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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

Wesley W. Harris, *et al.*,  
Plaintiffs,

v.

Arizona Independent Redistricting  
Commission, *et al.*,  
Defendants.

Case No. CV 12-00894-PHX-ROS

**PLAINTIFFS' PROPOSED  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

Assigned to District Judges Silver and  
Wake and Circuit Judge Clifton

Pursuant to Rule 52, Fed. R. Civ. P., and the Court's Order dated December 21, 2012, Plaintiffs submit the following proposed Findings of Fact and Conclusions of Law.

1 **I. FINDINGS OF FACT<sup>1</sup>**

2 **The Parties**

3 1. This action is brought by qualified electors of the State of Arizona to  
4 challenge the final map of Arizona legislative districts (the "Final Legislative Map")  
5 approved by the Arizona Independent Redistricting Commission (the "IRC") on January  
6 17, 2012.

7 2. Plaintiff Wesley W. Harris resides in Legislative District ("LD") 20.  
8 Plaintiff LaMont E. Andrews resides in LD 17. Plaintiff Cynthia L. Biggs resides in LD  
9 12. Plaintiff Lynne F. Breyer resides in LD 23. Plaintiff Beth K. Hallgren resides in  
10 LD 16. Plaintiff James C. Hallgren resides in LD 17. Plaintiff Lina Hatch resides in  
11 LD 17. Plaintiff Terry L. Hill resides in LD 6. Plaintiff Joyce M. Hill resides in LD 6.  
12 Plaintiff Karen M. MacKean resides in LD 6. Plaintiff Sherese L. Steffens resides in  
13 LD 11.

14 3. All Plaintiffs are qualified electors of the State of Arizona, are registered  
15 to vote in the State of Arizona, and are members of the Republican Party.

16 4. Defendant Ken Bennett, the Arizona Secretary of State, is the chief  
17 elections officer in the State of Arizona and is charged with administering elections for  
18 the Arizona Legislature.

19 **Legislative Districts**

20 5. The Arizona Constitution, art. 4, pt. 2, § 1(1), establishes 30 legislative  
21 districts, each of which consists of one member of the Arizona State Senate and two  
22 members of the Arizona House of Representatives.

23 6. As determined by and at the time of the 2010 United States Census,  
24 Arizona's population was 6,392,017 persons.

25 \_\_\_\_\_  
26 <sup>1</sup> If any proposed findings are later deemed more properly classified as conclusions of  
law, Plaintiffs offer them for that purpose.

1 7. To achieve population equality, the ideal population for each legislative  
2 district is 213,067 persons.

3 **Proposition 106**

4 8. In 2000, Arizona voters approved Proposition 106, an amendment to the  
5 Arizona Constitution, which establishes the IRC, provides for a selection process for  
6 commissioners, and sets forth the procedural and substantive criteria for creating  
7 legislative and congressional redistricting plans.

8 9. The IRC consists of five commissioners, two of which are appointed by  
9 Republican legislative leaders, two of which are appointed by Democratic legislative  
10 leaders, and one commissioner – the chairperson – is selected by the first four appointed  
11 commissioners.

12 **Selection of the Commissioners by Party**

13 10. Leadership makes their selections from slates of applicants assembled by  
14 the Arizona Commission on Appellate Court Appointments (the “Appointment  
15 Commission”). After interviewing applicants for IRC commissioner, the Appointment  
16 Commission creates three separate slates of candidates:

- 17 a. a slate of ten Republicans;  
18 b. ten Democrats; and  
19 c. five others who are registered as Independents or with a minor  
20 political party.

21 11. On the following dates, appointments to the IRC were made in the  
22 constitutionally prescribed order: January 31, 2011, the Republican Speaker of the  
23 Arizona House of Representatives appointed Scott Freeman, a registered Republican  
24 from Maricopa County; February 2, 2011, the Democratic Minority Leader of the  
25 Arizona House of Representatives appointed Jose Herrera, a registered Democrat from  
26 Maricopa County; February 9, 2011, the Republican President of the Arizona State

1 Senate appointed Richard Stertz, a registered Republican from Pima County; and  
2 February 15, 2011, the Democratic Minority Leader of the Arizona State Senate  
3 appointed Linda McNulty, a registered Democrat from Pima County.

4 **Selection of the IRC Chairperson**

5 12. The fifth commissioner is selected by the four legislative appointments  
6 from the Appointment Commission's third slate of candidates. The fifth commissioner  
7 serves as the chair of the IRC.

8 13. Colleen Mathis learned about the position of IRC chair at a convention for  
9 Arizona L.I.S.T. that she and her husband Christopher Mathis attended in August 2010.

10 14. Arizona L.I.S.T. exists for the purpose of electing progressive and pro-  
11 choice Democratic women to public office.

12 15. In response to the rules or practices of the Appointment Commission, Ms.  
13 Mathis submitted an application to the Appointment Commission, dated October 12,  
14 2010.

15 16. Therein Ms. Mathis omitted critical information, which, had it been  
16 known, would have identified her as biased to the Democratic Party and not impartial,  
17 and would have precluded her under article 4, part 2, § 1(3) of the Arizona Constitution  
18 from being nominated to the IRC as an Independent or and from being selected to serve  
19 as the Independent chairperson of the IRC.

20 17. Specifically, she failed to reveal the following:

21 a. Christopher Mathis, her husband, served in the 2010 election as  
22 treasurer for the campaign of Nancy Young Wright, a Democratic candidate for a  
23 seat in the Arizona House of Representatives from legislative district 26 in Pima  
24 County;

25 b. on May 16, 2010, she donated \$100 to the campaign of Andrei  
26 Cherny, then a democratic candidate for Arizona State Treasurer in the 2010

1 election;

2 c. on May 4, 2010, Christopher Mathis donated \$250 to the Cherny  
3 state-treasurer campaign;

4 d. on October 27, 2010, Christopher Mathis donated \$100 to the  
5 Nancy Wright legislative campaign;

6 e. on August 10, 2010, she donated \$10 to the Arizona List P.A.C., a  
7 committee for pro-choice Democratic women in Arizona; and

8 f. on March 3, 2010, Christopher Mathis donated \$75 to Arizona List  
9 P.A.C., and on August 10, 2010, donated another \$10 to Arizona List P.A.C.

10 This consistent pattern of service to Democratic causes and patronage to  
11 Democratic candidates reveals that Chairperson Mathis is an Independent in name only,  
12 and in reality, sides with Democratic-oriented candidates and causes.

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

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

23 20. During the February 24, 2011, interviews, Commissioner Freeman  
24 indicated to Ms. Mathis that the IRC’s political appointee members were looking for a  
25 chairperson who would bring balance and fairness to the IRC and asked Ms. Mathis  
26 whether anything in her background would call into question her ability to be fair.

1 According to the minutes of this meeting, Ms. Mathis answered that “there is nothing in  
2 her background that would limit her ability to be fair and as long as she did not have to  
3 make decisions about buying heavy equipment she would be okay.”

4 21. In response to questioning from Commissioner McNulty about her  
5 management style, the meeting minutes report that Ms. Mathis responded that she liked  
6 “to create an environment where people feel they can trust her and are comfortable with  
7 what she is trying to do” and that it was “important to be open and impartial and achieve  
8 the end result by consensus.”

9 22. This was an opportunity for Ms. Mathis to correct the material omissions  
10 she had made on her application. Instead, as disclosed by her interview answers, she  
11 doubled down and continued to maintain a façade of impartiality. Ms. Mathis later  
12 explained in her deposition in this matter that she did not provide these details because  
13 she was not asked about them directly and specifically.

