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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. CV-12-01211-PHX-PGR

**FIRST AMENDED COMPLAINT**

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

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1 For its First Amended Complaint, the Arizona State Legislature alleges as  
2 follows:

3 **NATURE OF THE ACTION**

4 1. The Elections Clause of the United States Constitution delegates the  
5 authority over the redistricting of congressional districts to the Legislatures of the  
6 States. Contrary to this constitutional delegation, Proposition 106 (adopted in 2000)  
7 amended the Arizona Constitution – removing that authority from the Arizona State  
8 Legislature (“Legislature”) and vesting it instead with the “Independent Redistricting  
9 Commission” (“IRC”). The Legislature brings this action requesting the Court to a)  
10 declare that Proposition 106 is unconstitutional to the extent it removes congressional-  
11 redistricting authority from the Legislature, b) declare that the congressional district  
12 maps adopted by the IRC are unconstitutional, and c) enjoin the Defendants from  
13 enforcing or implementing any congressional redistricting plan from the IRC beginning  
14 the day after the 2012 congressional election is held in Arizona. Though the Legislature  
15 seeks permanent injunctive relief, it does not seek immediate relief as to the 2012  
16 congressional election because the current IRC plan has already been certified and the  
17 2012 election cycle is already well underway.

18 **PARTIES**

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

25 3. Defendant IRC is a commission established “to provide for the  
26 redistricting of congressional and state legislative districts.” Ariz. Const. art IV, pt. 2, §

1 1 (¶ 3). The IRC can sue and be sued in “legal actions regarding [its] redistricting  
2 plan.” *Id.* § 1 (¶ 20). The IRC consists solely of unelected appointees.

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

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

12 **JURISDICTION**

13 6. This court has jurisdiction of this action under 28 U.S.C. §§ 1331, 1367,  
14 2201, 2202, and 2284.

15 **VENUE**

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

17 **THREE-JUDGE PANEL REQUESTED**

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

22 **FACTS**

23 **Redistricting Prior to Proposition 106**

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

1           10. From 1912 to 2000, the Arizona Constitution recognized that the  
2 responsibility and authority of establishing both congressional and legislative district  
3 lines resided in the Legislature. Ariz. Const. art. XXII, § 12; art. IV, pt. 1, § 1 (West  
4 Historical Notes).

5           11. Prior to 2000, the Legislature established congressional lines in the  
6 following manner:

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

20          12. Not since 1981 has an Arizona Governor disapproved of redistricting  
21 legislation. In that year, Governor Bruce Babbitt vetoed legislative and congressional  
22 district lines approved by the Legislature. The Legislature called itself into special  
23 session and overrode the Governor's veto, pursuant to Article V, section 7 of the  
24 Arizona Constitution.  
25  
26



1 Performance Review: November 7, 2000 General Election 54-55 (2000),  
2 <http://www.azsos.gov/election/2000/Info/pubpamphlet/english/prop106.pdf> (last visited  
3 June 7, 2012).

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

7 20. Prop. 106 also prescribes the process by which the IRC members are  
8 appointed and the process and procedures by which the IRC is to establish legislative  
9 and congressional district lines.

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

- 12 a. An opportunity to submit nonbinding recommendations to the IRC (Ariz.  
13 Const. art. IV, pt. 2, § 1 (¶ 16)); and  
14 b. The obligation to make appropriations for the operation of the IRC (*Id.* at  
15 § 1 (¶ 18)).

16 22. Prop. 106 gives each of the individual leaders of the Legislature—the  
17 Speaker and Minority Leader of the House of Representatives and the President and  
18 Minority Leader of the State Senate—one appointment to the five-member IRC. *Id.* at  
19 §1 (¶ 6).

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

26 24. If a legislative leader fails to make an appointment in the prescribed time

1 frame, the Appellate Commission makes the appointment instead. Ariz. Const art. IV,  
2 pt. 2, § 1 (¶ 7).

3 25. The four appointed members of the IRC must then choose their own fifth  
4 and final member from a pool of only five persons created by the Appellate  
5 Commission. *Id.* at § 1 (¶ 8). If the four members of the IRC fail to select a fifth  
6 member, the Appellate Commission makes the selection instead. *Id.*

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

11 **The IRC Certifies a New Congressional District Map in Arizona**  
12 **For 2012 and Beyond**

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

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

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

22 **2012 Election Deadlines**

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

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







1 DATED on July 20, 2012.

2  
3 **ARIZONA STATE LEGISLATURE**

4 By: /s/ Joshua W. Carden

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**CERTIFICATE OF SERVICE**

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I hereby certify that on July 20, 2012, I electronically transmitted the attached document to the Clerk's office using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing to the CM/ECF to the following:

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