

ARIZONA INDEPENDENT REDISTRICTING COMMISSION

Thursday, October 9, 2014
(Public Session)
4:39 p.m.

Location

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

Attending

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

Ray Bladine, Executive Director
Kristina Gomez, Deputy Executive Director

Mary O'Grady, Legal Counsel
Joe Kanefield, Legal Counsel

Reported By:
Marty Herder, CCR
Certified Court Reporter #50162
www.CourtReportersAz.com

Phoenix, Arizona
October 9, 2014
4:39 p.m.

P R O C E E D I N G S

(Whereupon, the public session commences.)

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

Today is Thursday, October 9, 2014. The time is 4:39 p.m.

And if everyone would please rise for the Pledge of Allegiance, I'll ask Vice-Chair Freeman to lead us.

(Whereupon, the Pledge of Allegiance was recited.)

CHAIRPERSON MATHIS: Great. Thanks, everyone.
Can you hear me okay?

VICE-CHAIRMAN FREEMAN: Yes.

COMMISSIONER McNULTY: Yes.

CHAIRPERSON MATHIS: Great.

And we also have on the line -- well, we'll go through roll call. I just want to make sure everyone can -- that Marty can hear everyone well.

Vice-Chair Freeman?

VICE-CHAIRMAN FREEMAN: Here.

1 CHAIRPERSON MATHIS: Commissioner Kallen.

2 COMMISSIONER KALLEN: Here.

3 CHAIRPERSON MATHIS: Commissioner McNulty.

4 COMMISSIONER McNULTY: Here.

5 CHAIRPERSON MATHIS: Commissioner Stertz.

6 COMMISSIONER STERTZ: Here.

7 CHAIRPERSON MATHIS: We have a quorum.

8 Other folks in the room tonight, our legal counsel
9 Mary O'Grady and Joe Kanefield.

10 Do we have a mapping consultant tonight?

11 RAY BLADINE: Not yet.

12 VICE-CHAIRMAN FREEMAN: We do not.

13 CHAIRPERSON MATHIS: Okay. Okay.

14 Staff in the room, the executive director Ray
15 Bladine and deputy director Kristina Gomez.

16 And I believe we have the full group; right? Anna
17 Garcia, Lisa Schmelling, and Shane Shields?

18 VICE-CHAIRMAN FREEMAN: Yes.

19 CHAIRPERSON MATHIS: Great.

20 And I think Shane is playing the role of chief
21 technology officer tonight, so this meeting is being
22 recorded.

23 And we also of course have our court reporter
24 today, who's Marty Herder.

25 Okay. Anything -- I guess that's it for the roll

1 call, unless I missed anyone.

2 Hearing nothing, we'll go to the next item on the
3 agenda.

4 Agenda item two, legal briefing, discussion and
5 possible action relating to pending litigation in Arizona
6 Legislature versus Arizona Independent Redistricting
7 Commission, also the case Harris versus Arizona Independent
8 Redistricting Commission, and also the case Leach versus
9 Arizona Independent Redistricting Commission.

10 And this will include discussion and possible
11 action regarding retaining a U.S. Supreme Court specialist
12 for the pending Supreme Court appeals in both Arizona
13 Legislature and Harris.

14 The Commission may vote to go into executive
15 session which will not be open to the public for the purpose
16 of obtaining legal advice and providing direction to
17 counsel.

18 So, Mary or Joe, would one of you like to say
19 anything?

20 JOSEPH KANEFIELD: Madam Chair, this is Joe.
21 Members of the Commission.

22 Let me start by quickly giving an overview of the
23 Arizona State Legislature case. As you all are now aware
24 that the U.S. Supreme Court has noted probable jurisdiction
25 or at least postponed its consideration of jurisdiction on

1 the question of whether the elections clause of the
2 United States Constitution, as well as 2 U.S.C.
3 Section 2a(c) permit Arizona to use a citizen commission to
4 adopt congressional districts.

