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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

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

v.

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

Case No. CV 12-00894-PHX-ROS-  
NVW-RRC

**FINAL PRETRIAL ORDER FOR  
BENCH TRIAL**

Pursuant Federal Rule of Civil Procedure 16(e),

IT IS ORDERED that the following is adopted as the Final Pretrial Order for the trial on March 25, 2013, on the current pleadings and does not supersede the pleadings:

**A. TRIAL COUNSEL FOR THE PARTIES**

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**B. STATEMENT OF JURISDICTION/VENUE**

1. This court has jurisdiction of this action under 28 U.S.C. §§ 1331, 1367, 2201, 2202, 2284, and 42 U.S.C. § 1983.
2. Venue is proper in the District of Arizona under 28 U.S.C. § 1391.
3. A three-judge panel has been properly convened pursuant to 28 U.S.C. § 2284(a).

1 **C. NATURE OF THE ACTION**

2 This is an action brought by Plaintiffs for alleged dilution of their votes by  
3 unjustified population deviations in legislative districting for the sole purpose of  
4 partisanship, in violation of the one-person/one vote principle of the equal protection  
5 clause of the Fourteenth Amendment to the United States Constitution.

6 **D. JURY/NON-JURY**

7 This action will be tried to a three-judge panel pursuant to 28 U.S.C. § 2284(a).

8 **E. CONTENTIONS OF THE PARTIES**

9 **1. Plaintiffs:**

10 The complaints' first claim for relief alleges a violation of the one-person/one-  
11 vote principle and dilution of Plaintiffs' votes in violation of the equal protection  
12 clause of the Fourteenth Amendment.

13 The Fourteenth Amendment requires a State to make a good faith effort to  
14 achieve population equality among legislative districts. *Roman v. Sincock*, 377 U.S.  
15 695, 710 (1964). Once a State has done so, it can adjust district boundaries to attain  
16 other legitimate state interests, such as respecting county, city, and town lines, and  
17 communities of interest, or achieving compactness, contiguity or avoidance of  
18 contests among incumbents. *See Karcher v. Daggett*, 462 U.S. 725, 740 (1983)  
19 (identifying these as legitimate policies for deviation from equality in congressional  
20 plans); *Marylanders for Fair Representation, Inc. v. Schaefer*, 849 F.Supp. 1022,  
21 1031 (D.Md. 1994) (applying *Karcher* to state legislative plans). Deviations from  
22 equality of district populations are permissible if they are the incidental results of  
23 State efforts to attain such policies. *Brown v. Thomson*, 462 U.S. 835, 842 (1983).  
24 Arizona Constituiton, art. 4, pt. 2, §1(14), further limited the authority of the IRC to  
25 make adjustments to district lines to the five other criteria stated therein, and  
26 eliminated the authority of the IRC to take incumbency into consideration at all.  
27  
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1           Accordingly, Plaintiffs must prove (A) the legislative districts deviate from  
2 equality, (B) the adjustments the Arizona Constitution authorized did not cause the  
3 deviations from strict equality, (C) deviations from equality are not the incidental  
4 result of adjustments made to attain legitimate state interests, and (D) no legitimate  
5 State interests justify or warrant the IRC's deviations from equality *Larios v. Cox*,  
6 300 F. Supp. 2d 1320, 1326 (N.D. Ga. 2004) (three-judge court), *aff'd*, 542 U.S. 947  
7 (2004); *Hulme v. Madison County*, 188 F. Supp. 2d 1041 (S.D. Ill. 2001); and *Vigo*  
8 *County Republican Central Comm. v. Vigo County Comm'rs*, 834 F. Supp. 1080 (S.D.  
9 Ind. 1993).