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

17 24. On March 1, 2011, after meeting in closed session for a little over an hour,  
18 Commissioners Freeman, Herrera, Stertz, and McNulty selected Ms. Mathis, a  
19 registered Independent from Pima County, to serve as IRC Chair.

20 **Selection of Counsel**

21 15. The alliance among Commissioners Mathis, McNulty and Herrera first  
22 emerged with the selection of the IRC’s legal counsel.

23 16. After discussion about the IRC’s procurement authority and consultation  
24 with the State Procurement Office (“SPO”) of the Arizona Department of  
25 Administration, the IRC decided to follow the state procurement code to retain legal  
26 services from one or more law firms.

1           17. The IRC is vested with authority to retain legal counsel by the Arizona  
2 Constitution, which also provides the IRC with discretion to determine whether it will  
3 retain one of more law firms. Ariz. Const. art. 4, pt. 1, § 1(19).

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

6           19. Article 4, part 2, § 1(12) of the Arizona Constitution does not authorize  
7 the IRC to meet in anything but “a meeting open to the public, with 48 or more hours  
8 public notice provided.” Nonetheless, the IRC met in closed sessions on May 3, 2011,  
9 for approximately 5.5 hours; May 6, 2011 (telephonically) for an undisclosed amount of  
10 time; and on May 10, 2011 for approximately 1.5 hours before selecting the law firms to  
11 be interviewed in public session on May 10, 2011.

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

15           21. At a public meeting on May 13, 2011, Commissioner Herrera indicated  
16 his preference for Democratic lawyer Michael Mandell. In addition, Commissioners  
17 Freeman and Stertz indicated their preference for Republican lawyer Lisa Hauser.  
18 Accordingly, Commissioner Stertz moved that the IRC hire Mr. Mandell and Ms.  
19 Hauser as their counsel. This motion was defeated by the voting bloc of Mathis-  
20 McNulty-Herrera, even though Commissioner Herrera had indicated his preference for  
21 Mr. Mandell just minutes before the vote was taken.

22           22. Following the defeat of Commissioner Stertz’s motion, the Democratic  
23 Commissioners, McNulty and Herrera, and Chairperson Mathis, selected Republican  
24 counsel over the objections of the Republican Commissioners, Defendants Freeman and  
25 Stertz. On this decision, the Mathis-Herrera-McNulty majority essentially isolated and  
26 shut out the Republican commissioners from the decision-making process and selected

1 Osborn Maledon, P.A. (Democrat Mary O’Grady) and Ballard Spahr LLP (Republican  
2 Joseph Kanefield) as legal counsel.

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

10 23. Further concerns emerged regarding the outcome-oriented nature of  
11 the scoring of the responses to the RFP engaged in by at least one Commissioner who  
12 gave perfect scores to the Democratic Commissioners’ preferred candidates and an  
13 unjustifiably low score to the candidate preferred by the Republican Commissioners.  
14 One other Commissioner’s written comments during the procurement process raised  
15 concerns about the possibility that the scoring had been rigged.

16 24. Commissioners Mathis, McNulty, and Herrera discussed matters  
17 involving the selection of legal counsel for the IRC, including having discussions that  
18 led to or were the equivalent of legal action, outside of properly noticed public  
19 meetings.

### 20 **Selection of the Mapping Consultant**

21 25. On or about June 15, 2011, the IRC met in public session to select four  
22 candidates to interview for the position of mapping consultant: Strategic Telemetry,  
23 National Demographics, Research Advisory Services, and Terra Systems Southwest.  
24 Before making their selection, the IRC held one or more closed sessions to discuss the  
25 selection of a mapping consultant, including an almost five-hour closed session on June  
26 15, 2011.



1           26.       The mapping consultant RFP evaluation form criteria included two  
2 categories that were scored by the commissioners: methodology for performance of  
3 work (400 points) and capacity of offeror (300 points). The other two categories, cost  
4 (200 points) and conformance with T's and C's (100 points), were completed by SPO.

5           27.       Following presentations by the candidates for mapping consultant on  
6 June 24, 2011, the IRC met in closed session to discuss the selection of the mapping  
7 consultant and Chairperson Mathis and Commissioners McNulty and Herrera all gave  
8 Strategic Telemetry perfect scores for the methodology and performance of work and  
9 capacity of offeror (700 points). None of these three commissioners indicated any  
10 perceived weaknesses in the space for weaknesses in the Strategic Telemetry evaluation  
11 form.

12           28.       Commissioners Mathis, McNulty, and Herrera all gave Strategic  
13 Telemetry perfect scores and failed to list any weaknesses despite its relative lack of  
14 redistricting experience, its lack of even rudimentary knowledge of Arizona  
15 demographics and geography, its submission of the most expensive proposal, its being  
16 headquartered at the District of Columbia, and its deep and exclusive affiliation with  
17 Democratic candidates and causes.

18           29.       By a vote of 3-2, on June 29, 2011, the Commission selected Strategic  
19 Telemetry as its mapping consultant. Chairperson Mathis again joined with the  
20 Democratic commissioners who favored retention of the Democratic-aligned consultant  
21 against Commissioners Stertz and Freeman.

22           30.       On this decision as well, the Mathis-Herrera-McNulty majority again  
23 isolated and shut out the Republican commissioners from the decision-making process.

24           31.       Throughout this selection process, concerns were voiced by the public  
25 and Commissioners Stertz and Freeman about Strategic Telemetry's highly partisan,  
26

1 pro-Democratic resume. Strategic Telemetry advertised itself as a statistics and data  
2 analysis firm that caters to Democratic clients.

3 32. As a Democratic campaign strategist, Strategic Telemetry's President,  
4 Ken Strasma, specialized in micro targeting and is considered to be a pioneer in the use  
5 of high-tech statistical modeling in Democratic campaigns. In this vein, Mr. Strasma,  
6 served as the national target director for the 2008 Obama presidential campaign. His  
7 work for the 2008 Obama campaign included micro-targeting, a technique for  
8 identifying narrow niches of voters and targeting campaign communications to them.  
9 He also worked with the 2004 John Kerry presidential campaign and directed its micro-  
10 targeting efforts. Most recently, he worked on efforts to recall Republican officials in  
11 Wisconsin. Mr. Strasma also has a long history of making substantial monetary  
12 contributions to Democratic candidates.

13 33. The fact that Strategic Telemetry is not a mapping firm was  
14 highlighted during an IRC meeting in July 2011 when Strategic Telemetry indicated that  
15 its staff would need time to learn the Maptitude software that is standard in the mapping  
16 industry.

17 34. Chairperson Mathis, who, prior to the Commission meeting, knew that  
18 Strategic Telemetry would be selected, provided her reasoning from a statement that  
19 was prepared ahead of time. Moreover, prior to the meeting, Chairperson Mathis had  
20 conversations with other IRC commissioners outside of executive session and public  
21 meetings regarding the retention of Strategic Telemetry. At a minimum, she called  
22 Commissioners Stertz and Freeman separately and asked them to support Strategic  
23 Telemetry. With respect to Commissioner Stertz, she indicated that he should support  
24 the selection of Strategic Telemetry because he may need her to vote with him in the  
25 future.

26

1           35.        A public outcry followed Strategic Telemetry’s selection. For weeks  
2 afterward, members of the public questioned the Commission’s decision to hire this  
3 partisan firm to assist with constructing Arizona’s legislative district lines for the next  
4 decade.

