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ARIZONA INDEPENDENT REDISTRICTING COMMISSION  
PUBLIC MEETING  
University of Arizona  
Student Union Memorial Center  
Tucson Room  
1303 East University Boulevard  
Tucson, Arizona  
May 10, 2011

RAYNBO COURT REPORTING, LTD.  
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Reported by: Joyce L. Howard, RPR, CR  
Certified Reporter No. 50685

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1 ARIZONA INDEPENDENT REDISTRICTING COMMISSION:

2

3 COLLEEN COYLE MATHIS, Chair

4 SCOTT D. FREEMAN, Vice Chair

5 JOSE M. HERRERA, Vice Chair

6 RICHARD P. STERTZ, Commissioner

7 LINDA C. McNULTY, Commissioner

8 ALSO PRESENT: JAMES E. BARTON, II

Assistant Attorney General

9

RAYMOND F. BLADINE

10 Executive Director

11 PATRICIA WARD, Recording Secretary

12

13 \* \* \* \*

14

15 The above Public Meeting of the Arizona  
16 Independent Redistricting Commission was held at the  
17 University of Arizona, Tucson Room, 1303 East University  
18 Boulevard, in the City of Tucson, County of Pima, State of  
19 Arizona, before Joyce L. Howard, RPR, CR, Certified Reporter  
20 No. 50685, in and for the County of Pima, State of Arizona,  
21 on the 10th day of May, 2011, commencing at the hour of  
22 9:06 a.m. on said day.

23

24 \* \* \* \*

25

1 CHAIR MATHIS: The meeting of the Arizona  
2 Independent Redistricting Commission will now come to order.  
3 The time is now 9:07 a.m. in the morning. It's Tuesday,  
4 May 10th, 2011.

5 Please rise for the Pledge of Allegiance.

6 (Whereupon the Pledge of Allegiance was recited.)

7 CHAIR MATHIS: So I would like to remind everyone  
8 that anyone who would like to speak during public comment,  
9 please fill out a request to speak form in the back. I've  
10 got a few already. And we'll address those concerns when we  
11 get to that point on the agenda.

12 So if I could begin with roll call.

13 Vice Chair Freeman?

14 VICE CHAIR FREEMAN: Here.

15 CHAIR MATHIS: Vice Chair Herrera?

16 (No response.)

17 CHAIR MATHIS: Commissioner McNulty?

18 COMMISSIONER McNULTY: Here.

19 CHAIR MATHIS: Commissioner Stertz?

20 COMMISSIONER STERTZ: Here.

21 CHAIR MATHIS: We have a quorum.

22 And we're expecting Commissioner Herrera any  
23 minute, with our Executive Director Ray Bladine. So they'll  
24 be here shortly.

25 I'd also like to acknowledge our legal counsel

1 here today, Assistant Attorney General Jim Barton. Thank  
2 you for being here.

3 And we have a court reporter and a minute taker.  
4 So I would like to remind everyone to not speak over each  
5 other. Let's all try to remind ourselves to speak one at a  
6 time so that we get an accurate record.

7 Okay. Moving through the agenda. Let's go to  
8 Item II on the agenda, the call for public comment.

9 And I've got so far is one, two, three, four, five  
10 requests to speak.

11 The first one is Mohur Sidhwa. And if I'm  
12 mispronouncing that name, you can correct me when you come  
13 to the microphone.

14 Please come to the mic.

15 And if you wouldn't mind spelling your name for  
16 the court reporter, that would be great.

17 MS. SIDHWA: Thank you.

18 My name is Mohur Sidhwa, just as you pronounced  
19 it. Thank you.

20 M-O-H-U-R. S-I-D-H-W-A.

21 Thank you for serving, all of you.

22 The reason I'm here is just to perhaps emphasize  
23 that the essence of democracy is to feel that our words do  
24 count and do make a difference. It's about making sure that  
25 we have more competitive districts.

1 Changing populations into districts that are  
2 one-party dominant makes the candidates sound like mindless  
3 bags of talking points walking around and leaves little room  
4 for nuance. And it does lead to self-disenfranchisement and  
5 low voter turnout. And we do therefore need more  
6 competitive districts.

7 And stay strong. We need the commissioners to  
8 stand strong and do the right thing.

9 Thank you.

10 CHAIR MATHIS: Thank you very much.

11 Steve Muratore, he's publisher of the Arizona  
12 Eagletarian. And his subject is open meetings.

13 MR. MURATORE: Good morning.

14 Thank you, Madam Chair, Commissioners.

15 I want to briefly read into the record something  
16 I've written on my concern regarding how you guys will and  
17 have addressed open meeting law.

18 Why does it really matter that Arizona's  
19 Independent Redistricting Commission seems to be getting  
20 comfortable making decisions behind closed doors?

21 Before last week's IRC meeting began, one  
22 gentleman reflected to me that it seemed like that the  
23 commission was moving painstakingly slow. He asked me for  
24 my thoughts. And I told him I'm more interested in you guys  
25 getting the job done right.

1           Back in February and early March, the first four  
2 commissioners deliberated in executive session with  
3 Assistant Attorney Jim Barton and Secretary of State Ken  
4 Bennett over the question of whom to select for the  
5 chairman's position. More than one attorney suggested to me  
6 then that the process should have been done openly, allowing  
7 the public to observe.

8           As that was the first official action taken by the  
9 newly reconstituted commission, I chalked it up to learning  
10 curve.

11           Then last week an agenda item popped up  
12 unexpectedly for the executive session only meeting on  
13 April 27th. I asked Executive Director Bladine about it.  
14 He explained he wanted to hire a deputy executive director  
15 and he had a specific candidate already in mind. He wanted  
16 to pose the idea to you at the earliest possible time but no  
17 decision would be made until the next public meeting.

18           Then last week's Agenda Item No. IV called for  
19 discussion of possible action on retaining a deputy  
20 executive director. During the meeting, but very distinctly  
21 before any motion was made or any action taken in accordance  
22 with the open meeting law on that item, Commissioner Herrera  
23 posed a question that shed important light on the situation.  
24 He asked when Ms. Gomez would be starting her job as the new  
25 deputy executive director. Additionally, Bladine reported

1 that the Department of Administration had already approved  
2 the necessary changes to the position to facilitate her  
3 hiring.

4 To what degree is the process of citizen driven  
5 redistricting endangered when substantive negotiation is  
6 carried on outside of public scrutiny? Will you guys  
7 justify again circumventing open meeting law by saying these  
8 two examples show that the right decision was reached even  
9 though it was done privately?

10 Or is it more likely you will rationalize it based  
11 on the certain crescendo of concern that you will hear from  
12 county elections officials wanting enough time to properly  
13 prepare for the 2012 elections?

14 So I just wanted to make that concern part of the  
15 public record. And I know that your intentions are  
16 honorable. I just also know that it's very easy to  
17 circumvent the open meeting law.

18 So thanks.

19 CHAIR MATHIS: Thank you, Mr. Muratore.

20 The next speaker is Lynne St.Angelo, I think is  
21 what it says. Homeowners & Teachers in Oro Valley is who  
22 she's representing.

23 MS. ST.ANGELO: Yes.

24 CHAIR MATHIS: Great.

25 MS. ST.ANGELO: You pronounced it correctly,

1 St. Angelo.

2 CHAIR MATHIS: If you could spell that?

3 MS. ST.ANGELO: Sure. S-T period A-N-G-E-L-O.

4 And I just want to talk about community -- holding  
5 communities together.

6 Oro Valley, Catalina, SaddleBrooke, Dove Mountain,  
7 even Continental Ranch and Gladden Farms in Marana are all  
8 communities of like interest. These towns are smaller, they  
9 are less compact than Tucson and contain many master planned  
10 golf course communities like Sun City, SaddleBrooke, Rancho  
11 Vistoso, two Hilton golf communities, and Dove Mountain.  
12 There are others. Those are just examples.

13 These areas all could break this at Orange Grove  
14 and go north. North of Orange Grove have their own shopping  
15 centers and malls and so do not really travel into Tucson to  
16 shop. Many of the areas, that are not built around golf  
17 course, are more like ranches with horses, horse property,  
18 or even one area has airplanes instead of horses on very  
19 large tracts of land. So these are like areas.

20 The county land is very similarly more rural like  
21 this, the rest of the small towns surrounding it.

22 Catalina and the small towns north of Catalina  
23 access the shopping down Oracle Road. For example, the  
24 closest Wal-Mart, movie theater, and hospital are in  
25 Oro Valley on Oracle Road.

1 Oro Valley is in Amphi School District. And the  
2 children play T-ball and go to middle school in Catalina.  
3 So these are all connected communities that operate kind of  
4 together.

5 It is for this reason that everything north of say  
6 Orange Grove should be held together as communities of  
7 interest. Right now they're in Legislative District 26.  
8 This would give Legislative District 28 a large increase in  
9 population, south of Orange Grove, which they need to have.

10 And Legislative District 26 could expand north,  
11 picking up the small towns that naturally shop in the  
12 northwest area like Oracle, Red Rocks, San Carlos, and up  
13 toward Casa Grande.

