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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Arizona State Legislature,

Plaintiff,

v.

Arizona Independent Redistricting
Commission, and Colleen Mathis, Linda
C. McNulty, José M. Herrera, Scott D.
Freeman, and Richard Stertz, members
thereof, in their official capacities; Ken
Bennett, Arizona Secretary of State, in
his official capacity,

Defendants.

No.

COMPLAINT

**Apportionment Matter:
Three-Judge Panel Requested
Pursuant to 28 U.S.C. § 2248**

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1 For its complaint, the Arizona State Legislature alleges as follows:

2 **NATURE OF THE ACTION**

3 1. The Elections Clause of the United States Constitution delegates the
4 authority over the redistricting of congressional districts to the Legislatures of the
5 States. Contrary to this constitutional delegation, Proposition 106 (adopted in 2000)
6 amended the Arizona Constitution – removing that authority from the Arizona State
7 Legislature (“Legislature”) and vesting it instead with the “Independent Redistricting
8 Commission” (“IRC”). The Legislature brings this action requesting the Court to a)
9 declare that Proposition 106 is unconstitutional to the extent it removes congressional-
10 redistricting authority from the Legislature, and b) enjoin the Defendants from enforcing
11 or implementing any congressional redistricting plan from the IRC beginning the day
12 after the 2012 congressional election is held in Arizona. Though the Legislature seeks
13 permanent injunctive relief, it does not seek immediate relief as to the 2012
14 congressional election because the current IRC plan has already been certified and the
15 2012 election cycle is already well underway.

16 **PARTIES**

17 2. Plaintiff Arizona State Legislature is the elected-representative portion of
18 the legislative authority of the State of Arizona. Ariz. Const. art. IV, pt. 1 § 1. The
19 Legislature consists of the thirty-member State Senate and the sixty-member House of
20 Representatives. On May 2, 2012, both chambers authorized the filing of this action by
21 majority vote. *See* Exhibit A (excerpts from the Journals of the Senate and House). The
22 Legislature is directly elected by the People of Arizona.

23 3. Defendant IRC is a commission established “to provide for the
24 redistricting of congressional and state legislative districts.” Ariz. Const. art IV, pt. 2, §
25 1 (¶ 3). The IRC can sue and be sued in “legal actions regarding [its] redistricting
26 plan.” *Id.* § 1 (¶ 20). The IRC consists solely of unelected appointees.

1 4. Defendants Colleen Mathis, Linda C. McNulty, José M. Herrera, Scott D.
2 Freeman, and Richard Stertz currently hold office as members of the IRC and are
3 named herein as defendants solely in their official capacities. All of these defendants
4 reside within the District of Arizona.

5 5. Defendant Ken Bennett currently holds the office of Arizona Secretary of
6 State, and is charged with certain official duties with respect to the conduct of Arizona
7 elections, including receiving certified legislative and congressional districts from the
8 IRC. Ariz. Const. art. IV, pt. 2, §1 (¶ 17). Defendant Bennett is named herein solely in
9 his official capacity in view of his election responsibilities.

10 **JURISDICTION**

11 6. This court has jurisdiction of this action under 28 U.S.C. §§ 1331, 1367,
12 2201, 2202, and 2284.

13 **VENUE**

14 7. Venue is proper in the District of Arizona under 28 U.S.C. § 1391.

15 **THREE-JUDGE PANEL REQUESTED**

16 8. Because this is an action “challenging the constitutionality of the
17 apportionment of congressional districts,” the Legislature requests that a three-judge
18 court be convened pursuant to 28 U.S.C. § 2284 to try this action and to conduct all
19 other proceedings as required by law.

20 **FACTS**

21 **Redistricting Prior to Proposition 106**

22 9. The United States Constitution mandates that the times, places, and
23 manner of congressional elections “shall be prescribed in each State by the Legislature
24 thereof. . . .” U.S. Const. Art. I, § 4, cl. 1 (the “Elections Clause”).

25 10. From 1912 to 2000, the Arizona Constitution recognized that the
26 responsibility and authority of establishing both congressional and legislative district

1 lines resided in the Legislature. Ariz. Const. art. XXII, § 12; art. IV, pt. 1, § 1 (West
2 Historical Notes).

