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9
10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF MARICOPA**

12 STATE OF ARIZONA, *ex rel.* THOMAS C.
HORNE, Attorney General,

13 Petitioner,

14 vs.

15 COMMISSIONER COLLEEN MATHIS,
16 COMMISSIONER LINDA McNULTY,
COMMISSIONER JOSE HERRERA,

17 Respondents.
18

Case No.: _____

**PETITION FOR ENFORCEMENT
OF WRITTEN INVESTIGATIVE
DEMANDS AND APPLICATION
FOR ORDER TO SHOW CAUSE**

19 Petitioner petitions the court, pursuant to A.R.S. § 38-431 *et. seq.*, for issuance of the
20 following orders:

- 21 1. Order to show cause why each respective Respondent should not fully comply
22 with the written investigative demands dated August 11, 2011 and issued by the
23 State pursuant to A.R.S. § 38-431 *et. seq.*
- 24 2. An order requiring each respective Respondent to comply with the written
25 investigative demands dated August 11, 2011.
- 26 3. Such other orders as the Court deems just and proper.

1 This Petition for Enforcement of Written Investigative Demands and Application for
2 Order to Show Cause is supported by the attached Memorandum of Points and Authorities
3 demonstrating that the Attorney General has reasonable grounds to institute an Open Meeting
4 Law violation investigation, that Respondents have failed to comply with written investigative
5 demands, and the requested relief is appropriate.

6
7 RESPECTFULLY SUBMITTED this 7 day of September, 2011.

8 THOMAS C. HORNE
9 Attorney General

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11 _____
12 Thomas C. Horne
13 Attorney General
14 Mark D. Wilson
15 Assistant Attorney General
16 Attorneys for Petitioner

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **1. INTRODUCTION**

19 The Arizona Independent Redistricting Commission (the "Commission") is a five
20 member body tasked with the important function of creating legislative districts. The
21 Commission is both constitutionally and statutorily required to conduct its business in open
22 meetings. Ariz. Const. Art. IV, pt.2 § 1(12) and A.R.S. § 38-431 *et. seq.* The policy
23 supporting the Open Meeting Law is that government business be conducted openly subject to
24 public scrutiny and not in secret. *Long v. City of Glendale*, 208 Ariz. 319, 93 P.3d 519 (App.
25 2004), and *Johnson v. Tempe Elementary School Dist. No. 3 Governing Bd.*, 199 Ariz. 567, 20
26 P3d. 1148 (App. 2000). (Intent of the Open Meeting Law is that official deliberations be
conducted in public). Violations of the Open Meeting Law can occur in a number of different
ways. It can occur by means of actual meetings, secret telephone calls, emails and serial

1 communications. Since 1975, the Attorney General's office has recognized that:

2 Accordingly, it is our opinion that all discussions, deliberations, considerations or
3 consultations among a majority of the members of the governing body . . . must
4 be conducted in an open meeting . . . It should be pointed out, however, that
5 *such discussions and deliberations between less than a majority of the members*
6 *of a governing body, or other devices, when used to circumvent the purposes of*
7 *the Act, would constitute a violation* which would subject the governing body and
8 the participating members to the several sanctions provided for in the Act.
9 (emphasis added) Op. Atty. Gen. 75-8., *see also* Op. Atty. Gen. I79-4.

10 On March 24, 2011, the Commission received training in which it was cautioned that no
11 Commissioner should speak to more than one other Commissioner about substantive matters
12 that, by law, must be discussed in an open meeting. The Commission was told as follows:

13 Also, the Open Meeting Law can be circumvented by what we call splintering the
14 quorum. That means one person talks to less than a quorum but does so one at a
15 time then passes on information from one to the next. So you, essentially,
16 achieve a quorum just not all in the same place. That has also been held to be an
17 Open Meeting Law violation. I don't see that happening intentionally very much
18 anymore. Must public servants are honorable and don't do that ... I would
19 definitely keep it only to one person and never try to talk to a third person about it
20 (Transcript of Commission March 242011 meeting, pgs. 20-21).

