

BEFORE THE ARIZONA INDEPENDENT REDISTRICTING COMMISSION

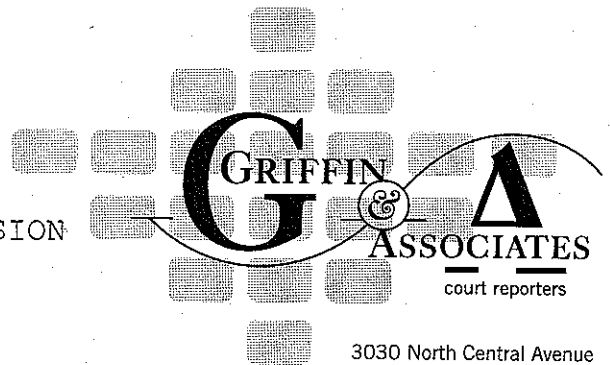
REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona
November 18, 2005
12:59 p.m.

REPORTED BY:
RABIN CASTRO, RPR, CR
CERTIFIED REPORTER
CR #50653

PREPARED FOR:
INDEPENDENT REDISTRICTING COMMISSION

(COPY)



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PROCEEDINGS

[1] PROCEEDINGS
[2]
[3] MR. LYNN: All right. We will call the — the
[4] meeting to order. For the record, the — all commissioners
[5] are present. We should probably — for the record should do
[6] a roll call.
[7] Vice Chairman Minkoff?
[8] MS. MINKOFF: Here.
[9] MR. LYNN: Mr. Elder?
[10] MR. ELDER: Here.
[11] MR. LYNN: Mr. Huntwork?
[12] MR. HUNTWORK: Here.
[13] MR. LYNN: Mr. Hall?
[14] MR. HALL: Here.
[15] MR. LYNN: Mr. Hall is with us by phone.
[16] And we also have counsel present and staff.
[17] First item on the agenda is public comment. This
[18] is the time and place for consideration and discussion of
[19] issues brought to us by the public. Anyone who wishes to
[20] speak should fill out a yellow speaker's card, and we will
[21] take them in order.
[22] I have one such form, and it is from
[23] Mark Dangerfield, who is the attorney for Arizonans for Fair
[24] and Legal Redistricting.
[25] Mr. Dangerfield.

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[1] BE IT REMEMBERED that Pursuant to Notice, the
[2] Public Meeting of the Arizona Independent Redistricting
[3] Commission was taken before RABIN CASTRO, RPR, CR, a
[4] Certified Reporter, in and for the County of Maricopa, State
[5] of Arizona, on November 18, 2005, commencing at 12:59 p.m.,
[6] at the offices of ARIZONA INDEPENDENT REDISTRICTING
[7] COMMISSION, 1400 West Washington, Hearing Room M, Phoenix,
[8] Arizona 85007.

[9]
[10] APPEARANCES:
[11] MR. STEVEN W. LYNN, Chairman
[12] MS. ANDREA MINKOFF, Vice Chairman
[13] MR. JAMES R. HUNTWORK, Commissioner
[14] MR. DANIEL ELDER, Commissioner
[15] MR. JOSHUA HALL, Commissioner
[16] MS. LISA HAUSER, Counsel for Commission
[17] MR. JOSE DE JESUS RIVERA, Counsel for Commission
[18] MR. ADOLFO ECHEVESTE, Executive Director

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[1] MR. DANGERFIELD: Yes. Thank you.
[2] I wanted to talk for just a few minutes about the
[3] pending motion to expedite the supreme court review of the
[4] court of appeals decision. That motion was filed by the
[5] Minority Coalition.
[6] And the supreme court has already denied that
[7] motion in part, and — and in denying the motion has ordered
[8] that the — the responses to the petitions for review be
[9] filed in the ordinary course.
[10] The — the order suggested that the court might
[11] entertain or might make decisions to expedite beyond the —
[12] once those petitions are filed. I wanted to address that
[13] for just a moment.
[14] I believe that it's important that the supreme
[15] court not try and expedite the resolution of this matter,
[16] and the reason — there's really a couple of reasons for
[17] that.
[18] One is that expediting the — the review process
[19] at this point really can't have any — it can't do any good.
[20] The reason that the Minority Coalition sites is that they
[21] want to get things changed prior to the 2006 elections, and
[22] for reasons I'm going to talk about in just a minute.
[23] There's almost no possible conceivable way that a change can
[24] be effected that would affect the 2006 election.
[25] And — but the most important reason is — for not

[1] trying to expedite review is that the supreme court is
[2] dealing with some very complex issues that shouldn't be
[3] rushed. And if you look at the court of appeals opinion —
[4] I'm sure the members of the Commission have all seen it —
[5] it's 75 pages long.

