

**CANTELME & BROWN, P.L.C.**

A Professional Liability Company  
3003 N. Central Avenue, Suite 600  
Phoenix, Arizona 85012-2902  
Tel (602) 200-0104 Fax (602) 200-0106

E-mail: [djc@cb-attorneys.com](mailto:djc@cb-attorneys.com) /  
[dbrown@cb-attorneys.com](mailto:dbrown@cb-attorneys.com)

David J. Cantelme, Bar No. 006313  
D. Aaron Brown, Bar No. 022133

*Attorneys for Plaintiffs Wesley W. Harris, LaMont E. Andrews, Cynthia L. Biggs, Lynne F. Breyer, Ted Carpenter, Beth K. Hallgren, James C. Hallgren, Lina Hatch, Terry L. Hill, Joyce M. Hill, and Sherese L. Steffens*

**SNELL & WILMER L.L.P.**

One Arizona Center  
400 E. Van Buren Street  
Phoenix, Arizona 85004-2202  
Telephone: (602) 382-6000  
E-Mail: [mliburdi@swlaw.com](mailto:mliburdi@swlaw.com)  
Michael T. Liburdi, Bar No. 021894)

*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

Wesley W. Harris, *et al.*,

Plaintiffs,

v.

Arizona Independent Redistricting  
Commission, *et al.*,

Defendants.

Case No. CV 12-0894-PHX-ROS

**PLAINTIFFS' FIRST AMENDED  
COMPLAINT**

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For their first amended complaint, Plaintiffs Wesley W. Harris, LaMont E. Andrews, Cynthia L. Biggs, Lynne F. Breyer, Ted Carpenter, Beth K. Hallgren, James C. Hallgren, Lina Hatch, Terry L. Hill, Joyce M. Hill, Karen M. MacKean, and Sherese L. Steffens, allege as follows:

**OVERVIEW**

1. By any objective standard, the work of the majority on the Arizona Independent Redistricting Commission (“IRC”) has been a failure. It drew fewer competitive districts than the number drawn in 2002. It designed bizarre-shaped districts, glaring examples being Legislative District 6, which cobbles together parts of Coconino, Yavapai, Gila, and Navajo Counties, and Congressional District 4, which stretches from Bullhead City to Florence to Yuma. It violated section 2 of the Voting Rights Act by depriving minorities of the number of legislative districts the Act required for them. It systematically overpopulated Republican-plurality districts and underpopulated Democrat-plurality, the obvious goal being to maximize the number of Democratic districts. It packed Republican incumbents into districts to force them to run against each other. The selection of the putatively independent chairperson was marred by material omissions from her application and from her interview. Had the chairperson disclosed her connections to the Democratic Party, she never would have been selected as chairperson. The IRC unfortunately quickly polarized around party lines, with the nominally independent chairperson siding with the two Democrats on every substantive issue, including the selection of a partisan Democratic firm as mapping consultant. The IRC’s work was late, and it wasted public money. When the voters passed Proposition 106 in 2000 to create the IRC, they wanted to take politics out of redistricting. This IRC put politics front and center – specifically to favor Democrats. In doing so, as described below, it violated the one-person/one-vote

1 requirement of the equal protection clause of the Fourteenth Amendment to the United  
2 States Constitution, *Larios v. Cox*, 300 F.Supp.2d 1320 (N.D.Ga. 2004), *aff'd sub nom.*  
3 *Cox v. Larios*, 542 U.S. 947 (2004), and the equal population requirement of ARIZ.  
4 CONST. art 4, pt. 2, §1(14)(B).

5 **NATURE OF THE ACTION**

6 2. This action is brought by Plaintiff Arizona qualified electors to challenge  
7 the final map of Arizona legislative districts (“Final Legislative Map”) approved by the  
8 IRC on or about January 17, 2012, on the grounds that the legislative districts created by  
9 the IRC violate the one-person/one-vote requirement of the equal protection clause of  
10 the Fourteenth Amendment to the United States Constitution, and violate the equal  
11 population requirement of ARIZ. CONST. art 4, pt. 2, § 1(14)(B), by systematically  
12 overpopulating Republican plurality districts and systematically under-populating  
13 Democrat plurality districts with no lawful state interest justifying such deviations from  
14 equality of population among Arizona legislative districts.

15 **PARTIES, JURISDICTION, AND VENUE**

16 3. Plaintiffs are all qualified electors of the State of Arizona, registered to  
17 vote in Arizona, and members of the Republican Party. The addresses at which they are  
18 registered to vote in Arizona and the legislative districts in which they reside are as  
19 follows: Wesley W. Harris, 14802 N. Coral Gables Drive, Phoenix 85023, Legislative  
20 District 20; LaMont E. Andrews, 3366 E. Cardinal Way, Chandler 85286 Legislative  
21 District 17; Cynthia L. Biggs, 10612 S. Greenfield Rd., Gilbert 85234, Legislative  
22 District 12; Lynne F. Breyer, 7629 N. Via del Paraiso, Scottsdale 85258, Legislative  
23 District 23; Ted Carpenter, 9727 E. Twin Spurs, Florence 85132, Legislative District 8;  
24 Beth K. Hallgren, 3400 S. Ironwood Drive, Lot 236, Apache Junction 85120,  
25 Legislative District 16; James C. Hallgren, 3400 S. Ironwood Drive, Lot 236, Apache  
26 Junction 85120, Legislative District 16; Lina Hatch, 1325 W. Pebble Court, Gilbert

1 85233, Legislative District 17; Terry L. Hill, 2677 Arizona Highway 77, Show Low  
2 85901, Legislative District 6; Joyce M. Hill, 2677 Arizona Highway 77, Show Low  
3 85901, Legislative District 6; Karen M. MacKean, 4422 Larkspur Road, Show Low  
4 85901, Legislative District 6; and Sherese L. Steffens, 5869 W. Oasis Road, Tucson  
5 85742, Legislative District 11.

6 4. All Plaintiffs reside in an overpopulated legislative district, and the  
7 resulting violations of the one-person/one-vote requirement of the equal protection  
8 clause of the Fourteenth Amendment to the United States Constitution, and the equal  
9 population requirement of ARIZ. CONST. art 4, pt. 2, §1(14)(B), as alleged in detail  
10 below, have proximately caused Plaintiffs and each of them to suffer concrete and  
11 particular injuries, *i.e.* the unconstitutional dilution of their votes, for which this Court is  
12 able to provide relief.

13 5. Defendant IRC is a commission established by ARIZ. CONST. art 4, pt. 2, §  
14 1(3), “to provide for the redistricting of congressional and state legislative districts.”  
15 The IRC can sue and be sued under ARIZ. CONST. art 4, pt. 2, § 1 in “legal actions  
16 regarding [its] redistricting plan.”

17 6. Defendants Colleen Mathis, Linda C. McNulty, José M. Herrera, Scott D.  
18 Freeman, and Richard Stertz currently hold office as members of the IRC, did so at all  
19 times material to this action, and are named herein as defendants solely in their official  
20 capacities. All of these defendants reside within the District of Arizona.

21 7. Defendant Ken Bennett currently holds office as Arizona Secretary of  
22 State, and is charged with certain official duties with respect to the conduct of elections  
23 to the Arizona Legislature. Defendant Bennett is named herein solely in his official  
24 capacity and as a nominal party in view of his election responsibilities.

25 8. This court has jurisdiction of this action under 28 U.S.C. §§ 1331, 1367,  
26 2201, 2202, 2284, and 42 U.S.C. § 1983.

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

2 10. Because this is an action challenging the apportionment of the Arizona  
3 Legislature, a three-judge court has been convened pursuant to 28 U.S.C. §2284 to try  
4 this action and to conduct all other proceedings as required by law.

5 **ESTABLISHMENT OF THE IRC**

6 11. On or about December 29, 2010, acting pursuant to authority granted by  
7 ARIZ. CONST. art 4, pt. 2, § 1(5), the Arizona Commission on Appellate Court  
8 Appointments (“Appointment Commission”) nominated the requisite number of  
9 nominees to be considered for appointment to the IRC. Specifically, the Appointment  
10 Commission finalized a pool of 25 candidates for appointment to the IRC: ten each from  
11 the Democratic and Republican Parties, and five who were not registered with either of  
12 those parties.

13 12. A question quickly arose whether three of the individuals nominated by  
14 the Appointment Commission qualified for a seat on the IRC under the requirements of  
15 ARIZ. CONST. art. 4, pt. 2, § 1(3).

16 13. To challenge the qualifications of these three nominees, an action was  
17 filed in the Arizona Supreme Court under the caption of *Adams v. The Commission on*  
18 *Appellate Court Appointments*, No. CV 10-0405-SA.