21 Even the Commission's lawyers, in their objection, admitted as follows: "This
22 objection does not mean that the Commission cannot be held accountable for its constitutional
23 obligation to conduct business in open meetings." Commission's Objections, pg 2, Exhibit 1).
24 The Commission has also recognized the need to follow the Open Meeting Law. Virtually
25 every Commission agenda cites to the Open Meeting Law as the Commission's authority to
26 act in a particular manner, such as meeting in executive session.

On June 29, 2011, the Commission awarded what has been referred to as the "mapping
consultant contract". During that Commission meeting prior to going into executive session to
evaluate "mapping consultant contract" proposals, Respondent Mathis stated to those in
attendance:

1 [The] Commission may vote to go into Executive Session, which will not be open
2 to the public, for the purpose of obtaining legal advice or reviewing confidential
3 documents. Staff from the State Procurement Office will be present.

4 And I would just like to say for everyone, because I know it's frustrating when
5 you see the Commission go into Executive Session, and it seems like that's all
6 we're doing is going into Executive Session, or coming out of it. And I speak for
7 all Commissioners on this.

8 **We would love to be conducting as much as we can in front of you. We view
9 this as a very transparent process and we want input.** (emphasis added)
10 (Transcript of Commission's June 29, 2011 meeting at pg 27).

11 When Respondent Mathis made this statement, she did not reveal that she conducted
12 private conversations attempting to "line up" votes, a Commissioner had negotiations that did
13 not occur in an open meeting, and Respondent Mathis prepared a written statement explaining
14 the Commission's choice before the evaluation and the vote. In addition, three Commissioners
15 each gave the winning vendor a perfect score of 700 points, as to which Commissioner Stertz
16 testified: "I find it strangely odd that there were three perfect scores with this particular
17 consultant... not being intellectually dishonest, okay, would be impossible to achieve." (Stertz
18 Interview, pgs. 34-35). His reasons for characterizing a perfect score as "intellectually
19 dishonest" are described in greater detail below. It is unlikely that these unusual acts would
20 occur independently and coincidentally among three Commissioners, without their having
21 made an agreement in advance.

22 More simply put, at the time Respondent Mathis explained the need for an executive session
23 to discuss vendor proposals and spoke about a transparent process. Unknown to the public, the
24 determination to award the "mapping consultant contract" appears to have already been made.

25 2. FRUSTRATION OF INVESTIGATION

26 Attorney General Thomas C. Horne ("Attorney General") is charged with the
enforcement of the provisions of Open Meeting Law. After being alerted to possible Open
Meeting Law violations, the Attorney General instituted an investigation. A.R.S. § 38-431.06.

1 This statute provides, in part:

- 2 A. On receipt of a written complaint signed by a complainant alleging a
3 violation of this article or on their own initiative, the attorney general or the
4 county attorney for the county in which the alleged violation occurred may begin
5 an investigation.
- 6 B. In addition to the powers conferred by this article, in order to carry out the
7 duties prescribed in this article, the attorney general or the county attorney for the
8 county in which the alleged violation occurred, or their designees, may ...
- 9 3. Examine under oath any person in connection with the investigation of the
10 alleged violation of this article ... (emphasis added).

11 A.R.S. § 431-131.06(D) provides for court enforcement of these provisions.

12 During the course of this investigation, the State has made numerous requests to
13 voluntarily interview the Respondents:

- 14 1. On July 29, 2011 Special Agent David Lakey contacted the Commission's
15 receptionist requesting interviews of the Respondents.
- 16 2. On August 1, 2011 Assistant Attorney General Mark Wilson emailed
17 Commission Counsel Mary O'Grady requesting to interview the Respondents.
- 18 3. On August 2, 2011 Assistant Attorney General Mark Wilson requested to
19 interview the Respondents during a telephone conversation with Commission
20 Counsel Mary O'Grady and Joe Kanefield.
- 21 4. On August 4, 2011 Assistant Attorney General Mark Wilson emailed
22 Commission Counsel Mary O'Grady requesting to interview the Respondents.
- 23 5. On August 5, 2011 Commission Counsel Mary O'Grady emailed Assistant
24 Attorney General Mark Wilson suggesting that Respondent Mathis might be
25 available for an interview on Wednesday.
- 26 6. On August 8, 2011 Assistant Attorney General Mark Wilson contacted
Commission Counsel Mary O'Grady by telephone asking for times Respondent
Mathis would be available on Wednesday.