14 This also helps solve Legislative District 23  
15 which needs to lose like 150,000 population because of its  
16 large growth in the last ten years.

17 CHAIR MATHIS: Thank you very much.

18 Our next speaker is Dave Braun.

19 MR. BRAUN: Good morning.

20 CHAIR MATHIS: Good morning.

21 MR. BRAUN: I am here to speak specifically to  
22 Items IV and possibly V on your agenda for today.

23 I'm concerned about the issue in reference to the  
24 appointment of legal counsel for the commission.

25 As you already know, I've applied, so I do have a

1 dog in this fight, if you will. But even as simply as a  
2 taxpayer or citizen, I am concerned about certain  
3 considerations that I will hope that you will consider in  
4 handling Items IV and V.

5 I'm for, of course, as Solicitor General's  
6 application, to enter into an intergovernmental contract and  
7 represent the commission in its proceedings.

8 There are basically two things that the lawyers  
9 for the commission specifically handle.

10 The first stage is during your preparation of the  
11 maps. And that's going to take basically the rest of this  
12 year. And with a little bit of luck, that will be finalized  
13 sometime in November or very, very early December, after all  
14 the consultations and all the public meetings and all the  
15 input that you're going to get from all the lobby groups and  
16 politicians and whatever. And that's fine. And that's how  
17 it should be.

18 The second thing that the lawyers do, more than  
19 the commission itself, will be to handle inevitable  
20 litigation that is going to arise. And I think you should  
21 anticipate that litigation in especially handling the  
22 decision in reference to who you're going to appoint as  
23 counsel in this matter.

24 Mr. Horne, the Attorney General -- Mr. Cole, the  
25 Solicitor General, is making application for that position

1 for handling complete representation.

2 The prior commission made a decision that it was  
3 better for its representation to have two attorneys, one  
4 representing the democratic point of view and one  
5 representing the republican point of view.

6 I think the main idea behind that concept of  
7 having two caucus attorneys, if you will, was to make sure  
8 that the system and the process and the output is fair to  
9 both sides and that nobody is basically using the attorney  
10 position to take advantage of the other political party.  
11 That was the basic philosophy in the policy why they  
12 appointed two attorneys.

13 In this situation, the Solicitor General is making  
14 application, the Attorney General, if you will, is making  
15 application. And while not specifically denigrating or  
16 calling into suspicion any of the particular attorneys that  
17 might be assigned to you to the integrity of their advice, I  
18 would point out that Mr. Horne, very frankly, is a fairly  
19 partisan Attorney General.

20 It was an open secret that if Governor Napolitano  
21 had fulfilled -- finished her term and the governor's race  
22 had been wide open, republican primary last year, he  
23 probably would have been a candidate for governor. And I  
24 think people who pay attention to politics would concur with  
25 that observation that I'm making. He has a dog in this

1 fight.

2 Again, everybody suspects that, you know, three  
3 years from now, if Governor Brewer cannot run, that he would  
4 be a candidate for governor. Again, this is one of his  
5 ambitions, which is fine. There's nothing wrong with being  
6 ambitious. But there is some concern, I would think, from  
7 your perspective and also from the public's perspective that  
8 it's simply a conflict of interest for a partisan elected  
9 official to have, and such an important position, to have an  
10 interest in the outcome and the direct interest that will  
11 affect possibly his political career.

12 Secondly, the litigants that are going to be in  
13 the litigation, at least if we expect it will be similar to  
14 last time, were in fact elected officials. The Arizona  
15 minority coalition wasn't just a coalition, it included a  
16 number of elected officials who are plaintiffs in the  
17 lawsuits. The republican party intervened as a defendant in  
18 the lawsuit.

19 So here, we would have a situation where if it's  
20 repeated, and I would expect that it would be repeated  
21 sometime this year, somebody, some politician is upset with  
22 the fact that they've been redistricted out of their current  
23 district and don't like the district lines. If there is  
24 litigation, you're going to have a situation where a  
25 legislator or a legislative candidate is suing the

1 commission and the Solicitor's General's Office, the  
2 Attorney General, is representing the commission.

3 I don't see how that is any way different than the  
4 initial or the attorney general's recent decision in the  
5 Fiesta Bowl where he disqualified his office from being the  
6 investigative attorneys, and possibly the prosecuting  
7 attorneys, because he indicated that the parties involved  
8 would be members of the legislature. It's that same  
9 conflict of interest. And there's conflict of interest rife  
10 in a situation where an attorney from the Attorney General's  
11 Office, even if he's a good guy, even if he's competent and  
12 a step removed, isn't perceived as representing the interest  
13 of Mr. Horne.

14 I think that same idea of having one attorney or  
15 one law firm representing the commission was another reason  
16 why the prior commission did not do that. They could have  
17 hired just one law firm. But again, most of the law firms  
18 and most of the lawyers, who do Voting Rights Acts  
19 litigation, who are really familiar with this area of law,  
20 either represent democratic candidates or interest groups or  
21 republican candidates or interest groups.

22 And even if you hire a law firm with republicans  
23 and democrats, whoever from that law firm is going to be  
24 doing the bulk of the work is actually going to be handling  
25 this situation, going to your meetings, doing the enormous

1 amount of legal work that will be involved, is going to be  
2 having that persuasion. That is simply the way it is.

3 And, again, it won't seem from an outside person,  
4 party looking in, that the commission already hasn't tilted  
5 the playing field. You're two democrats and two republicans  
6 and one independent. The legislature has a republican  
7 counsel who represents or helps the republican coalition and  
8 a democratic counsel helps the democratic coalition and they  
9 do have their own institutional lawyers who remain as state  
10 employees to help with the actual drafting of bills.

11 But in this situation, you're like a legislature.  
12 That's what the courts have actually said, you are a  
13 legislature.

14 In this situation you're fully bound. And I think  
15 both from a specific factual conflict of interest and also  
16 from the way it's going to appear to the public, you should  
17 continue with a prior practice of the first commission and  
18 have two counsel, one democratic counsel or law firm, and  
19 one republican counsel or law firm.

20 I appreciate your patience and giving me so much  
21 time. And I thank you very much.

22 And if you have any questions, since the rules  
23 allow for that, I would be happy to answer them now, or  
24 observations.

25 Very well.

1 COMMISSIONER STERTZ: We don't.

2 MR. BRAUN: Thank you very much.

3 CHAIR MATHIS: Thank you, Mr. Braun.

4 The last person requesting to speak is Dave Cole,  
5 the Solicitor General.

6 Dave, I don't know if this is a separate issue, or  
7 you're actually on the agenda to give us a little  
8 presentation. So I'm not sure.

9 MR. COLE: I'll proceed when you would like me to.

10 CHAIR MATHIS: Okay. Great. It will be the next  
11 agenda item then if this is the same thing.

12 So is there anyone else who wishes to speak during  
13 public comment?

14 (Whereupon Vice Chair Herrera and Mr. Ray Bladine  
15 entered the meeting room.)

16 CHAIR MATHIS: Okay. That takes us to Item III on  
17 the agenda, which is just perfect timing for Mr. Ray  
18 Bladine. He's our executive director and that's the  
19 executive director report. So you're on first.

20 MR. BLADINE: Okay. Thank you.

21 It's all Jose's fault that I'm late.

22 VICE CHAIR HERRERA: It's all my fault?

23 You can figure out who to believe.

24 MR. BLADINE: I'd believe a commissioner before  
25 I'd believe staff.

1           Actually, I got a remember from my notes, the  
2 report is actually going to be short.

3           We spent some time in the Evans House this week,  
4 starting yesterday. We are not functioning. We're still  
5 fighting technology instead of technology helping us. We  
6 have desks that fit our historic nature. They're called  
7 early steel case. And they work. And we have phones in.  
8 We have an Internet line, but we're not hooked up to the  
9 state system yet. Buck is working on that. We're hoping at  
10 the end of the week, we'll have that done.

11           We also bought a small, little printer so we can,  
12 hopefully by the end of the week, do our own scanning and  
13 printing at the location.

14           And the Arizona Department of Administration have  
15 really been helpful. They have expedited things. So we got  
16 the phones a lot earlier than we thought. And we're great  
17 about getting material, desks, and file cabinets out, out of  
18 surplus. So we're there.

19           Hopefully by the end of the week, we will really  
20 be able to function and have technology help us, not fight  
21 us.

22           At this point, I probably will bring back to you  
23 next time or I will start the process -- unless someone  
24 objects -- I think it would be a good time to start filling  
25 two positions, one, the PIO position, so that once the

1 mapping consult is on board, we have someone to do the work  
2 to get the information out in terms of future meetings and  
3 the information on the mapping, to make the community  
4 contacts, keep the press informed.

5 And the other position is basically administrative  
6 assistant secretary type of position in the office. So that  
7 now we have phones that can be answered and machinery that  
8 we can be running, I think it's a good time to start moving  
9 in those, so they will be in place as we progress.