19 14. On January 19, 2011, the Arizona Supreme Court issued an order in this  
20 case, found therein that two of the three nominees in question failed to satisfy the  
21 constitutional requirements to serve as a member of the IRC, and directed that they be  
22 replaced. The opinion supporting the order is published at 227 Ariz. 128, 254 P.3d 367  
23 (2011).

24 15. Pursuant to the Arizona Supreme Court’s order, the Appointments  
25 Commission convened and nominated two additional nominees, one of whom was Mr.  
26 Stertz.

1           16. On or about the following dates, appointments to the IRC were made in  
2 the constitutionally prescribed order: January 31, 2011, the Republican Speaker of the  
3 Arizona House of Representatives appointed Defendant Freeman, a registered  
4 Republican from Maricopa County; February 2, 2011, the Democratic Minority Leader  
5 of the Arizona House of Representatives appointed Defendant Herrera, a registered  
6 Democrat from Maricopa County; February 9, 2011, the Republican President of the  
7 Arizona State Senate appointed Defendant Stertz, a registered Republican from Pima  
8 County; and February 15, 2011, the Democratic Minority Leader of the Arizona State  
9 Senate appointed Defendant McNulty, a registered Democrat from Pima County.

10                                   **SELECTION OF THE CHAIRPERSON AND**  
11                                   **HER MATERIAL OMISSIONS**

12           17. In response to the rules or practices of the Appointment Commission,  
13 Defendant Mathis, a registered Independent from Pima County, submitted an  
14 application to the Appointment Commission, dated October 12, 2010. A true copy of  
15 the application is attached as Exhibit 1, and is adopted herein by reference. Therein  
16 Defendant Mathis omitted critical information, which, had it been known, would have  
17 identified her as biased to the Democratic Party and not impartial, and would have  
18 precluded her under ARIZ. CONST. art 4, pt. 2, § 1(3), from being nominated to the IRC  
19 as an Independent or and from being selected to serve as the Independent chairperson of  
20 the IRC.

21           18. Specifically, she failed to reveal (a) that Christopher Mathis, Defendant  
22 Mathis's husband, served in the 2010 election as treasurer for the campaign of Nancy  
23 Young Wright, a Democratic candidate for a seat in the Arizona House of  
24 Representatives from legislative district 26 in Pima County, (b) on May 16, 2010, she  
25 donated \$100 to the campaign of Andrei Cherny, then a candidate for Arizona State  
26 Treasurer in the 2010 election, (c) on May 4, 2010, Christopher Mathis donated \$250 to

1 the Cherny state-treasurer campaign, (d) on October 27, 2010, Christopher Mathis  
2 donated \$100 to the Nancy Wright legislative campaign, (e) on August 10, 2010, she  
3 donated \$10 to the Arizona List P.A.C., a committee for pro-choice democratic women  
4 in Arizona; and (f) on March 3, 2010, Christopher Mathis donated \$75 to Arizona List  
5 P.A.C., and on August 10, 2010, donated another \$10 to Arizona List P.A.C. A true  
6 copy of a campaign finance report of the Arizona Secretary of State's office reflecting  
7 such donations is attached as Exhibit 2, and is adopted herein by reference. This  
8 consistent pattern of service to Democratic causes and donations to Democratic  
9 candidates reveals that Defendant Mathis at heart was a Democrat, though dressed in  
10 Independent clothing.

11 19. Question number 6 on the application provides: "Is there any possible  
12 conflict of interest or other matter that would create problems or prevent you from fairly  
13 and impartially discharging your duties as an appointee to the Independent Redistricting  
14 Commission? Yes ( ) No ( ) If your answer is "Yes," attach an explanation.  
15 Defendant Mathis answered "No." Defendant Mathis did not disclose the information  
16 relative to her Democratic-Party ties on her application in response to this question.

17  
18 20. On February 24, 2011, in a meeting called by the Arizona Secretary of  
19 State, the first four appointed Commissioners, constituting a quorum, met to select a  
20 chairperson from among the five candidates who are not registered with either of  
21 Arizona's two largest parties.

22 21. During the February 24, 2011, interviews, Defendant Freeman indicated  
23 to Defendant Mathis that the IRC's political appointee members were looking for a  
24 chairperson who would bring balance and fairness to the IRC and asked Defendant  
25 Mathis whether anything in her background would call into question her ability to be  
26 fair. According to the minutes of this meeting, Defendant Mathis answered that "there

1 is nothing in her background that would limit her ability to be fair and as long as she did  
2 not have to make decisions about buying heavy equipment she would be okay.” In  
3 response to questioning from Defendant McNulty about her management style, the  
4 meeting minutes report that Defendant Mathis responded that she liked “to create an  
5 environment where people feel they can trust her and are comfortable with what she is  
6 trying to do” and that it was “important to be open and impartial and achieve the end  
7 result by consensus.”

8 22. This was an opportunity for Defendant Mathis to correct the material  
9 omissions she had made on her application. Instead, as disclosed by her interview  
10 answers, she doubled down and continued to maintain a façade of impartiality.

11 23. Although they interviewed the five candidates and then met in closed  
12 session, the Commissioners did not select a chairperson that day. To allow time for  
13 further reflection, the Commissioners decided to meet again on March 1, 2011.

14 24. On March 1, 2011, after meeting in closed session for a little over an hour,  
15 Defendants Freeman, Herrera, Stertz, and McNulty selected Defendant Mathis to serve  
16 as IRC Chair.

17 25. Indeed, Mr. Mathis effectively became a “sixth commissioner” by closely  
18 counseling Defendant Mathis on every aspect of the redistricting process and the votes  
19 that were taken and interacting with stakeholders. Mr. Mathis attended virtually every  
20 public meeting of the IRC, often spoke with Democratic operatives during hearings,  
21 listened in on many conference calls among the IRC members, and acted on Defendant  
22 Mathis’s behalf to round up votes on decisions coming before the IRC. Mr. Mathis  
23 even went so far as to propose a deal to establish legislative district boundaries under  
24 which the Democratic Commissioners would draw districts in southern Arizona and the  
25 Republican Commissioners would draw those in northern Arizona.

26 26. For someone constitutionally barred from service on the Commission, Mr.



1 Mathis was allowed to have unprecedented involvement in and influence on the  
2 redistricting process.

3 **TURMOIL SURROUNDS THE IRC’S PARTISAN DECISIONS**

4 27. With the selection of Defendant Mathis as its chair, the IRC was fully  
5 constituted on March 1, 2011, and it almost immediately violated the Arizona  
6 Constitution. 9. After selecting a chair, Article 4, Part 2, § 1(9) of the Arizona  
7 Constitution mandates that “[t]he five commissioners shall then select by majority vote  
8 one of their members to serve as vice-chair.”

9 28. But instead of complying with the constitution’s mandate and despite the  
10 advice of counsel to the contrary, the IRC selected both Commissioners Herrera and  
11 Freeman to serve as co-vice-chairs.

12 29. After the appointment of the IRC’s chairperson, the commissioners  
13 quickly polarized along party lines, with the chairperson, nominally an independent,  
14 siding with the Democratic members on every decision of any consequence.

15 **THE DEMOCRATS AND INDEPENDENT**  
16 **SELECT REPUBLICAN COUNSEL**

17 30. The alliance among Defendants Mathis, McNulty and Herrera first  
18 emerged with the selection of the IRC’s legal counsel.

19 31. After discussion about the IRC’s procurement authority and consultation  
20 with the State Procurement Office (“SPO”) of the Arizona Department of  
21 Administration, the IRC Defendants decided to follow the state procurement code to  
22 retain legal services from one or more law firms.

23 32. On or about April 8, 2011, SPO issued a request for proposals (“RFP”) for  
24 IRC legal services. Responses to the legal services RFP were due April 28, 2011.

25 33. ARIZ. CONST. art. 4, pt. 2, § 1(12) does not authorize the IRC to meet in  
26 anything but “a meeting open to the public, with 48 or more hours public notice

1 provided.” Nonetheless, the IRC met in closed sessions on May 3, 2011, for  
2 approximately 5.5 hours; May 6, 2011 (telephonically) for an undisclosed amount of  
3 time; and on May 10, 2011 for approximately 1.5 hours before selecting the law firms to  
4 be interviewed in public session on May 10, 2011.

5 34. On May 12, 2011, the IRC met in public session and interviewed six of  
6 the law firms that responded to the legal services RFP with the goal of procuring the  
7 services of a Republican and a Democratic attorney.

8 35. After at least two closed sessions on May 12, 2011, and May 13, 2011,  
9 totaling approximately two hours, Defendants Mathis, McNulty, and Herrera selected  
10 Osborn Maledon, P.A. (Democrat Mary O’Grady) and Ballard Spahr LLP (Republican  
11 Joseph Kanefield) as legal counsel. For more than 20 years, Mr. Kanefield had been a  
12 registered Democrat, and only switched to the Republican Party in 2010.