5           36.        The Strategic Telemetry employee assigned to conduct day-to-day  
6 mapping functions for the IRC commissioners, Willie Desmond, had no prior  
7 redistricting experience.

8   **The SPO Withdraws**

9           37.        The Arizona Constitution requires that the IRC perform its procurement  
10 and contracting functions “with fiscal oversight from the department of administration  
11 or its successor.” Ariz. Const. art. 4, pt. 1, § 1(19).

12           38.        Despite its stated intention of following the Arizona Procurement Code  
13 (“APC”), the IRC failed to do so. By letter dated June 29, 2011, Jean Clark at SPO  
14 withdrew from further assistance to the IRC, and cited the following as instances in  
15 which the IRC either failed to follow the APC or engaged in poor procurement  
16 practices:

17                 a.        The IRC voted on the legal firm shortlist for interviews without  
18 involvement by the Procurement Officer. The Procurement Officer was excluded  
19 from attendance and was not afforded an opportunity to provide supporting  
20 evaluation documentation for the shortlist decision. Further, the IRC failed to  
21 provide the Procurement Officer the opportunity to review the interview  
22 questions or prescribe the guidelines for the interviews. (R2-7 -C316B,  
23 Evaluation of Offers)

24                 b.        The IRC agreed and signed a legal services summary evaluation  
25 report, but then publicly discussed and some members voted contradictory to the  
26 agreed upon evaluation report. (R2-7 -C316B, Evaluation of Offers)

1 c. The IRC directed SPO to “harmonize” the rates between the two  
2 firms, which required a non-susceptible award determination after the public vote  
3 so the rates could be negotiated. This did not follow the customary process or  
4 requirements in the APC for negotiations and final proposal revisions. (A.R.S.  
5 §41-2534F; R2-7- C311A, Determination of Not Susceptible for Award)

6 d. The IRC disregarded a recommendation by SPO that the  
7 composition of the evaluation committee for the mapping RFP include  
8 independent subject matter experts and not be solely comprised of  
9 Commissioners. (R2-7-C316B, Evaluation of Offers)

10 e. The IRC disregarded the Procurement Officer’s instruction to  
11 submit their preliminary interview questions for review prior to the mapping  
12 consultant interviews. (R2-7-C313C, Clarifications of Offerors)

13 f. The IRC disregarded the Procurement Officer’s instructions to  
14 evaluate strictly upon the evaluation factors in the RFP and to be consistent;  
15 however, inconsistencies were evident in the evaluator comments and scoring for  
16 the mapping consultant. (R2-7 -C316B, Evaluation of Offers)

17 g. The IRC failed to comply with the APC in the evaluation of the  
18 proposals. In particular in the determination of susceptibility/competitive range  
19 and ultimate contract award. (A.R.S. § 41-2534F; R2-7 -C314C, Negotiations  
20 with Responsible Offerors and Revisions of Offers) As discussions also  
21 transpired in Executive Session, other aspects of the Arizona Procurement Code  
22 may be in question.

23 **The Four-Stage Map Drawing Process**

24 39. Every ten years, following the decennial census, the ARIZ.CONST., art. 4,  
25 pt. 2, § 1(14), requires that the IRC engage in a four stage process to draft new  
26 legislative districts:

1 The Commission must follow a four-step process. First, the  
2 Commission must create districts of equal population in a  
3 grid-like pattern across the state. Second, the Commission  
4 must adjust the equally populated grid map as necessary to  
5 accommodate six goals enumerated in the Arizona  
6 Constitution to create a draft map. To do so, the Commission  
7 must begin by ensuring that the configuration of the districts  
8 complies with the United States Constitution and the Voting  
9 Rights Act. Then the Commission must adjust the map to  
10 accomplish the remaining five goals to the extent practicable:  
11 (1) equal population in congressional and legislative districts;  
12 (2) geographically compact and contiguous districts; (3)  
13 district boundaries that respect communities of interest; (4)  
14 district lines drawn using visible geographic features, city,  
15 town and county boundaries, and undivided census tracts; and  
16 (5) competitive districts, where such districts would create no  
17 significant detriment to the other factors. Places of residence  
18 of incumbents or candidates may not be identified or  
19 considered.

20 Third, the Commission must advertise its adjusted draft map  
21 for at least 30 days and consider both public comments and  
22 any recommendations made by the Arizona legislature.  
23 Lastly, the Commission must establish final district  
24 boundaries and certify the new districts to the Arizona  
25 Secretary of State.

26 *Harris v. Arizona Independent Redistricting Comm'n*, 2012 WL 5835336, \*\* 1-2 (D. Ariz.,  
Nov. 16, 2012).

### **Stage 1: The Grid Map**

40. On August 18, 2011, the IRC approved its option 2 legislative grid map  
(the "Grid Map"), thereby completing Phase 1 of its constitutionally mandated work.  
The grid map had a maximum overpopulation deviation of 1.56% and a maximum  
underpopulation deviation of 2.51%. In that respect, the Grid Map failed to comply  
with Ariz.Const. art. 4, pt. 2, § 1(14), which required the Grid Map to consist of districts

1 of equal population as the start point of the map drawing process. Thus, the IRC was  
2 already off on the wrong foot.

3 **Stage 2: Adjustments for the Six Constitutional Criteria.**

4 **The IRC Fails to Have a Racial Bloc Voting Analysis Done**  
5 **for Section 5 or Section 2, and Unconstitutionally Abandons the Grid Map.**

6 41. The IRC did not adopt a definition of community of interest as that term is  
7 used in article 4, part 2, § 1(14) of the Arizona Constitution.

8 42. The IRC did not adopt a definition of compactness or contiguity as those  
9 terms are used in article 4, part 2, § 1(14) of the Arizona Constitution.

10 43. The IRC did not adopt a definition of competitiveness as that term is used  
11 in article 4, part 2, § 1(14) of the Arizona Constitution.

12 44. In preparing the Draft Map, the Arizona Constitution requires the IRC to  
13 comply with the Voting Rights Act. To do so, it had an equal duty of complying with  
14 Section 5 to avoid retrogression, and of complying with Section 2 to ensure minority  
15 groups made whatever voting gains population growth entitled them to.

16 45. The IRC failed to make a racial bloc voting analysis to determine  
17 cohesiveness and polarization under Section 5 of the Voting Rights Act before it  
18 adopted the Draft Map.

19 46. The IRC never performed a racial bloc voting analysis to determine  
20 cohesiveness and polarization under Section 2 of the Voting Rights Act.

21 47. The IRC's submission to the United States Department of Justice  
22 ("DOJ"), dated August 23, 2002 (the "Benchmark Plan"), identified the following  
23 districts from the Benchmark Plan as districts in which minority voters had the ability to  
24 elect their candidates of choice: 2, 13, 14, 16, 23, 24, 25, and 27. Of these, in District 2,  
25 Native American voters were the dominant minority group.

26

1           48. This meant that the IRC needed to attain no more than eight ability-to-  
2 elect districts to satisfy section 5 and avoid retrogression.

3           49. At this stage in the proceedings, the IRC had not performed a racial bloc  
4 voting analysis to determine cohesiveness and polarization of voting patterns, and had  
5 made no determination under Section 2 of the Voting Rights analysis under the test set  
6 forth in *Thornburg v. Gingles*, 478 U.S. 30 (1986), to determine the number of majority-  
7 minority districts it needed to create under Section 2 of the Voting Rights Act.