10           **2. Defendant AIRC:**

11           The facts will not bear out Plaintiffs' claim. Minor population deviations to  
12 Voting Rights Act districts were done to enhance the minorities' ability to elect  
13 candidates of choice, among other legitimate reasons. A major goal of the  
14 Commission was to obtain preclearance of the legislative maps from the Department  
15 of Justice

16           Because the actual population deviations are less than 10%, there is a  
17 rebuttable presumption that the population deviations are the result of an "honest and  
18 good faith effort to construct districts . . . as nearly of equal population as is  
19 practicable." *Daly v. Hunt*, 93 F.3d 1212, 1220 (4th Cir. 1996) (citation omitted). To  
20 rebut the presumption, Plaintiffs must prove:

21           (a) That the population deviations are the result of an arbitrary or  
22 discriminatory policy; that is, the population deviations are not based upon  
23 legitimate considerations incident to the effectuation of a rational state policy.  
24 *E.g., Rodriguez v. Pataki*, 308 F. Supp. 2d 346, 365 (S.D.N.Y. 2004),  
25 *summarily aff'd*, 125 S. Ct. 627 (2004).

26           (b) That the asserted unconstitutional or irrational state policy is the actual  
27 reason for the deviation. *Id.*

28

1 (c) Where partisanship is alleged as the sole reason for diverging from  
2 population equality, that the population deviations result in an improper  
3 partisan effect. *Cf Vieth v. Jubelirer*, 541 U.S. 267, 315 (2004) (Kennedy, J.,  
4 concurring).

5 In developing the legislative map, the Commission made population changes to  
6 further legitimate redistricting considerations under federal and state law. The state  
7 policies involved include, without limitation, creating competitive districts, respecting  
8 communities of interest, limiting splits of cities, counties and census tracts, keeping  
9 counties whole, compactness, reducing population deviations, incorporating technical  
10 changes to align with County precinct lines, and protecting the ability of minority  
11 voters to elect candidates of their choice. The latter consideration was deemed critical  
12 in complying with the Voting Rights Act and in achieving preclearance of the Arizona  
13 legislative map with the Department of Justice.

14 **F. STIPULATIONS AND UNCONTESTED FACTS AND LAW**

15 The following facts are stipulated to be true:

16 1. The Arizona Independent Redistricting Commission (“IRC”) consists of  
17 five appointed members: Chairperson Colleen Mathis, Vice Chairman Scott Freeman,  
18 Vice Chairman Jose Herrera, Commissioner Richard Stertz, and Commissioner Linda  
19 McNulty.

20 2. Each of the current plaintiffs resides within a district the population of  
21 which exceeds the ideal population of an Arizona legislative district of 213,067.  
22 Plaintiffs are registered Republicans. The legislative districts in which they reside are  
23 as follows: Wesley W. Harris, District 20; LaMont E. Andrews, District 17; Cynthia  
24 L. Biggs, District 12; Lynne F. Breyer, District 23; Beth K. Hallgren, District 16;  
25 James C. Hallgren, District 16; Lina Hatch, District 17; Terry L. Hill, District 6; Joyce  
26 M. Hill, District 6; Karen M. MacKean, District 6; and Shereese L. Steffens, District  
27 11.

28

1 **G. QUESTIONS OF FACT TO BE TRIED**

2 The following are disputed questions of fact to be tried:

3 1. Whether the IRC's sole reason for the population deviation was partisan  
4 advantage and other asserted reasons were pretextual or not in good faith. Subsumed  
5 in this:

6 a. Whether the IRC had actual partisan bias.

7 b. Whether the IRC gave Voting Rights Act districts population  
8 deviations to improve the minority ability to elect candidates of choice or strengthen  
9 other Voting Rights Act districts.

10 c. Whether the IRC adopted the population deviation to comply  
11 with the Voting Rights Act § 5.

12 d. Whether the IRC adopted the population deviation for any other  
13 legitimate state purpose.

14 2. Whether the IRC made a good faith attempt to minimize population  
15 deviation.

16 3. Whether Districts 2, 3, 4, 7, 8, 19, 24, 26, 27, 29, and 30 are or may be  
17 properly considered a majority-minority, coalition, or cross-over district, or none of  
18 the foregoing, when determining whether the IRC plan retrogressed or could be  
19 counted toward satisfaction of the Voting Rights Act § 5.

