No. _____

In the Supreme Court of the United States

ARIZONA STATE LEGISLATURE,
Appellant,

v.

ARIZONA INDEPENDENT REDISTRICTING COMMISSION, *et al.*,
Appellees.

On Appeal from the United States District Court for the District of Arizona

APPELLANT'S JURISDICTIONAL STATEMENT

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QUESTION PRESENTED

In a provision added by citizen initiative, the Arizona Constitution removes all authority to prescribe legislative and congressional redistricting from the Arizona State Legislature and places it in an unelected commission. The Legislature challenges this provision as to congressional redistricting as a violation of Article I, section 4, the Elections Clause of the United States Constitution. In a 2-1 decision, a three-judge panel of the District Court for the District of Arizona ruled that removing the Legislature did not violate the Elections Clause. The question presented is:

Does the provision of the Arizona Constitution that divests the Arizona Legislature of any authority to prescribe congressional district lines violate the Elections Clause of the United States Constitution, which requires that the time, place, and manner of congressional elections be prescribed in each state by the "Legislature thereof"?

PARTIES TO THE PROCEEDING

Appellant here, and Plaintiff below, is the Arizona State Legislature.

Appellees, and Defendants below, are the Arizona Independent Redistricting Commission, Colleen Mathis, Linda C. McNulty, Cid R. Kallen (replacing former commissioner Jose M. Herrera purusant to Fed. R. Civ. P. 25(d)), Scott D. Freeman, and Richard Stertz in their official capacities as members of the Arizona Independent Redistricting Commission, and Ken Bennett in his official capacity as Secretary of State of Arizona.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONS AND STATUTES

OTHER AUTHORITIES

OPINION BELOW

On February 24, 2014, the three-judge district court (Rosenblatt, Schroeder, Snow, J.J.) entered the Judgment that is the subject of this appeal. The district court's majority opinion and Judgment are reproduced at App. 2-23 and 24-25 respectively. The dissenting opinion by Judge Rosenblatt begins at App. 20.

JURISDICTION

On August 21, 2013, the Ninth Circuit Court of Appeals ordered the appointment of a three-judge district court pursuant to 28 U.S.C. § 2284(b)(1). The three-judge court entered its final judgment granting a motion to dismiss and denying injunctive relief on February 24, 2014. Appellant filed the Notice of Appeal on February 26, 2014. This Court has jurisdiction under 28 U.S.C. § 1253.

RELEVANT STATE AND FEDERAL CONSTITUTIONAL PROVISIONS

Article I, § 4, cl. 1 of the United States Constitution, the "Elections Clause," states:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

Appellant challenges the Constitutionality of Arizona Constitution article IV, part 2 § 1(3) – (23),

reproduced at App. 29-36, as applied to federal congressional elections.

STATEMENT OF THE CASE

This case presents a Constitutional challenge to Arizona Constitution article IV, part 2 § 1(3) – (23) ("Prop. 106"), an initiative-based amendment to the Arizona Constitution, which divests the Arizona State Legislature ("Legislature") of authority over congressional redistricting in favor of an unelected Independent Redistricting Commission ("IRC"). Appellant brings this challenge on the grounds that Prop. 106 impermissibly removes the legislature from its constitutional role under the Elections Clause. In a majority opinion, a three-judge panel of the District Court for the District of Arizona held that the term "Legislature" in the Elections Clause refers to the entire lawmaking process of the state; that Prop. 106 does not violate the Elections Clause; and that shifting the authority to prescribe congressional districts away from the Legislature and vesting it in the IRC does not violate the Elections Clause.

A. The Background of Prop. 106

From its first year of statehood in 1912 until 2000, the Legislature established congressional district lines in Arizona. App. 3. The Legislature's congressional redistricting authority was subject to the limitations of the legislative process, including, for instance, gubernatorial veto. *Id*.

A private citizen group placed an initiative measure on Arizona's November, 2000 general election ballot, designated by the Arizona Secretary of State as Proposition 106. The initiative was intended to "take[]

the redistricting power away from the Arizona Legislature and put[] it in the hands of a politically neutral commission of citizens who are not active in partisan politics…." App. 43. The measure passed, and amended the Arizona Constitution to create Arizona Constitution article IV, part 2 § 1(3) – (23). True to its purpose, Prop. 106 took outcome-determinative authority over congressional redistricting away from the Legislature and gave it to the IRC. App. 22.