10 I think that is all I have.

11 Let me turn around and see if Buck or -- anything?

12 MR. FORST: No.

13 MR. BLADINE: Okay. So then any questions?

14 COMMISSIONER STERTZ: Madam Chair?

15 CHAIR MATHIS: Go ahead, Mr. Stertz.

16 COMMISSIONER STERTZ: Mr. Bladine, welcome. Glad  
17 you made it. We were starting to get a little worried about  
18 you guys.

19 MR. BLADINE: Thank you.

20 We're not as smart as you guys, coming up our way.

21 COMMISSIONER STERTZ: You can make it more often.

22 Is the telephone number up and operating?

23 MR. BLADINE: Not yet. It is operating but we  
24 haven't given it out because we haven't been there to answer  
25 it. But I'll send you an e-mail tomorrow and give you those

1 phone numbers.

2 COMMISSIONER STERTZ: Okay. We'll make that phone  
3 number public through the Web site?

4 MR. BLADINE: Yes.

5 COMMISSIONER STERTZ: That leads to the next  
6 question, the Web site. And special thanks to Mr. Muratore  
7 for recognizing that when logging into our Web site, that we  
8 had a minor lapse. Our apologies to the public for that  
9 lapse.

10 That lapse, I understand, has been remedied?

11 MR. BLADINE: Yes, it has.

12 COMMISSIONER STERTZ: And our Web site of  
13 azredistricting.org is --

14 MR. BLADINE: Ours again.

15 COMMISSIONER STERTZ: Is ours again and back up  
16 and operating and functional?

17 MR. BLADINE: Correct.

18 COMMISSIONER STERTZ: Thank you.

19 MR. BLADINE: Good question.

20 CHAIR MATHIS: Any other questions?

21 VICE CHAIR FREEMAN: Madam Chair?

22 CHAIR MATHIS: Vice Chair Freeman.

23 VICE CHAIR FREEMAN: Ray, do you think you will  
24 have a proposal for us to consider on these two judicial  
25 positions we would like to see filled by our next meeting,

1 which is Thursday?

2 MR. BLADINE: Yeah. I was hoping to do it today  
3 and just hand you a memo and say, here's my planning. Well,  
4 it isn't posted on the agenda for you to act on. I think  
5 what I would do is I will write you a memo and say, if there  
6 isn't any questions, I plan to go this way. And I did plan  
7 to do it today, but it just didn't work. So I will have  
8 something for you Thursday.

9 CHAIR MATHIS: Any other questions?

10 Okay. Mr. Bladine, I would like to echo the  
11 thanks to the ADOA for expediting all the facilitation with  
12 getting the office set up. We're really grateful. Thanks  
13 to all of you guys for your hard work in doing it too. So I  
14 appreciate it.

15 VICE CHAIR HERRERA: Madam Chair?

16 CHAIR MATHIS: Yes.

17 VICE CHAIR HERRERA: Would this be an appropriate  
18 time? I would like to get an update from Buck on the status  
19 of equipment of the deliverables. And since it's on the  
20 agenda, I would like to see if we can have it be part of  
21 your report.

22 MR. FORST: I'm being told it should be here  
23 Friday.

24 MR. BLADINE: It looks like the equipment for  
25 streaming will be here Friday.

1 MR. FORST: Correct.

2 COMMISSIONER STERTZ: Very good.

3 And what you're speaking about is that, for  
4 members of the audience and may not be aware, the goal is  
5 that all of our public hearings, in an effort for there to  
6 be access, we've invested in equipment that will allow us to  
7 stream live via the Internet at any meeting that we have,  
8 any location, that will be taking place at any time  
9 throughout this day.

10 MR. BLADINE: Okay. Thank you very much.

11 CHAIR MATHIS: Thank you.

12 That concludes Agenda Item III.

13 Agenda Item IV, presentation by Dave Cole,  
14 Solicitor General, on Attorney General's office providing  
15 permanent legal counsel to the commission.

16 Just for the public's edification, we have been  
17 receiving legal counsel through the AG office since we got  
18 up and running on March 1st. And we've been very grateful  
19 for that. Jim Barton has served us really well and  
20 Christopher Munz has also helped us out. And we're very  
21 appreciative.

22 And so today, Solicitor General Cole is going to  
23 give us a little presentation in terms of providing  
24 permanent legal counsel to the commission.

25 Go ahead.

1 MR. COLE: One of the first things I learned on  
2 this job, I'm in my tenth week, and one of the most  
3 difficult things is conquering all of the acronyms. I had  
4 to hear the acronym ISA about 12 times before I realized  
5 that it actually stands for Interagency Service Agreement.  
6 I had been used to IGA, that's an Intergovernmental  
7 Agreement, but I'm of the impression that they fulfill  
8 essentially the same role.

9 As you're aware, you have two proposals before  
10 you. The difference in terms of the services provided,  
11 you'll find of paragraph two of each of the documents.

12 With respect to the first document, the service  
13 provided by the Attorney General's to the commission, would  
14 be related to open meeting law compliance, public records  
15 requests, and Interagency coordination.

16 With respect to the second agreement, the services  
17 covered would be limited to providing legal advice related  
18 to establishing congressional and legislative districts and  
19 do not include representing the commission and litigation.

20 The commission would be free, certainly, as one  
21 option, to seek outside counsel for litigation purposes.

22 I listened very, very carefully to Mr. Braun. And  
23 I don't take personal offense at anything he said. I know  
24 he didn't mean it that way. But I have a couple of things  
25 to say about the role of politics.

1           If you look at both ISAs, as I've now figured out  
2 they're actually called, both of them talk about your  
3 representation being offered by the department of law, not  
4 the department of politics, not the department of democrats,  
5 republicans, independents, whatever it may be. It's the  
6 department of law.

7           I'll be upfront about it. I'm a republican.  
8 Mr. Barton is a democrat. Mr. Horne is a republican. We  
9 are all lawyers first and politicians somewhere, at least in  
10 my case and Jim's case, way down the line.

11           So I certainly understand Mr. Braun's comments.  
12 And again, I'm not offended in any way by them. But lawyers  
13 do legal work. And I'm not at all sure that I take the same  
14 view of the system as Mr. Braun does. And I think that  
15 lawyers are there to provide legal advice for their clients,  
16 as anybody has practiced law, and I've been admitted to the  
17 Bar for 35 years. If you practice law, you know that  
18 lawyers do law. We are a nation of laws, not of men for a  
19 reason. And whether it's the commission that is our client  
20 or whether it's another state body or whether it's an  
21 individual charged with some sort of criminal activity, we  
22 are lawyers first.

23           I spent ten years as a prosecutor. I've  
24 prosecuted republicans and democrats and never asked what  
25 party the person being prosecuted was.

1 I sat on the Maricopa County Superior Court bench  
2 for almost 19 years making lawyerly and judicial decisions.  
3 That's how I intend to do this job if you decide to hire the  
4 Attorney General to assist you.

5 I'm sure that you have questions and some I might  
6 be able to field, but Mr. Barton has been doing this kind of  
7 work for quite some time.

8 I appreciate the positive comment you made about  
9 Mr. Barton, as well as the other individual in our office  
10 who, in my view, will provide top-notch legal services and  
11 would be both capable and willing to do so if you were to  
12 hire us as your counsel in this matter.

13 So I'm happy to take questions. I will probably  
14 ask Mr. Barton to field the vast majority of them because of  
15 his superior knowledge of the area. And so feel free to ask  
16 questions if you have any.

17 CHAIR MATHIS: Great.

18 Any questions from the Commissioners?

19 COMMISSIONER McNULTY: Mr. Cole, I guess I'll  
20 begin.

21 MR. COLE: All right.

22 COMMISSIONER McNULTY: It's your anticipation that  
23 we would -- if we wanted attorneys to represent us in both  
24 of these areas, execute two separate ISAs?

25 MR. COLE: Yes.

1           COMMISSIONER McNULTY: We would ask for an ISA for  
2 an attorney who would be appointed for the public meeting  
3 issues, the open meeting law issues, and then we would enter  
4 into a separate ISA and a separate attorney would be  
5 appointed to handle the redistricting issues?

6           MR. COLE: That's my understanding of the  
7 document.

8           Mr. Barton may be able to make further comment in  
9 terms of exactly how that would be accomplished.

10          MR. BARTON: Commissioner -- Madam Chair,  
11 Commissioner McNulty, I think the idea is that if you  
12 entered into the full scope ISA, the one that's for  
13 \$125,000, that would include all the work associated with  
14 creating the maps, which would include facilitating the  
15 meetings but would not include litigation.

16          If commission decides that that's not -- the  
17 commission is not interested in using the Attorney General  
18 for that purpose, we provide as a second option the \$25,000  
19 ISA that we would provide open meeting law, public record  
20 request, interagency coordination.

21          COMMISSIONER McNULTY: And who are the assistant  
22 attorney generals who would be assigned to us?

23          MR. COLE: Mr. Barton would in all likelihood be  
24 involved because of his expertise in the area. We have  
25 others in the office who have expertise in the area.