8           50. At this stage, the IRC's efforts to comply with both section 2 and section  
9 5 of the Voting Rights Act were not analytical and were based solely on anecdotal  
10 evidence. In particular, the IRC considered compliance with section 5, and not section  
11 2, and did so by reviewing how a proposed district voted in the 2010 race for state mine  
12 inspector. In that race, the Democratic candidate was Manuel Cruz, a Hispanic, running  
13 against Joe Hart, an Anglo Republican.

14           51. What is worse, in September 2011, the IRC abandoned the Grid Map in  
15 favor of certain ability-to-elect district proposals drafted by D.J. Quinlan, Elections  
16 Director of the Arizona Democratic Party ("ADP"), and submitted to the IRC by  
17 Richard Miranda of the Minority Coalition. Chairperson Mathis decided that  
18 compliance with the Voting Rights Act required that the IRC adopt the Minority  
19 Coalition's recommendations as a starting point and then redraw other district  
20 boundaries around them.

21           52. On October 10, 2011, the IRC approved a draft legislative map (the "Draft  
22 Map"). The Draft Map was supposed to have been a "Merge Map," meaning a  
23 combination of the maps then preferred by Commissioner McNulty for Southern  
24 Arizona and by Commissioner Freeman for Northern Arizona. In fact, it was essentially  
25 a map drawn by Commissioner McNulty. The Republican members of the IRC again  
26 were frozen out of the process.

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**Stage 3**

53. Immediately after approving the Draft Map, the IRC put the map out for stage-three public comment. The effect of the IRC’s publishing the draft map at the end of stage 2 of the process was to represent to the people of Arizona that the Draft Map was a good faith effort to satisfy the six criteria set forth in art. 4, pt. 2, § 1(14) of the Arizona Constitution.

54. Yet not having had any racial bloc voting analyses performed either for section 5 or section 2, the IRC was at best guessing that its minority districts in fact formed ability-to-elect districts.

55. On November 2, 2011, during the stage-three comment period, the Arizona Legislature passed House Concurrent Memorial 2001, making comments on the legislative draft map pursuant to art. 4, pt. 2, § 1(14), of the Arizona Constitution.

**Stage 4**

56. After the 30-day comment period elapsed, the Commission reconvened and met on the following dates: November 29 and 30, and December 1, 5, 7, 8, 9, 12, 15, 16, 19, 20, 2011, and January 9, 10, 13, and 17, 2012.

57. The IRC completely ignored House Concurrent Memorial 2001.

58. At the first meetings concerning adjustments to the draft map, held on November 29 and 30, 2011, the IRC received advice from its voting rights consultant, Bruce Adelson, that it could under-populate Voting Rights Districts relative to other districts to help ensure that the map would not retrogress and would meet the Commission’s burden under Section 5 of the Voting Rights Act.

59. At the same meetings, a draft racial bloc voting analysis, prepared by Dr. Gary King, was presented to the IRC. It identified Districts 2, 3, 4, 7, 19, 24, 26, 27, 29, and 30 as all ability-to-elect districts for section 5 retrogression purposes. It also identified ten ability-to-elect districts in the benchmark plan.



1           60. The latter point in Dr. King's report was error. The IRC later  
2 acknowledged in its submission to DOJ that two of the putative ability-to-elect districts  
3 in the Benchmark Plan in fact never elected the minority-preferred candidate and that  
4 two rarely did.

5           61. Dr. King provided no information to the IRC on any discrete  
6 improvements, if any, the IRC needed to make to the ten identified ability-to-elect  
7 districts.

8           62. Thus, the IRC never knew how much, if at all, it needed to improve any of  
9 the districts in the draft map labeled as ability-to-elect districts.

#### 10                           **The IRC's Genuine Ability-to-Elect Districts**

11           63. By November 29, 2011, Dr. King's racial bloc voting analysis showed  
12 that the IRC in fact had achieved eight ability-to-elect districts, even though it had been  
13 proceeding anecdotally at best. These were Districts 2, 3, 4, 7, 19, 27, 29, and 30. At  
14 that point, these eight districts were adequate to equal the Benchmark Plan.

15           64. ***District 2.*** This is a newly created district, and did not continue  
16 unchanged, into the proposed plan. According to the IRC's DOJ submission, at p. 38, in  
17 District 2, Hispanics make up 59.6% of total population, and the total minority  
18 percentage of total population comes to 66.2%. Total minority percentage of VAP  
19 comes to 59.4%. With an Hispanic percentage of total population exceeding 50%, this  
20 is a majority-minority coalition district for section 5 purposes. Whether it is an  
21 effective ability-to-elect district for section 5 purposes depends on the degree of  
22 cohesiveness of minority voting patterns.

23           65. ***District 3.*** This is a newly created district, and did not continue  
24 unchanged, into the proposed plan. According to the IRC's DOJ submission, at p. 39, in  
25 District 3, Hispanics make up 55.5% of total population, and the total minority  
26 percentage of total population comes to 67.1%. Total minority percentage of VAP

1 comes to 60.6%. With Hispanic percentage of total population exceeding 50%, and a  
2 supermajority of total minority population exceeding 65%, this is a majority-minority  
3 coalition district for section 5 purposes. Whether it is an effective ability-to-elect  
4 district for section 5 purposes depends on the degree of cohesiveness of minority voting  
5 patterns.

6 66. **District 4.** This is a newly created district, and did not continue  
7 unchanged, into the proposed plan. According to the IRC's DOJ submission, at p. 39, in  
8 District 4, Hispanics make up 60.5% of total population, and the total minority  
9 percentage of total population comes to 69.7%. Total minority percentage of VAP  
10 comes to 66.8%. With Hispanic percentage of total population exceeding 50%, and a  
11 supermajority of total minority population exceeding 65%, this is a majority-minority  
12 coalition district for section 5 purposes. Whether it is an effective ability-to-elect  
13 district for section 5 purposes depends on the degree of cohesiveness of minority voting  
14 patterns.

15 67. **District 7.** This is a newly created district. While it did not continue  
16 unchanged, into the proposed plan, in substance it comprises most of Benchmark  
17 District 2. According to the IRC's DOJ submission, at p. 42, in District 7, Native  
18 Americans have a VAP exceeding 50%. Because of the high correlation of Native  
19 American VAP to Native American CVAP, this is a majority-minority Native-American  
20 district. Whether it is an effective ability-to-elect district for section 5 purposes depends  
21 on the degree of cohesiveness of minority voting patterns.

22 68. **District 19.** This is a newly created district, and did not continue  
23 unchanged, into the proposed plan. According to the IRC's DOJ submission, at p. 48, in  
24 District 19, Hispanics make up 65.1% of total population, 60.4% of VAP, and 47.5% of  
25 CVAP. With Hispanic percentage of total population exceeding 50%, and a  
26 supermajority of total population exceeding 65%, we would consider this to be an

1 Hispanic majority-minority district. Whether it is an effective ability-to-elect district  
2 for section 5 purposes depends on the degree of cohesiveness of minority voting  
3 patterns.

4 69. **District 27.** This is a newly created district, and did not continue  
5 unchanged into the proposed plan. According to the IRC's DOJ submission, at p. 52, in  
6 District 27, Hispanics make up 57.1% of total population, African-Americans make up  
7 15.2% of total population, and Non-Hispanic Native Americans make up 4.0% of total  
8 population. Thus, the total minority percentage of total population comes to 80.4%.  
9 Total minority percentage of VAP comes to 75.7%. With Hispanic percentage of total  
10 population exceeding 50%, and a supermajority of total minority population well  
11 exceeding 65%, this is a majority-minority coalition district for section 5 purposes.  
12 Whether it is an effective ability-to-elect district for section 5 purposes depends on the  
13 degree of cohesiveness of minority voting patterns.