The IRC is convened in February of each year ending in one (e.g. 2001, 2011, etc.). Ariz. Const. art. IV, pt. 2 § 1(3). Four of the five members of the IRC are chosen by the highest ranking officer and minority leader of each chamber of the legislature from a list of ten candidates pre-selected by Arizona's Commission on Appellate Court Appointments. The four appointed members themselves then choose the fifth member from the pre-selected nomination pool to serve as chair. *Id.* at ¶¶ 4-8. After appointment, the members of the IRC can only be removed by the Governor of Arizona, with the concurrence of two-thirds of the Senate, for substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office. *Id.* at ¶ 10.

The IRC creates congressional districts based on set criteria, including (A) compliance with the U.S. Constitution and Voting Rights Act, (B) equal population to the extent practicable, (C) geographic compactness, (D) respect for communities of interest, (E) use of geographic features and city and county boundaries, and lastly (F) favoring politically competitive districts. *Id.* at ¶ 14. Prop. 106 states that the IRC "shall" establish final district boundaries and "shall" certify them to the secretary of state. *Id.* at

¶¶ 16-17. The IRC thus has ultimate and exclusive decision-making authority on congressional redistricting. Unlike ordinary legislative enactments in Arizona, the IRC's district maps are not subject to checks in the legislative process such as gubernatorial veto or referendum. Ariz. Const. art. IV pt. 1 § 1(3) (referendum power applies only to measures "enacted by the legislature").

Under Prop. 106, the Legislature is permitted only to submit nonbinding recommendations to the IRC. *Id.* at pt. 2 § 1(16). The Legislature is also required to make necessary appropriations for the operation of the IRC. *Id.* at ¶ 18. And the IRC is granted legal standing to challenge by suit the adequacy of funding supplied by the Legislature. *Id*. at ¶ 20. Neither members of the Legislature, nor any candidates for or holders of any other public office, may serve on the IRC. *Id.* at ¶ 3.

The most recent iteration of the IRC, using the 2010 Census data, approved congressional district lines on January 17, 2012, and forwarded its maps to the U.S. Department of Justice for preclearance. App. 4. As directed by Prop. 106, the Arizona Secretary of State used the IRC's congressional maps to determine congressional election districts for the 2012 general election. Under current law, the IRC's congressional maps will be used in the 2014 general election, and will continue to be used in congressional elections until a new IRC is convened in 2021. Ariz. Const. art. IV., pt. 2, § 1 at ¶¶ 5, 17, and 23.

B. Procedural Background

The Legislature first filed its Complaint on June 7, 2012, requesting declaratory relief as to the

constitutionality of Prop. 106 and any congressional map created by the IRC. Because the election time frames for the 2012 election cycle were underway, the Legislature sought injunctive relief to commence the day after the 2012 general election. App. 48. On June 8, 2012, the Legislature filed a motion requesting a three-judge panel be convened pursuant to 28 U.S.C. § 2284(a). The district court initially granted the motion, but then entertained a motion to reconsider. Over a year later on August 14, 2013, the district court denied the motion to reconsider, confirmed its order, and requested a three-judge court be convened. The three-judge court was convened on August 23, 2013.

On January 24, 2014, the three-judge district court panel conducted oral argument on the IRC's Motion to Dismiss for failure to state a claim and the Legislature's Motion for Preliminary Injunction. On February 24, 2014, the district court entered final judgment granting the IRC's motion to dismiss, and denying the Legislature's Motion for Preliminary Injunction. The Legislature filed its notice of appeal on February 26, 2014.

C. The District Court Decision

In its opinion below, the district court held that the Legislature has standing, that the action was not barred by laches, and that consideration of the constitutional merits was not precluded by the political question doctrine. On the merits, however, the court ruled that the term "legislature" as used in the Elections Clause encompasses a state's entire legislative process, and thus, Prop. 106 does not violate the Election Clause. App. 15.