1           And you have mentioned the other gentleman who has  
2 spent some time, that would be Chris Munz, who has spent  
3 some time on your matters. And you've been pleased with  
4 him. He's always available to serve as backup.

5           But my anticipation would be that Mr. Barton would  
6 be the one who would be most frequently involved and most  
7 deeply involved.

8           COMMISSIONER McNULTY: And if we entered into an  
9 agreement with the Attorney General's Office, is the  
10 Attorney General agreeable to specifying that in the ISA,  
11 that the attorney or attorneys that are assigned to us would  
12 be acceptable to us?

13           MR. COLE: Mr. Barton.

14           MR. BARTON: Madam Chair, Commissioner McNulty, I  
15 think if you will see in the ISA, it designates -- I don't  
16 have one in front of me -- but it designates that the  
17 Attorney General will come from the Solicitor General's  
18 Office and will be an attorney familiar with election law.  
19 That would be in paragraph five.

20           And the reason this is done, instead of  
21 identifying anyone by name -- another attorney in our office  
22 is Tom Collins who spent some time representing -- primarily  
23 represents the Clean Elections Commission, but he would be  
24 someone else who also would satisfy these criteria, as well  
25 as Carrie Brennan is another -- we have several attorneys

1 that would sort of fit this criteria.

2 The reason why we've written it this way is, on  
3 the one hand, to continue to give the Attorney General the  
4 flexibility to assign, as has been our practice with other  
5 agencies, which is that ultimately the Attorney General  
6 decides who fills particular jobs when we enter into ISAs,  
7 but also just to recognize, you know, from a practical  
8 standpoint that if you have turnover within the office, that  
9 way you don't have to enter into a new ISA.

10 So this language in paragraph five is intended to  
11 address the issue of allowing the commission to have some  
12 feeling about who the attorney is going to be. Right now it  
13 would be me, but who knows, you know, maybe I would have a  
14 great job offer and I'm not at the office in five months,  
15 and this way you don't have to do a new ISA.

16 MR. COLE: I think you meant greater.

17 MR. BARTON: Greater. Sorry.

18 COMMISSIONER McNULTY: Would we be able to include  
19 the names of the attorneys who are currently in the Attorney  
20 General's Office from whom the Attorney General would make  
21 the selection?

22 MR. BARTON: Madam Chair, Commissioner McNulty,  
23 this is certainly a document that we could negotiate with.  
24 And, for example, we could work with Executive Director  
25 Bladine to address those concerns before the commission

1 decided.

2 I am not in a place right now that I can commit to  
3 add names to the document. But if that is important for the  
4 commission -- and I know that you're going to be  
5 deliberating at some point in executive session about the  
6 firms to consider, and some of those firms, though, might be  
7 negotiations -- we certainly could talk about that. At this  
8 time, I can't commit to putting names to the document.

9 COMMISSIONER McNULTY: I would just like to say as  
10 soon as the opportunity is present.

11 I agree with you, Mr. Cole, about the concept of  
12 lawyering. I believe that lawyers should and, in most  
13 cases, are lawyers first. And that the idea for us would be  
14 to have an attorney who is well-versed in representing  
15 public bodies in the particular kind of election law, that  
16 is important to us; and who could answer questions from each  
17 side of this table with an answer that says something like,  
18 if we do this, it would affect those who are interested in,  
19 you know, promoting democratic agenda in this way. If we do  
20 this, it would affect those who are interested in promoting  
21 republican agenda. If we do this, it would affect those who  
22 are interested in running the non -- or no party affiliation  
23 agenda.

24 So whether we can achieve that, is a question,  
25 however, whether we can reach agreement among us. If we

1 can, it would be great.

2 But it really is important, I think, first and  
3 foremost to chose people who rise above partisanship. And  
4 for that reason, it would be important for us, I think, to  
5 interview the folks from the Attorney General's Office who  
6 were being offered to fill the positions.

7 I feel like we've interviewed Mr. Barton, but if  
8 there are other folks who are going to be participating, my  
9 own preference would be to talk with them.

10 MR. COLE: Well, I'll simply echo what Jim said  
11 and indicate we are certainly willing to negotiate and  
12 everything is on the table. I mean, nothing is removed from  
13 the table. And we're happy to do that.

14 CHAIR MATHIS: Any other questions?

15 VICE CHAIR FREEMAN: Madam Chair?

16 CHAIR MATHIS: Yes, Commissioner Freeman.

17 VICE CHAIR FREEMAN: Mr. Cole, I apologize. I  
18 just received these when I walked in, so I have not had a  
19 chance to review the proposed agreements. And perhaps  
20 they're addressed -- this issue is addressed.

21 But in the event of subsequent litigation, what  
22 would be the role of the Attorney General's Office in  
23 assisting, or would there be no assistance whatsoever?

24 MR. COLE: Well, the larger scope, as Mr. Barton  
25 referred to it, contract commissioner is, is somewhat

1 responsive to that, and that it indicates that our services  
2 would be everything other than litigation. At that point we  
3 could perhaps consider a separate ISA and you would  
4 obviously have the opportunity to seek outside counsel.  
5 There's several ways you can handle that. But the document  
6 makes clear that as of the beginning of the relationship,  
7 which I believe, Jim, would be July 1 of 2011. Is that  
8 accurate?

9 MR. BARTON: That's correct.

10 MR. COLE: As of that date, we would not be -- we  
11 would not have a contractual relationship with you that  
12 would provide litigation services. There's no reason that  
13 we couldn't negotiate that later or that you couldn't simply  
14 go out and hire your own counsel if that's what you desire  
15 to do.

16 VICE CHAIR FREEMAN: Thank you.

17 MR. COLE: Okay.

18 CHAIR MATHIS: Any other questions?

19 COMMISSIONER STERTZ: Madam Chair?

20 CHAIR MATHIS: Commissioner Stertz.

21 COMMISSIONER STERTZ: We were entertaining --  
22 we're taking this opportunity from the Attorney General's  
23 Office to propose in a manner that does not -- that, that is  
24 substantively different than what we've asked the other  
25 proposers for this work to do. We've asked them -- they're

1 coming forward at a different organizational document, a  
2 different time frame. They're not -- the question that I'm  
3 asking is that, that we can, as a body, entertain this  
4 because we don't fall under the specific rules and  
5 organizational requirements of the Department of  
6 Administration. However, I want to also be very fair to the  
7 ten applicants that did go through the appropriate process  
8 in their application.

9 And I guess my question is, is if the AG's Office  
10 wanted to propose, why are you bringing it forward now  
11 outside of, outside of the process that was laid out for  
12 private counsel to bring forward proposals?

13 MR. COLE: Well, I can only say two things. One,  
14 would be, I was put on the agenda separately. The other  
15 would be that we represent state agencies. That's what the  
16 Attorney General's Office does.

17 And so I have no desire for this office or my  
18 office, Solicitor General's Office, to receive any special  
19 treatment. If you would like us to be part of the regular  
20 process, I don't think anybody objects to that.

21 The simple fact is that the Attorney General is in  
22 the full-time business of representing state agencies.

23 MR. BARTON: Madam Chair?

24 CHAIR MATHIS: Yes, Mr. Barton.

25 MR. BARTON: And if I could add, I think

1 Commissioner Stertz today -- you know, all along, we  
2 recognized that the commission has three choices. It can  
3 use the Attorney General, it can use attorneys that are on  
4 the Attorney General's list, or it can go out and find its  
5 own attorney.

6 COMMISSIONER STERTZ: Yes.

7 MR. BARTON: And so as the commission is in the  
8 process of looking at option three and finding its own  
9 attorney, we thought that the commission would benefit to  
10 have more details about what it would mean for it to choose  
11 choice one. And that's why we, we provided this information  
12 so that the commission would have, you know, a little bit  
13 more detail of what it would mean if it went -- if the  
14 commission went back and decided to choose option one and  
15 stay with Attorney General's Office.

16 So in one sense, the Attorney General's Office  
17 applying for this job is a different process because we're  
18 not a private law firm responding to an IRP.

19 But also, the timing here was just, you know, we  
20 realized that we were getting to the place where you needed  
21 to make a decision. We thought it would be helpful to have  
22 details about what it meant to go to the AG's Office. So if  
23 you chose to go that route, you weren't just making that  
24 completely without any information about what that would be.  
25 So that was the motivation behind the timing.

1                   COMMISSIONER STERTZ: I appreciate that. Thank  
2 you.

3                   VICE CHAIR HERRERA: Madam Chair?

4                   CHAIR MATHIS: Yes, Commissioner Herrera.

5                   VICE CHAIR HERRERA: Yeah, I personally say that  
6 I'm very pleased with Jim Barton's representation. If we  
7 had our -- if it was my choice, I would -- I think I've  
8 expressed my feelings.

9                   But I was very -- I couldn't agree more with  
10 Commissioner Stertz' comments. I was surprised at the  
11 timing of the -- of all of this from the AG's Office. This  
12 has been going on for a while now. And I was hoping that  
13 you guys would have expressed interest from the beginning.  
14 It didn't seem that way for me. And when we sent out the  
15 RFP, started preparing, got the RFPs from the private firms,  
16 I made the assumption that the AG's Office was not  
17 interested in representing us. Then we get some information  
18 saying that they were, after the fact.