3 11. Prior to 2000, the Legislature established congressional lines in the
4 following manner:

- 5 a. Redistricting measures were introduced as proposed legislation.
- 6 b. The proposed redistricting legislation was reviewed, and debated in a bi-
7 partisan, joint committee on redistricting.
- 8 c. The proposed redistricting legislation, along with any recommended
9 committee amendments, was recommended to the body as a whole, which
10 had the power to either approve the recommendations of the joint
11 committee or make any other changes.
- 12 d. Proposed redistricting legislation was read on three separate days on the
13 floor, and after final passage, it was sent to the Governor for approval or
14 disapproval, in accordance with Article IV, part 2, section 12 of the
15 Arizona Constitution.
- 16 e. The Governor had the authority to approve, disapprove, or take no action
17 on redistricting legislation. Ariz. Const. art. IV, pt. 2, § 12; art. V, § 7.

18 12. Not since 1981 has an Arizona Governor disapproved of redistricting
19 legislation. In that year, Governor Bruce Babbitt vetoed legislative and congressional
20 district lines approved by the Legislature. The Legislature called itself into special
21 session and overrode the Governor's veto, pursuant to Article V, section 7 of the
22 Arizona Constitution.

23 **In 2000, Proposition 106 Removed the Legislature and the Governor from the**
24 **Redistricting Process**

25 13. On September 13, 1999, an organization identified as "Fair Districts, Fair
26 Elections c/o Arizona Common Cause, Inc." filed an application with the Office of the

1 Arizona Secretary of State to circulate initiative petitions.

2 14. On July 6, 2000, “Fair Districts, Fair Elections” successfully filed its
3 eponymous initiative petition with the Arizona Secretary of State. Arizona Secretary of
4 State, 2000 General Election: Ballot Measures, “Fair Districts, Fair Elections”
5 <http://www.azsos.gov/election/2000/General/ballotmeasures.htm> (last visited June 4,
6 2012).

7 15. The application included the following short title:

8 This citizen-sponsored Arizona Constitutional amendment will create a new
9 “citizens’ independent redistricting commission” to draw new legislative
10 and congressional district boundaries after each U.S. Census. This
11 amendment takes the redistricting power away from the Arizona
12 Legislature and puts it in the hands of a politically neutral commission of
13 citizens who are not active in partisan politics and who will serve without
14 pay to create fair districts that are not “gerrymandered” for any party’s or
15 incumbent’s advantage.

14 *Id.*

15 16. The Arizona Secretary of State designated the measure as Proposition 106
16 (“Prop. 106”) and placed Prop. 106 on the 2000 general election ballot.

17 17. The measure passed with 56% of applicable votes cast. Arizona Secretary
18 of State, *State of Arizona Official Canvass* (2000),
19 <http://www.azsos.gov/election/2000/General/Canvass2000GE.pdf> (last visited June 7,
20 2012).

21 18. Prop. 106 amends Article IV, part 2, § 1 of the Arizona Constitution by
22 striking language, adding language to pre-existing paragraphs, and inserting twenty-one
23 new paragraphs. *See* Arizona Secretary of State, *Ballot Propositions & Judicial*
24 *Performance Review: November 7, 2000 General Election 54-55* (2000),
25 <http://www.azsos.gov/election/2000/Info/pubpamphlet/english/prop106.pdf> (last visited
26 June 7, 2012).

1 19. Prop. 106 removes entirely from the Legislature the authority to prescribe
2 legislative and congressional district lines and reassigns that authority wholly to the IRC
3 – a new entity created by Prop. 106.

4 20. Prop. 106 also prescribes the process by which the IRC members are
5 appointed and the process and procedures by which the IRC is to establish legislative
6 and congressional district lines.

7 21. Prop. 106 eliminates entirely the Legislature’s prescriptive role in
8 congressional redistricting, and creates a new and extremely limited role:

- 9 a. An opportunity to submit nonbinding recommendations to the IRC (Ariz.
10 Const. art. IV, pt. 2, § 1 (¶ 16)); and
11 b. The obligation to make appropriations for the operation of the IRC (*Id.* at
12 § 1 (¶ 18)).

13 22. Prop. 106 gives each of the individual leaders of the Legislature—the
14 Speaker and Minority Leader of the House of Representatives and the President and
15 Minority Leader of the State Senate—one appointment to the five-member IRC. *Id.* at
16 §1 (¶ 6).