1 7. On August 9, 2011 Assistant Attorney General Mark Wilson emailed
2 Commission Counsel Mary O'Grady requesting the time for Respondent Mathis'
3 interview and to interview the other Respondents.

4 8. On August 9, 2011 Commission Counsel Mary O'Grady emailed Assistant
5 Attorney General Mark Wilson that Respondent Mathis was not available on
6 Wednesday and provided no alternative times.

7 9. Finally, on August 11, 2011, after all attempts at voluntary interviews had been
8 frustrated, the State served written investigative demands on the Respondents.
9 The Respondents have refused to respect those demands and the Commission did
10 not file its objections until August 29, 2011.

11 Two Commissioners have testified. The other three Respondents have stonewalled the
12 investigation, delaying the filing of this petition by over a month by such devices as stating a
13 Respondent might be available to testify on a given date, and then cancelling that date without
14 giving an alternate time for the testimony.

15 In addition, the Attorney General served written investigative demands on each of the
16 Respondents on August 11, 2011. A copy of each written investigative demands is attached as
17 Exhibit 4. The purpose was to secure testimony and documentary evidence that might assist
18 the Attorney General in his investigation of possible open meeting violations. The testimony
19 and documents sought are clearly relevant to this issue. Nevertheless, members of the
20 Commission have refused to provide testimony or any of the documents requested.

21 On August 29, 2011, the Commission objected to the State's written investigative
22 demands (Commission's Objections, Exhibit 1). It did so after both law firms representing the
23 Commission had been present at Commissioner Stertz's interview and had knowledge of all of
24 the factual allegations contained in this Petition, including the factual basis for reasonable
25 cause in this case. Both law firms knew of private meetings, telephone calls, descriptions of
26 negotiations that did not occur in an open meeting, a statement explaining a Commission vote

1 prepared prior to the vote, and three scoring sheets that were identical. As will be set forth
2 more fully below, the Commission's objections are without basis because the State has
3 reasonable cause to undertake an investigation. The State's response to the Commission's
4 objection are set forth on Exhibits 2 and 3.

5 3. THE STATE HAS REASONABLE CAUSE TO BELIEVE THAT A VIOLATION
6 HAS OCCURRED

7 It is critical for the Attorney General to conduct a fair and thorough investigation
8 concerning potential violations of the Open Meeting Law. The work of the Commission may
9 materially affect the political landscape of this state for the next decade. The public must have
10 confidence in its work. The public must be assured that there were no secret deals. The
11 constitutional mandate of openness must be upheld. Ariz. Const. Art. IV pt. 2 § 1(12)

12 The Attorney General initiated this investigation pursuant to A.R.S. §38-431 *et. seq.*
13 after receiving information that possible violations of the Open Meeting Law occurred.
14 Pursuant to that investigation, Commissioner Stertz and Commissioner Freeman testified under
15 oath. That testimony, together with other unrefuted facts, demonstrates that there is reasonable
16 cause to believe that there has been a violation of the Open Meeting Law. A.R.S. §38-431 *et.*
17 *seq.*

18 On August 24, 2011, Commissioner Stertz testified that he was contacted twice (once on
19 June 28th and once on June 29th) by Respondent Mathis prior to the vote to award the contract.
20 During the June 28th conversation, Respondent Mathis told Commissioner Stertz that she hoped
21 for a 5-0 vote the next day. Following this initial conversation, Commissioner Stertz described
22 the June 29th conversation as follows:

23 [R]eiterated that her goal for the day was a 5-0 vote and she wanted to – she was
24 asking me for her – for the vote in the affirmative for Strategic Telemetry.