5 This is the lawsuit that the Legislature
6 challenged the Commission's authority to draw the
7 congressional lines arguing that the elections clause of the
8 United States Constitution only enables the legislative body
9 itself to draw those lines, that being the Arizona
10 Legislature.

11 The court also raised the question whether the
12 Arizona Legislature has standing to bring the suit. So you
13 may recall this case was heard by a three judge panel at the
14 district court, which consisted of two federal district
15 court judges and a Ninth Circuit judge.

16 In these cases that involved redistricting where a
17 three judge panel hears the case, once the case is resolved,
18 whoever is the non-prevailing party has a right to appeal
19 that decision directly to the United States Supreme Court
20 and the court must hear and decide the case.

21 So, having done that, we prevailed below, as you
22 may recall, the Legislature appealed, and now we received
23 had receive the result of the court's consideration of the
24 Legislature's appeal, which means effectively that the court
25 will consider the merits of the issue along with the

1 question of standing, as I mentioned.

2 There will be a full briefing. We've calendared
3 the Legislature's brief to be due on November 17th. Our
4 brief willing do 30 days after that day of filing. They'll
5 then have an opportunity to reply. And the case will likely
6 be scheduled for oral argument the last week of February.
7 If I recall, there's three days that week that the United
8 States Supreme Court will be hearing argument.

9 We have not yet confirmed that with the court.

10 At this time, Madam Chair, members of the
11 Commission, we would like to recommend that the Commission
12 go into executive session to receive advice, legal advice
13 both on this case and also on the Leach case that's
14 currently pending before the Maricopa County Superior Court.

15 CHAIRPERSON MATHIS: Okay. Thanks, Mr. Kanefield.

16 Do any commissioners have anything to say before
17 I'll entertain a motion?

18 (No oral response.)

19 CHAIRPERSON MATHIS: Okay.

20 COMMISSIONER McNULTY: Madam Chair, I'll move that
21 we go into executive session for purposes of receiving legal
22 advice and getting direction from counsel.

23 CHAIRPERSON MATHIS: Is there a second?

24 COMMISSIONER KALLEN: Madam Chair, this is
25 Commissioner Kallen. I would second the motion.

1 CHAIRPERSON MATHIS: Great.

2 Any discussion?

3 (No oral response.)

4 CHAIRPERSON MATHIS: All in favor?

5 COMMISSIONER KALLEN: Aye.

6 COMMISSIONER STERTZ: Aye.

7 VICE-CHAIRMAN FREEMAN: Aye.

8 CHAIRPERSON MATHIS: Aye.

9 Any opposed?

10 (No oral response.)

11 CHAIRPERSON MATHIS: So we'll go ahead and exit
12 out of public session at this point. The time is 4:46 p.m.
13 And we'll enter back into executive session once the public
14 has been cleared.

15 (Whereupon, the public session ends.)

16

17 * * * * *

18

19 (Whereupon, the public session resumes.)

20 CHAIRPERSON MATHIS: We'll enter back into public
21 session now. The time is 5:52 p.m.

22 And thank you to the public for waiting that out.

23 And do any commissioners have anything they'd like
24 to say coming out of executive session?

25 COMMISSIONER McNULTY: Madam Chair, I would make a

1 motion, if you would entertain it.

2 CHAIRPERSON MATHIS: I would entertain it.

3 COMMISSIONER McNULTY: That we direct our counsel
4 to retain Seth Waxman and his firm WilmerHale on a pro bono
5 basis to work with Commission counsel to represent the
6 Commission before the U.S. Supreme Court in the matter of
7 Arizona Legislature versus AIRC with the understanding that
8 the Commission would be paying expenses, notwithstanding
9 that it's on a pro bono basis.