17 23. The four legislative leaders must choose their four appointments from a
18 pool of only ten persons created by the Commission on Appellate Court Appointments
19 (“Appellate Commission”). *Id.* at § 1 (¶ 5). The Commission on Appellate Court
20 Appointments is an appointed body that exists to screen nominees to Arizona’s state-
21 appellate courts, and submit those nominees to the Governor for appointment. Ariz.
22 Const. art. VI. §§ 36 and 37.

23 24. If a legislative leader fails to make an appointment in the prescribed time
24 frame, the Appellate Commission makes the appointment instead. Ariz. Const art. IV,
25 pt. 2, § 1 (¶ 7).

26 25. The four appointed members of the IRC must then choose their own fifth

1 and final member from a pool of only five persons created by the Appellate
2 Commission. *Id.* at § 1 (¶ 8). If the four members of the IRC fail to select a fifth
3 member, the Appellate Commission makes the selection instead. *Id.*

4 26. Once appointed, members of the IRC can only be removed by the
5 Governor with concurrence of two-thirds of the Senate for “substantial neglect of duty,
6 gross misconduct in office, or inability to discharge the duties of office.” *Id.* at § 1 (¶
7 10).

8 **The IRC Certifies a New Congressional District Map in Arizona**
9 **For 2012 and Beyond**

10 27. On January 17, 2012, the IRC approved a “final congressional map” and
11 forwarded it to the U.S. Department of Justice for preclearance. The same day, the IRC
12 certified the congressional districts to the Arizona Secretary of State.

13 28. On April 9, 2012, the Department of Justice precleared the IRC’s
14 congressional maps.

15 29. Under the framework of Prop. 106, the Arizona Secretary of State must
16 use the IRC’s congressional maps to conduct the congressional elections in 2012 and
17 thereafter, until a new IRC is chosen in 2021. Ariz. Const. art. IV., pt. 2, § 1 (¶¶ 5, 17,
18 and 23).

19 **2012 Election Deadlines**

20 30. The last day for candidates to file nomination petitions for the 2012
21 Primary Election was May 30, 2012. Ariz. Rev. Stat. § 16-311.

22 31. The Primary Election will be held on August 28, 2012. Early voting
23 begins on August 2, 2012.

24 32. By law, the last day to transmit ballots to registered absent uniformed
25 services voters and overseas voters is 45 days before the Primary Election, or July 14,
26 2012. Ariz. Rev. Stat. § 16-543.

CLAIM FOR RELIEF

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33. Plaintiff adopts herein by reference all allegations of all preceding paragraphs.

34. An actual controversy exists within this Court’s jurisdiction that would be resolved by a declaration of the rights and other legal relations of the parties in this action – namely, that Prop. 106 violates the Elections Clause of the United States Constitution.

35. The authority to prescribe the times, places, and manner of congressional elections arises exclusively under the Elections Clause of the United States Constitution. The States do not have the inherent authority to regulate federal elections.

36. The Constitution delegates and conveys the authority to prescribe the times, places, and manner of congressional elections only to “the Legislature” of “each state.” U.S. Const. art. I, § 4, cl. 1. This delegation is a broad grant of power to the Legislature to prescribe the means by which congressional elections are held.

37. The word “Legislature” in the Elections Clause means the representative body which makes the laws of the people.

38. No State can constitutionally divest its Legislature entirely of the redistricting authority conveyed by Article I, Section 4.

39. Yet Prop. 106 removes entirely the constitutionally-delegated authority over prescribing the boundaries of congressional districts from the Arizona Legislature. In so doing, Prop. 106 conflicts directly with the United States Constitution and is therefore preempted, null and void.

40. Plaintiff is therefore entitled to judgment declaring that the provisions of Proposition 106 concerning congressional redistricting are null and void.

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RELIEF REQUESTED

The Legislature respectfully requests that the Court award it the following relief against all Defendants by:

A. Declaring that Proposition 106 violates the Elections Clause of the United States Constitution insofar as it removes the authority to prescribe the times, places, and manner of congressional elections from the Arizona Legislature, and therefore is preempted, null and void;

B. Enjoining Defendants and each of them permanently from adopting, implementing or enforcing any congressional map created under Proposition 106 beginning the day after the 2012 congressional election in Arizona, and

C. Awarding Plaintiff such other relief as is just, proper, or equitable under the facts and circumstances of this case.

DATED on June 7, 2012.

ARIZONA STATE LEGISLATURE

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