20 **H. ISSUES OF LAW.**

21 The following questions of law may be decided:

22 1. Whether the equal protection clause of the Fourteenth Amendment  
23 prohibits deviation from equal population in legislative districts done only for partisan  
24 purposes.

25 2. Whether the Voting Rights Act § 5 requires or authorizes population  
26 deviation in legislative districts to comply with the Act.

27 3. If the Voting Rights Act § 5 does not require or authorize population  
28 deviation in legislative districts to comply with the Act:

1 a. Whether Arizona Constitution, art 4, pt. 2, § 1(14) limits the  
2 policy goals for which the IRC could make adjustments to detriment of equality of  
3 population to the five other criteria stated therein.

4 b. Whether a good faith but mistaken attempt to comply with the  
5 Voting Rights Act is a legitimate state interest justifying population deviations, even  
6 if it results in partisan advantage.

7 c. Whether population deviation to benefit protected minorities that  
8 is not authorized by the Voting Rights Act § 5 is racial discrimination prohibited by  
9 the equal protection clause.

10 d. Whether strict scrutiny applies to such population deviation.

11 4. Whether the Eleventh Amendment bars reliance on or resolution of state  
12 law necessary to deciding the federal claims.

13 5. Whether relief may include instructions to avoid violation of the equal  
14 protection clause in a revised plan and court adoption of a constitutional legislative  
15 plan in time for the 2014 election, if the IRC cannot do so.

16 6. If Plaintiffs prevail, whether they are entitled to an award of costs and  
17 attorneys' fees against the IRC pursuant to the 42 U.S.C. § 1988.

18 **I. THE PARTIES' CONTENTIONS OF FACT**

19 **1. The number of districts in which Hispanics or Native**  
20 **Americans could elect the candidate of their choice the IRC needed to avoid**  
21 **retrogression under Section 5 of the Voting Rights Act.**

22 Plaintiffs contend:

23 In its February 28, 2012, submission to DOJ, at p. 83, the current IRC  
24 identified seven Benchmark ability to elect districts: District 2 as a Native-American  
25 ability-to-elect district, and Districts 13, 14, 15, 16, 27, and 29 as Hispanic ability-to-  
26 elect districts. The divergence between the 2002 submission and the 2011 submission  
27 is explained by actual election results.

28

1           The Benchmark Plan actually included eleven districts in which non-Hispanic  
2 Whites made up less than 50% of total population: Districts 2, 12, 13, 14, 15, 16, 18,  
3 24, 25, 27, and 29. *See* Table 3 to the IRC's February 28, 2012, submission to DOJ, at  
4 p. 10. The IRC noted, however, that two of these Benchmark districts (Districts 12  
5 and 18) never supported the minority candidate of choice, and two others (Districts 24  
6 and 25) rarely did so. *Id.* at p. 83. Thus, it concluded that these four were not ability-  
7 to-elect districts. *Id.* As a result, the IRC represented to DOJ in its pre-clearance  
8 submission, dated February 28, 2012, that the Benchmark Plan included only six  
9 Hispanic ability-to-elect districts: Districts 13, 14, 15, 16, 27, and 29. It identified  
10 District 2 as a Native-American ability-to-elect district.

11           Based on actual results in the 2004-10 elections, however, Plaintiffs do not  
12 consider Benchmark Districts 14, 15, and 29 to be true ability-to-elect districts. In  
13 Benchmark District 14, total minority CVAP came to 54.75%, but of this Hispanic  
14 CVAP totaled only 46.2%. Benchmark District 14 elected an Hispanic to the  
15 Legislature in only four out of 12, or one-third, of total opportunities. In Benchmark  
16 District 15, total minority CVAP came to 36.5%, and it elected an Hispanic to the  
17 Legislature in only three out of 12, or one-fourth, of opportunities. In Benchmark  
18 District 29, total minority CVAP equaled 45.6% and this district elected Hispanics to  
19 the Legislature in only six out of 12, or one half, of opportunities.