19                   And so, I don't know, I was a little baffled. It  
20 almost seemed that you guys didn't have your act together.  
21 You know, that's how I looked at it, like, what is this? I  
22 mean, they should have done this from the beginning. If  
23 they were interested, submit the information. But they wait  
24 after the fact, after the other firms submitted the  
25 information on time, we have everything, we're going to be

1 interviewing them -- 'cause we could make a decision as  
2 easily as Tuesday. That's very possible. Not Tuesday.

3 When is our next meeting?

4 CHAIR MATHIS: Thursday.

5 VICE CHAIR HERRERA: Thursday. Thank you.

6 So I was disappointed at the, at the AG's Office.

7 I really didn't feel like they were truly interested and  
8 devoted to meeting our needs and representing us going  
9 forward. And that's just my opinion.

10 MR. COLE: Well, I need to know if you're asking  
11 me a question or --

12 VICE CHAIR HERRERA: I'm not asking a question.

13 I'm just expressing my opinion of disappointment,  
14 'cause I was confused.

15 And I would echo Commissioner Stertz' opinions and  
16 his comments, because I really was hoping that you guys  
17 would have shown some interest.

18 So I don't have a question. I just wanted to  
19 express my feeling.

20 MR. COLE: Well, certainly you're entitled to do  
21 that.

22 And, Commissioner, in brief response -- Mr. Barton  
23 may want to say something about the timing. Again, by the  
24 tenth week, I can't say much about what happened  
25 historically, but when you say "after the fact," my

1 impression was that we're within the applicable time limit.

2 VICE CHAIR HERRERA: I didn't think so.

3 MR. COLE: Then I'll need to hear what it was.

4 VICE CHAIR HERRERA: You know, we submitted all  
5 the information, the RFP -- and, and I guess I was not -- I  
6 did not understand what the time lines for the AG's Office,  
7 that they were different, that they could submit a proposal  
8 after the fact, after the deadlines. I didn't know that.

9 MR. COLE: If we are in fact past the deadline, I  
10 understand your question. If we were not after the  
11 deadline, I'm not sure about the "after the fact" remarks.

12 VICE CHAIR HERRERA: Well, after the fact, what  
13 I'm referring to is the deadlines.

14 MR. BARTON: Madam Chair?

15 CHAIR MATHIS: Yes, Mr. Barton.

16 MR. BARTON: Maybe I can add some clarification.

17 I think it is past the closing deadline for a  
18 private law firm to respond to the request for proposal.  
19 But this isn't a response to the request for proposal. This  
20 is giving you an idea of what the relationship with the  
21 Attorney General's Office would be like.

22 And I apologize if I have not made this clear in  
23 past meetings. But I thought that we had made it pretty  
24 clear the Attorney General's Office is willing and able to  
25 provide the work. And I believe I said that a number of

1 times.

2           And this proposal is simply just giving the  
3 commission some details if it chooses to do that. But I  
4 believe at each stage, I made it clear that if the  
5 commission chooses to use the Attorney General, we are  
6 willing and able. And even on one occasion sort of  
7 responded to some, some suggestions that we would be  
8 incapable of doing it because of the political concerns. As  
9 you recall, I took pains to point out that it was our  
10 position that we could do the work.

11           So I guess Commissioner Herrera, I, I accept some  
12 responsibility if I've given the impression that we weren't  
13 interested in the work.

14           But as far as whether this is a late submission, I  
15 really believe it is not because it's not a response to the  
16 RFP. It's just giving you detail if you choose to not use  
17 the RFP process but to instead get a lawyer from another  
18 process.

19           VICE CHAIR HERRERA: Madam Chair.

20           I guess I was under the assumption that there was  
21 no deadline -- that the deadline was no different for the  
22 AG's Office. That was my assumption. Since I was not given  
23 any other information otherwise, my assumption was that the  
24 deadline for the private attorneys would be no different  
25 than the deadline for the AG's Office. And I was told --

1 there was no information that was given to us that was  
2 contrary to that. I mean, at least I didn't receive it.

3 CHAIR MATHIS: Okay.

4 MR. COLE: Just simply to add briefly what  
5 Mr. Barton said. If in fact we were late, we were late.  
6 But I think his point is that this is not a typical RFP,  
7 because we represent state agencies. And if I were to hear  
8 from another applicant that they were somehow disadvantaged  
9 by us being last -- somebody is always going to be last with  
10 their proposal. I'm not sure what we can do about that.

11 But I respect your point of view, commissioner,  
12 absolutely. So I hope you will try to understand mine, and  
13 Jim's as well of course.

14 VICE CHAIR HERRERA: Thank you.

15 MR. COLE: Thank you.

16 CHAIR MATHIS: Any other questions or comments?

17 MR. COLE: Thank you, all, for your time.

18 CHAIR MATHIS: Thank you.

19 MR. COLE: If I'm in Tucson at any time, this is  
20 home, so invite me any time.

21 CHAIR MATHIS: Okay. Great. Thank you.

22 All right. Moving to Agenda Item V. Presentation  
23 and recommendation by the Arizona Department of  
24 Administration to include a law firm's response to the  
25 Commission's RFP for legal counsel.

1           And there's some additional information on this  
2           that Susan Bayer from the State Procurement Office, which is  
3           a division of the Arizona Department of Administration, is  
4           here this morning to tell us about that.

5           So thanks, Susan, for being here.

6           MS. BAYER: Certainly. Thank you for the  
7           opportunity to be here.

8           I was asked to be here today to just describe the  
9           sequence of events that led to the State Procurement Office  
10          issuing a determination and accepting a late proposal.

11          As you know, the RFP for legal counsel for the  
12          commission was issued on April 14th. Proposals were due  
13          April 28th through the state's e-procurement system known as  
14          ProcureAZ.

15          Prior to the bid opening date, Rose Law Group  
16          successfully submitted a quote in response to the RFP. The  
17          response was in Word format and did not contain a signature.  
18          It was -- that response was issued Quote No. 00004254.

19          After a discussion was with the procurement  
20          officer, who is part of the State Procurement Office,  
21          regarding allowable formats, Rose Law Group withdrew its  
22          Quote No. 4254 in order to resubmit the quote as a pdf with  
23          a signature. Quote No. 4280 was created and the pdf was  
24          attached but it was not submitted timely in ProcureAZ.

25          Since there were no material changes to the offer

1 and a verbal discussion between the procurement officer and  
2 Rose Law Group may have resulted in confusion regarding the  
3 need to resubmit a signed offer in a different format, Quote  
4 No. 4280 was accepted.

5 In accordance with the Arizona Procurement Code,  
6 and its Rule R2-7-C307B, a determination was made to accept  
7 Rose Law Group's late offer since the action or inaction of  
8 personnel directly serving the purchasing agency may have  
9 affected the timeliness of the quote submission. As such,  
10 the acceptance of Rose Law Group's offer is consistent with  
11 the Arizona Procurement Code.

12 CHAIR MATHIS: Great. Thank you for that  
13 presentation.

14 Any questions for Susan or comments?

15 We all have a copy of the determination letter  
16 that was dated May 3rd, and it's by John Red Horse, the ADOA  
17 Procurement Manager. And it describes what Susan just  
18 presented.

19 COMMISSIONER McNULTY: Madam Chair, I do not have  
20 a copy.

21 CHAIR MATHIS: Okay. It came -- it's not in your  
22 presentation this morning. It came with the actual --

23 MS. BAYER: I have a copy.

24 CHAIR MATHIS: -- Rose Law Group.

25 COMMISSIONER McNULTY: We did have a couple of

1 questions that we asked the director about this.

2 One of which was, what is the significance of the  
3 signature and do all the other applications have it?

4 And the other is, have we confirmed that there are  
5 no other applications that are stuck in the system that are  
6 in the same sort of limbo that this one was in?

7 MS. BAYER: Okay. At this point in time, I'm not  
8 aware of any other late applications -- offers, quotes.

9 Regarding the other offers that were submitted,  
10 this proposal is currently an evaluation. So I don't have  
11 access to that information.

12 As you know, my proposals are an evaluation. They  
13 are confidential. I'm not the assigned procurement officer  
14 so I do not have access to that information.

15 And as far as the significance of a signature on  
16 an offer itself, I think that many times when we're looking  
17 at whether an offer is legitimate and is valid, you know, we  
18 consider intent to be bound. Did the offer in submitting  
19 the proposal intend to be bound to a contract?

20 In this instance, the answer is yes.

21 COMMISSIONER McNULTY: So as I understand it from  
22 your remarks, the Rose Law Firm was told by someone at the  
23 counter, so to speak perhaps, that they should withdraw  
24 their application and resubmit it with a signature and  
25 that's the reason they withdrew it?

1 MS. BAYER: It's unclear what that communication  
2 was. The procurement officer didn't have a clear  
3 recollection of the conversations.