13 36. The Democratic Commissioners, Defendants McNulty and Herrera, and  
14 the Chairperson, Defendant Mathis, selected Republican counsel over the objections of  
15 the Republican Commissioners, Defendants Freeman and Stertz.

16 37. The selection of Republican counsel against the wishes of the Republican  
17 members of the IRC set off a firestorm of controversy during public comment in  
18 subsequent meeting after meeting. In summary, this first glimpse of the coalition of  
19 Defendants Mathis, McNulty, and Herrera raised concerns that the selection of counsel  
20 would foreshadow this coalition’s commitment to something other than the application  
21 of the constitutional provisions in an honest, independent, and impartial fashion and  
22 other than upholding public confidence in the integrity of the redistricting process.

23 **THE DEMOCRATS AND INDEPENDENT SELECT A HIGHLY-PARTISAN**  
24 **DEMOCRATIC FIRM AS MAPPING CONSULTANT**

25 38. Further concerns emerged concerning the outcome-oriented nature of the  
26 scoring of the responses to the RFP engaged in by at least one Commissioner who gave

1 perfect scores to the Democratic Commissioners' preferred candidates and an  
2 unjustifiably low score to the candidate preferred by the Republican Commissioners.  
3 One other Commissioner's written comments during the procurement process raised  
4 concerns about the possibility that the scoring had been rigged.

5 39. Upon information and belief, Defendants Mathis, McNulty, and Herrera  
6 discussed matters involving the selection of legal counsel for the IRC, including having  
7 discussions that led to or were the equivalent of legal action, outside of properly noticed  
8 public meetings.

9 40. On or about June 15, 2011, the IRC Defendants met in public session to  
10 select four candidates to interview for the position of mapping consultant: Strategic  
11 Telemetry, National Demographics, Research Advisory Services, and Terra Systems  
12 Southwest. Before making their selection, the IRC Defendants held one or more closed  
13 sessions to discuss the selection of a mapping consultant, including an almost five-hour  
14 closed session on June 15, 2011.

15 41. Following presentations by the candidates for mapping consultant on June  
16 24, 2011, the IRC Defendants met in closed session to discuss the selection of the  
17 mapping consultant, and Defendants Mathis, McNulty, and Herrera all gave Strategic  
18 Telemetry perfect scores despite its complete lack of redistricting experience, its lack of  
19 even rudimentary knowledge of Arizona demographics and geographics, its submission  
20 of the most expensive proposal, and its being headquartered at the District of Columbia.

21 42. A copy of the July 1, 2011, Yellow Sheet Report, published by Arizona  
22 Capitol Reports, LLC, is attached as Exhibit 3 and is adopted herein by reference, and  
23 details the irregularities surrounding the selection of Strategic Telemetry as mapping  
24 consultant to the IRC. These irregularities were not limited to closed-session violations  
25 of Ariz. Const. art. 4, pt. 2, § 1(12), but also included destruction of public records, *i.e.*  
26 their initial scoring sheets, in violation of A.R.S. § 39-121.01.

1           43. Throughout this selection process, concerns were voiced about Strategic  
2 Telemetry's highly partisan, pro-Democratic resume. Strategic Telemetry advertised  
3 itself as a statistics and data analysis firm that caters to Democratic clients. Upon  
4 information and belief, as a Democratic campaign strategist, Strategic Telemetry's  
5 President, Ken Strasma, specialized in micro targeting and is considered to be a pioneer  
6 in the use of high-tech statistical modeling in Democratic campaigns. In this vein, Mr.  
7 Strasma, served as the national target director for the 2008 Obama presidential  
8 campaign. His work for the 2008 Obama campaign included micro-targeting, a  
9 technique for identifying narrow niches of voters and targeting campaign  
10 communications to them. He also worked with the 2004 John Kerry presidential  
11 campaign. Most recently, he worked on efforts to recall Republican officials in  
12 Wisconsin, including Governor Scott Walker. Mr. Strasma also has a long history of  
13 making substantial monetary contributions to Democratic candidates. According to  
14 Federal Election Commission records, Mr. Strasma has contributed almost \$15,000 to  
15 Democratic candidates in recent years. The fact that Strategic Telemetry is not a  
16 mapping firm was highlighted during and AIRC meeting in July 2011 when Strategic  
17 Telemetry indicated that its staff would need time to learn the software that is standard  
18 in the mapping industry.

19   **THE DEMOCRATS AND INDEPENDENT**

20   **DEFY THE OPEN MEETING LAW**

21           44. Despite its lack of mapping experience, Strategic Telemetry's ability to go  
22 beyond voter registration to analyze voter behavior would allow it to carve out districts  
23 that might appear neutral but in fact would be solidly pro-Democrat districts.  
24 Commissioner Mathis lobbied other Commissioners to select Strategic Telemetry.

25           45. Before the selection of the mapping consultant, Defendant Mathis  
26 contacted Defendant Freeman on at least one occasion to ask him to support the

1 selection of Strategic Telemetry as the IRC's mapping consultant. Defendant Mathis  
2 presented a *quid pro quo* to Defendant Freeman, stating that "there might be times in the  
3 future where, you know, [you] need[] a third vote." (Attorney General Deposition of S.  
4 Freeman at 11:8-9, copy attached as Exhibit 4 and adopted herein by reference.)  
5 Defendant Freeman properly rejected Defendant Mathis's overture.

6 46. Before the selection of the mapping consultant, Defendant Mathis  
7 contacted Defendant Stertz on at least two occasions to ask him to support the selection  
8 of Strategic Telemetry as the IRC's mapping consultant. Defendant Mathis presented a  
9 *quid pro quo* to Defendant Stertz, stating that "if I were to vote with her in regards to  
10 the selection of Strategic Telemetry, she would provide a favorable vote for me in the  
11 future." (See 10/29/2011 Letter of R. Stertz to Governor Brewer at 2, a true copy of  
12 which is attached as Exhibit 5 and is adopted herein by reference.) Like Defendant  
13 Freeman, Defendant Stertz properly rejected Defendant Mathis's offer to exchange his  
14 vote in favor of Strategic Telemetry for the promise of a future vote from Defendant  
15 Mathis.

16 47. Before the selection of the mapping consultant, Defendant Herrera  
17 communicated with one or more other IRC Commissioners regarding which firm should  
18 be hired. According to remarks made during the June 29, 2011 public meeting, Mr.  
19 Herrera pretextually stated that his first choice was Research Advisory Services but  
20 further stated that "in a spirit of cooperation and negotiation," he decided "to support  
21 Strategic Telemetry."

22 48. Upon information and belief, before the selection of the mapping  
23 consultant, Defendant Mathis contacted Defendant McNulty on at least one occasion to  
24 ask her to support the selection of Strategic Telemetry as the IRC's mapping consultant.

25 49. On June 29, 2011, the IRC Defendants met to consider the mapping  
26 consultant RFP. Following a closed session with State Procurement officials, the IRC's

1 counsel announced that SPO was no longer working on the mapping consultant  
2 procurement and that the project was now delegated to the IRC. Upon information and  
3 belief, SPO renounced any role in the process because the process clearly was diverging  
4 from long-standing principles of Arizona procurement law.

5 50. The IRC then proceeded to select Strategic Telemetry as its mapping  
6 consultant by a vote of 3-2, with the Mathis-McNulty-Herrera coalition voting yes, and  
7 Defendants Stertz and Freeman voting no.

8 51. In explaining her vote for Strategic Telemetry, Defendant Mathis read  
9 from remarks obviously prepared in advance of the meeting, which indicated advance  
10 knowledge of the outcome of the IRC's vote.

11 52. On information and belief, Defendants Mathis, McNulty, and Herrera  
12 coordinated their efforts to guarantee that Strategic Telemetry would be selected as the  
13 IRC's mapping consultant by, among other actions, agreeing that they each would  
14 award Strategic Telemetry a perfect score and engaging in various non-public  
15 communications designed to garner a majority of Commissioners in advance of a public  
16 meeting. These *sub rosa* efforts to achieve majority consensus violated ARIZ. CONST.  
17 art. 4, pt. 2, § 1(12), which required all discussions and actions to hire a mapping  
18 consultant to occur in a public meeting. "Public officials may not circumvent public  
19 discussion by splintering the quorum and having separate or serial discussions with a  
20 majority of the public body members. Splintering the quorum can be done by meeting in  
21 person, by telephone, electronically, or through other means to discuss a topic that is or  
22 may be presented to the public body for a decision." Arizona Attorney General Agency  
23 Handbook at § 7.5.2, found at [http://www.ag.state.az.us/Agency\\_Handbook/ch07.pdf](http://www.ag.state.az.us/Agency_Handbook/ch07.pdf).