14 70. **District 29.** This is a newly created district, and did not continue  
15 unchanged into the proposed plan. According to the IRC's DOJ submission, at p. 53, in  
16 District 29, Hispanics make up 67.7% of total population, and the total minority  
17 percentage of total population comes to 78.3%. Hispanic VAP totals 61.9%, and the  
18 total minority VAP comes to 72.9%. With Hispanic percentage of total population  
19 exceeding 50%, and a supermajority of total Hispanic population exceeding 65%, this is  
20 an Hispanic majority-minority district for section 5 purposes. Whether it is an effective  
21 ability-to-elect district for section 5 purposes depends on the degree of cohesiveness of  
22 minority voting patterns.

23 71. **District 30.** This is a newly created district, and did not continue  
24 unchanged into the proposed plan. According to the IRC's DOJ submission, at p. 54, in  
25 District 30, Hispanics make up 57.5% of total population, and the total minority  
26 percentage of total population comes to 71.3%. Hispanic VAP equals 50.7%, and the

1 total minority VAP comes to 64.5%. When it comes to CVAP, however, Hispanic  
 2 CVAP drops to 32.9%, and total minority CVAP equals only 41.9%. With Hispanic  
 3 percentage of total population exceeding 50%, and a supermajority of total minority  
 4 population exceeding 65%, this possibly is a majority-minority district for section 5  
 5 purposes. Whether this district should count towards satisfying Section 5 would  
 6 depend on the extent to which minority groups vote cohesively. In this respect, we note  
 7 that minority CVAP in this district runs well under 50%. Consistent with the  
 8 unevenness of minority percentages in this district, we note that in the 2012 election this  
 9 district sent only one minority to the Legislature and sent two Whites to the state House  
 10 of Representatives.

### 11 **The District 24 and District 26 Artifices**

12 72. Despite the fact that its legislative plan achieved the necessary eight  
 13 ability-to-elect districts to avoid retrogression, between November 29, 2011, and  
 14 January 17, 2012, the IRC proceeded to convert Districts 24 and 26 into as strong  
 15 Democratic-plurality districts as it could. To do so it underpopulated other Democratic-  
 16 plurality districts and overpopulated other Republican-plurality districts.

17 73. This chart shows how the Final Legislative Map made adjustments to the  
 18 ability-to-elect districts as these districts were configured in the Draft Map:

19 <b>Dist.</b>	<b>Population</b>	<b>Deviation from Ideal</b>	<b>Population Change</b>	<b>Draft HVAP %</b>	<b>Final HVAP %</b>	<b>HVAP Change</b>
20 2	Draft 212,863 Final 204,615	Draft -204 Final -8452	↓8248	61.4%	52.8%	↓9.6%
21 3	Draft 210,016 Final 204,613	Draft -3051 Final -8454	↓5403	51.2%	50.1%	↓1.1%
22 4	Draft 214,082 Final 204,143	Draft +1014 Final -8924	↓9938	53.7%	55.7%	↑2.0%

Dist.	Population	Deviation from Ideal	Population Change	Draft HVAP %	Final HVAP %	HVAP Change
19	Draft 212,096 Final 207,088	Draft -971 Final -5979	↓5008	60.0%	60.4%	↑0.4%
24	Draft 213,582 Final 206,659	Draft + 514 Final - 6,408	↓ 6,922	31.8%	34.1%	↑2.3%
26	Draft 213,247 Final 213,659	Draft + 179 Final + 591	↑ 412	30.4%	32.0%	↑1.6%
27	Draft 208,413 Final 204,195	Draft -4654 Final -8872	↓4218	53.7%	52.1%	↓1.6%
29	Draft 212,258 Final 211,067	Draft -809 Final -2000	↓1191	61.7%	61.9%	↑0.2%
30	Draft 207,918 Final 207,763	Draft -5149 Final -5304	↓155	50.7%	50.7%	---
7 <sup>2</sup>	Draft 210,314 Final 203,026	Draft -2753 Final -10,041	↓7288	61.9%	63.1%	↑1.2%

74. District 24 is a newly created district, and did not continue unchanged, into the proposed plan. According to the IRC's DOJ submission, at p. 50, in District 24, the Hispanic percentage of total population is 41.3% and the total minority percentage of total population is 55.1%. The picture changes dramatically when VAP and CVAP are considered. Non-Hispanic Whites have 52.4% of VAP, and Hispanic VAP drops to 34.1%. All minorities together make up 47.6% of VAP. Hispanic CVAP drops substantially to only 22.8%. When other minorities are counted, total minority CVAP comes to 32.8%. Thus, for section 5 non-retrogression purposes, District 24 cannot be considered a majority-minority, coalition, or cross-over district. It should not be

<sup>2</sup> District 7's VAP percentages are Native American, rather than Hispanic.

1 considered at all for section 5 purposes. Not surprisingly, this district elected no  
2 minorities to the Legislature at the 2012 election.

3 75. District 26 is a newly created district, and did not continue unchanged into  
4 the proposed plan. According to the IRC's DOJ submission, at p. 52, in District 26, the  
5 Hispanic percentage of total population is 38.5% and the total minority percentage of  
6 total population is 54.6%. As with District 24, the picture changes dramatically when  
7 VAP and CVAP are considered. Non-Hispanic Whites have 52.3 of VAP, and Hispanic  
8 VAP drops to 32.0%. All minorities together make up 47.7% of VAP. Hispanic CVAP  
9 drops substantially to only 18.7%. When other minorities are counted, total minority  
10 CVAP comes to 28.8%. Thus, for section 5 non-retrogression purposes, District 24  
11 cannot be considered a majority-minority, coalition, or cross-over district. It should not  
12 be considered at all for section 5 purposes. Not surprisingly, this district elected only  
13 one minority to the Legislature at the 2012 election.

#### 14 **The District 8 Artifice**

15 76. District 8 is a newly created district, and did not continue unchanged, into  
16 the proposed plan. According to the IRC's DOJ submission, at p. 42, in District 8,  
17 Hispanics are the largest minority group in the district and make up 34.8% of total  
18 population, 31.3% of VAP, and 30.5 of CVAP. Non-Hispanic Whites make up 50% of  
19 the total population and 53.4% of VAP. With no minority group having a population  
20 exceeding 50% of total population, this is not a majority-minority district. With all  
21 protected minority groups not exceeding 50% of the total population, this is not a  
22 coalition or cross-over district. It should not be considered at all for section 5 purposes.

23 77. Nearly at the end of the map drawing process, around December 15,  
24 2011, Commissioner McNulty provided Willie Desmond, the mapping consultant, with  
25 a thumb drive that made significant changes to Districts 8 and 11. At the deposition  
26 taken on March 7, 2013, at Tucson, Commissioner McNulty testified, "I don't recall

1 whether I did it myself or whether I did it with D.J.'s help." Ms. McNulty was referring  
2 to D.J. Quinlan, who, at the time, was elections director for the Arizona Democratic  
3 Party and now is its Executive Director. Commissioner McNulty also appears as one of  
4 Mr. Quinlan's Facebook™ friends.