25 I then answered the – I then asked her this question. I said, Colleen, is this a quid
26 pro quo?

1 And her answer to me was, there will come a time down the road when you will –
2 there will be a tough decision to be made and you will need my vote.

3 And I asked her again to make sure that it was clear, Colleen, is this a quid pro
4 quo?

5 And she said – she reaffirmed the answer...

6
7 I said, if you are looking for a 5-0 vote, am I the fifth vote? And she said she did
8 not have an answer from Commissioner Freeman: (pgs. 12-13)

9 This last statement implied that she did have three votes from the other three
10 Commissioners, as the only uncertainty she expressed, as to a 5-0 vote, was Freeman.
11 Commissioner Stertz testified further as follows:

12 It was – approximately a half hour conversation, and it was a continued attempt to
13 persuade me that a 5-0 vote was imperative ... So I now knew that at least that
14 there was three no and an unknown [ie. 3 “yes” 1 “no” 1 “unknown”]. Pgs. 15-16

15 This conversation occurred while Respondent Mathis was on a speaker telephone in the
16 presence of her husband (Stertz Interview, pg 12 line 5 through pg 17, line 14 and pg 32, lines
17 10 through 25).

18 Commissioner Freeman also testified that Commissioner Mathis contacted him by
19 telephone on June 29th and requested that he vote for Strategic Telemetry because she sought a
20 unanimous vote. Commissioner Freeman testified:

21 To the best of my recollection, as I sit here right now, the conversation concerned
22 Commissioner Mathis expressed her support of Strategic Telemetry and she
23 desired – she expressed a desire for a unified front; that the Commission vote
24 unanimously in favor of the award, the contract award to that firm. And she
25 wanted my support on that, and I did not tell her how I – how I would vote.
26 However, I did say that – I do recall saying that that was a very tough thing to ask
me to do, which is about as far as I went on that score.

The – I recall that she said that she did not know how Commissioners Herrera or
McNulty would vote. And I recall that I told her that I did not know how
Commissioner Stertz would vote. I recall that, although I don't remember the

1 words exactly, I recall developing an understanding that I believe she was going
2 to call Commissioner Stertz before the hearing. And I recall that I expressed
3 reservations about that because we would be meeting as a Commission in just a
4 couple of hours and thought that that would be the most – more appropriate time
5 to do that. (Freeman Interview, pg 8, lines 5 through 16).

6 Commissioner Mathis' statement to Commissioner Freeman that she did not know how
7 the others would vote is controverted by other evidence. Asking Commissioners Stertz and
8 Freeman for a 5-0 vote made no sense unless she had three votes lined up. Respondent Herrera
9 would later state that his vote had been negotiated. As discussed below, Respondents Mathis,
10 Herrera and McNulty appear to have made an agreement to give Strategic Telemetry a perfect
11 score, something they were highly unlikely to have done independently.

12 In addition, Commissioner Mathis contacted Commissioner Freeman two times by
13 telephone almost a week earlier, on the day before the meeting to interview potential vendors
14 and requested his vote for a contract award to Strategic Telemetry. Commissioner Freeman
15 replied that he wanted to see how the four companies performed in their interviews. (Freeman
16 Interview, pg 22, line 22 through pg 27 line 17). Commissioner Mathis explained to
17 Commissioner Freeman that Commissioner Freeman might need a vote in a future matter as she
18 was requesting his vote for Strategic Telemetry. (Freeman Interview, pg 11 line 14 through pg
19 12 line 18).

20 Further, immediately after the vote on June 29th, Respondent Mathis read from a
21 prepared statement explaining the Commission's vote to award the contract to Strategic
22 Telemetry. This was a statement to the public explaining the vote that had just occurred, but the
23 statement was clearly prepared prior to that vote. The Commission posted on its web page a
24 document purporting to be her statement. Commissioner Stertz did not observe Commissioner
25 Mathis preparing the written statement after the vote and understood it to have been created
26 prior to the vote (Stertz's Interview, pg 23, line 25 through pg 24, line 10).