4 COMMISSIONER McNULTY: Okay. Fellow commissioners  
5 I would just like to make the comment that I think we've  
6 taken the position that in the interest of efficiency, we  
7 are taking advantage of some of the procedures that the  
8 State Procurement Office has in place so that we didn't have  
9 to draw up all these documents by ourselves and start over  
10 again. But that we've also been pretty clear from the  
11 outset that we have our own procurement authority and that  
12 we're not seeking that in any way. So while we appreciate  
13 procurement making the decision to accept the application  
14 that presented to us, I think it's still our decision  
15 whether and how we act on it. That would be my perspective.

16 CHAIR MATHIS: Commission Herrera.

17 VICE CHAIR HERRERA: The procurement officer that  
18 was involved in the situation, has he or she done that in  
19 the past where they've recommended to someone to withdraw  
20 the proposal and resubmit it?

21 MS. BAYER: I honestly don't have the answer to  
22 that. I don't know.

23 And I don't even know -- it's not even clear to me  
24 that he made that recommendation in this instance. He  
25 doesn't recall per se.

1 VICE CHAIR HERRERA: He doesn't recall?

2 And there was nothing in writing, obviously?

3 MS. BAYER: No.

4 VICE CHAIR FREEMAN: Madam Chair?

5 CHAIR MATHIS: Commissioner Freeman.

6 VICE CHAIR FREEMAN: Just the original submittal,  
7 though, it was received from the law firm, acknowledged as  
8 received from a law firm through the electronic submittal  
9 system?

10 MS. BAYER: Correct.

11 VICE CHAIR FREEMAN: It was assigned a number?

12 MS. BAYER: A quote number.

13 VICE CHAIR FREEMAN: A quote number.

14 So it had been accepted.

15 It was a subsequent conversation that led to the  
16 issue now we're faced with; is that correct?

17 MS. BAYER: That's correct.

18 And the two submissions, there is no material  
19 difference between the two. There was no change in  
20 language, no change of pricing.

21 COMMISSIONER McNULTY: Madam Chair, I would just  
22 like to add that I went on AZ Procure to look at a copy of  
23 the RFP, just to make sure what was put up was what we had  
24 finally approved, and it wasn't an easy thing to do. So I  
25 sympathize. I do have sympathy.

1           And I guess I would move that we accept the  
2 application for consideration with the others.

3           VICE CHAIR HERRERA: Madam Chair?

4           CHAIR MATHIS: Commissioner Herrera.

5           VICE CHAIR HERRERA: Before we move, I would like  
6 for us to consider to accept the original one as opposed to  
7 the one that was submitted after the fact, after the one  
8 that was -- I think that would make more sense. If there  
9 really is no difference, than why don't we go with the  
10 original one?

11          VICE CHAIR FREEMAN: I second the motion, Jose.

12          CHAIR MATHIS: Before we move or act on that  
13 motion, I would like to acknowledge a request to speak that  
14 just came in from Tim LaSota from Rose Law Group. And he  
15 would like to make a comment. And since it's material to  
16 this particular agenda item, I think it's worth having him  
17 speak to us before we proceed.

18          MR. LaSOTA: Thank you, Madam Chair.

19          Maybe my timing is not impeccable, but I did want  
20 to just clarify Commissioner McNulty's question. And I  
21 think the answer is, yes, that was exactly what we were  
22 told, based on my conversation with the person from our law  
23 firm who was told that, but, yeah, go ahead and withdraw.  
24 Which I technically don't think was necessary. If you  
25 read -- I don't think we needed the signature to begin with.

1 But they told us to go ahead and withdraw. We think we  
2 resubmitted it. Obviously, it wasn't caught in the system.

3 And accepting the first bid, second bid, doesn't  
4 matter to us, just either one.

5 So thank you.

6 CHAIR MATHIS: Thank you, Mr. LaSota.

7 Any other comments or questions on this or  
8 discussion?

9 Okay. So we have a motion on the floor.

10 And do you mind repeating that motion, please?

11 Was it Mr. Herrera?

12 VICE CHAIR HERRERA: I don't know if it was a  
13 motion. I'll make it a motion.

14 CHAIR MATHIS: Okay.

15 VICE CHAIR HERRERA: I make a motion that we  
16 accept the original or resubmitted by the Rose Law Firm.

17 CHAIR MATHIS: Is there a second?

18 VICE CHAIR FREEMAN: Now we have two motions.

19 COMMISSIONER McNULTY: I think we have a motion on  
20 the floor --

21 CHAIR MATHIS: Different? Okay.

22 COMMISSIONER McNULTY: My motion was that, yes,  
23 that we accept the recommendation to us by the Department of  
24 Administration that we consider the RFP that they accepted  
25 into the system.

1 CHAIR MATHIS: Okay. I apologize for that.

2 Is there a second to Commissioner McNulty's?

3 VICE CHAIR FREEMAN: I second.

4 CHAIR MATHIS: And that was Mr. Freeman. Okay.

5 Good.

6 So we have a seconded motion to accept the ADOA's

7 determination that we --

8 Sorry?

9 COMMISSIONER McNULTY: Recommendation.

10 CHAIR MATHIS: Recommendation -- I'm sorry. I was

11 using their language from their letter which is their

12 determination letter.

13 Their recommendation that we accept the Rose Law

14 Group proposal as part of our consideration for legal

15 services. And it has been seconded.

16 All in favor?

17 (Whereupon everyone voted aye.)

18 CHAIR MATHIS: Any opposed?

19 Okay. The motion carries. So we will be

20 considering the Rose Law Group proposal as part of our legal

21 services responses.

22 Thank you Susan and Mr. LaSota for providing

23 clarification for us.

24 Okay. Agenda Item VI, agenda items and dates of

25 future meetings.

1           At our last meeting we discussed future meetings  
2 and we already have two set up, May 12th, which will be in  
3 Phoenix at 9:30 in the morning. That agenda has been  
4 posted. And it will be held in the Industrial Commission  
5 Main Auditorium, 1st floor area.

6           And then we have a meeting also scheduled for  
7 May 26th, also in Phoenix, at 9:30 in the morning. Venue to  
8 be determined.

9           Don't know if we want to move into June at this  
10 point. Mr. Bladine did collect information from us on when  
11 we are available in June.

12           So I open that to discussion. Commissioners would  
13 like to schedule any additional meetings at this time?

14           VICE CHAIR FREEMAN: Madam Chair, can we take that  
15 up on Thursday and see how things go today? We may need to  
16 plug in more meetings or maybe less.

17           CHAIR MATHIS: Sounds good to me.

18           VICE CHAIR HERRERA: I agree.

19           Madam Chair, the commissioners first had a  
20 comment, I think, during our last meeting -- which is the  
21 executive session which may not -- never mind.

22           CHAIR MATHIS: See, we're learning, Mr. Barton,  
23 about open meeting laws and executive sessions.

24           VICE CHAIR HERRERA: Madam Chair, what I can say  
25 is --

1 CHAIR MATHIS: Yeah, Mr. Herrera.

2 VICE CHAIR HERRERA: May 26, that's the week of  
3 Memorial -- the weekend, not that I had any plans, but if we  
4 meet on the 26th, what will we get accomplished that we  
5 couldn't meet before the 26th or after that week? That is  
6 my question.

7 And I see Commissioner Freeman nodding his head.  
8 Are you agreeing with me?

9 VICE CHAIR FREEMAN: Yes. Madam Chair, that  
10 May 26th meeting, I don't know, I think when we meet on  
11 Thursday, we might want to take a look at it, because I  
12 don't know if we'll have the responses to the mapping RFP in  
13 hand and having digested them in time for that meeting. So  
14 I'm not exactly sure -- I suppose there are other things we  
15 can accomplish, administrative things, that might be  
16 worthwhile to have the meeting then as well. I don't think  
17 May 26th meeting is set in stone at this point.

18 VICE CHAIR HERRERA: I agree.

19 CHAIR MATHIS: Okay. Mr. Bladine.

20 MR. BLADINE: Madam Chair, Commission Freeman, my  
21 comment was going to be similar to yours. The RFP will be  
22 back but whether we have anything that you can really act  
23 on, on the 26th, we don't know yet. But if we address it  
24 Thursday, we might have a better idea of whether there's a  
25 need or not. And I will re-circulate a calendar to get more

1 information for June to give people a chance to update.

2 CHAIR MATHIS: Sounds good.

3 The only agenda item I can recall for May 26th  
4 that we had talked about is the Ken Clark presentation that  
5 he had requested to make one to the commission, but that was  
6 all. And I think we initially set that up at our last  
7 meeting because we knew that the week of -- next week was  
8 not going to work for the commissioners.

9 But I agree, we should see how things proceed  
10 today and on Thursday and then we can set the next one.

11 Sound good? Okay.

12 Agenda Item VII. Discussion and possible action  
13 authorizing the State Procurement Office to issue the  
14 finalized RFP for mapping consultant on behalf of the  
15 commission.

16 We had an executive session. This was referred to  
17 Commission Herrera on Friday where we discussed the  
18 finalization of edits to this particular document which is a  
19 confidential document until it's released. And it's to  
20 obtain mapping services from a consultant.