5 78. The modification provided by Mr. Quinlan via Commissioner McNulty  
6 flipped party registrations in District 8, with Republican Party registration dropping  
7 from 36.2% to 28.5% of total registration, and Democratic Party registration increasing  
8 from 32% to 38%. It also underpopulated District 8, going from 3,262 over ideal to  
9 4,873 under ideal. The ostensible reason was to make District 8 a Voting Rights Act  
10 district. That rationale makes little sense. For section 5 retrogression purposes, the IRC  
11 identified ten ability-to-elect Benchmark districts (though the true number it later  
12 represented to DOJ was less), and it already had created what it claimed to be ten ability  
13 to elect districts in its evolving plan, apart from District 8. Thus, even if District 8  
14 turned into a voting rights district (which never happened), it could do nothing for  
15 section 5 purposes. It would be gilding the lily. At any rate, District 8 came nowhere  
16 near the 50% + 1 CVAP needed to qualify as a section 2 district.

17 79. The District 8 flip was motivated purely by partisan purposes, and  
18 Democratic Elections Director Quinlan's hands were all over it.

19 80. To the extent that the IRC claims that it systematically overpopulated  
20 Republican plurality districts and systematically under-populated Democrat plurality  
21 districts for the purpose of making District 8 an influence district, such alleged efforts  
22 are pretextual and mask the IRC's true purpose of maximizing the strength of the  
23 Democratic Party at the Legislature.

24 81. Commissioner McNulty relied upon Mr. Quinlan to provide her with  
25 "technical assistance" in drawing many of her proposed changes to the legislative map.  
26 In particular, Mr. Quinlan assisted Ms. McNulty with making a change to the boundary

1 between LDs 8 and 11. Ms. McNulty provided instructions for this change to Mr.  
2 Desmond on a thumb drive during the Commission's December 9, 2011, meeting. The  
3 results of this change increased registration numbers of Democratic voters.

4 82. Commissioner McNulty engaged in off-the-record communications with  
5 Quinlan regarding the placement of legislative district boundaries and population  
6 deviations. This includes receiving the thumb drive with changes to LDs 8 and 11 and  
7 email communications regarding the placement of legislative district boundaries.

8 83. Commissioner Herrera engaged in off-the-record communications with  
9 Quinlan regarding the placement of legislative district boundaries and population  
10 deviations.

11 84. Mr. Strasma engaged in off-the-record communications with Quinlan  
12 regarding the placement of legislative district boundaries and population deviations.

### 13 **The Effect of the IRC's Failure to Make a Section 2 Analysis**

14 85. The IRC failed to perform an analysis under section 2 of the Voting  
15 Rights Act under the test set forth in *Thornburg v. Gingles*, 478 U.S. 30 (1986), to  
16 determine the number of majority-minority districts section 2 would have required it to  
17 create, if any, based on the increase in the percentage of minority, and particularly  
18 Hispanic, population experienced over the last decade.

19 86. Had the IRC done so, all districts it created to satisfy section 2 would have  
20 had to have had minority CVAP exceeding 50% under *Bartlett v. Strickland*, 556 U.S.  
21 1, 19 (2009). While as a theoretical matter, Section 2 would not prohibit the use of  
22 coalition or crossover districts (defined below) for purposes of satisfying section 5, as a  
23 practical matter, in Arizona's demographical circumstances, section 5 and section 2  
24 would have overlapped, and all ability-to-elect districts would have required total  
25 minority CVAP exceeding 50%.

26



1           87.    Thus, by never performing the section 2 analysis, the IRC gave itself a  
2 green light to employ Districts 8, 24, and 26 as artifices for strengthening Democratic  
3 Party strength at the Legislature.

4           88.    In fact, the stratagem worked. Districts 24 and 26 elected only Democrats  
5 to the six seats these two districts had in the Legislature, and only one of the six was  
6 minority.

7           89.    District 8 sent a Democrat to the Arizona Senate, which increased  
8 Democratic Party strength to 13 seats. In a 30-seat chamber, that one seat at times is  
9 very significant.

### 10    **The Final Map**

11           90.    On January 17, 2012, the IRC adopted its Final Legislative Map.  
12 Commissioners Mathis, McNulty, and Herrera voted in favor and Commissioners Stertz  
13 and Freeman voted against.

14           91.    The IRC systematically under-populated Republican plurality districts and  
15 over-populated Democratic plurality districts for the sole purpose of providing  
16 Democratic candidates with a partisan advantage that would not otherwise be attainable  
17 had the IRC tried to achieve population equality with deviations based solely on  
18 traditional redistricting principals and legitimate state policies.

19           92.    The IRC systematically over-populated Republican plurality districts and  
20 systematically under-populated Democratic plurality districts for the purpose of  
21 maximizing the strength of the Democratic Party at the Legislature.

22           93.    To the extent that the IRC claims that it systematically overpopulated  
23 Republican plurality districts and systematically under-populated Democrat plurality  
24 districts for the purpose of complying with section 5 of the Voting Rights Act, such  
25 alleged compliance is pretextual and masks the IRC's true purpose of maximizing the  
26 strength of the Democratic Party at the Legislature.

1           94. The population distribution for the Final Legislative Map, according to  
2 each legislative district, is as follows:

Dist.	Population	Deviation from Ideal		All Registration		
		#	%	% REP	% DEM	% OTH
1	216,451	3,383	1.6%	47.1%	20.2%	32.7%
2	204,615	-8,452	-4.0%	24.5%	42.3%	33.2%
3	204,613	-8,454	-4.0%	17.7%	50.1%	32.2%
4	204,143	-8,924	-4.2%	24.5%	40.4%	35.1%
5	219,040	5,972	2.8%	39.7%	23.7%	36.6%
6	214,244	1,176	0.6%	37.8%	29.0%	33.1%
7	203,026	-10,041	-4.7%	19.3%	53.8%	26.9%
8	208,422	-4,645	-2.2%	28.5%	38.1%	33.4%
9	213,224	156	0.1%	33.2%	37.0%	29.9%
10	211,073	-1,994	-0.9%	33.5%	37.0%	29.5%
11	213,377	309	0.1%	38.9%	27.9%	33.2%
12	221,735	8,667	4.1%	47.0%	20.6%	32.4%
13	211,701	-1,366	-0.6%	41.2%	25.3%	33.6%
14	217,693	4,625	2.2%	39.0%	29.7%	31.3%
15	214,941	1,873	0.9%	42.8%	23.5%	33.8%
16	220,157	7,089	3.3%	38.7%	23.6%	37.7%
17	221,174	8,106	3.8%	39.3%	25.4%	35.3%
18	218,677	5,609	2.6%	36.9%	29.3%	33.7%
19	207,088	-5,979	-2.8%	19.8%	39.9%	40.2%
20	218,167	5,099	2.4%	36.8%	28.8%	34.4%
21	216,242	3,174	1.5%	37.7%	28.9%	33.4%
22	215,912	2,844	1.3%	44.9%	23.0%	32.1%
23	213,451	383	0.2%	45.2%	21.7%	33.1%
24	206,659	-6,408	-3.0%	24.8%	39.1%	36.1%
25	220,795	7,727	3.6%	45.9%	22.7%	31.4%
26	213,659	591	0.3%	25.8%	33.0%	41.1%
27	204,195	-8,872	-4.2%	14.6%	47.8%	37.6%
28	218,713	5,645	2.6%	40.2%	29.2%	30.6%
29	211,067	-2,000	-0.9%	21.5%	39.5%	39.0%
30	207,763	-5,304	-2.5%	24.0%	38.6%	37.4%

1           95. The Final Legislative Map made the following adjustments in terms of  
 2 party registration to the following legislative districts from their configurations in the  
 3 Draft Map:

4                           **Changes in Party Registration Percentages in Selected Districts**  
 5   **Draft Map to Final Map**

District	Draft Republican Registration	Final Republican Registration	Draft Democratic Registration	Final Democratic Registration
2	20.7	24.5	46.0	42.3
3	18.2	17.7	49.9	50.1
4	26.4	24.5	38.6	40.4
6	38.4	37.8	29.0	29.0
7	19.0	19.3	53.6	53.8
8	36.2	28.5	32.0	38.1
9	33.1	33.2	36.9	37.0
10	33.0	33.5	37.5	37.0
19	19.6	19.8	40.1	39.9
24	25.3	24.8	38.4	39.1
26	27.6	25.8	32.4	33.0
27	14.8	14.6	47.6	47.8
29	21.5	21.5	39.4	39.5
30	24.0	24.0	38.6	38.6

23  
 24   **The DOJ Submission**

25           96. On February 28, 2012, the IRC made its preclearance submission to the  
 26 DOJ under section 5 of the Voting Rights Act (“2012 DOJ Submission”).