1 At this same meeting when Respondent Mathis read from a pre-prepared statement,
2 Respondent Herrera stated:

3 I want to state for the record that Research Advisory Services was my number
4 one choice. I thought the proposal was impeccable. Every RAS districting plan
5 has been pre-cleared DOJ on the first submittal. Their interview was top notch. I
6 think Mr. Sissons answered every question honestly and was very detailed.

7 The proposed time line was very realistic. You know they proposed a
8 collaboration with IRC's legal counsel.

9 Everything – every question we asked of RAS was answered, was answered well,
10 even during tough examination.

11 So I – they would be my number one choice.

12 However, in the spirit of cooperation and negotiation, I'm willing to support
13 Strategic Telemetry. (emphasis added) (Transcript of Commission's June 29,
14 2011 meeting, pg 41).

15 Although, a number of Commissioners explained their votes during the June 29th
16 meeting, the Attorney General has not been able to identify any negotiation between the
17 Commissioners concerning how one was voting or should vote that occurred during the open
18 meeting. Neither Commissioner Stertz nor Commissioner Freeman were able to recall any
19 such negotiation while they were present. (Stertz's Interview, pg 19, line 16 through pg 20, line
20 20 and Freeman Interview, pg19, line 17 through pg 20 line 6). The negotiations that
21 Respondent Herrera discussed did not occur in an open meeting and could very well constitute
22 a violation of the Open Meeting Law.

23 Commissioner Herrera's scoring sheets, which were prepared sometime before the June
24 29th open meeting vote, do not reflect his statements that RAS was his first choice. Instead,
25 Commissioner Herrera scored Strategic Telemetry's proposal as the top proposal granting
26 Strategic Telemetry 100% of the possible points on all categories he evaluated.

27 In addition to Respondent Herrera, the two other Respondents, Mathis and McNulty,
28 also awarded Strategic Telemetry 100% of the points for all categories they evaluated.
29 Commissioner Stertz, explained that:

1 "I find it strangely odd that there were three perfect scores for this particular
2 consultant, and I am concerned that knowing how the RFP was crafted and
3 knowing the skill set of the consultants that were proposing that the ability to
4 have a perfect score would if – not being intellectually dishonest, okay, would be
5 impossible to achieve.

6 And I say that because in the request for the proposal there are certain criteria that
7 needed to be met where if a particular consultant could not provide that it would
8 have provided a reduction in score." (Stertz's interview, pgs. 34-35)

9 The foregoing facts demonstrate that there is reasonable cause to believe that an Open
10 Meeting Law violation occurred. Commissioner Mathis privately phoned two Commissioners
11 (Freeman and Stertz), outside of a public meeting and asked that they vote for Strategic
12 Telemetry so as to make the selection unanimous. This suggests that she already knew how the
13 remaining two Commissioners were going to vote. Further, Commissioner Herrera stated on
14 the public record that Strategic Planning was not his first choice but he selected that entity
15 through private negotiations. There is then the specter of three Commissioners providing three
16 perfect and identical scores for Strategic Telemetry. Finally, Commissioner Mathis prepared a
17 written statement of the June 29 meeting justifying the 3-2 vote of the Commission in favor of
18 Strategic Telemetry. All of this points to a decision reached through private coordination of
19 effort, out of view and hearing of the public. Such private, concerted effort is wrong and
20 constitutes an Open Meeting Law violation.

21 The U.S. Supreme Court has consistently recognized that in proper circumstances,
22 "aside from the privilege against compelled self-incrimination . . . silence in the face of
23 accusation is a relevant fact not barred from evidence by the Due Process clause. *Baxter v.*
24 *Palmigiano*, 425 U.S. 308, 318-19 (1976). In fact, "[s]ilence is often evidence of the most
25 persuasive character." *Id.*, quoting *U.S. ex rel. Bilokumsky v. Tod*, 263 U.S. 149, 153-54 (1923).
26 In *U.S. v. Hale*, 422 U.S. 171, 176, 95 S.Ct. 2133, 2137 (1975), the Court stated that "[f]ailure
to contest an assertion . . . is considered evidence of acquiescence . . . if it would have been
natural under the circumstances to object to the assertion in question." *Id.*

1 The failure of the three Respondents to cooperate in this investigation also adds to
2 the inference that there is a violation of law. If no wrongdoing had occurred, there would be
3 nothing to hide and we would expect Commissioners Mathis, Herrera and McNulty to be
4 forthcoming and cooperate, just as Commissioners Stertz and Freeman cooperated. It is
5 reasonable to draw an inference the three Respondents do not wish to testify under oath because
6 of concern that they committed an Open Meeting Law violation.