20           Thus, based on the totality of circumstances, including actual results, the  
21 Benchmark Plan had a total of four ability to elect districts – Benchmark Districts 2,  
22 13, 16, and 27. Of these District 2 was a native-American ability-to-elect district, and  
23 Districts 13, 16, and 27 were Hispanic ability-to-elect districts. Benchmark Districts  
24 14, 15, and 29 at best were cross-over districts, but actual results suggest that  
25 Benchmark Districts 14 and 15 actually were influence districts.

26           This review indicates that the IRC needed to attain three Hispanic ability-to-  
27 elect districts and one Native-American ability-to-elect district. By its own  
28 submission in 2012, it needed to attain a total of seven, six Hispanic and one Native



1 American. By reference to 2002, it needed to attain eight, seven Hispanic and one  
2 Native American. Thus, to be safe, the IRC would have set eight districts as its goal  
3 under Section 5.

4 A section 2 analysis, which it never performed, would have told the IRC  
5 whether it needed to create any ability-to-elect districts in addition to those found in  
6 the Benchmark Plan.

7 The IRC confused the functions of section 5 and section 2. The function of  
8 section 5 is only to preserve existing gains in ability-to-elect districts. If the number  
9 of districts did not increase, and in this case the number has remained constant at 30  
10 for more than 40 years, “there is no retrogression as long as the number of ability  
11 districts remains the same.” *Texas II*, 887 F.Supp.2d at 157. In contrast, the function  
12 of section 2 is to determine whether population changes required the creation of  
13 additional ability-to-elect districts. *Id.*

14 There is a further significant distinction. While as a theoretical matter, Section  
15 2 would not prohibit the use of coalition or crossover districts (defined below) for  
16 purposes of satisfying section 5, *id.* at 25, as a practical matter, in Arizona’s  
17 demographical circumstances, Section 5 and Section 2 would have overlapped, and all  
18 ability-to-elect districts would have required total minority CVAP exceeding 50%.

19 This result would have prevented the creation of Districts 24 and 26 as putative  
20 crossover districts and District 8 as an “opportunity” district. Their creation goes  
21 beyond compliance “with federal antidiscrimination laws” and are not justified by the  
22 Voting Rights Act because these districts were not “reasonably necessary under a  
23 constitutional reading and application of those laws.” *Miller*, 515 U.S. at 921.

24 Defendant contends:

25 Plaintiffs have not identified any expert witness to testify as to the number of  
26 voting rights districts in the benchmark legislative map, loaded with 2010 census data,  
27 that are districts where the minority population has the ability to elect candidates of  
28 their choice. Plaintiffs expert Dr. Hofeller testified that he did not perform a

1 functional analysis of the benchmark districts. Moreover, what other persons or  
2 Commissions believe are the number of Voting Rights Act districts required for  
3 redistricting in the 2000 redistricting cycle, or any extrapolation that can be made by  
4 Plaintiffs into the 2010 cycle, does not provide reliable information on the number of  
5 Voting Rights Act districts that will be required by the Department of Justice for pre-  
6 clearance under Section 5 of the Voting Rights Act. To avoid a Court drawn  
7 legislative map, the Commission had to make judgments about what was needed for  
8 pre-clearance, judgments which in this case were successful.

9 In the 2000 redistricting cycle, the Commission presented in its first  
10 submission to the Department of Justice ten Voting Rights Act districts. When that  
11 map did not pre-clear, the Commission drew a second map that it claimed contained  
12 seven Voting Rights Act districts. The special master Bruce Cain opined that the  
13 second map contained eight Voting Rights Act districts.