The district court based its decision primarily on two prior cases where this Court directly addressed the effect of the Elections Clause on the authority of the state legislatures to conduct congressional redistricting: *Ohio ex. rel. Davis v. Hildebrant*, 241 U.S. 565 (1916), and *Smiley v. Holm*, 285 U.S. 355 (1932). Both decisions approved the ability of a state to provide a limited check on their elected legislature's redistricting prerogative. Addressing Minnesota's application of the gubernatorial veto, this Court in *Smiley* held that "…there is nothing in Article I, section 4, which precludes a State from providing that legislative action in districting the State for congressional election shall be subject to the veto power of the Governor as in other cases of the exercise of the lawmaking power." *Smiley*, 285 U.S. at 373-74. The district court interpreted the *Smiley* decision to mean that a State may structure its legislative power used to enact congressional election regulations in any way it sees fit. The relevant inquiry, according to the district court, is simply whether the state performed redistricting through a valid use of the legislative process as determined by the state's own constitution. App. 17.

In addition to *Smiley* and *Hildebrant*, the district court also based its decision in part on this Court's observation in *Growe v. Emison*, that "reapportionment is primarily the duty and responsibility of the State through its legislature ***or other body***, rather than of a federal court." 507 U.S. 25, 34 (1993) (emphasis added). Viewing the enactment of Prop. 106 as a valid use of voter initiative for a state constitutional issue, the district court ruled that the Elections Clause had not been infringed. Additionally, the panel majority

pointed to the selection process for IRC members and the Legislature's ability to suggest modifications in draft maps and observed that "Arizona has not entirely divested the legislature of any redistricting power." App. 19 n. 4.

In his dissent, Judge Rosenblatt noted that states may only regulate congressional elections to the extent permitted by the Elections Clause. App. 21 (citing *Cook v. Gralike*, 531 U.S. 510, 522-23 (2001)). Given that the Elections Clause operates as a restriction on the states' authority to regulate congressional elections, Judge Rosenblatt disagreed with the majority that the inquiry under the Elections Clause may only ask whether the state's exercise of its lawmaking power was valid as a state constitutional matter. He pointed out that any law passed by a state must still abide by the United States Constitution. App. 21.

Judge Rosenblatt further noted that none of the authority relied on by the majority permitted a state to remove ***all*** substantive redistricting authority from its legislature. App. 22. He also argued that the Elections Clause does in fact place substantive limits on a state's legislative process in redistricting, and would have held that Proposition 106's complete evisceration of the Legislature's ability to have an outcome-defining effect on the congressional redistricting process "is repugnant to the Election Clause's grant of legislative authority." App. 23.

THE QUESTION PRESENTED IS SUBSTANTIAL

The Court should note probable jurisdiction. This Court grants plenary review of direct appeals where the appellants pose a substantial question. *Hicks v. Miranda*, 422 U.S. 332, 344 (1975). Prior to the district court's decision below, no court had ever held that a state may exclude completely its elected legislature from congressional redistricting in light of the plain import of the Elections Clause.

Since the time of the Civil War, both state and federal courts have addressed the authority to regulate congressional elections as delegated in the Elections Clause. *See, e.g., In re Opinions of Justices*, 45 N.H. 595, 607 (1864) (upholding the state legislature's suffrage law and stating that "the authority of the state legislature to prescribe the time place and manner of holding elections for representatives in Congress...is not an exercise of their general legislative authority under the Constitution of the State"); *Grills v. Branigin*, 284 F.Supp. 176, 180 (S.D. Ind. 1968), *aff'd per curiam*, 391 U.S. 364 (1968) (denying state election board's request to perform redistricting as they were not a "legislative" body under the Elections Clause); *Smith v. Clark*, 189 F.Supp.2d 548 (S.D. Miss. 2002), *aff'd sub nom. Branch v. Smith*, 538 U.S. 254 (2003) (court did not have authority to redistrict, as under the Elections Clause, an entity that draws the lines must "find the source of its power to redistrict in some act of the legislature"); *compare Koenig v. Flynn*, 258 N.Y. 292, 300 *aff'd* 285 U.S. 375 (1932) (state legislature cannot redistrict by joint resolution, but must do so through the legislative process in the state

constitution); *In re Opinion of the Justices*, 118 Me. 552 (1919) (state legislature's act granting suffrage to women was subject to the state constitution's referendum provisions).