10 CHAIRPERSON MATHIS: Is there a second?

11 COMMISSIONER KALLEN: Madam Chair, this is
12 Commissioner Kallen. I would second the motion.

13 CHAIRPERSON MATHIS: Any discussion?

14 VICE-CHAIRMAN FREEMAN: Madam Chair, this is Scott
15 Freeman.

16 CHAIRPERSON MATHIS: Vice-Chair Freeman.

17 VICE-CHAIRMAN FREEMAN: Just to clarify on the
18 motion, expenses means costs; correct?

19 COMMISSIONER McNULTY: No, I think it means
20 whatever expenses are incurred in preparing the briefs,
21 printing the briefs, paying the phone, the long distance
22 phone calls, yes, those kinds of things.

23 Reimbursing them for long distance phone calls.

24 If they come to Arizona to talk to us, I guess we
25 would -- not that I'm expecting them to do that, but that

1 would be an expense I would think.

2 MARY O'GRADY: I think the major expense here is
3 going to just be the printing of the brief.

4 And that's the main issue there.

5 CHAIRPERSON MATHIS: Any other discussion?

6 (No oral response.)

7 CHAIRPERSON MATHIS: Hearing none, all in favor?

8 COMMISSIONER McNULTY: Aye.

9 COMMISSIONER KALLEN: Aye.

10 CHAIRPERSON MATHIS: Do we have -- how many ayes
11 so far? I heard Commissioner Kallen and McNulty.

12 (No oral response.)

13 CHAIRPERSON MATHIS: Okay. It sounds like there
14 are two ayes.

15 I will vote aye. This is the chair.

16 Any nays?

17 COMMISSIONER STERTZ: Nay.

18 VICE-CHAIRMAN FREEMAN: Nay.

19 CHAIRPERSON MATHIS: Okay. So the motion carries.

20 VICE-CHAIRMAN FREEMAN: Madam Chair.

21 CHAIRPERSON MATHIS: Go ahead.

22 VICE-CHAIRMAN FREEMAN: I'm sorry. This is Scott
23 Freeman. May I explain my vote, please?

24 CHAIRPERSON MATHIS: Please.

25 VICE-CHAIRMAN FREEMAN: Madam Chair, I did not

1 vote aye, not because I don't think Mr. Waxman and his firm
2 is esteemed counsel, not that I don't think that he is well
3 qualified to represent the Commission, not because I don't
4 think the price is right, and not because I don't think the
5 Commission could have -- should have counsel of its choice
6 representing it at the Supreme Court.

7 I did not vote aye because I would not want an aye
8 vote to be misconstrued in some way as me supporting what
9 the Commission has done with respect to the federal map.

10 And I've also seen how in Harris litigation how
11 sometimes innocent gestures can be misconstrued and turned
12 around against me in my position as commissioner.

13 So I did not want any of that to be misconstrued.

14 So having said that, I voted no.

15 And I also want to express my appreciation of
16 Ms. O'Grady and Mr. Kanefield for all the hard work they
17 did, and probably very enjoyable work, in researching
18 counsel and providing the recommendation to the Commission.

19 CHAIRPERSON MATHIS: Thank you,
20 Vice-Chair Freeman.

21 Anything else from the other commissioners?

22 COMMISSIONER STERTZ: Madam Chair.

23 CHAIRPERSON MATHIS: Go ahead.

24 COMMISSIONER STERTZ: Madam Chair, I concur with
25 everything that Scott has said.

1 And the other piece is that I really am
2 disappointed that, again, that as a commissioner I was not
3 provided the same data that the chair was.

4 And whether or not that was intended or not, it
5 sure would have been nice to have an equal level of
6 distribution of knowledge.

7 This has been -- this has been an issue throughout
8 the duration of this Commission, in this commissioner's
9 opinion.

10 And I wish everybody the best of luck in this
11 case. It's going to be exciting. I think you've got two
12 heavyweights. They're going to be going toe to toe in front
13 of the Supremes. And I am looking forward to the -- to this
14 becoming settled.

15 So congratulations to Ms. O'Grady and
16 Mr. Kanefield as I believe that this couldn't have been a
17 better choice of counsel to represent the Commission.