14 In this redistricting cycle, the Commission hired Bruce Adelson as a Voting  
15 Rights Act expert, and received advise from its own counsel regarding Voting Rights  
16 Act issues. The Commission hired Dr. Gary King to perform analysis as to voting  
17 behavior and reports were submitted to it by Dr. King. The Commission discussed  
18 extensively on the public record the number of Voting Rights Act districts that needed  
19 to be created, as well as its desire to obtain pre-clearance from the Department of  
20 Justice on the first submission.

21 The Commission eventually prepared a Draft Legislative Map that contained  
22 ten Voting Rights Act districts: eight majority minority districts and two coalition  
23 districts. David Cantelme, Plaintiffs' counsel, even sent a letter to the Commission  
24 recommending ten Voting Rights Act districts. The Commission's decision to  
25 proceed with ten Voting Rights Act districts was a rational and reasonable decision,  
26 and certainly did not mask any partisan interests. It was supported by the Republican  
27 Commissioners on the Commission.

28

1           The submission letter to the Department of Justice is, among other things, an  
2 advocacy piece. To obtain pre-clearance, the Commission minimized the number of  
3 Voting Rights Act districts it needed to create, and maximized the number of Voting  
4 Rights Act districts it created, including an opportunity district. It also provided the  
5 analysis that would support preclearance based on ten benchmark districts and  
6 attempted to lay out the electoral history in all potential benchmark ability-to-elect  
7 districts. *See, e.g.*, Arizona Preclearance Submission at 100 (analyzing Benchmark  
8 LD 24); 124-126 (analyzing Benchmark 23 and new District 8); 133 (advocating for  
9 preclearance based on ten benchmarks). As testified to by Bruce Adelson, a former  
10 Department of Justice employee who worked as the Department of Justice team leader  
11 for pre-clearance of the Arizona 2000 redistricting cycle submission, the Department  
12 of Justice pays no attention to what the State says is required, the Department of  
13 Justice does its own functional analysis. The Department of Justice pre-cleared the  
14 Commission's first submission in the 2010 redistricting cycle.

15           Plaintiffs' reliance on the 2012 election results is flawed for three reasons.  
16 First, Plaintiffs persist in believing, without any functional analysis of voting  
17 behavior, that candidates of choice must be minority candidates. Dr. King's report  
18 demonstrates that in some legislative districts, non-hispanic whites are the minority  
19 candidates of choice. Second, one election is not sufficient to assess voting behavior,  
20 and Plaintiffs have not done a functional analysis of the voting behavior. Finally,  
21 anticipating future results in 2012 say nothing about what the Commission had to  
22 determine based upon a functional analysis of election results from 2002 to 2010.

23           Plaintiffs legal contention that the Defendant AIRC should have only created  
24 four minority majority districts to comply with Section 5 of the Voting Rights Act  
25 (three Hispanic and one Native American) is absurd and retrogressive to the extreme.  
26 Even their own expert witness, Tom Hofeller, refused to draw a votings rights act map  
27 based on this low number of majority minority districts.

28

1           **2. The number of coalition districts needed to attain, if any, to avoid**  
2 **retrogression under section 5 of the Voting Rights Act.**

3           Plaintiffs contend: None.

4           Defendants contend: Two

5           **3. The number of cross-over districts the IRC needed to attain, if any,**  
6 **to avoid retrogression under section 5 of the Voting Rights Act?**

7           Plaintiffs contend: One.

8           Defendant Contends: Two.

9 **J. LIST OF WITNESSES**

10           Each side will designate deposition testimony for the Court. As the time limits  
11 will affect who can be called, and may change as the case is tried, both deposition  
12 testimony and live testimony is listed in this proposed Joint Pretrial Order.

