

**SUPREME COURT
STATE OF ARIZONA**

<p>ARIZONA INDEPENDENT REDISTRICTING COMMISSION; et al., Petitioners,</p> <p style="text-align:center">vs.</p> <p>DAVID PETERSEN, in his capacity as State Treasurer, et al.</p> <p style="text-align:center">Respondents,</p> <p style="text-align:center">And</p> <p>ARIZONA MINORITY COALITION FOR FAIR REDISTRICTING, et al.,</p> <p style="text-align:center">Real Parties in Interest.</p>	<p>Arizona Supreme Court</p> <p>Case No. CV-03-0356-SA</p> <p>Maricopa County Nos. CV 2002-004380 CV 2002-004882</p> <p>MARY ANN ARVIZU, RACHEL LONGKNIFE, and JENNIFER McCLARTY'S REPOSE TO PETITIONERS ARIZONA INDEPENDENT REDISTRICTING COMMISSION ET AL.'S APPLICATION FOR INTERLOCUTORY STAY OF PROCEEDINGS</p>
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PLAINTIFFS)

Mary Ann Arvizu, Rachel Longknife, and Jennifer McClarty¹ (the “Congressional Plaintiffs” in the Superior Court) object to the Independent Redistricting Commission’s Application for Interlocutory Stay of Proceedings. In addition to joining any arguments made by the Arizona Minority Coalition, the Congressional Plaintiffs present the following argument:

The IRC seeks a stay of all proceedings in the Superior Court to allow it to seek additional funding. The funding problems of the IRC were caused by itself or by the state government of the Arizona – not by the plaintiffs in the Superior Court action. The IRC chairman and/or attorneys met “several months ago,”² “during the last regular session,” and “in the late spring[,] early summer”³ with the legislative leaders seeking additional funding and met with no success. At that point, the IRC knew that it did not have sufficient funds to proceed with trial and would not obtain those funds through the usual legislative appropriation process.

¹ The Arvizu plaintiffs brought the Congressional redistricting case in the Superior Court. Their original lead plaintiff, Joseph Ricarte, withdrew from the case about a month after the complaint was filed. Even though the Commission named Ricarte as a respondent in this Court, he no longer has any direct interest in the litigation.

² Appendix to Petition for Special Action, item B (transcript of IRC meeting of 8 October 2003, page 8, line 11.

³ Appendix to Petition for Special Action, item C (transcript of Superior Court hearing, 9 October 2003, from 12:23 to 13:14.

On 30 May 2003 (about the same time as the meetings with the legislative leaders), instead of seeking to save money, the IRC removed the redistricting case from Superior Court to U.S. District Court. This caused the cancellation of the Superior Court trial scheduled for 8 July and additional work by all parties.

If the IRC knew in the Winter or Spring of this year that it would need additional funds to pay for the trial of this case, why did it not bring an action for a “constitutional appropriation” at that time? Instead, the IRC removed the redistricting case to federal court – a course of action sure to cause extra work for its own attorneys in preparing the removal papers and most likely defending against a motion to remand. Instead of seeking a stay in the Superior Court at the earliest time it could project it would not have enough money to prepare for and complete a trial, the Commission continued to a point when its plight became more desperate and when a request for a stay would surely delay the scheduled trial.

Because of the actions of the Commission in willfully spending the funds it had without taking timely and adequate steps to obtain more funding, the plaintiffs in the Superior Court should not have their right to a trial delayed. As Judge Fields noted, “Time is of the essence in this case.”⁴

The Congressional plaintiffs are entitled to their day in Court in time to grant them relief. As privately-financed parties,

⁴ Appendix to Petition for Special Action, item C (transcript of Superior Court hearing, 9 October 2003, from 34:11 to 35:7.

they have had to husband their funds so as to pay for the expense and delays caused by the Commission's three special actions to the appellate courts, federal court suit in 2002, and removal to federal court in 2003. The fact that the publicly funded Commission has not exercised similar restraint over its own budget is, to put it bluntly, not the fault of the plaintiffs and should not be cause for the further delay of this trial.

While the IRC asserts that the redistricting trial cannot affect the 2004 elections, we believe that a trial beginning in November can result in a plan effective for the 2004 election. Nominating petitions for congressional candidates can be filed no earlier than 10 May 2004 (with signature requirements announced by the Secretary of State on 1 March).⁵ If the trial is allowed to proceed on schedule and the Superior Court makes an expeditious ruling, the Commission should have ample time to draw new congressional districts in time for the 2004 election. In contrast, a delay in the trial is most certainly going to mean no relief to the plaintiffs in 2004.

The Congressional plaintiffs urge this Court to deny the stay of proceedings.

⁵ If new districts are created after 1 March, "the basis for determining the required number of nomination petition signatures is the number of registered voters in the designated party of the candidate in the elective office, district or precinct on the day the new districts or precincts are effective." ARS § 16-322(D).

RESPECTFULLY SUBMITTED this 20th day of October 2003, by,

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CERTIFICATE OF SERVICE

I hereby certify that on 20 October 2003, a copy of the foregoing
delivered by facsimile, email, and/or first class mail to the following:

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