18 CHAIRPERSON MATHIS: Any comments from other
19 commissioners?

20 (No oral response.)

21 CHAIRPERSON MATHIS: Okay. Or from Mary and Joe?

22 JOSEPH KANEFIELD: No comments from me,
23 Madam Commissioner -- Madam Chair, members of the
24 Commission.

25 Mary?

1 MARY O'GRADY: No. Thank you.

2 CHAIRPERSON MATHIS: Okay. We'll go agenda item
3 three, executive director's report. Is Mr. Bladine there or
4 will Ms. Gomez be giving it?

5 RAY BLADINE: I will go ahead, Madam Chair, and
6 just start off, but I think the area that probably we need
7 to just take a few minutes to go over with you is the budget
8 and the spreadsheet that we send you monthly.

9 This will kind of be the first time that we've had
10 a chance to go through the spreadsheet with you and show you
11 what we're trying to do.

12 The spreadsheet that we send out every month takes
13 a number of other spreadsheets to put them into one that
14 best portrays what we're doing in terms of our
15 appropriation.

16 And I am going to let Kristina go through that.

17 But probably as you have read in the first part of
18 our budget memo, we provide reports to the Governor's
19 Office, to the general accounting office, to JLBC, and
20 they're in different formats.

21 And so it's quite a job to keep them all tied
22 together and make sure that they all balance.

23 And I want to compliment Kristina, because she's
24 spent a lot of time to go through and do that.

25 And she's really not an accountant, but she's an

1 MPA, but she's learning how to be an accountant.

2 And with that, I'll let her talk about that. Then
3 I'll come back and talk about the other issues.

4 KRISTINA GOMEZ: Madam Chair, Commission members,
5 first of all, I worked closely with the State Boards Office
6 to actually develop this spreadsheet.

7 We have, as you know, we have two ongoing
8 appropriations. So rather than having two separate
9 spreadsheets, I -- Megan Darian recommended that we put both
10 of them onto one spreadsheet to make it a little bit easier,
11 but she did this in a very creative way.

12 And I'll go through this with you right now.

13 So, at the start of this fiscal year, the
14 Legislature appropriated the IRC \$1,115,300 for the entire
15 FY15 fiscal year.

16 We also have the FY14 supplemental appropriation.
17 At the start of this current fiscal year, we had a remaining
18 balance of \$1,183,528.

19 Now, if you look at the monthly budget
20 spreadsheet, you'll notice that there's multiple colors
21 there.

22 The reason being is we're tracking two separate
23 appropriations.

24 So if you look at the columns in July, August, and
25 September, you'll see a black font. This represents the

1 actuals that are reported each month to the State Boards
2 Office.

3 The blue font represents estimates, and those
4 funds will be allocated from the FY15 appropriation.

5 And the green font represents estimates which are
6 allocated from the FY14 supplemental appropriation.

7 So the different color fonts should help us
8 differentiate which invoices will be paid from the
9 particular appropriations.

10 And also if you notice in the August column in
11 green, there's roughly 22,000 spent out, out of the FY14
12 supplemental appropriation.

13 These invoices came in after the end of the fiscal
14 year.

15 So these bills were incurred during fiscal year
16 '14. So these were the last bills that the Commission had
17 to pay in order to close out fiscal year '14.

18 Now, if you look under -- or over to the
19 professional and outside services, you'll see litigation
20 estimates.

21 These were created with the help of legal counsel.
22 They did their best to provide the best estimates for this
23 current physical year's lawsuits.

24 So we then asked them also to go ahead and if they
25 could give us their best estimates of how much money we

1 would be spending per month.

2 So they helped us with that.

3 Finally, we believe that we do have sufficient
4 funds to complete this fiscal year.

5 So with the FY15 appropriation and with the FY14
6 supplemental appropriation, we feel that we're fine as far
7 as with funding for this current fiscal year.