24 53. Coming on the heels of the selection of legal counsel, the Mathis-  
25 McNulty-Herrera decision to hire the highly partisan Strategic Telemetry proved to be a  
26 flashpoint that irreparably damaged public confidence in the IRC. Subsequent IRC

1 meetings featured scores of citizens expressing concerns about the ability of Strategic  
2 Telemetry to remain impartial. The transcript of the IRC's public meeting on June 30,  
3 2011, reflects roughly 90 pages of public comments denouncing the selection of  
4 Strategic Telemetry and the criticizing the hack conduct of Defendant Mathis.

5 54. Additional concerns were raised about Defendants Mathis, McNulty, and  
6 Herrera discussing IRC business with each other outside of public meetings and about  
7 the IRC improperly conducting business during closed sessions.

8 55. On the morning of July 21, 2011, Attorney General Tom Horne  
9 announced an investigation of the IRC for alleged violations of Arizona's procurement  
10 rules and its open meeting law, which is codified at A.R.S. §§ 38-431.01 through 38-  
11 431.09.

12 56. As part of this investigation, the Attorney General issued Civil  
13 Investigative Demands ("CIDs") to all five Commissioners.

14 57. Commissioners Freeman and Stertz cooperated with the Attorney  
15 General's investigation and submitted to depositions under oath.

16 58. Defendants Mathis, McNulty, and Herrera each received separate legal  
17 counsel at the IRC's expense, which violated A.R.S. § 38-431.07(B), and each refused  
18 to cooperate with the Attorney General's investigation. The Attorney General sued  
19 these Commissioners in Maricopa County Superior Court to enforce the CIDs, Case no.  
20 CV2011-016442.

21 59. In response to the Attorney General's investigation, the IRC argued that it  
22 was subject only to ARIZ. CONST. art. 4, pt. 2, § 1(12)'s public meeting requirement and  
23 not the specific provisions of the open meeting law. But the Defendant IRC's own  
24 counsel provided training to the Commissioners on open meeting law compliance,  
25 noticed IRC meetings by citing to the open meeting law's provisions, and freely utilized  
26 the open meeting law's exception allowing the IRC to meet in closed sessions. What's

1 more, if the IRC were only subject to ARIZ. CONST. art. 4, pt. 2, § 1(12)'s public  
2 meeting requirements, it had no legal justification for the more than 40 hours spent in  
3 closed sessions.

4 60. The IRC brought a declaratory judgment and special action, case no.  
5 CV2011-017914, seeking in Maricopa County Superior Court to resolve the question of  
6 whether the IRC was subject to the open meeting law and to protect the IRC from what  
7 it argued was the Attorney General's attempt to interfere with the IRC's business.

8 61. The trial court ultimately removed the Attorney General from the  
9 investigation based on a conflict of interest arising from the Attorney General's  
10 representation of the IRC before the hiring of the IRC's legal counsel. The  
11 investigation was then transferred to the Maricopa County Attorney's Office. The trial  
12 court also determined that (a) the IRC is subject only to ARIZ. CONST. art. 4, pt. 2, §  
13 1(12)'s public meeting requirement, and (b) that the IRC is not subject to the open  
14 meeting law. The Maricopa County Attorney's Office has appealed, and the matter is  
15 now pending in Division One of the Arizona Court of Appeals, No. 1 CA-CV 12-0068.

16 62. On information and belief, Defendants Mathis, McNulty and Herrera  
17 engaged in non-public communications to arrive at consensus among this majority of  
18 Commissioners and then took the position that they were not subject to Arizona's open  
19 meeting law in order to avoid the consequences of their conduct.

20 63. Early on, the stage thus was set for an outcome-driven redistricting instead  
21 of the process-driven redistricting guaranteed by the Arizona Constitution.

22 **THE DEMOCRATS AND INDEPENDENT**

23 **ABANDON THE CONSTITUTIONAL PROCESS**

24 64. ARIZ. CONST. art. 4, pt. 2, §§1(14) – (16) require the IRC to perform its  
25 district-drawing work in four phases. *Arizona Minority Coalition for Fair Redistricting*  
26



3           65.    The first phase is the “creation of districts of equal population in a grid-  
4 like pattern across the state.” *Id.* at ¶ 30 (internal quotation marks omitted.)

5           66.    Second, the “Commission must make adjustments to the grid as necessary  
6 to accommodate the six constitutional goals.” *Id.* at ¶ 31 (internal quotation marks  
7 omitted.)

8           67.    Third, the IRC must advertise the maps for public comment for a period of  
9 30 days. *Id.* at 598-99, ¶ 31, 208 P.3d at 687-88.

10          68.    Fourth, “after the public comment period has ended, the Commission must  
11 establish final district boundaries and certify the new districts to the Secretary of State.”  
12 *Id.* at 600, ¶ 44, 208 P.3d at 689.

13          69.    On or about July 21, 2011, the IRC began to hold what it denoted as  
14 round-one public hearings in various locales around Arizona to take public input on  
15 mapping considerations.

16          70.    The IRC concluded the round-one public hearings on or about August 6,  
17 2011.

18          71.    On August 18, 2011, the IRC considered two possible congressional grid  
19 maps and chose Grid Map No. 2. Although the constitution requires that the IRC begin  
20 the mapping process by creating “districts of equal population in a grid-like pattern  
21 across the state” before making any adjustments to accommodate the six constitutional  
22 goals, the IRC violated the constitution by considering factors other than equal  
23 population in creating the Congressional Grid Map. A true copy of the congressional  
24 grid map is attached as Exhibit 6, and is adopted herein by reference.

25          72.    As reflected in the transcript of the IRC meeting of August 18, 2011, at  
26 5:24-6:2, the IRC’s adopted Congressional Grid Map was based not only on equal

1 population; it admittedly took the goals of compactness and contiguity into account. A  
2 true copy of this excerpt of the 08.18.11 meeting transcript is attached as Exhibit 7 and  
3 is adopted herein by reference.

4 73. In addition, instead of adopting a Grid Map that would serve as a neutral,  
5 unbiased starting point for redistricting, the IRC's Congressional Grid Map was adopted  
6 based on subjective considerations, including which Grid Map might be most likely to  
7 lead to a Commissioner's desired outcome in violation of ARIZ. CONST. art. 4, pt. 2 §  
8 1(14). *See* Exhibit 7 at 6:24-51:19.

9 74. On August 18, 2011, the IRC approved its option 2 legislative grid map,  
10 thereby completing Phase 1 of its constitutionally-mandated work. A true copy of this  
11 grid map is attached as Exhibit 8, and is adopted herein by reference.

12 75. After approval of the grid maps, the IRC entered into Phase 2 of its  
13 constitutionally-mandated work, and began adjustments to the grid maps.

14 **PHASE TWO MAP DRAWING, CONTINUED POLARIZATION, BOGGING**  
15 **DOWN, AND PARTIAL ABANDONMENT OF THE GRID MAP**

16 76. The IRC again polarized around party lines, with the Democratic members  
17 proposing a series of legislative mapping iterations under the label of Legislative 9  
18 Minority Districts Option 1, and the Republican members proposing a series of  
19 legislative mapping iterations under the label of Legislative 9 Minority Districts Option  
20 2.

21 77. Similarly, on the congressional side, the Democratic members proposed a  
22 series of congressional mapping iterations under the rubric of River District, and the  
23 Republican members proposed a series of congressional mapping iterations under the  
24 rubric of Whole Counties.

25 78. In September 2011, the IRC began bogging down in its work on both the  
26 legislative and congressional sides.

1           79. As a result, on the week-end of September 24-25, 2011, Chairperson  
2 Mathis on her own at her home began to draw a congressional map, which she presented  
3 to the IRC at its meeting of September 26, 2011, under the label of the “Everything  
4 Map,” the effect of which was to merge the River District Map and the Whole Counties  
5 Map outside of Maricopa County and to obliterate the grid map and leave a blank space  
6 in Maricopa County. This Map quickly became known as the donut-hole map.

7           80. The Chairperson then turned the task of filling in the blank space in  
8 Maricopa County to Commissioner McNulty.

9           81. It was apparent from this process that Ms. Mathis had (1) again sided with  
10 the Democratic members on the question of drawing the congressional map, and (2) in  
11 Maricopa County had forsaken the state constitutional command that the IRC begin  
12 with the grid map and make adjustments only for the six goals set forth in ARIZ. CONST.  
13 art. 4, pt. 2, § 1(14).

