

ARIZONA SUPREME COURT

STATE OF ARIZONA, ex rel. WILLIAM G.
MONTGOMERY, Maricopa County
Attorney,

Petitioner-Appellant,

v.

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

Respondents-Appellees,

ARIZONA INDEPENDENT
REDISTRICTING COMMISSION, an
Independent Constitutional Body,

Plaintiff,

vs.

THOMAS C. HORNE, in his official
capacity as Attorney General of the State of
Arizona,

Defendant.

Supreme Court No. T-12-0002-CV

No. 1 CA-CV 12-0068

Maricopa County Superior Court

CV2011-016442

CV2011-017914

REC'D OSBORN MALEDON P.A.

MAY 15 2012

**RESPONSE TO PETITION
FOR TRANSFER TO THE SUPREME COURT**

(counsel listed on following page)

Joseph A. Kanefield, 015838
Brunn W. Roysden, 028698
BALLARD SPAHR, LLP
1 East Washington Street, Suite 2300
Phoenix, Arizona 85004-2555
kanefieldj@ballardspahr.com
roysdenb@ballardspahr.com

Mary R. O'Grady, 011434
Joseph N. Roth, 025725
OSBORN MALEDON, P.A.
(00196000)
2929 N. Central Avenue, Suite 2100
Phoenix, Arizona 85012-2793
mogrady@omlaw.com
jroth@omlaw.com

*Attorneys for Arizona Independent
Redistricting Commission*

Timothy A. Nelson, 0167274
Tim Nelson, PLLC
Citiscap Executive Suites
1 E. Washington Street, Suite 500
Phoenix, AZ 85004
tim@timnelsonpllc.com
*Attorneys for Commissioner Jose
Herrera*

Paul K. Charlton, 0124449
Quintin H. Cushner, 0273303
Gallagher & Kennedy, P.A.
2575 E. Camelback Road
Phoenix, AZ 85016
paul.charlton@gknet.com
*Attorneys for Commissioner Colleen
Mathis*

Andrew S. Gordon, 003660
Roopali H. Desai, 024295
Coppersmith Schermer & Brockelman PLC
2800 N. Central Avenue, Suite 1200
Phoenix, AZ 85004
agordon@csblaw.com
rdesai@csblaw.com
*Attorneys for Commissioner Linda
McNulty*

Pursuant to ARCAP 19(e), Respondents hereby oppose the State of Arizona's Petition for Transfer to the Arizona Supreme Court because there are no extraordinary circumstances that justify the transfer. Without explanation, the State argues that a transfer is necessary because the issues raised are of "substantial statewide importance" and therefore must be decided "expeditiously." However, the Court of Appeals is well equipped to decide this appeal in the first instance.

The Arizona Independent Redistricting Commission ("Commission") completed its redistricting work in January, and has only met once in the past four months. Its future meeting schedule will also be limited. To the extent meetings are scheduled in the future, they will be limited to matters involving lawsuits against the Commission and administrative matters, and the Commission will continue following the Open Meeting Law as it has done since its inception. Consequently, the Petition does not present "extraordinary circumstances justifying transfer," ARCAP 19(a)(3), and should be denied.

I. FACTS

This case arises out of an open meeting investigation by the Arizona Attorney General. On August 11, 2011, the Attorney General served civil investigative demands on the five Arizona Independent Redistricting Commissioners, pursuant to A.R.S. § 38-431.06(B)(3). Commissioners Mathis, McNulty, and Herrera properly objected to the civil investigative demands. The

Attorney General then petitioned for enforcement of the demands pursuant to A.R.S. § 38-431.06(D). The Commissioners objected on multiple grounds, including that the Attorney General lacked reasonable cause to believe there may have been a violation of the law, as required by § 38-431.06(D). Additionally, the Commission filed an action seeking a declaration that the civil investigative demands were improper because the Commission is governed by its own open meetings clause, Ariz. Const. art. IV, pt. 2, § 1(12), not the open meeting law, and the demands sought to inquire into matters that were protected by the Commissioners' legislative privilege. It also sought corresponding injunctive relief. The Attorney General and Commission's actions were consolidated.