21 And we have Don Ellwanger here. He was extremely  
22 helpful. And he's from State Procurement Office and was  
23 extremely helpful in guiding us through those edits and  
24 getting them incorporated into the document. And he has  
25 supplied those back to us in record time. And we each have

1 a copy of those. And hopefully everyone has had a chance to  
2 review them. We can't discuss them in public session  
3 because it's a confidential document. So we may need to  
4 enter executive session to finalize.

5 But any thoughts from the commissioners?

6 VICE CHAIR FREEMAN: Madam Chair?

7 CHAIR MATHIS: Mr. Freeman.

8 VICE CHAIR FREEMAN: It think it might behoove us  
9 to go into a brief executive session just so we can discuss  
10 the document and ensure to ourselves that it is the way we  
11 like it.

12 And I use the word "brief" advisedly because we've  
13 said that before. But I have every confidence that  
14 expectation it would be brief, however you want to define  
15 that.

16 So I suggest we go into executive session for the  
17 purpose of finalizing the RFP for mapping purposes.

18 COMMISSIONER STERTZ: I'll second that.

19 CHAIR MATHIS: Great. All in favor?

20 (Whereupon everyone voted aye.)

21 CHAIR MATHIS: Any opposed?

22 Okay. We'll go into executive session.

23 And this public session ends at 10:09 a.m. And we  
24 will go into executive session.

25 (Whereupon a recess was taken from 10:09 a.m. to

1 11:22 a.m, and the commission went into executive session.)

2 (Whereupon due to a miscommunication, the court  
3 reporter did not attend this executive session.)

4 (Whereupon the public session was resumed at  
5 11:22 a.m.)

6 CHAIR MATHIS: Okay. We'll now come back into  
7 public session. The time is 11:22 in the morning.

8 And I think in the future, we won't make any  
9 projections about how long we'll be in executive session,  
10 because I think we're failing the public in this regard.

11 Thanks for hanging with us.

12 We had a good discussion during executive session.

13 And I wondered if I could entertain a motion to  
14 authorize the ADOA to -- State Procurement Office to issue  
15 the RFP for mapping services, including all the changes that  
16 we just discussed during executive session?

17 Mr. Freeman has a copy of those changes in one  
18 document that he will supply to Mr. Ellwanger who will then  
19 incorporate them and then Mr. Freeman will work with  
20 Mr. Ellwanger just to confirm that those changes all were  
21 indeed incorporated.

22 COMMISSIONER STERTZ: So moved.

23 COMMISSIONER McNULTY: Seconded.

24 CHAIR MATHIS: Any discussion?

25 All in favor?

1 (Whereupon everyone voted aye.)

2 CHAIR MATHIS: Any opposed?

3 Great. Motion carries.

4 So thank you, Mr. Freeman, for your leadership on  
5 this in supplying those edits and working with Don to  
6 finalize it.

7 We're hoping it will be, I guess, issued on  
8 Wednesday morning, is the timeline of that document that  
9 will come out. And at that time then, of course, it's a  
10 public document.

11 Okay. Next item on the agenda is approval of the  
12 April 8th, 2011 minutes and April 8th, 2011 minutes in the  
13 form of transcript, as well as the April 14th minutes in the  
14 form of a transcript.

15 And at our last meeting, Mr. Freeman supplied us  
16 with revised versions of those sets of minutes due to a  
17 number of formatting, as well as substantive issues. And we  
18 all received them at our last meeting.

19 Did everyone have a chance to review the minutes?

20 VICE CHAIR FREEMAN: Madam Chair?

21 CHAIR MATHIS: Mr. Freeman.

22 VICE CHAIR FREEMAN: Let me just explain what was  
23 in your packet this morning.

24 The commissioners were originally provided with a  
25 copy of the original minutes of the April 8th meeting. And

1 Kristina was nice enough to take my copy that I brought with  
2 me, because I had changes to my own revisions. So what you  
3 will see in your packet are the revised version of the  
4 April 8th minutes, both public session and executive  
5 session. And the handwritten notations you see on the  
6 document are my proposed changes to those documents. I  
7 don't think we need to go through them.

8 If anyone else has any additional changes, and you  
9 may have some, perhaps you can compare your changes to what  
10 I've done and see whether I've captured them.

11 CHAIR MATHIS: Okay. That's for the  
12 April 8th minutes. It was in the folder that Kristina  
13 provided. I'm trying to see.

14 There's two sets; right?

15 VICE CHAIR FREEMAN: Yes.

16 CHAIR MATHIS: There's the confidential e-session  
17 minutes as well as the public session minutes, and revisions  
18 are made to both by Mr. Freeman.

19 Any other revisions that any commissioners had  
20 that are different from what Mr. Freeman has provided?

21 COMMISSIONER STERTZ: Madam Chair?

22 CHAIR MATHIS: Yes, Mr. Stertz.

23 COMMISSIONER STERTZ: I move to approve the  
24 April 8th minutes in the form of as outlined in item eight  
25 and as amended by Commissioner Freeman.

1 CHAIR MATHIS: Is there a second?

2 COMMISSIONER McNULTY: I will second that.

3 CHAIR MATHIS: Okay. And that's for both the  
4 public and e-session?

5 COMMISSIONER STERTZ: Yes, ma'am.

6 CHAIR MATHIS: Okay. Any discussion?

7 All in favor?

8 (Whereupon everyone voted aye.)

9 CHAIR MATHIS: Any opposed?

10 Okay. The motion carries, so the minutes from  
11 April 8th, both public and e-session minutes, are approved as  
12 revised by the handwritten copy that you have in front of  
13 you with the edits.

14 We also have the April 14th minutes in the form of  
15 a transcript.

16 Did any commissioners have any edits to that  
17 document? Or do I hear a motion to approve those minutes in  
18 the form of a transcript from April 14th?

19 VICE CHAIR HERRERA: So moved.

20 COMMISSIONER STERTZ: Seconded.

21 CHAIR MATHIS: Any discussion?

22 All in favor?

23 (Whereupon everyone voted aye.)

24 CHAIR MATHIS: Any opposed?

25 Okay. The minutes from April 14th in the form of

1 a transcript passed.

2 And that takes us to Item IX on the agenda.

3 Discussion and possible action on the responses to the RFP  
4 for legal services.

5 And just so everyone is aware, the bidding process  
6 ended on April 28th. And ten law firms or individuals  
7 responded to that request for proposal for legal counsel.  
8 And then we have the addition of the Attorney General's  
9 Office that presented their information today.

10 The responses to the legal counsel RFP are  
11 considered confidential until we make an evaluation of those  
12 responses. And so we cannot provide actual information on  
13 their responses and will probably be going into executive  
14 session to discuss them.

15 Did any commissioners, though, have any comments  
16 on our RFP for legal counsel or the responses that we can  
17 talk about in public?

18 COMMISSIONER STERTZ: Madam Chair?

19 CHAIR MATHIS: Yes, Mr. Stertz.

20 COMMISSIONER STERTZ: Are the lists of the  
21 responders available on our Web site currently?

22 Bladine might have that answer.

23 And are the listed responders currently public?

24 CHAIR MATHIS: The list of the responders, the ten  
25 firms that responded is public information. And it's not on

1 our Web site, to my knowledge. And that might be something  
2 we consider doing.

3 COMMISSIONER STERTZ: And where would be the  
4 easiest way to find --

5 CHAIR MATHIS: The actual list?

6 COMMISSIONER STERTZ: -- the actual information?

7 CHAIR MATHIS: The easiest way would probably be  
8 for us to divulge that information right here.

9 COMMISSIONER STERTZ: We just want to make the  
10 list public so we can put it into the record.

11 CHAIR MATHIS: Yes, I think that would be good.

12 COMMISSIONER STERTZ: Okay.

13 CHAIR MATHIS: I can try to go through my list.

14 COMMISSIONER STERTZ: Mr. Muratore is saying that  
15 we could go to his Web site because they're currently  
16 listed.

17 CHAIR MATHIS: All right. I apologize these  
18 aren't in any kind of order, the actual responders, but I'll  
19 give you the names as they are listed in my stack here.

20 So the Law Office of David Braun.

21 Dimonta Clark -- I'm sorry. Dimilante Clark, LLP.

22 Gammage & Burnham.

23 Calderon Law Offices.

24 The Mandell Law Firm, LLC.

25 Ballard Spahr, LLP.

1                   Let me get the rest. The rest are in another  
2 pile.

3                   Rose Law Group, PC.

4                   Snell & Wilmer.

5                   Osborne Maledon.

6                   And I think that's ten.

7                   VICE CHAIR FREEMAN: Gordon & Rees.

8                   CHAIR MATHIS: Oh, Gordon & Rees.

9                   I must have it somewhere else. Thank you for  
10 getting that for me.

11                   So that should be ten responses to the RFP that we  
12 received.

13                   Any other comments or questions on the responses  
14 to the legal counsel's RFP?

15                   COMMISSIONER STERTZ: Madam Chair, I move to go  
16 into executive session to discuss the ten, as well as the  
17 two submitted draft options from the Attorney General's  
18 Office.