This Court's decisions in *Hildebrant* and *Smiley* make clear that the manner in which congressional redistricting is performed under the Elections Clause is in fact "legislative"; that "legislature" means the representative body that makes the laws of the people; and that legislatures must act within their respective states' legislative processes in prescribing congressional election regulations. *Smiley* indicates that the Elections Clause, by its use of the word "Legislature," refers to the "representative body which [makes] the laws of the people." *Smiley*, 285 U.S. at 365. However, neither *Hildrebrant* nor *Smiley* permit a state to divest its legislature of all meaningful authority to prescribe district lines, as in each case the state legislature retained the ability to draw district lines.

The use of independent commissions, often in conjunction with the state legislatures, has become a popular tool to aid in the politically sensitive and often contentious process of redistricting.[1] As it relates to redistricting of congressional boundaries, however, exclusive commission drawing authority is a relatively modern phenomenon. Only the voters of Arizona, and more recently, California, have fully divested their

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[1] At least twenty-four (24) states currently use redistricting commissions, primarily in drawing state legislative district lines. Other states use commissions as a backup in case of deadlock, or in an advisory role.

elected legislatures of congressional districting authority, despite the Elections Clause's clear reference to the "legislature" of each state.[2] It is only this limited issue—complete removal of the Legislature from congressional redistricting—that Appellant challenges.

The authority to prescribe the time, place, and manner of federal elections is conveyed to the state legislature by the Constitution. It cannot be displaced through state action. The District Court's Order suggests that the authority is alienable through unilateral action of the states. Such a result is inconsistent with the Elections Clause. The Court should hold full plenary review of the District Court's decision in order to enforce the constitutional delegation of authority to the Legislature.

I. THE DECISION OF THE DISTRICT COURT IS INCONSISTENT WITH THIS COURT'S ELECTIONS CLAUSE JURISPRUDENCE.

The district court based its holding primarily on this Court's decisions in *Davis v. Hildebrant* and *Smiley v. Holm*.

In *Hildebrandt*, this Court reviewed a challenge to the validity of a referendum veto on the state General Assembly's 1915 redistricting plan, which passed as a statute, and would have superseded a redistricting plan passed just two years earlier by the legislature in

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[2] Arizona (Ariz. Const. art. IV, pt. 2 § 1), California (Cal. Const. art. XXI, § 2). Other states that perform congressional redistricting by commission amended their constitutions by constitutional convention (Hawaii) or by legislatively-referred amendments (Idaho, New Jersey, Washington).

1913. *State ex rel. Davis v. Hildebrant*, 94 Ohio St. 154, 168 (1916). The challenge to the referendum veto alleged in part that the veto was invalid, as the Elections Clause gave the state legislature absolute authority over redistricting. The Ohio Supreme Court denied the challenge, holding that the referendum veto was valid, and that the legislature's 1913 plan remained in effect. *Id.* The Ohio General Assembly retained the right to draw congressional district lines. It next passed a revised redistricting plan following the 1950 census. The General Assembly of Ohio continues to redistrict congressional lines by statute today. *See* Ohio Revised Code § 3521.01 (setting current congressional district lines).

This Court confirmed the Ohio Supreme Court's ruling. As a state law matter, this Court found that the referendum power "constituted a part of the state Constitution and laws," and was thus a valid check on the state legislature's congressional redistricting plan. *Hildebrant*, 241 U.S. at 568. To the extent that the petitioners in *Hildebrant* based their claim on a belief that a referendum could not be "legislative" under the Elections Clause, this Court held that this argument did not present a justiciable controversy. *Id.* at 569.

In *Smiley v. Holm*, this Court again addressed the limits placed by the Elections Clause on the states' redistricting processes. The governor of Minnesota vetoed a congressional map drawn by the state legislature. Despite the veto, the legislature registered the map with the Minnesota secretary of state on the grounds that both houses of the Minnesota legislature approved of it and the governor's approval or disapproval had no legal effect because of the Elections

Clause reference to "the Legislature." A citizen filed suit, arguing that "Legislature" in the Elections Clause encompassed the entire legislative power of the state, and thus the map could be of no effect because, after the governor's veto, "it was not repassed by the Legislature as required by law…" *Smiley*, 285 U.S. at 361-62.

