



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**KIRK D. ADAMS and RUSSELL PEARCE v. THE COMMISSION ON
APPELLATE COURT APPOINTMENTS et al.
CV-10-0405-SA**

PARTIES:

Petitioners: Arizona House Speaker Kirk Adams and Senate President Russell Pearce.

Respondents: The Commission on Appellate Court Appointments (“Commission”) and its members, Rebecca White Berch, Suzanne M. Ballard, Doug Cole, Carey Dobson, Robert M. Gallo, John A. Leavitt, Linda Martin, Dewey D. Schade, Jane C. Strain, John Thomas Taylor, III, Charlie Wallace, William J. Eckstrom, Jr., Jill Harrison, Michael Rusing and Ted A. Schmidt.

Amicus Curiae: Lattie Coor, Paul Johnson, the Valley Citizens League, Phoenix and the Arizona Latino Research Enterprise; United States Representatives Jeff Flake, Trent Franks, Benjamin Quayle, Paul Gosar and David Schweikert; and Yavapai County Attorney Sheila S. Polk.

FACTS:

Pursuant to Arizona Supreme Court Rules, Rule 131(a) (2010), in September 2010 Commission staff made available an application form for individuals interested in serving on the Independent Redistricting Commission (“IRC”). The Commission accepted applications until October 15, 2010, receiving seventy-nine. The Commission met on November 16 in a public meeting to review the applications.

Applicants included Paul Bender, Mark Schnepf and Stephen Sossaman. Bender applied to serve as an Independent. In addition to his teaching duties at the Sandra Day O’Connor School of Law, he wrote in his application that he serves as Chief Justice of the Fort McDowell Nation Supreme Court and the San Carlos Apache Court of Appeals. Schnepf, a Republican, indicated in his application that he serves as a member of the New Magma Irrigation District Board of Directors. Republican applicant Sossaman listed current membership on the Queen Creek Irrigation District Board of Directors.

Some members of the public raised concerns to the Commission about Bender’s service to the tribes, to which he responded. They disagree about whether his acting as a tribal judge disqualifies him from IRC membership as a “public official.” The Commission met on December 8, 2010 to take public comment, obtain legal advice on eligibility questions for various applicants, interview forty applicants and select the nominees. It voted to nominate twenty-five people for appointment to the IRC,

including Bender, Schnepf and Sossaman.

Petitioners sent a letter on December 10 asking that the Commission reconsider its pool of nominees based on their view that three of the nominees currently hold public office. Chief Justice Berch, as chair of the Commission, responded that the Commission would hold a meeting as soon as possible to address their concerns. Petitioners then sent letters to Bender, Schnepf and Sossaman telling them they could not consider appointing them and requesting that they withdraw their names. Bender declined; the others withdrew before the Commission meeting.

On December 29, 2010 the Commission met to address the issues in Petitioners' December 10 letter. The Commission voted to affirm its nomination of Bender, to reject the withdrawals of Schnepf and Sossaman, and not to add more Republican nominees from outside Maricopa County to the list. On December 29 Commission staff forwarded the official list of nominees to legislative leaders.

ISSUES:

1. Whether the Commission on Appellate Court Appointments failed to perform its constitutional duty to establish a pool of twenty-five persons who are qualified for appointment to the Independent Redistricting Commission, as required by article IV, part 2, section 1 of the Arizona Constitution, when its final list includes two individuals who hold the office of Irrigation District Director and one individual who holds judicial office with two different Arizona Indian tribes.

2. Whether the Commission on Appellate Court Appointments exceeded its constitutional authority to establish a pool of twenty-five persons who are "willing to serve" on the Independent Redistricting Commission, when its final list includes two individuals who have formally withdrawn their names from consideration.

This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.