[6] This — the court of appeals normally on average
[7] will — will resolve a case within about 90 days of oral
[8] argument. This case it took the Court six months after oral
[9] argument on the case to come out with their — their 75-page
[10] opinion.

[11] And I — I'm quite sure it took that long because
[12] there was a lot of work involved, there was a factual record
[13] that involved not only a 60-plus-page opinion by the trial
[14] judge, but a lot of disputed factual issues and legal
[15] issues.

[16] And the court of appeals took six months to
[17] carefully consider it, they came out with a very
[18] well-reasoned opinion, and we now have three members of the
[19] court of appeals that unanimously agree that Judge Fields
[20] got it wrong and that this commission got it right.

[21] For the supreme court to try and summarily or
[22] quickly pass on that doesn't really make sense, particularly
[23] when you think that what the supreme court is doing in this
[24] review is not looking at the 2006 election; they're looking
[25] at the rest of the history of elections in Arizona.

[1] That is to say their decision, if they — whether
[2] they accept review, deny review, affirm, reverse, their
[3] decision will be the way this constitutional provision is
[4] interpreted not just for the 2006 election, but for every
[5] other election extend — extending into the future of
[6] Arizona.

[7] And so under those circumstances, it really
[8] doesn't make sense to try and urge the Court to do a quick,
[9] rush job of it.

[10] The Commission struggled with these issues itself
[11] over a long period of time, and you have a good
[12] understanding, and as does your counsel, of how tricky and
[13] complicated these are. Takes some reflection and some time
[14] to appreciate them. And the supreme court ought to do that
[15] in the normal course of things.

[16] Now, let me address for a moment what possible
[17] effect it could have if the — if review is expedited.

[18] I — I suggest that there's really almost no way
[19] that it could affect the 2006 elections, and for this
[20] reason: The hoped-for resolution by the Minority Coalition
[21] is that the supreme court would accept review, would reverse
[22] the court of appeals, would affirm Judge Fields, and would
[23] approve the — the alternate court-ordered plan that this
[24] commission came out with under — under court order.

[25] Assuming the supreme court did all of that, under

[1] the present schedule the earliest the supreme court could
[2] consider whether or not to accept review of this matter
[3] would be at — now at their January session, which is at the
[4] end of January.

[5] And the way that would work is if the Court —
[6] assuming the Court decided to accept review, it would then
[7] issue some sort of briefing schedule to the parties and an
[8] oral argument date would be set, and in all likelihood it
[9] would take at least a month to get the briefing done and
[10] then arguments set. There would be an argument probably
[11] sometime in February or maybe March.

[12] And then the Court would take whatever time it
[13] needed to decide. And assuming it was a very quick
[14] decision, maybe we would get a decision in April. But by
[15] then it's too late to affect their — the election, because
[16] assuming the Court did what the Minority Coalition wants it
[17] to do, that is approve this — this court-ordered plan, that
[18] has to then be submitted to the Department of Justice.

[19] Now, you all know it was once submitted, but they
[20] never finished it, and it would have to be resubmitted.
[21] Commission's well aware that there are groups that oppose
[22] that plan, including the — the MALDEF.

[23] And it's — it's anything but certain that the
[24] Department of Justice would approve it. What is certain, or
[25] virtually certain based on the past history of the

[1] Department of Justice and these plans, is it's going to take
[2] more than the minimum 60 days that the Department of Justice
[3] is — is allowed by statute. And of course they're allowed
[4] to request another 60 days after that.

[5] And — and if you — if you look back in history,
[6] it's taken usually four months or more for plans, over the
[7] last ten years, to be reviewed and approved or rejected by
[8] the Department of Justice.

[9] So by the time you get through all that process,
[10] the — there's not going to be — there couldn't be a new
[11] plan in place approved by the Department of Justice until
[12] sometime well into the middle or — or — or latter part of
[13] 2006.

[14] And you've probably seen the filing or the —
[15] Counsels' probably made you aware of the filing by the
[16] Secretary of State, who takes no position on the petition
[17] for review, but — but simply lays out the — the dates
[18] starting with January 1st as the date when legislative
[19] candidates can start seeking fundings through the Clean
[20] Elections Program from members in their district. And so
[21] that assumes they know what those districts are.