7 The U.S. Supreme Court has further recognized that “the Fifth Amendment does not
8 forbid adverse inferences against parties in civil actions when they refuse to testify in response
9 to probative evidence offered against them.” *Baxter*, 425 U.S. at 318; *see Castro v. Ballesteros-*
10 *Suarez*, 222 Ariz. 48, 53, 213 P.3d 197, 202 (App. 2009) (finding that when a party invokes his
11 right against self-incrimination in a civil case, “the trier of fact is free to infer the truth of the
12 charged misconduct”).

13 The Attorney General has reasonable cause to investigate an Open Meeting Law
14 violation.

15 4. THE OPEN MEETING LAW APPLIES AND A.R.S. § 38-431.06 AUTHORIZES THE
16 ATTORNEY GENERAL TO ISSUE WRITTEN INVESTIGATIVE DEMANDS

17 The Commission objects that the statutory Open Meeting Law does not apply and sets
18 forth a position that is inconsistent with its past practice. The Open Meeting Law applies to all
19 “public bodies” and “public body” is defined to include the Legislature. A.R.S. § 38 431(6).
20 The Commission consistently has applied the statutory Open Meeting Law to its meetings. In
21 fact, many Commission agendas specifically cite to the Open Meeting Law for substantive
22 authority for an action. (*See generally*, Agenda for June 29, 2011 Commission Meeting). The
23 Commission has applied not only the procedural but also the substantive provisions of the
24 statutory Open Meeting law. The procedural issues address such things as posting notice. The
25 substantive provisions, however, address the very ability of a body to enter into an executive
26 session. A.R.S. § 38-431.03.

1 In addition to being included within the definition of “public body”, the Commission’s
2 long-standing interpretation of its implementing authority is persuasive. *Long v. Dick*, 87 Ariz.
3 25, 347 P.2d 581 (1959). The Commission has consistently applied the statutory Open Meeting
4 Law to the conduct of its business. The Commission now argues that it is not controlled by the
5 statutory Open Meeting Law requirements but instead by the Constitutional open meeting
6 requirements. Ariz. Const. Art.4 pt.2 §1(12) requires that all Commission business be
7 conducted in public. It contains no provision for executive sessions. As such, if the
8 Commission’s new position is correct and the statutory Open Meeting Law does not apply, the
9 Commission has violated the Constitution each time it has held an executive session.

10 5. COMMISSION HAS FAILED TO MAKE A GOOD FAITH ATTEMPT TO COMPLY
11 WITH THE WRITTEN INVESTIGATIVE DEMANDS

12 The Commission has raised a number of separate objections including legislative
13 privilege, attorney client privilege and the general breadth of the documents requested. (*see*
14 Commission’s Objections, Exhibit 1).

15 Briefly, on the issue of legislative privilege, the Open Meeting Law investigation has
16 concerned whether the Commission and its Commissioners have appropriately conducted
17 business in public, subject to public scrutiny. In *Arizona Independent Redistricting Commission*
18 *v. Fields* 206 Ariz. 130, 75 P.3d 1088 (2003), a coalition disagreed with maps drawn by the
19 IRC, claiming they failed “to make the legislative districts sufficiently competitive.” 206 Ariz.
20 at 135. The court held that the Commission members were entitled to legislative privilege on
21 this issue, stating that “a state legislator engaging in legitimate legislative activity may not be
22 made to testify about those activities, including the motivation for his or her decision.” 206
23 Ariz. at 137. (emphasis added).