14           82. Abandoning the grid map in Maricopa County and turning the  
15 congressional map drawing within Maricopa County over to Commissioner McNulty  
16 brought a firestorm of public criticism down upon the chairperson.

17                           **ADOPTION OF DRAFT MAPS WITH NO GENUINE**  
18                           **EFFORT TO SATISFY THE VOTING RIGHTS ACT**

19           83. On October 3, 2011, a three–person majority of the IRC, composed of  
20 Chairperson Mathis and Democratic members McNulty and Herrera, approved a  
21 congressional draft map to be published for 30-day comment.

22           84. The IRC then turned to the legislative maps. To defuse the criticism of  
23 partisanship surrounding her obliteration of the grid map in Maricopa County on the  
24 congressional side and turn over of the line drawing in Maricopa County to  
25 Commissioner McNulty, Chairperson Mathis initially drew Commissioner Freeman in  
26 to join Commissioner McNulty in drawing legislative districts.



1 violate the one-person/one-vote rule of the Fourteenth Amendment and the equal  
2 population requirement of ARIZ. CONST. art. 4, pt. 2, § 1(14)(B), (b) the IRC had not  
3 performed a racial bloc voting analysis and therefore could not have made any genuine  
4 determination that the legislative draft map complied with the Voting Rights Act, (c) the  
5 minority voting-age population in some districts exceeded 60%, while in adjacent  
6 districts barely exceeded 50%, (d) the draft legislative districts failed to respect  
7 communities of interest in at least 13 instances, and failed to respect city, town, and  
8 county lines in multiple instances, (e) it appeared from the packing of Republican  
9 incumbents into several districts that the IRC had to have considered the residence  
10 locations of incumbents, which violated ARIZ. CONST. art. 4, pt. 2, § 1(15), and (f) the  
11 IRC had not complied with the 30-day comment requirement of ARIZ. CONST. art. 4, pt.  
12 2, § 1(16), because the IRC had neither the essential racial bloc voting analysis nor  
13 complete competitiveness information when it approved the draft maps and therefore  
14 the maps were incomplete when published to the public. A true copy of the  
15 Legislature's memorial is attached as Exhibit 10, and is adopted herein by reference.

#### 16 **THE GOVERNOR'S REMOVAL OF THE CHAIRPERSON**

17 93. Concerned about the IRC's patent violation of the map-drawing process  
18 provided by ARIZ. CONST. art. 4, pt. 2, §§ 1(14) -- (16), the Governor gave notice to the  
19 IRC chairperson and members of such violations, and requested a response by October  
20 31, 2011. A true copy of the Governor's notice letter is attached as Exhibit 11, and is  
21 adopted herein by reference.

22 94. Finding the response of the Chairperson inadequate, on November 1,  
23 2011, the Governor announced her intent to remove Chairperson Mathis, and called a  
24 special session of the Arizona Legislature for the purpose of obtaining concurrence from  
25 the Arizona Senate.

26

1           95.    On November 1, 2011, the Arizona Senate concurred with the Governor’s  
2 removal of the Chairperson by a two-thirds majority.

3           96.    The IRC filed a special action petition in the Arizona Supreme Court to  
4 reverse the Governor’s removal of Chairperson Mathis, the Arizona Supreme Court  
5 accepted jurisdiction, and by order dated November 17, 2011, the Arizona Supreme  
6 Court reversed the removal and ordered Chairperson Mathis reinstated to her office at  
7 the IRC. The opinion supporting the order is *Arizona Independent Redistricting Com’n*  
8 *v. Brewer*, --- P.3d ----, 2012 WL 1366362, 632 Ariz. Adv. Rep. 32 (Ariz., April 20,  
9 2012).

10                           **ALL PRETENSE OF IMPARTIALITY IS ABANDONED.**

11           97.    With her hand strengthened by the Arizona Supreme Court’s reversal of  
12 her removal, Chairperson Mathis and the two Democratic members of the IRC  
13 abandoned all pretense of impartiality and proceeded to maximize the advantages in the  
14 legislative map to the Democratic Party.

15           98.    The IRC gave no consideration to the recommendations of the Legislature  
16 in violation of the Article 4, Part 2, § 1(16) of the Arizona Constitution.

17           99.    The Legislative recommendations were placed on the Commission’s  
18 November 29, 2011 agenda. At that meeting, Commission attorney Mary O’Grady  
19 advised the Commissioners that the Legislative recommendations were in the packet of  
20 materials provided to each Commissioner for their review. Ms. O’Grady stated, “I don’t  
21 know that it makes sense now to sort of read through [the Legislature’s  
22 recommendations], but maybe commit it to the Commission to makes [sic] sure that you  
23 review those. And as the mapping process proceeds, you may want to – you can take  
24 those into account as the work goes on.” She also stated that the Commission “might  
25 want to consider” the Legislature’s comments and that “if the Commission is concerned  
26

1 about anything [raised by the Legislature], they can consider those as they propose  
 2 recommended changes to the draft map.” (Tr. 11-29-11 at 144:18-146:22).

3 100. Defendant Herrera stated his understanding of Ms. O’Grady’s advice. “I  
 4 think as Ms. O’Grady said, we’re free to read this information and take it into account  
 5 when we are making changes to the draft map. So I think she was pretty clear.” Tr.  
 6 11-29-11 at 148:12-15.

7 101. The Commission merely made a record that it had received House  
 8 Concurrent Memorial 2001, which is insufficient to satisfy the constitutional  
 9 requirement that the Commission “consider” the recommendations of the Legislature.  
 10 Tr. 11-29-11 at 145:9-16.

11 102. The Commission treated its responsibility to consider the Legislative  
 12 recommendations as discretionary in violation of Ariz. Const. art. 4, pt. 2, § 1(16).

13 103. At no time did a quorum of the Commission consider acting upon the  
 14 Legislature’s recommendations, in whole or in part, and never considered accepting or  
 15 rejecting any or all of its recommendations. On information and belief, the Commission  
 16 ignored the Legislature’s recommendations and, by doing so, ignored the constitutional  
 17 requirement that it consider them.

18 104. In a series of IRC meetings beginning on November 29, 2011, and ending  
 19 on January 17, 2012, the IRC’s Democrat-polarized majority made numerous changes  
 20 in the draft legislative map, which can be summarized as follows:

District	Changes
1	Lost Camp Verde, and added New River, Cave Creek, Carefree, and Anthem
2	Lost Cochise County, and added Green Valley and more of Tucson

1		
2	3	Added part of Marana and Democratic State Senator Cajero
3		Bedford's house
4	4	Lost part of Yuma to Legislative District 13
5		
6	5	Added the Arizona strip north of the Grand Canyon
7		
8	6	Added Camp Verde and Grand Canyon Village, and lost Show Low and
9		Linden
10	7	Lost the Arizona Strip and added Show Low and Linden
11		
12	8	Lost east Tucson foothills and Saddlebrook, and added Eloy
13		and part of Casa Grande
14	10	Added southeastern Tucson
15		
16	11	Lost Eloy, Casa Grande, and the Gila River reservation, and
17		
18		added the east Tucson Foothills
19	12	Added Queen Creek in Pinal County
20		
21	13	Added northwest Maricopa County, including Buckeye and
22		Wickenburg, and part of Yuma, and lost part of Surprise
23	14	Added Greenlee County and a portion of Cochise County, and lost
24		part of Tucson
25	15	Added Phoenix west of I-17, and Lost Phoenix south of Union
26		Hills



1	20	Added eastern Glendale
2		
3	21	Added a portion of Surprise
4		
5	23	Gained the Ft. McDowell Reservation
6		
7	24	Lost northeastern Scottsdale and the Salt River Reservation
8		
9	26	Gained northeastern Scottsdale and the Salt River Reservation
10		
11	27	Gained the Gila River Reservation
12		

**ADOPTION OF THE FINAL LEGISLATIVE MAP**

14           105. On January 17, 2012, the IRC Democratic-polarized majority approved a  
15 final legislative map over the vigorous dissents of the two Republican members.

16           106. As reflected in the comments of Vice-Chairperson Freeman and  
17 Commissioner Stertz at the IRC meeting of January 17, 2012, the final map was  
18 stripped of all input from the Republican members and was a purely Democratic map  
19 with only pretextual effort to satisfy the six state-constitutional goals set forth in ARIZ.  
20 CONST. art. 4, pt. 2, § 1(14).

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**THE IRC SYSTEMATIC OVERPOPULATES  
REPUBLICAN-PLURALITY DISTRICTS AND  
UNDERPOPULATES DEMOCRATIC-PLURALITY DISTRICTS**

107. In the final congressional map adopted by the IRC on January 17, 2012, the IRC achieved equality of population among districts, with eight of the nine congressional districts having a population of 710,224 residents, and the ninth district having a population of 710,225 residents. A true copy of the IRC’s population break-down for the final congressional map is attached as Exhibit 12, and is adopted herein by reference.

