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9
10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF MARICOPA**

12 ARIZONA INDEPENDENT REDISTRICTING
COMMISSION, an Independent Constitutional
13 Body,

14 Plaintiff/Petitioner,

15 vs.

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

17 Defendant/Respondent.

Case No.: CV2011-017914

MOTION TO DISMISS

(Assigned to Hon. Richard J. Gama)

18 Pursuant to Rule 12(b)(1) Arizona Rules of Civil Procedure, the Defendant by and
19 through the undersigned counsel hereby moves the Court to dismiss this action in full, for the
20 reason that the Arizona Independent Redistricting Commission (the "Commission") lacks
21 standing to bring this action and thus, there is no subject matter jurisdiction. The Commission is
22 a jural entity for only limited purposes and those purposes do not include the allegations set
23 forth in the Verified Complaint. The grounds for this motion are more fully stated in the
24 accompanying Memorandum of Points and Authorities.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **SUMMARY OF RELEVANT FACTS**

3 The Commission was created in 2000 by an amendment to the Arizona Constitution.
4 The Plaintiff is charged with and is currently in the process of establishing Arizona
5 congressional and legislative districts. Ariz. Const. Art. 3 Pt. 2 §1(14). During that process,
6 the Defendant on his own initiative, commenced an Open Meeting Law violation investigation
7 pursuant to A.R.S. § 38-431.06. In conjunction with that investigation, the Defendant issued
8 three Written Investigative Demands. The Plaintiff is challenging Defendant’s authority to
9 conduct the investigation and issue the Written Investigative Demands.

10 **LEGAL AUTHORITY AND ARGUMENT**

11 Plaintiff’s authority to sue or be sued can be found in only one constitutional provision:

12 The Independent Redistricting Commission shall have standing in legal actions
13 regarding the redistricting plan and the adequacy of resources provided for the
14 operation of the Independent Redistricting Commission. . . . Ariz. Const. Art. 4
Pt 2 § 1(20).

15 Conspicuously absent from the authorizing provision is the power to sue and be sued for
16 purposes other than those regarding the redistricting plan or adequacy of resources for
17 operation. The constitutional grant of authority does not authorize Plaintiff to sue the Attorney
18 General to stop investigations of Plaintiff’s Open Meeting Law violations.

19 There exist Arizona governmental entities with the express power to sue and be sued, for
20 example, the Arizona State School for the Deaf and Blind. A.R.S. § 15-1303(C)(1). It is
21 settled, however, that no action can be brought by or against an agency that lacks this power.
22 *Kimball v. Shofstall*, 17 Ariz. App. 11, 13, 494 P.2d 1357, 1359 (1972) (holding that neither the
23 Constitution nor the enabling statutes made the State Board of Education an autonomous body
24 with the right to sue and be sued.) “A court has no jurisdiction until a party is brought before it
25 who legally exists and is legally capable of being sued.” *Yamamoto v. Santa Cruz Cty. Brd. of*
26 *Supervisors*, 124 Ariz. 538, 539, 606 P.2d 28, 29 (App. 1979). As the Commission lacks the

1 authority to sue for the stated purposes, the Court should dismiss this action by Plaintiff for lack
2 of subject matter jurisdiction.

3 The Plaintiff only has those powers granted to it by the Constitution or by the
4 Legislature. Simply because a commission or board is mentioned in the Constitution, it is
5 granted no implied or inherent powers. *See Arizona Corporation Comm'n v. Woods*, 171 Ariz.
6 286, 830 P.2d 807 (1992); *Kendall v. Malcolm*, 98 Ariz. 329, 404 P.2d 414 (1965) (Corporation
7 Commission has no implied powers); *Burlington Northern And Santa Fe Railway Co. v.*
8 *Arizona Corporation Comm'n*, 198 Ariz. 604, 12 P.3d 1208 (2000) (the Corporation
9 Commission has no implied powers that exceed those derived from a strict construction of the
10 Constitution and the implementing statutes); *Harkins v. School Dist. No. 4 of Maricopa Co.*, 79
11 Ariz. 287, 288 P.2d 777 (1955) (State Board of Education only has those powers as the
12 Legislature grants it); and *Mirkin v. School District No. 38 of Maricopa County*, 4 Ariz. App.
13 473, 421 P.2d 906 (1967). This lack of “inherent” powers of constitutional commissions and
14 boards has been found to be the law in Arizona even though the framers of the Constitution
15 created commissions such as the Corporation Commission as separate, properly elected
16 branches of state government. *See Arizona Corporation Comm'n v. Woods*, 171 Ariz. 286,
17 290, 830 P.2d 807, 811 (1992).

18 Plaintiff is a jural entity (can sue or be sued) for only specifically delineated purposes.
19 When Plaintiff was created in 2000 the voters did not grant it the authority to sue or be sued for
20 any purpose. The Legislature has enacted no statute expanding Plaintiff’s authority to sue or be
21 sued. As such the Plaintiff has no standing to file the Verified Complaint.

22 CONCLUSION

23 For the forgoing reasons, Plaintiff’s Verified Complaint for Declarative, Injunctive and
24 Special Action Relief fails to state a claim upon which relief can be granted against the
25 Defendant. The Court should enter an order dismissing the Verified Complaint for Declarative,
26 Injunctive and Special Action.

1 RESPECTFULLY SUBMITTED this 3rd day of October, 2011.

2 THOMAS C. HORNE
3 Attorney General

4
5 /s/ Thomas C. Horne
6 THOMAS C. HORNE
7 Attorney General
8 Mark D. Wilson
9 Assistant Attorney General
10 Attorneys for Defendant/ Respondent

11 **Document electronically transmitted to the
12 Clerk of the Court for filing using AZTurboCourt
13 this 3rd day of October, 2011.**

14 COPY of the foregoing mailed this
15 same date to:

16 Hon. Richard J. Gama
17 Maricopa County Superior Court
18 Central Court Building-701
19 201 W. Jefferson
20 Phoenix, AZ. 85003-2243

21 COPY of the foregoing mailed and e-mailed this
22 same date to:

23 Hon. Dean M. Fink
24 Maricopa County Superior Court
25 Old Court House-202
26 125 W. Washington
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**(PROPOSED) ORDER TO
DISMISS**

18 IT IS HEREBY ORDERED, with good cause showing, that this matter is dismissed in
19 its entirety with prejudice, with each party to bear its own attorneys' fees and costs.

20 DATED this _____ day of _____, 2011.

21
22
23 _____
24 Superior Court Judge
25
26