24 We agree that someone disagreeing with the substance of a legitimate legislative
25 decision should not be able to question the decision makers on the reason for their decision.
26 But that should not protect illegitimate activities involving violations of the law. If it did, then

1 even if there were evidence of bribery, Commission members could claim that they had
2 legislative privilege, that they could not be questioned about whether they were bribed or not,
3 and that they could be free to throw decisions in favor of whatever party was willing to pay
4 them the largest bribes.

5 The courts have narrowly construed constitutional, common law, and statutory immunity
6 “for they are in derogation of the search for truth” *United States v. Nixon*, 418 U.S. 683, 709-
7 710, 94 S.Ct. 3090, 41 L.Ed 2d 1039 (1974). The legislative privilege does not apply to
8 administrative acts, *Arizona Independent Redistricting Commission v. Fields*, 206 Ariz. 130, 75
9 P2d. 1088 (App. 2003) which would include the administration of contracts. *Cinevision v.*
10 *Burbank*, 745 F.2d 560 (9th Cir. 1984). Even assuming, however, that a legislative privilege
11 applies to these discussions, legislative actions must be done in accordance with procedural
12 requirements such as the Open Meeting Law. The Open Meeting Law and the Commission’s
13 constitutional provision requiring open meetings were adopted to ensure that the public has
14 access to the discussions of its representatives on public matters. The “legislative privilege”
15 was not intended to and does not infringe upon the Commission’s constitutional and statutory
16 obligations to provide public access to those discussions.

17 To date, the Commission and/or Commissioners have provided no documents described
18 in the written investigative demands. This is wrong. Most, if not all, of the documents requested
19 are public records. There has been no attempt to redact documents the Commission believes
20 contain attorney-client privilege information or provide those documents that (1) the
21 Commission/Commissioners view as not being covered by a privilege, or (2) if covered by
22 privilege provide those documents for which the privilege has been waived. Nor is there an
23 issue regarding the relevance of these documents. To the extent that some documents contain
24 both relevant and irrelevant materials, such as cell phone records, the Attorney General would
25 readily agree to the redaction by the Commission’s counsel of the irrelevant information.

26

1 The objection raises a question about alleged conflicts of interest. These are answered in
2 a letter by Mary Jo Foster, the ethics attorney for the Attorney General's office, who was also
3 the ethics attorney under the Goddard administration, and serves on the Arizona State Bar's
4 Ethics Committee (Exhibit 2).

5 Finally, the request for records is not overbroad. Each request for the production of
6 documents was limited in time from a date shortly before the proposals were opened to a date
7 shortly after the June 29th vote (approximately one month). In its objections, the Commission
8 requested that we make public the transcript of the executive session. We agree, but we believe
9 a court order is necessary to do that. In the meantime, there is a portion of that transcript which
10 is relevant to this motion, which will be filed with the Court under seal until such time as the
11 court authorizes the parties to make public the transcript of the executive session.

12 6. CONCLUSION

13 The State respectfully requests that the Court issue an Order to Show Cause why the
14 Respondents should not fully comply with the written investigative demand. The State requests
15 that the Respondents be ordered to comply with the written investigative demands.

16 RESPECTFULLY SUBMITTED this 7 day of September, 2011.

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18 THOMAS C. HORNE
19 Attorney General

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22 Thomas C. Horne
23 Attorney General
24 Mark D. Wilson
25 Assistant Attorney General
26 Attorneys for Petitioner

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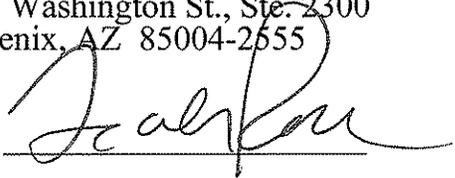
1 ORIGINAL of the foregoing filed this
7th day of September, 2011 with:

2
3 Maricopa County Superior Court
201 W. Jefferson
Phoenix, AZ. 85003-2243

4
5 COPY of the foregoing mailed and e-mailed
This 7th day of September, 2011 to:

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