108. In contrast, in the Final Legislative Map, the IRC did not achieve population equality among districts, and not even a single district achieved the ideal population of 213,067 residents. A true copy of the IRC’s population break-down for the Final Legislative Map is attached as Exhibit 13, and is adopted herein by reference.

109. The IRC systematically overpopulated Republican-plurality districts. (As used herein, “Republican-plurality district means a legislative district in which more voters are registered with the Republican Party than with any other party, and “Democratic-plurality district” means a legislative district in which more voters are registered with the Democratic Party than with any other political party.)

110. With one exception, every Republican-plurality district exceeds the ideal population of 213,067 residents. These include Districts 1, 5, 6, 11, 12, 14-18, 20-23, 25, and 28. The exception is District 13, which is an oddly-shaped district comprising northern Yuma County and western Maricopa County and is under-populated by 1,366 residents or 0.64% below ideal. A true copy of the IRC’s legislative-district party-registration break-down is attached as Exhibit 14, and is adopted herein by reference.

1           111. Two Republican-plurality districts are more than 8000 persons above  
2 population equality: District 12 at 8668, and District 17 at 8107. Two are more than  
3 7000 persons over: District 25 at 7728, and District 16 at 7090. Four are more than  
4 5000 persons over: District 5 at 5973, District 28 at 5646, District 18 at 5100, and  
5 District 20 at 5100. District 14 is 4626 persons over. On average, the 16 overpopulated  
6 Republican-plurality districts exceed the ideal by 4480 persons or 2.1%.

7           112. All of the 14 most overpopulated districts are Republican. All of the 12  
8 under-populated districts, save one (District 13) are Democrat. The four remaining  
9 districts are all over-populated by less than 0.30%. Of them, Districts 9 and 26 are  
10 Democrat-plurality, and Districts 11 and 23 are Republican-plurality.

11           113. The IRC systematically under-populated Democratic-plurality districts.  
12 With two exceptions, every Democratic-plurality district falls short of the ideal  
13 population of 213,067 persons. These include Districts 2-4, 7, 8, 10, 13, 19, 24, 27, 29,  
14 and 30. The two exceptions are District 9, which comprises north Tucson and Oro  
15 Valley, and District 26, which comprises much of Tempe. These districts are slightly  
16 overpopulated from the ideal, respectively by 156 and 591 persons, or by 0.07% and by  
17 0.28%.

18           114. Thus, eighty-nine percent of the overpopulated districts are Republican  
19 and ninety-two percent of the under-populated districts are Democrat.

20           115. One Democratic-plurality district -- District 7 -- falls below population  
21 equality by 10,041 persons. Four Democratic-plurality districts fall below by more than  
22 8000 persons: District 4 at 8924, District 27 at 8872, District 3 at 8454, and District 2 at  
23 8452. Three more fall below by more than 5000 persons: District 24 at 6408, District  
24 19 at 5979, and District 30 at 5304. District 8 falls below ideal by 4645 persons. On  
25 average, the 11 under-populated Democratic-plurality districts fall short of the ideal by  
26 6461 persons or 3.03%.

1           116. District 7, the only Native American legislative district in the State, falls  
2 below population equality by 4.71 percent, the largest absolute deviation in the plan.  
3 District 7 is also. Four Democrat districts fall below by more than 3.5 percent: District  
4 4 at 4.19 percent, District 27 at 4.16 percent, and Districts 3 and 2 at 3.97%. Four more  
5 fall below by more than 2 percent: District 24 at 3.01 percent, District 19 at 2.81  
6 percent, District 30 at 2.49 percent, and District 8 at 2.18%.

7           117. On average the 11 under-populated Democrat districts fall short of the  
8 ideal by 3.03%. This high average population deviation indicates that an abnormal  
9 number of these districts are under-populated and, indeed, overpopulated in excess of  
10 3%. If the IRC had been drawing with equal population as a principal criterion, most of  
11 the districts would be expected to be within +/-1% of the ideal. Only nine of the IRC's  
12 2011 districts are that close. If the IRC had used neutral redistricting criteria as its  
13 guiding principle in drawing the map, one might see some population deviations higher  
14 than one percent, but the pattern of district deviations would not correlate with  
15 partisanship to anywhere near the extent seen in the IRC's plan. The only logical  
16 explanation is that the IRC's pattern of deviations was deliberate and intended to have a  
17 partisan effect to enhance Democrat strength in the Legislature.

18           118. Exhibit 17, adopted herein by reference, contains a bar chart showing the  
19 amplitude of deviation of each district with each district's bar colored according to party  
20 registration plurality. The bars colored green are the districts with Democrat pluralities,  
21 while the red bars are Republican.

22                           **NO LEGITIMATE STATE INTEREST JUSTIFIES**

23                                   **THE IRC'S VARIANCE FROM IDEAL**

24           119. Having achieved exact equality among congressional districts, the IRC  
25 had the technical ability to achieve exact equality among legislative districts, and under  
26

1 the circumstances of this action, no legitimate state interest justifies the IRC's variation  
2 from exact equality.

3 120. The technology of demographics has evolved to the point that  
4 demographers, assisted by computer science, are capable of drawing legislative districts  
5 of precisely equal population. They are also capable of using this same technology to  
6 create intentional and arbitrary deviations from the ideal population in order to attain  
7 partisan and other political gains. The IRC 2011 Legislative Plan's range of district  
8 deviations from +4.07% to -4.71% is remarkably and unnecessarily wide, given the  
9 large ideal district population and the absence of any rational state criteria requiring  
10 such a wide range of deviation.

11 121. The IRC was able to create congressional districts of equal population,  
12 even when taking into account the Voting Rights Act's requirements for majority-  
13 minority districts.

14 122. Another way to measure district deviations is in terms of the difference  
15 between the most and least populous district called top-to-bottom, overall range or total  
16 deviation. For the Final Legislative Plan, total deviation would be calculated by taking  
17 the percentage deviation of most populous district, District 10 at +4.07%, and adding to  
18 it the percentage deviation of the least populous district, District 7 at -4.71%. Those  
19 two percentages are added together without the negative sign (absolute value) to yield a  
20 overall deviation range (or total deviation) of 8.79%.

21 123. In the Final Legislative Plan, the deviation from ideal exceeded 2% in 18  
22 districts. The Final Legislative kept district deviations within 2% for only 12 districts  
23 and within 1% for only 9 districts. In contrast, the California Citizens Redistricting  
24 Commission constructed all 40 state senate districts within a total deviation of 2% and  
25 with 12 of 40 districts with 1%. Other states such as Florida, Georgia, Iowa, Minnesota  
26

1 and Nevada were able to keep their state senate district plan total deviations below 2%.  
 2 Indiana, Oregon and Virginia drew theirs below 4%.

3 124. Had the IRC properly followed the criteria for drawing districts mandated  
 4 by ARIZ. CONST. art. 4, pt. 2, § 1(14), or the neutral criteria recognized as justifying a  
 5 deviation in legislative districts from ideal population, the IRC could not have made all  
 6 but one Republican-plurality district over-populated and all but two Democrat-plurality  
 7 districts under-populated. That such results occurred by chance defies all logic and  
 8 probability.

9 **VOTING RIGHTS COMPLIANCE**  
 10 **DOES NOT JUSTIFY THE VARIANCE**

11 125. According to the Census Bureau, the Hispanic portion Arizona's  
 12 population increased from 25.3% in 2000 to 29.6% in 2010. According to the results of  
 13 the U. S. Census Bureau's 2010 release of the American Community Survey ("ACS"),  
 14 Hispanics citizens of voting age comprise 17.89% of Arizona's total citizen voting age  
 15 population.

16 126. The Final Legislative Map contained what purported to be no more than  
 17 seven districts in which Hispanic qualified electors could elect the candidates of their  
 18 choice, which represented no net increase from 2000 to 2010, despite the significant  
 19 increase in Arizona Hispanic population from 2000 to 2010. These are Districts 2, 3, 4,  
 20 19, 27, 29, and 30. A true copy of the IRC's voting-age population break-down for the  
 21 Final Legislative Map is attached as Exhibit 15, and is adopted herein by reference. The  
 22 IRC has labeled these "Hispanic opportunity districts."

23 127. The following chart shows the Hispanic voting-age population ("HVAP")  
 24 of the seven districts according to the IRC population breakdowns. The chart also  
 25 shows the Hispanic citizen voting age population ("HCVAP") of the seven districts.