1           97. The 2012 DOJ Submission at p. 83, represented that the Benchmark Plan  
 2 had one district, LD 2, in which Native-American voters had the ability to elect the  
 3 candidate of their choice, and six other “majority-minority districts that provide  
 4 minority voters the ability to elect their candidates of choice (Benchmark LDs 13, 14,  
 5 15, 16, 27, [and] 29.)”

6           98. Exhibit 20 to the 2012 DOJ submission listed general election results for  
 7 Benchmark districts. It indicated that in four election cycles – 2004 to 2010 –  
 8 Benchmark District 15 never elected an Hispanic to the state Senate and elected an  
 9 Hispanic, David Lujan, to the state House three times, 2004-08.

10           99. As part of its submission to DOJ, the IRC included a document entitled,  
 11 “An Analysis of the Arizona Independent Redistricting Commission Legislative District  
 12 Map,” dated February 24, 2012, by Gary King and Benjamin Schneer, and a document  
 13 entitled, “Candidates of Choice Supplement to: An Analysis of the Arizona Independent  
 14 Redistricting Commission Legislative District Map,” dated February 26, 2012, by Gary  
 15 King and Benjamin Schneer.

16           100. By letter dated April 26, 2012, from Thomas E. Perez, Assistant Attorney  
 17 General, the DOJ declined to interpose any objection to the Final Legislative Map, and  
 18 the Map accordingly became effective with the force of law upon such action by DOJ.

19           101. The 2012 general elections showed the following results in the following  
 20 districts:

**Arizona Legislative District Minority Performance  
 2012 General Election**

District	Senate	House
2	Lopez (D)	Dalessandro (D) Gabaldon (D)
3	Cajero Bedford (D)	Gonzalez (D)

District	Senate	House
		Saldate (D)
4	Pancrazi (D)	Escamilla (D) Otondo (D)
7	Jackson (D)	Hale (D) Peschlacai (D)
19	Tovar (D)	Cardenas (D) Contreras (D)
24	Hobbs (D)	Alston (D) Campbell (D)
26	Ableser (D)	Mendez (D) Sherwood (D)
27	Landrum (D)	Gallego (D) Miranda (D)
29	Gallardo (D)	Hernandez (D) Quezada (D)
30	Meza (D)	Larkin (D) McCune-Davis (D)

### The Neutral Criteria

102. None of the neutral criteria of respecting county, city and town lines, respecting communities of interest, compactness, or competitiveness drove any of the changes that the IRC made to the legislative district boundaries.

103. The 2012 legislative map split county, city, and town lines more than 400 times.

104. Having never adopted a definition of communities of interest, the IRC was unable to afford much respect for this constitutional criterion.

1           105. The 2012 legislative map created at most three competitive districts, three  
2 fewer than the predecessor IRC created.

3           106. None of the legislative districts achieve the ideal population of 213,067  
4 established by the 2010 Census.

5           107. The IRC failed to make an honest and good faith effort to achieve  
6 population equality among legislative districts.

7           108. The IRC failed to make an honest and good faith effort to adjust district  
8 boundaries for the purpose of respecting county, city, or town lines.

9           109. The IRC failed to make an honest and good faith effort to adjust district  
10 boundaries for the purpose of achieving compactness or contiguity.

11           110. The IRC failed to make an honest and good faith effort to adjust district  
12 boundaries for the purpose of promoting competition.

13           111. The IRC failed to make an honest and good faith effort to adjust district  
14 boundaries for the purpose of preserving communities of interest.

15           112. The IRC failed to make an honest and good faith effort to adjust district  
16 boundaries for the purpose of satisfying the Voting Rights Act.

17           113. The IRC failed to make an honest and good faith effort to adjust district  
18 boundaries for the purpose of satisfying the United States Constitution.

19           114. The IRC selectively and arbitrarily applied the concept of communities of  
20 interest to certain mapping decisions. For example, the IRC ignored several requests by  
21 residents that the IRC apply the community of interest criteria to their region:

- 22           a. The IRC ignored the request of the residents of the Town of Show  
23 Low to be kept in LD 6 with the community of Snowflake. The IRC instead  
24 placed this community in LD 7, specifically against the Show Low residents'  
25 wishes. The Town of Show Low is located on the boundary between LDs 6 and  
26 7.

1           b.     The IRC ignored the request of the residents in the Summerhaven  
2 community on Mt. Lemmon. These residents asked the IRC to place them in a  
3 legislative district with the City of Tucson. Instead, they were placed in LD 14,  
4 which is predominantly Cochise, Graham, and Greenlee Counties. The  
5 Summerhaven residents are located on the western edge of LD 14 and separated  
6 from the rest of the district by the Coronado National Forest.

7           c.     The IRC ignored the request of the City of Glendale to be placed in  
8 as few legislative districts of possible. Instead, the City of Glendale was divided  
9 among five legislative districts.

10          d.     The IRC ignored the request of the Pinal County Association of  
11 Governments to keep Pinal County in one or two legislative districts. Also, the  
12 City of Casa Grande asked that they be preserved in one district. Instead, the  
13 IRC divided it into four legislative districts and split the City of Casa Grande into  
14 two.

## 15 **II. CONCLUSIONS OF LAW**<sup>3</sup>

16          1.     The Fourteenth Amendment requires a State to make a good faith effort to  
17 achieve population equality among legislative districts. *Roman v. Sincock*, 377 U.S.  
18 695, 710 (1964). Once a State has done so, it can adjust district boundaries to attain  
19 other legitimate state interests, such as respecting county, city, and town lines, and  
20 communities of interest, or achieving compactness, contiguity or avoidance of contests  
21 among incumbents. *See Karcher v. Daggett*, 462 U.S. 725, 740 (1983) (identifying these  
22 as legitimate policies for deviation from equality in congressional plans); *Marylanders*

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23  
24  
25 <sup>3</sup> If any proposed conclusions are later deemed more properly classified as findings of  
26 fact, Plaintiffs offer them for that purpose.

1 *for Fair Representation, Inc. v. Schaefer*, 849 F.Supp. 1022, 1031 (D.Md. 1994)  
2 (applying *Karcher* to state legislative plans).

3 2. Deviations from equality of district populations are permissible if they are  
4 the incidental results of State efforts to attain such policies. *Brown v. Thomson*, 462  
5 U.S. 835, 842 (1983).