After hearing argument from the Commission, Commissioners, and County Attorney,¹ the Superior Court agreed with the Commission and Commissioners, dismissed the petition to enforce civil investigative demands, and entered an order declaring that the open meetings clause, not the open meeting law, applied and that the civil investigative demands sought to inquire into matters protected by legislative privilege. Alternatively, the court held that even if the open meetings law did apply, there were not reasonable grounds to believe a violation occurred

¹ The investigation was taken over by the Maricopa County Attorney after the Superior Court disqualified the Attorney General for a conflict of interest.

and therefore there was no basis for the investigation. It is from this judgment that the County Attorney appeals.

II. ARGUMENT

“In the ordinary course, appeals . . . should be to the court of appeals.” *Fleischman v. Protect Our City*, 214 Ariz. 406, 408 ¶ 7, 153 P.3d 1035, 1037 (2007) (quoting *Hancock v. Bisnar*, 212 Ariz. 344, 346 n.3, 132 P.3d 283, 285 n.3 (2006)). Indeed, under ARCAP 19(a), transfer is appropriate only in three specific instances: “[w]here the issue on appeal involves a claim that a decision of the Supreme Court should be overruled or qualified,” “[w]here the issue on appeal is one on which conflicting decisions have been rendered by the Court of Appeals,” and where there are “[a]ny other extraordinary circumstance justifying transfer.”

The Petition relies entirely on the “other extraordinary circumstances” prong, and confuses this standard with “important issues of law,” which may be grounds for granting a petition for review, *see* ARCAP 23(c)(3). The Court of Appeals frequently decides appeals of statewide importance in the first instance, including by interpreting the Arizona Constitution and Arizona Revised Statutes. Indeed, this is the premise of ARCAP 23(c)(3), under which this Court reviews the Court of Appeals’ decisions on such matters. There is no reason why this case cannot proceed through the Court of Appeals followed by a petition for review to this Court if either party thinks further review is warranted.

There are also no unique timing needs that justify bypassing the Court of Appeals. The Commission's redistricting work is done, and its maps have been finalized and precleared by the U.S. Department of Justice. All that remains is litigation. The Commission's last meeting regarding its maps was on January 17, 2012, and the Commission does not have any currently scheduled meetings or plans to meet unless necessary to discuss pending lawsuits or other administrative matters. *See* Ariz. Const. art. IV, pt. 2, § 1(23) ("The [Commission] shall not meet or incur expenses after the redistricting plan is completed, except if litigation or any government approval is pending, or to revise districts if required by court decisions . . ."). The Commission voluntarily follows the open meeting law in addition to its unique Constitutional mandate of openness, so there is no legitimate concern that citizens are precluded from learning about the business of the Commission. Even if this were a legitimate concern, it could be addressed by the Court of Appeals.

III. CONCLUSION

For the forgoing reasons, Respondents respectfully request that this Court deny the Petition for Transfer.

Respectfully submitted this 14th day of May, 2012.

By /s/ Joseph A. Kanefield

Joseph A. Kanefield
Brunn W. Roysden
BALLARD SPAHR, LLP
1 East Washington Street,
Suite 2300
Phoenix, Arizona 85004-2555

Mary R. O'Grady
Joseph N. Roth
OSBORN MALEDON, P.A.
2929 North Central Avenue,
Suite 2100
Phoenix, Arizona 85012-
2794

*Attorneys for Arizona
Independent Redistricting
Commission*

By /s/ Timothy A. Nelson (with permission)

Timothy A. Nelson
Tim Nelson, PLLC
Citiscap Executive Suites
1 E. Washington Street, Suite 500
Phoenix, AZ 85004
tim@timnelsonpllc.com
*Attorneys for Commissioner Jose
Herrera*

By /s/ Paul K. Charlton (with permission)

Paul K. Charlton
Quintin H. Cushner
Gallagher & Kennedy, P.A.
2575 E. Camelback Road
Phoenix, AZ 85016
paul.charlton@gknet.com
*Attorneys for Commissioner Colleen
Mathis*

By /s/ Andrew S. Gordon (with permission)

Andrew S. Gordon
Roopali H. Desai
Coppersmith Schermer & Brockelman PLC
2800 N. Central Avenue, Suite 1200
Phoenix, AZ 85004
agordon@csblaw.com
rdesai@csblaw.com
*Attorneys for Commissioner Linda
McNulty*

ARIZONA SUPREME COURT

STATE OF ARIZONA, ex rel. WILLIAM G.
MONTGOMERY, Maricopa County
Attorney,

Petitioner-Appellant,

v.