Legislative District	Percentage HVAP	Percentage HCVAP
----------------------	-----------------	------------------

1	2	52.8%	41.29%
2	3	50.1%	43.59%
3	4	55.7%	45.38%
4	19	60.4%	46.26%
5	27	52.1%	39.82%
6	29	61.9%	43.88%
7	30	50.7%	33.01%

8           128. The correlation between the under-populated districts and the minority  
9 percentages in those districts is stronger than the partisan deviation correlation. A chart  
10 demonstrating this pattern is contained Exhibit 18, adopted herein by reference. The  
11 five most under-populated districts in the IRC's 2012 map are also five of the districts  
12 which the IRC labeled “minority opportunity districts.” One of these districts is Native  
13 American and the other four are Hispanic. All seven of the IRC’s Hispanic opportunity  
14 districts are under-populated. The ten most under-populated districts in the IRC's 2012  
15 map all have a total voting age minority populations in excess of 50% (or less than 50%  
16 non-Hispanic adult whites). Only one additional legislative district has a voting age  
17 minority population in excess of 50%. That is District 26, which has a population only  
18 .28% over the ideal

19           129. It was totally unnecessary for the IRC to create such high deviations, or  
20 patterns of deviations, to draft the Hispanic opportunity districts at the HVAP found in  
21 the Final Legislative Map. The collective under-population of the IRC’s seven Hispanic  
22 districts is 32,588 persons from what it would have been if all the districts were draw at  
23 the ideal population.

24           130. Yet there are a number of whole or split precincts on the boundaries of the  
25 IRC’s seven Hispanic opportunity districts persons which have very high percentages of  
26 Hispanic adults and contain about 87,500 persons. These seven districts could have

1 been drafted at or above the ideal district population with the same or higher level of  
2 HVAP. Thus, the IRC deliberately separated these highly Hispanic precincts from the  
3 IRC's seven Hispanic opportunity districts to use their Democratic votes to shore up the  
4 partisan composition of neighboring Democrat-plurality districts, and or to directly or  
5 indirectly weaken Republican-plurality districts.

6 131. This is also true for Legislative District 7, which the IRC drew with a  
7 Native American voting age population ("NAVAP") of 63.1%. This district can be  
8 drawn with a population deviation of .02% with a NAVAP of 61.0%, more than enough  
9 to qualify this as a Native American majority district and to satisfy both sections two  
10 and five of the Voting Rights Act.

11 132. The Benchmark Plan, or the IRC's Legislative Plan adopted and pre-  
12 cleared in 2003, contains only two districts in which the Hispanic candidates have been  
13 consistently elected to both the one state senate and two state house seats in each of  
14 these districts. The first is Benchmark District 13, in Maricopa County (West Phoenix,  
15 Central Avondale, and Tolleson, which has a Hispanic Citizen Voting Age Percentage  
16 ("HCVAP") of 51.50% and an HVAP of 68.27%. The second is Benchmark District  
17 27, Pima County (primarily the west side of Tucson), which has an HCVAP of 43.67%  
18 and an HVAP of 49.89. Benchmark Districts 14 and 16 also have HCVAP percentages  
19 in the mid-forty percent range. Benchmark District 14 has an HCVAP of 44.27% and  
20 an HVAP of 64.90%, while Benchmark District 16 has an HCVAP of 44.27% and an  
21 HVAP of 56.74. Benchmark District 16 also has an African-American Citizen Voting  
22 Age Population of over 18% - by far the highest in any legislative district. Benchmark  
23 District 14 elects primarily non-Hispanic white candidates while Benchmark District 16  
24 elected either Hispanic or African-American candidates in the last 5 previous elections.

25 133. The IRC could have drawn at least four majority HCVAP districts and at  
26 least one more majority minority CVAP district. The IRC decided instead to create



1 seven weak Hispanic districts, only two of which had HCVAPs above the HCVAP of  
2 Benchmark District 27. Even worse, District 29, the successor district to Benchmark  
3 District 13, had its HCVAP reduced from 51.50% to 43.88%.

4 134. The IRC had the opportunity to draw these seats with HCVAP extremely  
5 close to or over 50%, but it declined to do. Three of these districts could have been in  
6 Maricopa County, one in Pima County and one running along the State's southern  
7 border from Yuma to Nogales. Instead, the IRC elected to create seven weaker seats.

8 135. To create the Democrat-plurality legislative districts with negative  
9 population deviations, including the minority districts, the IRC moved substantial  
10 numbers of Hispanic voters into neighboring non-Hispanic white Democrat districts to  
11 shore up the Democrats' partisan advantage in such districts. Had the IRC followed the  
12 Voting Rights Act and ARIZ. CONST. art. 4, pt. 2, §1(14), it would have moved the  
13 Hispanic voters around the boundary of the seven Hispanic districts to raise the  
14 percentage of Hispanic voters in those districts and give the Hispanic community an  
15 equal opportunity to elect more candidates of its choice. The IRC refused to do so for  
16 the sole reason of increasing the Democrat percentages of the vote in the districts  
17 adjacent to these seven districts.

18 136. In fact, the IRC engaged in intentional invidious dilution of Hispanic  
19 voting strength throughout the map. The IRC systematically spread Hispanic Democrats  
20 into predominantly non-Hispanic white Democrat districts to increase the strength of  
21 Democratic registration pluralities in them.

22 137. What's more, no correlation exists between satisfying Voting Rights Act  
23 section 5 and these districts' under-populations. Specifically, no significant  
24 improvement in minority VAP occurred in the VRA districts between the draft map and  
25 the final map. District 2 HVAP dropped by 9.6%. HVAP in Districts 3 and 27  
26 marginally declined. HVAP marginally improved in Districts 4, 19, and 29. Native

1 American VAP increased marginally in District 7. Yet the IRC's under-population of all  
2 these districts significantly worsened:

3 Dist.	Population	Deviation from Ideal	Population Change	Draft VAP %	Final VAP %	VAP Change
4 2	Draft 212,863 Final 204,615	Draft -204 Final -8452	↓8248	61.4%	52.8%	↓9.6%
5 3	Draft 210,016 Final 204,613	Draft -3051 Final -8454	↓5403	51.2%	50.1%	↓1.1%
6 4	Draft 214,082 Final 204,143	Draft +1014 Final -8924	↓9938	53.7%	55.7%	↑2.0%
7 19	Draft 212,096 Final 207,088	Draft -971 Final -5979	↓5008	60.0%	60.4%	↑0.4%
8 27	Draft 208,413 Final 204,195	Draft -4654 Final -8872	↓4218	53.7%	52.1%	↓1.6%
9 29	Draft 212,258 Final 211,067	Draft -809 Final -2000	↓1191	61.7%	61.9%	↑0.2%
10 30	Draft 207,918 Final 207,763	Draft -5149 Final -5304	↓155	50.7%	50.7%	---
11 7	Draft 210,314 Final 203,026	Draft -2753 Final -10,041	↓7288	61.9%	63.1%	↑1.2%

12 138. Thus, compliance with the Voting Right Act is no rationale for the IRC's  
13 violation of the equal population standard. The IRC weakened the ability of the  
14 Hispanic community to elect Hispanic candidates of their choice in order to elect more  
15 non-Hispanic white Democrats.

16 139. By letter dated April 26, 2012, the Department of Justice declined to  
17 interpose any objection to the Final Legislative Map. The April 26, 2012, letter,  
18 however, stated that "we note that Section 5 expressly provides that failure of the  
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1 Attorney General to object does not bar subsequent litigation to enjoin the enforcement  
 2 of the change.” Despite the DOJ letter, these are inadequate HCVAP percentages to  
 3 ensure that Hispanic electors could elect candidates of their choice, and therefore violate  
 4 the anti-retrogression requirement of Section 5 of the Voting Rights Act.

5 140. An analysis of the retrogression of Final Legislative Map in terms of  
 6 HCVAP is attached as Exhibit 16, and is adopted herein by reference. The analysis  
 7 reveals that the IRC majority of Ms. Mathis, Mr. Herrera, and Ms. McNulty deliberately  
 8 diluted the voting strength of Hispanic voters to protect Democratic-plurality districts. It  
 9 shows that the following new legislative districts retrogressed from the benchmark  
 10 districts by significant percentages of CVAP:

New Legislative District	Percentage HCVAP Retrogression from the Benchmark District
3	0.08 -
19	5.24 -
27	3.29 -
29	7.62 -
30	11.26 -

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 18 141. Such retrogressions could not have taken place had the IRC built the  
 19 Hispanic districts first, as is the common approach to adhere to the requirements of  
 20 Section 5, and as was required by ARIZ. CONST. art. 4, pt. 2, §§ 1(14) and 1(16) before it  
 21 could publish the legislative draft map for the 30-day comment period of Phase Three.