8 And one last note is that we also allocated most
9 of the FY15 funds up front.

10 The reason being is because FY15 dollars cannot be
11 carried forward into FY16, so we're going to try to use as
12 much of FY15 at the beginning of the fiscal year so that we
13 don't lose this funding at the end.

14 Any questions?

15 (No oral response.)

16 RAY BLADINE: Madam Chair, if there's no
17 questions, then I'll cover the rest of the report.

18 I think the other thing that I just want to
19 mention and I think what Kristina pointed out is we're
20 trying to keep track of a lot of things to make sure that we
21 know where our funding is.

22 The biggest issue we have is this delay. We don't
23 know when things are going to happen.

24 So as you've been told and as you've seen, we just
25 keep moving everything back to the next month. So the next

1 month is going to look huge, but that's probably not what's
2 going to happen, but it seems like that's the best
3 replication of a way to keep track of how much money hasn't
4 been spent.

5 If we keep going at this rate, that we're not
6 going to spend probably all the litigation money this year.

7 So we'll have to, as we get into the '16 fiscal
8 year, see how much is left of the '14 supplemental and what
9 we've requested the 1.15 for next year.

10 But that probably is an issue we'll deal with in
11 March or April when we get closer and the Legislature is
12 back in session and the new governor's budget is being
13 developed.

14 On the staffing, I tried in this report to cover
15 the questions that I thought would bring you up to date,
16 what's going on since we haven't met in a year, and some
17 questions that Vice-Chair Freeman wanted to -- wanted me to
18 address, which I hope I did, and if not, I'll take another
19 crack at it.

20 But basically, unfortunately we've come to the
21 point where we need to -- we believe we need to have
22 Mr. Shields leave our employ. We just don't have the work
23 right now. Although he's the only one that knows how to run
24 the machine, but I think the two of us are going to be
25 learning very quickly.

1 I want to personally thank him for his service and
2 for being there when we needed him. He has done an
3 excellent job for us, and we hate to see him go, but at this
4 point in time there just isn't the workload.

5 Thank you again, Shane, for your assistance.

6 The rest of the staffing, I think, probably will
7 stay the way it is, at least through this fiscal year.

8 We did ask the Department of Administration to
9 take a look at Lisa's position, given that she's doing a lot
10 of things that weren't in the original job description.

11 They did and came back with a programs project
12 specialist classification which they felt best fit. And
13 because this was a higher duty, it resulted in a pay
14 increase of some amount for Lisa.

15 And, again, she's done an excellent job for us.

16 I continue to try to avoid working.

17 Last year you can see I worked probably a third of
18 the year.

19 We are budgeted for half time, but as long as
20 Kristina doesn't need me, I play retired. And she really is
21 doing the day-to-day executive administrative functions, and
22 I come in as needed.

23 And I think you all may recall when you were nice
24 enough to offer me this job I said I didn't want to just
25 come in and sit.

1 And this is working out for me.

2 I don't work come in and sit. I come in when
3 there's something to be done.

4 And I'm enjoying doing it this way. It works for
5 me. I think it works for Kristina.

6 This old house should be have been the title of
7 facility.

8 I was mentioning earlier that we have a resident
9 mouse that runs around -- no, not a mouse, not a mouse, a
10 squirrel. We don't want anybody to panic. It's a squirrel
11 that runs around in the air conditioning and keeps us
12 entertained. And we still believe Virginia is around here
13 somewhere.

14 But we plan to stay here unless someone tells us
15 we should move. The reason being, well, the rent seems kind
16 of high for what we need, it does go back from the state, so
17 it's kind of goes from one pocket to the other versus us
18 going out and paying it to some other agency.

19 But that's something, unless you direct us, we
20 would plan on staying here until the end.

21 Buck is still on contract to help us put things on
22 in terms of the recordings and putting in the web page. And
23 we'll continue to use him on just an ad hoc basis.

24 We have taken a look at some of our office costs.

25 We met with the controllers office staff, and we

1 were talking about the fact we still have two printers.

