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15 *Attorneys for Plaintiff Arizona State Legislature*

16 **UNITED STATES DISTRICT COURT**

17 **DISTRICT OF ARIZONA**

18 Arizona State Legislature,

19 Plaintiff,

20 v.

21 Arizona Independent Redistricting
22 Commission, and Colleen Mathis, Linda
23 C. McNulty, José M. Herrera, Scott D.
24 Freeman, and Richard Stertz, members
thereof, in their official capacities; Ken
Bennett, Arizona Secretary of State, in
his official capacity,

25 Defendants.
26

No. CV-12-01211-PHX-PGR

FIRST AMENDED COMPLAINT

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

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

3 **NATURE OF THE ACTION**

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

18 **PARTIES**

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

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

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

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

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

12 JURISDICTION

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

15 VENUE

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

17 THREE-JUDGE PANEL REQUESTED

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

22 FACTS

23 Redistricting Prior to Proposition 106

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

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

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

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

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

25
26

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **2012 Election Deadlines**

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

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

1 DATED on July 20, 2012.

2
3 **ARIZONA STATE LEGISLATURE**

4 By: /s/ Joshua W. Carden

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CERTIFICATE OF SERVICE

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

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