13           Plaintiffs witnesses:

- 14           1. Commissioner Freeman
- 15           2. Commissioner Stertz
- 16           3. Commissioner Herrera
- 17           4. Commissioner McNulty (live or by deposition)
- 18           5. Willie Desmond
- 19           6. Ken Strasma (by deposition)
- 20           7. Bruce Adelson (by deposition)
- 21           8. Dr. Thomas Brooks Hofeller
- 22           9. D.J. Quinlan

23           Defendants witnesses:

- 24           1. Commissioner Stertz (live and/or by deposition)
- 25           2. Commissioner Freeman (live and/or by deposition)
- 26           3. Commissioner Mathis (live and/or by deposition)
- 27           4. Commissioner Herrera (live and/or by deposition)
- 28           5. Commissioner McNulty (live and/or by deposition)

- 1                   6. Willy Desmond (live and/or by deposition)
- 2                   7. Ken Strasma (live and/or by deposition)\_
- 3                   8. Bruce Adelson (live and/or by deposition)
- 4                   9. Ray Bladine

5   **K.    EXPERTS**

6           Plaintiffs will call:

7           Tom Hofeller (live and/or by deposition)

8           Defendants will call:

9           Bruce Cain (live and/or by deposition)

10   **L.    LIST OF EXHIBITS AND OBJECTIONS**

11           Plaintiffs exhibit list and objections are attached as Exhibit 1.

12           Defendants exhibit list and objections are attached as Exhibit 2.

13   **M.    MOTIONS IN LIMINE AND REQUESTED EVIDENTIARY RULINGS**

14           The parties advise that they may make the following evidentiary objections.

15           Plaintiffs will not file any motions in limine. Plaintiffs note the following  
16   evidentiary issues and briefly respond to those raised by the IRC below:

17           1.    As noted above, the disparate impact is obvious. Thus, the remaining  
18   issue is arbitrariness or discrimination under *Roman*, 377 U.S. at 710. To this end,  
19   Plaintiffs will follow the analysis set forth *Arlington Heights*, and factors bear on  
20   intent such as the IRC's biased selection of counsel and the mapping consultant, the  
21   freezing out of the Republican members from these and other decisions, the irregular  
22   departures from the State Procurement Code, which the IRC had elected to follow, the  
23   failure to follow the state public records laws, the failure to draw the grid map in  
24   accordance with ARIZ.CONST. art 4, pt. 2, § 1(14), the failure to perform a VRA  
25   section 2 analysis, the pretextual use of section 5, and the receipt of "guidance" from  
26   the Arizona Democratic Party's Elections Director in the map drawing. There will be  
27   other factors offered in evidence at trial. These show the wall of evidence being built  
28   of arbitrariness and discriminatory intent.

1           2.     Dr. Hofeller will be offered for the purposes set forth in disclosures  
2 made in his first two affidavits, in his original expert report, and in his rebuttal report.  
3 Dr. Handley's report was properly disclosed as part of Dr. Hofeller's rebuttal expert  
4 report. Dr. Cain's report disclosed issues relative to compliance with the Voting  
5 Rights Act as the reason for the population deviations, thereby inviting rebuttal from  
6 Dr. Hofeller. In forming his opinion, an expert may rely on another expert's analysis  
7 under Evidence Rule 703. Dr. Handley prepared her report in the ordinary course and  
8 offered it as a critique of the IRC's work. She did not prepare it for purposes of this  
9 case. Dr. Hofeller properly relied on her opinion in developing his rebuttal opinions.  
10 Dr. Hofeller performed a sound and adequate analysis to expose what districts cannot  
11 perform and could not be counted towards section 5 for retrogression analysis.

12           3.     Dr. Handley's report is addressed in item B above.

13           4.     The source of all information on charts comes from the public records  
14 or other admissible sources.

15           5.     Commissioner Herrera could remember little of the facts of this case in  
16 his deposition testimony. Thus, the IRC need not be overly concerned about  
17 legislative privilege and Mr. Herrera. His memory failures leave him with not much  
18 to testify to. Plaintiffs do not intend to call Chairperson Mathis. They will cross-  
19 examine if the IRC calls her. Regarding Commissioner McNulty, Plaintiffs will  
20 carefully observe the Court's ruling, as they did in deposition, which drew few  
21 objections on the basis of privilege.