[22] By March 1st, the Secretary of State has to
[23] calculate the number of signatures required for nominating
[24] petitions based on the districts, and if there's a change in
[25] those districts after that, of course it affects everything.

[1] So it's — what I've talked about is the — the
 [2] best possible scenario from the Minority Coalition's point
 [3] of view; that is supreme court accepts the review, they
 [4] order — approve the plan that Judge Fields ordered, and
 [5] that goes to the Department of Justice.
 [6] That's only one possible scenario. There are many
 [7] other possible scenarios that the supreme court might do.
 [8] Even if it disagreed with the court of appeals, it might
 [9] simply send it back to the trial court.
 [10] But the point of all this is there's no realistic
 [11] way that hurrying things up can alter the process. And
 [12] there's no — and given that fact — but even if — even if
 [13] that weren't the case, because of the tremendous importance
 [14] and the complexity of these issues, the — the supreme court
 [15] ought to be urged to do exactly the opposite of expediting
 [16] review. They ought to be simply urged to take this case in
 [17] the ordinary course, take whatever time they deem necessary,
 [18] make a decision that'll impact the state and their — the
 [19] interpretation of the constitution on into the future, not
 [20] just looking to — to 2006.
 [21] And if in fact they — they did try to expedite
 [22] review, that mere decision, I suspect, would have an
 [23] unsettling effect on the 2006 elections, because then all of
 [24] a sudden candidates would think, "Oh, gee. Do I really know
 [25] that these are my districts? Maybe they won't be. Maybe

[1] the supreme court will change them. Gee, should I run?
 [2] Maybe I shouldn't run."
 [3] Confusion is the enemy of competitive races. You
 [4] want a situation — whether you agree or disagree with the
 [5] plan, you want a situation where the candidates all know
 [6] well in advance "These are the districts," and then they can
 [7] go ahead and make their decisions to run or not run and
 [8] fight the best race they can.
 [9] And so I — I think all of these reasons tend to
 [10] suggest that the — that the Commission should — should
 [11] oppose any attempt to expedite or have some quick review by
 [12] the supreme court, and simply have it done in the ordinary
 [13] course.
 [14] **MR. LYNN:** Thank you, Mr. Dangerfield.
 [15] Any other members of the public wish to speak?
 [16] **MS. MINKOFF:** Can I ask a question?
 [17] **MR. LYNN:** I think you may, but I want to — I
 [18] want to caution that there are some things that we might
 [19] want to talk about in executive session.
 [20] But in terms of asking Mr. Dangerfield a question,
 [21] certainly.
 [22] **MS. MINKOFF:** Sure. If you'd respond.
 [23] A good lawyer is supposed to be able to argue both
 [24] sides of an issue. And I'm sure you're aware that the
 [25] Minority Coalition, that their attorneys have been quoted as

[1] saying that it's unlikely that even an expedited review
 [2] would be done in time for the 2006 elections.
 [3] **MR. DANGERFIELD:** Yes.
 [4] **MS. MINKOFF:** Given their acknowledging that, can
 [5] you tell me why you believe that they want an expedited
 [6] review?
 [7] **MR. DANGERFIELD:** Well, I guess,
 [8] Vice Chairman Minkoff, you're asking me to read their minds
 [9] a little bit.
 [10] **MS. MINKOFF:** Mm-hmm.
 [11] **MR. DANGERFIELD:** I think — I think the reason
 [12] they're asking for an expedited review is simply the hope
 [13] that even though they don't think it likely, the hope that
 [14] maybe the supreme court would act quickly and — and somehow
 [15] pull off the — the — pull the rabbit out of the hat and
 [16] get things changed before the 2006 election.
 [17] Now, I will say this. When they filed their
 [18] motion, the initial motion was to require the Commission and
 [19] everyone else to respond to the petition for review so that
 [20] the supreme court could consider this matter on their — on
 [21] their November 29th calendar. And if — if they had been
 [22] able — if they had done that, then that would have added —
 [23] that would have shortened the time, presumably, by a couple
 [24] of months, at least.
 [25] Now, that hasn't happened. Since the supreme