22 142. The true nature of these districts is revealed by the candidates who filed  
 23 for office in them. The Secretary of State’s records indicate that the candidates who  
 24 filed by the deadline for the Democratic nominations for state Senate from District 24  
 25 are former Senator Ken Chevront and Katie Hobbs and for the state House are  
 26 incumbents Chad Campbell and Lela Alston as well as Jean Chevront-McDermott and

1 Tom Nerini. From District 26, they are Ed Ableser for the Senate, and Andrew  
2 Sherwood and Juan Mendez for the House. *See* Secretary of State's 2012 Primary  
3 Election full listing, found at  
4 <http://www.azsos.gov/election/2012/Primary/FullListing.htm>. Given these are at most  
5 influence districts, it is no surprise that only one Hispanic is running in them.

6 143. It would not have been necessary for the IRC's mapping consultant  
7 Strategic Telemetry to use partisan election results to understand exactly what was  
8 being done here. Factoring in the effect of under-population of both the Hispanic and  
9 adjacent Democratic-plurality districts, coupled with ethnic fragmentation, creates a  
10 deliberate and classic gerrymander.

11 144. Thus, these facts show that the IRC could have made up these districts'  
12 shortfalls with minor adjustments in district lines, but chose not to do so to benefit  
13 Democratic incumbents or to increase the number of Democratic-plurality districts.

14 145. What is worse, to the extent the IRC eventually obtained a racial bloc  
15 voting analysis, the analysis made no study of the cohesiveness of minority voters, and  
16 made no study of the likelihood of white cross-over voting, and therefore was incapable  
17 of determining the percentage of CVAP it needed in purportedly Hispanic districts to  
18 create an effective Hispanic district, meaning a district in which the Hispanic electors  
19 could elect the candidate of their choice, and therefore was also incapable of  
20 determining whether it satisfied either Sections 2 or 5 of the Voting Rights Act.

21 146. What is worse yet, the analysis's sampling of elections was so limited as  
22 to cripple its effectiveness and usefulness. Specifically, the racial bloc voting analysis  
23 made no study of primary elections, made no study of endogenous elections, meaning  
24 actual legislative elections, and limited its focus to exogenous elections, meaning  
25 elections for offices other than the Arizona House of Representatives or Arizona Senate.  
26

1 Because of these deficiencies, the racial bloc voting analysis was essentially useless for  
2 determining compliance with sections 2 and 5 of the Voting Rights Act.

3 147. The only possible explanation for these facts is that the individuals who  
4 were drawing the maps for the Arizona Commission were engaged in intentional  
5 political gerrymandering. Their method for accomplishing this was to dilute the  
6 Hispanic voting strength as much as was politically possible so that they could use these  
7 Hispanic Democrats to shore up non-Hispanic white Democratic candidates. The  
8 Commission then raised up the Hispanic Democrat percentages for this purpose by  
9 under-populating the Hispanic districts. The Commission then artificially increased  
10 Democrat electoral strength even more by under-populating the non-Hispanic white  
11 Democrat districts so that fewer Democrat votes were necessary in order to control  
12 these districts. This fact was still further enhanced by removing Republican voters from  
13 these under-populated non-Hispanic white Democrat districts and placing them in  
14 highly Republican and massively overpopulated districts.

15 **RESPECTING THE COMPETITIVENESS GOAL**

16 **DOES NOT JUSTIFY THE VARIANCE FROM EQUALITY**

17 148. In 2002, the IRC final legislative map achieved six competitive districts,  
18 in which a candidate of either party with a reasonably well-run campaign had a chance  
19 of winning election.

20 149. In 2012, the IRC retrogressed and achieved only four competitive  
21 districts. These include Districts 8-10, and 18.

22 150. As a result, respecting the competitiveness goal did not justify the  
23 deviations from equality in the Final Legislative Map.

24 **RESPECTING THE NEUTRAL GOALS**

25 **DOES NOT JUSTIFY THE VARIANCE FROM EQUALITY**

26



1           159. The one-person/one-vote requirement of the equal protection clause of the  
2 Fourteenth Amendment does not permit legislative districts to deviate from the ideal  
3 population except when justified by a compelling state interest. A plan with legislative  
4 districts that do not exceed the ideal population by more than five percent over or five  
5 percent under the ideal is presumed not to violate the one-person/one vote requirement  
6 of the equal protection clause of the Fourteenth Amendment, but the presumption of  
7 constitutionality is rebuttable. *Larios*, 300 F.Supp.2d at 1341.

8           160. Not compelled or justified by any legitimate state interest, such as  
9 compliance with the Voting Rights Act, or the neutral districting criteria, the IRC's  
10 systematic overpopulating of Republican-plurality districts and systematic under-  
11 populating of Democratic-plurality districts was arbitrary and discriminatory, denied  
12 Plaintiffs, and each of them, their rights to equal protection of the laws guaranteed by  
13 the Fourteenth Amendment to the United States Constitution, and deprived them of  
14 "rights, privileges, or immunities secured by the Constitution and laws" of the United  
15 States, in violation of 28 U.S.C. § 1983. *Larios*, 300 F.Supp.2d at 1341.

16           161. The constitutional defects in the Final Legislative Map are so  
17 comprehensive that the IRC will have no choice but to abandon the Final Legislative  
18 Map and begin anew.

19           162. Because this is an action to enforce 28 U.S.C. § 1983, Plaintiffs are  
20 entitled to an award of attorneys' fees under 28 U.S.C. § 1988 against the IRC.

21           163. Plaintiffs therefore are entitled to judgment declaring that the Final  
22 Legislative Map violates the equal protection clause of the Fourteenth Amendment, and  
23 28 U.S.C. § 1983, and thereby injures Plaintiffs, and each of them, and is null and void,  
24 enjoining Defendants and each of them from implementing or enforcing the Final  
25 Legislative Map, mandating that the IRC draft a new map for legislative elections  
26

1 following the 2012 elections, and awarding Plaintiffs reasonable attorneys fees under 28  
2 U.S.C. § 1988 against the IRC.

3 **SECOND CLAIM FOR RELIEF**

4 164. Plaintiff adopts herein by reference all allegations of all preceding  
5 paragraphs.

6 165. This claim is so related to the First Claim for Relief that it forms part of  
7 the same case or controversy under Article III of the United States Constitution, and this  
8 Court has jurisdiction of it under 28 U.S.C. § 1367.

9 166. ARIZ. CONST. art. 4, pt. 2, § 1(14)(B) requires the IRC to draw legislative  
10 districts with equal population to the extent practicable.

11 167. The IRC could have drawn legislative districts that achieved the ideal  
12 population had it wanted to do so, just as it did with congressional districts.

13 168. To do so, however, would have prevented the McNulty/Herrera/Mathis  
14 bloc from maximizing the number of Democratic-plurality districts. As a result, the  
15 McNulty/Herrera/Mathis bloc deliberately defied the equal population requirement of  
16 ARIZ. CONST. art. 4, pt. 2, § 1(14)(B) for the sole purpose of maximizing the partisan  
17 interests of the Democratic Party.

18 169. The Final Legislative Map therefore violates the equal population  
19 requirement of ARIZ. CONST. art. 4, pt. 2, § 1(14)(B), and thereby injures Plaintiffs, and  
20 each of them, and is null and void.

21 170. This is an action to compel the members of the IRC, all of whom are state  
22 officers, to perform an act imposed by law as a duty on the them, and Plaintiffs  
23 therefore are entitled to an award of reasonable attorneys' fees and other expenses as  
24 provided for in A.R.S. § 12-2030 against the IRC and its members in their official  
25 capacities.

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**CANTELME & BROWN, P.L.C.**

By: /s/ David J. Cantelme, SBN 006313  
3003 N. Central Avenue, Suite 600  
Phoenix, AZ 85012  
Tel (602) 200-0104  
Fax (602) 200-0106  
E-mail: [djc@cb-attorneys.com](mailto:djc@cb-attorneys.com)

*Attorneys for Plaintiffs Wesley W. Harris, LaMont E. Andrews, Cynthia L. Biggs, Lynne F. Breyer, Ted Carpenter, Beth K. Hallgren, James C. Hallgren, Lina Hatch, Terry L. Hill, Joyce M. Hill, and Sherese L. Steffens*

**SNELL & WILMER L.L.P.**

By: /s/ Michael T. Liburdi, SBN 021894  
One Arizona Center  
400 E. Van Buren Street  
Phoenix, Arizona 85004-2202  
Telephone: (602) 382-6000  
Fax: (602) 382-6070  
E-Mail: [miburdi@swlaw.com](mailto:miburdi@swlaw.com)

*Attorneys for Plaintiffs*

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 5, 2012, I electronically transmitted the foregoing document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a notice of electronic filing to the EM/ECF registrants appearing in this case.

/s/ Taryn Cantrell