

SUPREME COURT OF ARIZONA

ARIZONA INDEPENDENT)	Arizona Supreme Court
REDISTRICTING COMMISSION, an)	No. CV-11-0313-SA
Independent Constitutional Body,)	
)	
Petitioner,)	
)	
COLLEEN COYLE MATHIS)	
)	
Intervenor,)	
v.)	
)	
JANICE K. BREWER, in her)	O R D E R
official capacity as the)	
Governor of the State of)	
Arizona; ARIZONA STATE SENATE;)	
RUSSELL PEARCE, in his official)	
capacity as Senate President,)	
)	
Respondents.)	
)	
_____)	FILED 11/23/2011

The Court has received Respondents' Joint Motion to Reconsider Order of November 17, 2011, Respondents' Joint Motion for Expedited Consideration, Respondents' Joint Motion to Stay Order Reinstating Petitioner-Intervenor Mathis Pending Reconsideration, and the Motion to Intervene of Andrew M. Tobin, Speaker of the Arizona House of Representatives and Joinder in the Governor and Senate's Motion for Reconsideration.

After consideration, the Court decides as follows:

IT IS ORDERED granting Respondents' Joint Motion for Expedited Consideration.

IT IS FURTHER ORDERED denying Respondents' Joint Motion to Stay Order Reinstating Petitioner-Intervenor Mathis Pending Reconsideration.

IT IS FURTHER ORDERED denying Motion to Intervene of Andrew M. Tobin, Speaker of the Arizona House of Representatives and Joinder in the Governor and Senate's Motion for Reconsideration. The Court will treat the Motion as an amicus brief.

IT IS FURTHER ORDERED denying Respondents' Joint Motion to Reconsider Order of November 17, 2011, except insofar as the motion seeks clarification of the Order. As the Order notes, the Court accepted jurisdiction of the petition for special action, having concluded that it has jurisdiction under Article 6, Section 5(1) of the Arizona Constitution. The Court further concluded that the issues presented are not political questions committed by the Constitution to the unreviewable discretion of the other branches of government.

IT IS FURTHER ORDERED clarifying the Court's November 17, 2011 Order as it concerns the letter of November 1, 2011, from the Acting Governor to Colleen Mathis. The Order states that the November 1, 2011 letter does not demonstrate "substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office" as required under Article 4, Part 2, Section 1(10) of the Arizona Constitution. Respondents seek clarification whether the Court's conclusion was based on the format of the November 1, 2011 letter, which stated that the Governor had determined that Mathis had "failed to conduct the Arizona Independent Redistricting Commission's business in meetings open to the public, and failed to adjust the grid map as necessary to accommodate all of the goals set forth in Arizona Constitution Art. 4, Pt. 2, § 1(14)."

The Governor's November 1, 2011 letter constitutes her findings of grounds for the removal of Mathis. The Court's conclusion that the letter does not demonstrate "substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office" is based on the letter's substance, not its format. The letter does not, as a matter of law, identify conduct that provides a constitutional basis for removal.

One ground identified in the Governor's letter is a failure to conduct the commission's business in meetings open to the public. The Constitution directs that "[w]here a quorum is present, the independent redistricting commission shall conduct business in meetings open to the public, with 48 or more hours public notice provided." Ariz. Const., Art. IV, Pt. 2, § 1(12). The statutory Open Meeting Law defines "meeting" in terms of a gathering of a quorum, A.R.S. § 38-431(4), and it directs that all meetings of public bodies shall be public meetings and that legal action of

public bodies shall occur in public meetings. *Id.* § 38-431.01(A). A failure to conduct the business of the commission in meetings open to the public must at least involve violations of these laws for it to constitute "substantial neglect of duty" or "gross misconduct." (We do not decide whether the constitutional provision preempts any statutory Open Meeting Law requirements, an issue that is being litigated in another forum.) There is, however, no allegation of any non-public meeting of a quorum of the commission in the Governor's October 26, 2011 letter or in the responses thereto. Nor does the Governor's November 1, 2011 letter find that a non-public meeting of a quorum of the commission occurred.

With regard to preparing maps, the commissioners perform legislative tasks in which they must "balance competing concerns" and "exercise discretion in choosing among potential adjustments to the grid map," *Ariz. Minority Coalition for Fair Redistricting v. Arizona Indep. Redistricting Comm'n*, 220 Ariz. 587, 597 ¶ 28, 208 P.3d 676, 686 (2009), and the commission's adoption of final maps is subject to judicial review for compliance with the Constitution's procedural and substantive requirements. *Id.* at 596 ¶ 24, 208 P.3d at 685. The Governor's disagreement with commissioners over whether they have properly considered constitutional criteria for adjusting the grid map before they have completed final maps is not, as a matter of law, a constitutional basis for removal.

As noted in the Order, the Court in due course will issue an opinion more fully detailing its reasoning in this matter.

DATED this _____ day of November, 2011.

FOR THE COURT

Andrew D. Hurwitz, Vice Chief Justice

TO:

Mary R. O'Grady
Kristin L. Windtberg
Joseph N. Roth
Timothy A. Nelson
Lisa T. Hauser
Joe Sciarrotta
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