that.

3 JOSEPH KANEFIELD: Madam Chair, Joe. I appreciate
4 that. I wasn't suggesting anything other than communicating
5 with the legislature.

6 If we do, if it appears that a supplemental
7 appropriation will not be forthcoming before the funding
8 runs out, then we will have to discuss what the Commission's
9 options are.

10 As I mentioned, this Commission has received a
11 supplemental appropriation twice.

12 The last Commission received at least one, on one
13 occasion that I'm aware of.

14 And the last Commission did, in fact file the
15 lawsuit, special action in the Arizona Supreme Court, when
16 it appeared that they were not going receive a supplemental
17 appropriation and they had a trial coming up and needed to
18 continue working.

19 And I think that situation was complicated by the
20 fact that the legislature wasn't in session, if I recall
21 correctly.

22 So I understand the legislature and the messages
23 that they are distracted with budget and Medicaid expansion
24 and everything else, but at the same time they do have the
25 ability -- the appropriations committee meets weekly.

1 I am hopeful that the legislature will work with
2 the Commission to provide an appropriate level of funding
3 and to avoid any unnecessary litigation on the subject as
4 they have in the past.

5 So I appreciate what the point you've made,
6 Madam Chair, and assure you that we will be ready to advise
7 the Commission if we get into that situation, but it's not
8 ready to offer that advice at this point.

9 CHAIRPERSON MATHIS: Okay. Thank you, Joe.

10 Mr. Bladine, and you're anticipating now that
11 based on what you know, and I know it's very hard to
12 guesstimate what happens, but that we'll be out of money,
13 current money, by the end of March; is that correct?

14 MR. BLADINE: Yes, that is correct.

15 It could be earlier depending on some of the bills
16 I haven't seen yet. And that's why I got anxious about
17 putting people on notice.

18 But we think that we can make it through March.

19 We clearly can't make it through April.

20 But, as I say, the thing that worried me, I really
21 haven't seen a lot of the bills yet for March that we'll be
22 getting. But we should be able to make it through March.

23 CHAIRPERSON MATHIS: Okay. So do we -- great.

24 Any other questions for Mr. Bladine? Or

25 Ms. Gomez?

1 MR. BLADINE: Madam Chair, let me, let me suggest
2 something.

3 I really don't -- I want to protect the Commission
4 and myself for not spending money we don't have, but I don't
5 want to do it prematurely.

6 I guess what I would think is that I will give --
7 if I don't hear an objection, I will hold off sending a
8 letter until perhaps Tuesday of next week. And then if I
9 can't get some assurance about timing, I will put on
10 official notice the legal, the legal staff that it's going
11 to be subject to a future appropriation.

12 So hearing no objection or other direction, that's
13 what I'll do.

14 CHAIRPERSON MATHIS: Okay. Thank you, Mr. Bladine
15 and Ms. Gomez.

16 MR. BLADINE: Thank you.

17 CHAIRPERSON MATHIS: That concludes agenda item
18 three.

19 Number four is call for public comment. Do we
20 have any request to speak forms?

21 VICE CHAIR FREEMAN: Madam Chair, it's Scott. We
22 have no public comment.

23 CHAIRPERSON MATHIS: Oh, okay.

24 Do we have public there?

25 VICE CHAIR FREEMAN: Yes. Two.

1 CHAIRPERSON MATHIS: Well, thanks for coming, the
2 two of you.

3 Anything else before I adjourn the meeting?

4 (No oral response.)

5 CHAIRPERSON MATHIS: Okay. The time is 6:39 p.m.,
6 and this meeting is adjourned. Thank you.

7 (Whereupon, the public session ends.)

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1 STATE OF ARIZONA)
)
2 COUNTY OF MARICOPA) ss.
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4 BE IT KNOWN that the foregoing proceeding was
5 taken before me, Marty Herder, a Certified Court Reporter,
6 CCR No. 50162, State of Arizona; that the foregoing 22 pages
7 constitute a true and accurate transcript of all proceedings
8 had upon the taking of said meeting, all done to the best of
9 my skill and ability.

10 DATED at Chandler, Arizona, this 20th day of
11 March, 2012.

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C. Martin Herder, CCR
Certified Court Reporter
Certificate No. 50162

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