19                   CHAIR MATHIS: Is there a second?

20                   VICE CHAIR HERRERA: I second it.

21                   MR. BARTON: Madam Chair?

22                   CHAIR MATHIS: Mr. Barton.

23                   MR. BARTON: For the sake of the public, I would  
24 like to make everyone aware that the Attorney General's  
25 Office has not reviewed the bids provided in response to the

1 RFP nor have we had some in the office during previous  
2 deliberations and we won't participate in the executive  
3 session deliberations that the commission is about to go  
4 into.

5 CHAIR MATHIS: Thank you for that clarification,  
6 Mr. Barton.

7 All in favor?

8 (Whereupon everyone voted aye.)

9 CHAIR MATHIS: Any opposed?

10 VICE CHAIR HERRERA: Madam Chair? Clarification.

11 CHAIR MATHIS: Mr. Herrera.

12 VICE CHAIR HERRERA: The executive session is  
13 really limited to legal advice?

14 CHAIR MATHIS: Uh-huh.

15 VICE CHAIR HERRERA: And I think basically  
16 reviewed the documents -- would it still make sense to have  
17 legal counsel present even though -- I don't know. I just  
18 feel uncomfortable not having legal counsel present. So  
19 should we have legal counsel there even though we won't be  
20 reviewing their proposal?

21 MR. BARTON: Madam Chair?

22 CHAIR MATHIS: Mr. Barton.

23 MR. BARTON: The first point of clarification.  
24 The primary reason to going into executive session on these  
25 is that you're reviewing confidential documents. And this

1 is not -- the motivation for going into executive session is  
2 not to receive legal advice but to go into executive session  
3 because you're reviewing confidential documents.

4 So Commission Herrera is correct in that if you  
5 were going into for legal advice, obviously, a lawyer has to  
6 be present. But in this case, the reason for the executive  
7 session is because the responses themselves are confidential  
8 documents.

9 As to the question of whether our office should be  
10 present. I have to tell you that the Attorney General's  
11 Office has decided not to participate in that part of the  
12 deliberation in the interest of, you know, eliminating any  
13 appearance of impropriety, because any notion that we might  
14 be competing, that would be an unfair advantage. And so at  
15 this point, I'm not available to participate in the  
16 executive session.

17 VICE CHAIR HERRERA: Okay.

18 CHAIR MATHIS: I think if any issues arise that  
19 pertain to open meeting law or something else that we want  
20 to get guidance on, we could contact Mr. Barton via cell.

21 MR. BARTON: Madam Chair, that's correct. If  
22 there are any other issues that don't pertain to the  
23 documents themselves, just have to do with open law meeting  
24 requirements or anything of that sort of thing, then, yes,  
25 you can contact me on my cell phone or at the office.

1 CHAIR MATHIS: Okay.

2 VICE CHAIR HERRERA: Okay. Thank you.

3 CHAIR MATHIS: All in favor?

4 (Whereupon everyone voted aye.)

5 CHAIR MATHIS: Any opposed?

6 Okay. We'll go into executive session. The time  
7 right now is 11:34 a.m.

8 (Whereupon a recess was taken from 11:34 a.m. to  
9 11:47 a.m., and the commission went into executive session.)

10 ....

11 ....

12 ....

13 (Whereupon the public session was resumed at  
14 1:12 p.m.)

15 CHAIR MATHIS: Okay. The meeting will come back  
16 to order, the public session. It's 1:12 p.m.

17 Thank you for hanging with us, public.

18 We had a good executive session discussion on the  
19 legal responses to the RFP.

20 Is there a motion from the commissioners to move  
21 forward?

22 COMMISSIONER McNULTY: Madam Chair, I'm going to  
23 try to formulate a motion based on my notes of the  
24 discussion of the various applications by the various  
25 commissioners for discussion.

1 I'll move that we would interview the following  
2 law firms. And I'm not sure I have the names of the law  
3 firms correct. Ballard Spahr, Gammage & Burnham, the Rose  
4 Law Group, Osborne Maledon, the Mandell Law Firm, and David  
5 Braun. And that we invite each of those firms and the  
6 principals who they have identified in their RFPs to talk  
7 with us at our next scheduled hearing.

8 COMMISSIONER STERTZ: Madam Chair, I second that.

9 And may I also suggest that we add that a goal of  
10 this is to gain as much information from their approach, and  
11 that a short presentation, and underscore the word short  
12 presentation, be made by each firm, followed by a question  
13 and answer period and then an allowed time of -- we would  
14 start -- allowed time of 45 minutes, that could creep into  
15 an hour, so the interviews take place at the top of each  
16 hour.

17 Will that be acceptable to amend your motion?

18 COMMISSIONER McNULTY: Yes.

19 COMMISSIONER STERTZ: I second the motion as  
20 amended.

21 CHAIR MATHIS: Okay. Any discussion on the  
22 amended motion?

23 COMMISSIONER McNULTY: Does your current agenda  
24 for Thursday, Mr. Bladine, accommodate that way of  
25 proceeding?

1 MR. BLADINE: Madam Chair, Commissioner McNulty,  
2 it is posted for discussion and possible action on an  
3 interview of attorneys, so I think it would qualify. You're  
4 just giving me more detail how to schedule under the agenda  
5 items. I don't see there is a conflict.

6 CHAIR MATHIS: I agree.

7 And the meeting is going to start at 9:30 a.m. and  
8 it will be soon, the interviews would begin soon after that.

9 MR. BLADINE: I didn't hear. Do you have a  
10 specific time you would like to start the first interview?

11 COMMISSIONER STERTZ: We recommend we start our  
12 first interview at 11:00, we go to, like, 12 to 1:00 lunch  
13 break, beginning at 1:00 and we go one, two, three, and  
14 four, and that accomplishes all the interviews by the end of  
15 the business day. Is that time right?

16 CHAIR MATHIS: I'm wondering if we could actually  
17 start earlier. Because we are starting the meeting at 9:30  
18 and the only agenda items would be the call for public  
19 comment, the executive director report, the agenda items and  
20 dates of future meetings, the approval of the May 3rd, 2011  
21 minutes, and then the interviews begin.

22 COMMISSIONER STERTZ: If my math is wrong, we need  
23 to start at 10:00.

24 CHAIR MATHIS: Okay. If we could have that first  
25 group prepare to interview at 10:00, that would be

1 wonderful, then every hour after.

2 MR. BLADINE: We also have to be out of that  
3 facility by 4:30. So 10, 11, 12, 1:00 -- oops, we got to  
4 stop for lunch. Ten, eleven, one, two, three, four.

5 COMMISSIONER STERTZ: There will be a half hour  
6 lunch break.

7 COMMISSIONER McNULTY: We also need to take breaks  
8 for our court reporter.

9 CHAIR MATHIS: Yeah.

10 COMMISSIONER McNULTY: You may need to look at  
11 another facility?

12 COMMISSIONER STERTZ: It's been posted.

13 MR. BLADINE: Unfortunately with us, it is  
14 required to be 48 hours posted. Maybe if we can shorten  
15 five minutes on each one, 40 minutes on each.

16 CHAIR MATHIS: Yeah.

17 MR. BLADINE: Madam Chair, I will plan to schedule  
18 that to end at 4:30 and that accomplishes what you've  
19 instructed me to do.

20 CHAIR MATHIS: Right.

21 COMMISSIONER STERTZ: Madam Chair?

22 CHAIR MATHIS: Yes.

23 COMMISSIONER STERTZ: Mr. Bladine, I suggest you  
24 schedule these in alphabetical order, as the order that they  
25 were given by Commissioner McNulty was in no particular

1 order. I want to make sure that we have -- that they're  
2 scheduled in alphabetical order so there's a clarity to  
3 that.

4 MR. BLADINE: Will do.

5 CHAIR MATHIS: Any other discussion?

6 All in favor?

7 (Whereupon everyone voted aye.)

8 CHAIR MATHIS: Any opposed?

9 Okay. The motion carries and we'll move forward  
10 with the interviews scheduled that Mr. Bladine will  
11 establish for us at our meeting on Thursday.

12 And that meeting is going to take place in Phoenix  
13 at the Industrial Commission, 1st floor, starting at 9:30 in  
14 the morning.

15 That brings us to the end of the agenda, so I move  
16 to adjourn the meeting.

17 This meeting is adjourned. It is now 1:18 p.m.

18 Thanks everyone.

19 (Whereupon the meeting was adjourned at 1:18 p.m.)

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1 STATE OF ARIZONA )

2 COUNTY OF PIMA )

3

4 I, JOYCE L. HOWARD, Certified Reporter in the  
5 County of Pima, State of Arizona, certify:

6 That the foregoing public meeting was taken before  
7 me at the time and place therein set forth;

8 That the foregoing 63 pages comprise a full, true  
9 and accurate transcription of my notes of said public  
10 meeting;

11 DATED this 21st day of May, 2011.

12

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Joyce L. Howard, RPR, CR

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Certified Reporter No. 50685

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