[1] court denied that part of their motion, that — that puts a
 [2] whole different blush on it, because now it's really, really
 [3] unlikely.
 [4] **MS. MINKOFF:** Okay. But you think that if they
 [5] had gotten the November 29th date, and all of the other
 [6] results that they're hoping for, that it might have happened
 [7] in time for the 2006 election?
 [8] **MR. DANGERFIELD:** I don't, but —
 [9] **MS. MINKOFF:** Yeah, I don't, either. Just thought
 [10] I'd clear that up.
 [11] **MR. LYNN:** Thank you, Mr. Dangerfield.
 [12] Other members of the public wishing to be heard at
 [13] this time?
 [14] **MS. BARNES:** Can I make a comment and fill out a
 [15] form after the fact?
 [16] **MR. LYNN:** Certainly. If you would, however,
 [17] state your name and position for the record, and we'll get
 [18] you a form.
 [19] **MS. BARNES:** Sure. My name is Rhonda Barnes, and
 [20] I'm with Perkins Cole Brown & Bain, who represents the
 [21] Arizona Minority Coalition. I just wanted to clarify one
 [22] point.
 [23] The supreme court could actually decide to
 [24] consider your petition for review not in the normal course
 [25] of their calendar. That is, even though the petition for

[1] review is scheduled — isn't until January, the Court could
[2] actually have a special agenda day and hear the petitions
[3] prior to January. I know they've done that before.

[4] So even if they don't hear it — you know, I think
[5] the response is due traditionally on the 8th — the Court
[6] could actually decide as early as the 9th that they want to
[7] consider those petitions together as a group, and that way
[8] they would expedite process that way.

[9] So it's not only that they won't be heard until
[10] January. That's all I wanted to clarify.

[11] **MR. LYNN:** Thank you. Appreciate that.

[12] Any other members of the public wishing to be
[13] heard?

[14] I think we've heard from every member of the
[15] public who happens to be here, with the exception of one,
[16] who is sort of a member of the public.

[17] Strike that from the record, because that was
[18] gratuitous.

[19] We'll go back to — now, Josh, that was for
[20] John Mills, just so you know.

[21] **MS. HAUSER:** Sort of a mascot in a way.

[22] **MR. LYNN:** Certainly a Commission favorite because
[23] he's been around and around and around.

[24] We will — we will perhaps go — return to public
[25] comment at some other point in the agenda, but let's at this

[1] point move through the agenda as quickly as we can.

[2] Item three is the opportunity for the Commission
[3] to meet in executive session to consider legal matters.

[4] Is there a motion for an executive session?

[5] **MS. MINKOFF:** So moved.

[6] **MR. LYNN:** Is there a second?

[7] **MR. ELDER:** Second.

[8] **MR. LYNN:** Discussion on the motion?

[9] All those in favor of the motion, signify by
[10] saying "aye."

[11] **MS. MINKOFF:** Aye.

[12] **MR. ELDER:** Aye.

[13] **MR. HUNTWORK:** Aye.

[14] **MR. HALL:** Aye.

[15] **MR. LYNN:** Opposed say no.

[16] Motion carries.

[17] And pursuant to ARS 38-43103(A)(3) and
[18] ARS 38-43103(A)(4), the Commission will recess their open
[19] meetings, go into executive session.

[20] I've never been able to — to get how long these
[21] last. I've always been wrong. So I would say if you're
[22] interested in the rest of the proceedings, have a soda,
[23] relax, and we'll call you when we're finished.

[24] (Executive Session was held from 1:18 to
[25] 1:50 p.m.)

[1] (Mr. Echeveste not present.)

[2] **MR. LYNN:** All right. Let's go back on the record
[3] while Adolfo will join us in a moment.

[4] For the record, all commissioners are present
[5] either in person or telephonically, as is Counsel.

[6] Item four. Is there in fact a motion with respect
[7] to the Commission's position on the issue of expedited
[8] consideration at the supreme court?

[9] Mr. Huntwork?

[10] **MR. HUNTWORK:** Mr. Chairman, I would — I — I
[11] move that this commission oppose expedited —

[12] (Mr. Echeveste entered the room.)

[13] **MR. HUNTWORK:** — consideration of these issues at
[14] the level of the supreme court.

[15] **MR. LYNN:** Is there a second to the motion?

[16] **MS. MINKOFF:** I'll second it.

[17] **MR. LYNN:** Thank you.

[18] Discussion on the motion.

[19] Mr. Huntwork?

[20] **MR. HUNTWORK:** Mr. Chairman, there is a phrase I
[21] remember well from law school that refers to the legal
[22] process; "Moving with all deliberate speed." It means
[23] justice must be swift, but it must also be sure and
[24] accurate.

[25] The — the rules that are in place, the time

[1] tables that are in place, are designed to allow counsel and
[2] the court the opportunity for full and careful deliberation
[3] of issues without taking unnecessary time to do so. They
[4] are rules which apply even to simple cases and to cases
[5] which do not have nearly the level of public importance
[6] that — that this one does.