22           6.     Dr. Cain relied on the analyses performed by Dr. King, but the IRC  
23 failed to list Dr. King as a witness, and blocked Plaintiffs from accessing his files,  
24 which Plaintiffs had subpoenaed. By having blocked access to Dr. King's files, the  
25 IRC cannot offer any testimony from Dr. Cain based on Dr. King's analyses.

26           Defendants will not file any written motions in limine. There are evidentiary  
27 issues that will be raised in trial:

28

1 (A) Defendant AIRC contends that controversies over the applications  
2 of either Commissioner Mathis or Commissioner Stertz, the hiring of counsel or the  
3 mapmaker, allegations of open meeting violations relating to the selection of the  
4 mapping consultant, the utterly failed attempt of the Arizona Governor and State  
5 Senate to impeach Commissioner Mathis have nothing to do with the equal protection  
6 claim filed by Plaintiffs.

7 (B) Plaintiffs' expert Tom Hofeller should be excluded from testifying  
8 under the *Daubert* test. He formed his opinions in this case solely from looking at the  
9 final legislative map. This is an insufficient basis to form any helpful expert opinions.  
10 Moreover, he draws conclusions in his reports as to individual people's state of mind,  
11 or intent, which is not the proper subject of expert testimony. He did not perform any  
12 "functional analysis" of the benchmark districts as required by Section 5 and the  
13 Department of Justice guideline for pre-clearance in evaluating redistricting plans for  
14 compliance with section 5. He should not be allowed to offer expert testimony on the  
15 issue of benchmark districts under section 5, or ability to elect districts in the  
16 proposed legislative maps. This is both a disclosure issue and a *Daubert* issue.

17 (C) The rebuttal report of Plaintiff's expert Tom Hofeller attaches a  
18 memorandum from Lisa Handley. Ms. Handley was not listed as an expert witness in  
19 disclosure, and Plaintiffs did not previously disclose that their expert Tom Hofeller  
20 would rely on another expert witness when it made its expert witness disclosure. Ms.  
21 Handley's memo, or Mr. Hofeller's recitation of it, is inadmissible. This is a  
22 disclosure violation.

23 (D) Defendant AIRC has objected to certain charts or demonstrative  
24 exhibits as to authenticity when the data source is not apparent on the exhibit, or the  
25 data source is the Republican National Committee which has not been revealed to  
26 Defendant AIRC. This applies to charts attached to Mr. Hofeller's reports.

27 (E) Commissioners McNulty, Herrera and Mathis have not waived their  
28 legislative privilege and maintain that their testimony and communications relating to

1 their redistricting work are protected by that privilege. This issue was briefed to the  
2 Court, and the Court ordered depositions on the core issues in the case. The opinion  
3 of the Court has not yet been issued. While it is clear from the Order that the Court  
4 rejected an absolute privilege, it is not clear how the Court ruled on the qualified  
5 privilege other than allowing depositions on the “core” claims. Defendant AIRC  
6 seeks to preserve the legislative privilege issue.

7 **N. TRIAL LENGTH**

8 Five days. The trial time will be split evenly between the parties. Trial will be  
9 conducted between 8:30 a.m. and 5:00 p.m. A one-hour break will be taken for lunch,  
10 and a 20 minute breach in the morning and the afternoon. Each side will have 15  
11 hours. Use of trial time will be calculated by the Court.

12 **O. TRIAL DATE**

13 March 25-29, 2013.

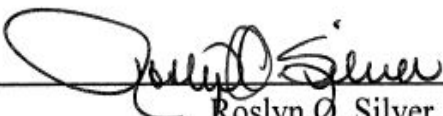
14 **P. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

15 Both sides have submitted their proposed findings of fact and conclusions of  
16 law.

17 **Q. MODIFICATION OF ORDER**

18 This pretrial order can be modified by Court order.

19 Dated: March 25, 2013.

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21   
22 Roslyn O. Silver  
23 Chief United States District Judge  
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