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

Respondents-Appellees,

ARIZONA INDEPENDENT
REDISTRICTING COMMISSION, an
Independent Constitutional Body,

Plaintiff,

vs.

THOMAS C. HORNE, in his official
capacity as Attorney General of the State of
Arizona,

Defendant.

Supreme Court No. T-12-0002-CV

No. 1 CA-CV 12-0068

Maricopa County Superior Court

CV2011-016442

CV2011-017914

REC'D OSBORN MALEDON P.A.

MAY 15 2012

CERTIFICATE OF SERVICE

I hereby certify that, on May 14, 2012, I electronically transmitted a PDF version of the Response to Petition for Transfer to the Supreme Court to the Office of the Clerk of the Arizona Supreme Court, for filing, using the AZTurboCourt System.

I further certify that, on May 14, 2012, a copy of the foregoing was emailed and/or U.S. Mailed to:

Clerk of the Court
ARIZONA SUPREME COURT
1501 West Washington, Suite 402
Phoenix, Arizona 85007-3232

M. Colleen Connor
Bruce P. White
Deputy County Attorneys
Civil Services Division
222 North Central Avenue, Suite 1100
Phoenix, Arizona 85004-2206
connorc@mcao.maricopa.gov
whiteb@mcao.maricopa.gov
Attorneys for State of Arizona

Paul K. Charlton, Esq.
Quintin H. Cushner, Esq.
GALLAGHER & KENNEDY, P.A.
2575 East Camelback Road, Suite 1100
Phoenix, Arizona 85004-4429
Paul.charlton@gknet.com
Quintin.cushner@gknet.com
*Attorneys for Respondent-Appellee
Commissioner Colleen Mathis*

Timothy A. Nelson, Esq.
THE NELSON LAW GROUP, P.L.L.C.
One East Washington Street
Suite 500
Phoenix, Arizona 85004
tim@nelsonlawsolutions.com
*Attorneys for Respondent-Appellee
Commissioner Jose Herrera*

Andrew S. Gordon, Esq.
Roopali H. Desai, Esq.
COPPERSMITH SCHERMER &
BROCKELMAN, P.L.C.
2800 North Central Avenue, Suite 1200
Phoenix, Arizona 85004
agordon@csblaw.com
rdesai@csblaw.com
*Attorneys for Respondent-Appellee
Commissioner Linda McNulty*

Respectfully submitted this 14th day of May, 2012.

By /s/ Joseph A. Kanefield

Joseph A. Kanefield
Brunn W. Roysden
BALLARD SPAHR, LLP
1 East Washington Street, Suite 2300
Phoenix, Arizona 85004-2555
Telephone: (602) 798-5400
kanefieldj@ballardspahr.com
roysdenb@ballardspahr.com

*Attorneys for Arizona Independent
Redistricting Commission*



Timeout in 30 min User: kanefieldazgov [Home](#) [Your Profile](#) [Quit](#) [Support](#)

you are working with form set # 524487

Filing Details

- [Change Keyword/Matter #](#)
- [Change My Notification Status](#)
- [Request My Forms](#)
- [Copy for New Form Set](#)
- [List My Forms](#)

Filing Details	Form Set #	524487	Case #	T-12-0002
Messages	Keyword/Matter #	00128245/09699	Status	Delivered
	Filing Type	Appellate Courts Filings	Location	Arizona Supreme Court / Arizona Supreme Court
	Customer Name	Joseph A Kanefield	Customer Email	kanefieldazgovernment@ballardspahr.com
	Delivery Date & Time	05/14/2012 4:30 PM MST	Filing Date & Time	
	Notification Status	Email notification with filing/case details shown in the body of the email, plus a link to the website		

Your filing was successfully completed and delivered. You will be notified when your forms have been accepted. Then a case number will be assigned and a stamped and endorsed copy will be ready for you to print.

Your Forms

[Summary Sheet](#)

[info](#)

[View](#)

Attached Documents

[RESPONSE - Transfer Case: Response to Petition for Transfer to the Supreme Court](#)

[info](#)

[View](#)

[Certificate of Service: Certificate of Service](#)

[View](#)