[7] So you have a combination of factors pulling at
[8] you with this case. Of course the importance of the issues
[9] argues for as much speed as possible and for as quick a
[10] resolution as possible, but at the same time it also argues
[11] for an even more careful and accurate result of those
[12] deliberations.

[13] So I — I think that, in my mind, at least, the
[14] rules that are in place, the time tables that are in place,
[15] have been crafted over many years to apply in many different
[16] situations and will work very well for the important matter
[17] that — that we have before the court.

[18] And I also — at the same time, I think that we
[19] need to be very careful and admonish our Counsel as much as
[20] possible not to be the cause of any delays or hopefully not
[21] have to ask for any extensions of those time periods, but —
[22] but do our best to live within them so that this matter can
[23] move forward and be resolved as expeditiously as — with all
[24] deliberate speed.

[25] **MR. LYNN:** Thank you.

[1] Miss Minkoff.

[2] **MS. MINKOFF:** Yeah. Mr. Chairman, I certainly

[3] agree with — with Mr. Huntwork's comments, which were more

[4] philosophical in nature.

[5] I have a very practical reason for supporting the

[6] motion, and that is that I believe that the risk of

[7] confusion regarding the 2006 election is greater than the

[8] possible benefit of having this decided in time for that

[9] election.

[10] I think it's highly unlikely, even with expedited

[11] consideration, with the need go to the Department of

[12] Justice, that anything can happen that would affect the 2006

[13] election. And I think the likelihood of confusing the

[14] process and creating uncertainty is far greater, and so

[15] that's reason that I support the motion.

[16] **MR. LYNN:** Thank you, Miss Minkoff.

[17] Further discussion on the motion.

[18] Hearing none, are you ready for the question?

[19] All those in favor of the motion to oppose

[20] expedited consideration at the supreme court level signify

[21] by saying "aye."

[22] **MS. MINKOFF:** Aye.

[23] **MR. ELDER:** Aye.

[24] **MR. HUNTWORK:** Aye.

[25] **MR. HALL:** Aye.

[1] **MR. LYNN:** Chair votes aye.

[2] The motion carries unanimously. It is so ordered.

[3] Any other business under item four?

[4] If not, item five, call to the public.

[5] Are there other members of the public who wish to

[6] be heard at this time?

[7] Seeing none, we'll move to item six, executive

[8] director report.

[9] Mr. Echeveste?

[10] **MR. ECHEVESTE:** There is no report at this time.

[11] **MR. LYNN:** Thank you. Appreciate your

[12] conciseness.

[13] **MS. MINKOFF:** Good report.

[14] **MR. LYNN:** Item seven, opportunity for members of

[15] the Commission to make any closing statements they wish to

[16] make for the vast throngs who are here to hear those

[17] statements. Clearly not necessary today.

[18] If no one seeks recognition under item seven, item

[19] eight, a reminder that the next scheduled meeting, although

[20] not yet noticed, but scheduled, meeting of the Commission is

[21] December 1st, 10:00 a.m., probably in this general vicinity.

[22] And that brings us to item nine, adjournment. The

[23] Commission will stand adjourned until the call of the Chair.

[24] Thank you all very much.

[25] (The Public Meeting was concluded at 1:56 p.m.)

[1] STATE OF ARIZONA)

[2]) ss.

[3] COUNTY OF MARICOPA)

[4] BE IT KNOWN that the foregoing Public Meeting of

[5] the Arizona Independent Redistricting Commission was taken

[6] before me, RABIN CASTRO, RPR, a Certified Reporter,

[7] No. 50653, in and for the County of Maricopa, State of

[8] Arizona; that the proceedings were taken down by me in

[9] machine shorthand and thereafter transcribed by

[10] computer-aided transcription under my supervision and

[11] direction; that the foregoing pages, numbered from 1 to 18,

[12] inclusive, constitute a true and accurate transcript of all

[13] the proceedings had upon the taking of said deposition, all

[14] done to the best of my skill and ability.

[15] I FURTHER CERTIFY that I am in no way related to

[16] any of the parties hereto, nor am I in any way interested in

[17] the outcome hereof.

[18] DATED in Laveen, Arizona, this 26th day of

[19] November, 2005.

[20]

[21]

[22]

[23]

[24] RABIN CASTRO, RPR, CR

[25] CR #50653

[1]

Lawyer's Notes



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Lawyer's Notes