2 We don't think we really need the backup we had,
3 but we were worried about the cost involved in getting rid
4 of one machine.

5 Anyway, Anna Garcia spent a lot of time analyzing
6 the actual invoices we had, what we were charged, and
7 negotiated with the firm about what if we cancelled one
8 machine and got one that we would know would cover it all.
9 And it looks like we should be able to save about 650 a
10 month doing that.

11 And I think the cancellation fee, I had put \$500,
12 should probably be less than that because we've been working
13 with the controllers office and so far we haven't actually
14 gone ahead to do this.

15 But I'd suspect next week we will, we'll go ahead
16 and get it done this month.

17 Commission records, they're now all upstairs.

18 I embarrassed myself a couple weeks ago. The
19 state controller came in for a tour and to talk about I
20 guess it was a couple months ago. And I pointed out that
21 all the records were over here in the first floor, and they
22 weren't there. They were upstairs. Which tells you I do
23 sometimes lose track of what's going on around here.

24 But they're better up there away from the door.
25 So they're kept.

1 Strategic Telemetry, as you recall, the contract
2 we had with them was basically on an hourly basis. And it
3 is until no longer needed.

4 There's been no change in the amount of that
5 contract. It still is the same hourly rate it was.

6 I think the last month we maybe spent \$900 for
7 services that they rendered. And we review their submittals
8 against what the legal counsel has been doing.

9 All hearing transcripts, minutes are posted,
10 and -- Vice-Chair Freeman asked about the voter database,
11 whether it would make sense for us to do something to update
12 it now for either the next Commission or to be available if
13 we were to re-map. I think it's a good question.

14 Frankly we just didn't have time to really try to
15 get answers to that and look at what would that really
16 entail. So our plan would be to talk to legal counsel, talk
17 to Strategic, talk to the Commission, and then I'll write up
18 a report laying out what I think are the issues, and then
19 the Commission can go ahead and take that up.

20 And I think with -- oh, the last thing we were
21 all -- that I also had a question, and that's the
22 multi-colored spreadsheet. It gives the total cost per
23 case, per litigation case.

24 The cost right now for the State of Arizona versus
25 the AIRC is about \$309,000 is what we have spent.

1 We keep track of these expenditures on a monthly
2 basis.

3 And I think that's it, unless there's any
4 questions. That would end my presentation.

5 CHAIRPERSON MATHIS: Thank you, Mr. Bladine and
6 Ms. Gomez.

7 Excellent job as usual.

8 Any questions or comments from other
9 commissioners?

10 (No oral response.)

11 CHAIRPERSON MATHIS: Okay. I will say I want to
12 thank Mr. Shields as well. He has been nothing but
13 professional and pleasant every time I've encountered him.
14 So I wish him well in his future endeavors.

15 And thank you for your service to the Commission
16 and the State of Arizona.

17 And I think, is that -- anything else on agenda
18 item three from anyone?

19 COMMISSIONER McNULTY: This is Linda. I'll second
20 that.

21 Keep in touch, Shane.

22 CHAIRPERSON MATHIS: Great. I think we move to
23 agenda item four now, public comment.

24 Do we have any members of the public who would
25 like to address the Commission?

1 RAY BLADINE: No one standing -- I'm sorry.

2 VICE-CHAIRMAN FREEMAN: No takers, it appears.

3 CHAIRPERSON MATHIS: Okay.

4 Okay. Well, the only item left then is
5 adjournment. So the time is now 6:13 p.m., and this meeting
6 is adjourned.

7 Thanks, everyone, for coming and for everyone's
8 preparation.

9 (Whereupon, the meeting was adjourned at
10 6:13 p.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF ARIZONA)
)
2 COUNTY OF MARICOPA) ss.
3

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 public
8 proceedings upon the taking of said meeting, all done to the
9 best of my skill and ability.

10 DATED at Chandler, Arizona, this 10th day of
11 October, 2014.

12

13

14

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

15

16

17

18

19

20

21

22

23

24

25