6 3. Article 4, par. 2, §1(14) of the Arizona Constitution further limits the  
7 authority of the IRC to make adjustments to district lines to the six criteria stated  
8 therein, and eliminates the authority of the IRC to take incumbency into consideration at  
9 all.

10 4. Departing from population equality among legislative districts to achieve  
11 partisan advantage in favor of one particular political party is not a traditional  
12 redistricting principal nor is it a legitimate state policy.

13 5. The IRC systematically overpopulated Republican plurality districts and  
14 systematically under-populated Democrat plurality districts with no lawful state interest  
15 justifying such deviations from equality of population among Arizona legislative  
16 districts.

17 6. The IRC systematically over-populated Republican plurality districts and  
18 systematically under-populated Democratic plurality districts in a manner that was  
19 “taint[ed] with arbitrariness [and] discrimination.” *See Roman v. Sincock*, 377 U.S. 695  
20 (1964).

21 7. The IRC’s method of systematically over-populating Republican plurality  
22 districts and systematically under-populating Democratic plurality districts violates the  
23 one-person-one-vote principle of the Equal Protection Clause of the Fourteenth  
24 Amendment.

25 8. The disparate impact of the Final Plan on Republican-plurality and  
26 Democratic-plurality districts is obvious. Thus, the remaining issue is arbitrariness or



1 discrimination under *Roman*, 377 U.S. at 710. To this end, the Court follows the  
2 analysis set forth *Village of Arlington Heights v. Metropolitan Housing Development*  
3 *Corp.*, 429 U.S. 252, 266 (1977) (“Sometimes a clear pattern, unexplainable on grounds  
4 other than race, emerges from the effect of the state action even when the governing  
5 legislation appears neutral on its face.”) While this is a one-person/one-vote case, and  
6 not a case of racial discrimination, the *Arlington Heights* analysis of discriminatory  
7 intent is instructive, and the Court will follow it here.

8 9. Clear factors bear on intent, such as the IRC’s biased selection of counsel  
9 and the mapping consultant, the freezing out of the Republican members from these and  
10 other decisions, the irregular departures from the State Procurement Code, which the  
11 IRC had elected to follow, the dismissal of the SPO despite the constitutional  
12 requirement that contracting and procurement proceed under its “fiscal oversight,” Ariz.  
13 Const. art. 4, pt. 2, § 1(19), the failure to follow the state public records laws, the failure  
14 to draw the grid map in accordance with Ariz. Const. art 4, pt. 2, § 1(14), the failure to  
15 perform a VRA section 2 analysis, the pretextual use of section 5, and the receipt of  
16 “guidance” from the Arizona Democratic Party’s Elections Director in the map drawing.  
17 These show a wall of evidence being built of arbitrariness and discriminatory intent.

18 10. The population deviations are not the incidental result of adjustments to  
19 legislative district boundaries made to attain legitimate state interests.

20 11. To the extent that the IRC adjusted district boundaries to respect county,  
21 city, and town lines, such adjustments do not constitute a legitimate redistricting  
22 justification for the population deviations and the dilution of Plaintiffs’ votes.

23 12. To the extent that the IRC adjusted district boundaries to respect  
24 communities of interest, as that term is used in article 4, part 2, § 1(14) of the Arizona  
25 Constitution, such adjustments do not constitute a legitimate redistricting justification  
26 for the population deviations and the dilution of Plaintiffs’ votes.

1           13. The IRC’s failure to define the term “community of interest” facilitated its  
2 arbitrary and discriminatory application of that concept and it was used to mask the  
3 IRC’s true goal to systematically over-populated Republican plurality districts and  
4 systematically under-populated Democratic plurality districts.

5           14. To the extent that the IRC adjusted district boundaries to respect  
6 compactness or contiguity, as those terms are used in article 4, pt. 2, § 1(14) of the  
7 Arizona Constitution, such adjustments do not constitute a legitimate redistricting  
8 justification for the population deviations and the dilution of Plaintiffs’ votes.

9           15. The IRC’s failure to define the concepts of “compactness” and  
10 “contiguity” facilitated its arbitrary and discriminatory application of these concepts and  
11 they were used to mask the IRC’s true goal to systematically over-populate Republican  
12 plurality districts and systematically under-populate Democratic plurality districts.

13           16. To the extent that the IRC adjusted district boundaries to advance  
14 competitiveness, as that term is used in article 4, pt. 2, § 1(14) of the Arizona  
15 Constitution, such adjustments do not constitute a legitimate redistricting justification  
16 for the population deviations and the dilution of Plaintiffs’ votes.

17           17. The IRC’s failure to define the term “competitive district” facilitated its  
18 arbitrary and discriminatory application of that concept and it was used to mask the  
19 IRC’s true goal to systematically over-populate Republican plurality districts and  
20 systematically under-populate Democratic plurality districts.

21           18. To the extent that the IRC adjusted boundaries to comply with the United  
22 States Constitution or the Voting Rights Act, such adjustments do not constitute a  
23 legitimate redistricting justification for the population deviations and the dilution of  
24 Plaintiffs’ votes.

25           19. Plaintiffs have established injury by proving the dilution of their votes.  
26

1           20. For the purposes of Voting Rights Act section 5 preclearance, a  
2 benchmark redistricting plan is the last redistricting plan approved for use by the DOJ or  
3 the United States District Court for the District of Columbia in a covered jurisdiction.  
4 The IRC's August 23, 2002 submission to the DOJ constitutes the benchmark plan for  
5 the purposes of complying with Section 5 of the Voting Rights Act. In addition, the  
6 following legislative districts from the Benchmark Plan constitute the benchmark  
7 ability-to-elect districts: 2, 13, 14, 16, 23, 24, 25, and 27.

8           21. Enacted Districts 24 and 26 are not majority-minority, coalition, or cross-  
9 over districts for purposes of section 5 of the Voting Rights Act.

10           22. To the extent that the IRC claims that it systematically overpopulated  
11 Republican plurality districts and systematically under-populated Democrat plurality  
12 districts for the purpose of making Districts 24 and 26 cross-over districts, such efforts  
13 still dilute Plaintiffs' votes in violation of the one-person/one-vote principle and the  
14 equal protection clause of the Fourteenth Amendment.

15           23. To the extent that the IRC claims that it systematically overpopulated  
16 Republican plurality districts and systematically under-populated Democrat plurality  
17 districts for the purpose of making District 8 an influence district, such efforts still  
18 dilute Plaintiffs' votes in violation of the one-person/one-vote principle and the Equal  
19 Protection Clause of the Fourteenth Amendment.

20 **III. RELIEF**

21 Plaintiffs respectfully request that the Court enter the following relief:

22           1. A declaration that the Final Legislative Map violates the equal protection  
23 clause of the Fourteenth Amendment and 42 U.S.C. § 1983, and thereby injures  
24 Plaintiffs, and each of them, and is null and void;

25           2. a permanent injunction against Defendants, and each of them, from using  
26 the legislative plan adopted on January 17, 2012, and enjoins the IRC from diluting

1 Plaintiffs' votes in any future plan;

2 3. if the IRC is unable to adopt a constitutional legislative plan in time for  
3 the 2014 election, the Court can order adoption of an interim plan;

4 4. an attorneys' fees award under 42 U.S.C. § 1988, and any other applicable  
5 law; and

6 5. such other relief that is just, proper, or equitable under the facts and  
7 circumstances of this case.

8 RESPECTFULLY SUBMITTED ON March 18, 2013.

9  
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 18, 2013, 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/ Cindy Tassielli

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