The Minnesota Supreme Court ruled in favor of the legislature, and made two distinct holdings. First, it held that "Legislature" as used in the Elections Clause carries the ordinary meaning of the word: "the representative body, which makes the laws of the state," and ***not*** "the lawmaking power of the state." *State ex rel. Smiley v. Holm*, 184 Minn. 228, 235-36 (1931). Second, the court held that the duty vested in the state legislature by the Elections Clause was not an ordinary legislative authority, but an exclusive grant of power. *Id.* at 238. The legislature was thus the "mere agency to discharge the particular duty." *Id.* The state Supreme Court held that the legislature's redistricting plan was passed outside the ordinary legislative channels and that the governor's veto power could have no effect on the process.

This Court maintained the analytical approach of the Minnesota Supreme Court by addressing each holding in turn. First, this Court affirmed the Minnesota Supreme Court's holding regarding the meaning of the term "Legislature" in the Elections Clause. Since the time it was incorporated in the Constitution, "Legislature" has always meant "the representative body which ma[kes] the laws of the people." *Smiley*, 285 U.S. at 364 (citing *Hawke v. Smith*, 253 U.S. 221, 227 (1920)). In clear terms, this

Court held that the Elections Clause specifies the body which is to regulate federal election procedures, and that body is the state legislature.

Second, this Court addressed: "whether the function contemplated by Article I, section 4, is that of making laws." *Id.* at 366. This Court observed that the Constitution makes several specific grants of authority to state legislatures. Prior to the adoption of the Seventeenth Amendment, state legislatures acted as electoral bodies for choosing United States Senators. Under Article I, § 3, state legislatures act as ratifying bodies for proposed amendments to the Constitution. And under Article I, § 8, cl. 17, state legislatures may act as consenting bodies for the acquisition of land by the United States. *Id.* at 365-66.[3] This Court held that a state legislature conducting redistricting performs a legislative function; therefore, "the exercise of the authority must be in accordance with the method which the state has prescribed for legislative enactments." *Id.* at 367-68.

The determinative issue in *Smiley* is not whether the state legislatures are the body authorized by the Elections Clause to conduct redistricting. Instead, this Court asked whether the state legislatures, when ***they*** act as a redistricting body, do so in a lawmaking

[3] The *Smiley* decision does not mention the grant of authority to state legislatures by Article II, section 1, clause 2 to direct the manner of presidential electors. *See generally McPherson v. Blacker*, 146 U.S. 1 (1892).

function, subject to checks characteristic of the legislative process such as a gubernatorial veto.[4]

A. The District Court Departs From the Central Holding Of *Smiley v. Holm*

This Court did not hold in *Smiley* that ***any*** body or entity can be vested with the authority to conduct congressional redistricting. It held that the language of the Elections Clause does not prohibit limitations on a state legislature's prerogative that are part of the ordinary legislative process. State legislative authority is still limited by the language of the Elections Clause. *Id.* at 372 ("Article I, section 4, plainly gives authority to the State to legislate ***within the limitations therein named***") (emphasis added). In summary, the *Smiley* holding is twofold. First, answering the ***identity question***, "Legislature" means the representative body that makes the laws of the state. Second, answering the ***function question***, in the specific context of redistricting, state legislatures exercise lawmaking authority.

The district court's judgment departs from the *Smiley* decision by conflating these two holdings. For the panel majority, "the word 'Legislature' in the Elections Clause refers to the legislative process used in that state, determined by that state's own constitution and laws." App. 15. In fact, *Smiley* holds precisely the opposite: "Legislature" in the Elections Clause refers to the "representative body that mak[es]

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[4] Departing from its prior decision in *Hildebrant*, this Court did not suggest that the Elections Clause analysis was in any way connected to the Republican Form of Government.

the laws of the people." *Smiley*, at 364. Based on this misreading, the district court below denied that "redistricting authority was vested uniquely in the legislature," and instead held that the states have "discretion of where to place such authority within the scope of the 'state's legislative power.'" App. 12-13.

According to the panel majority:

> [T]he relevant inquiry is not whether Arizona has uniquely conferred its legislative power in representative bodies, it is whether the redistricting process it has designated ***results from the appropriate exercise of state law***. There is no dispute that the IRC was created through the legislative power reserved in the people through the initiative with the specific purpose of conducting the redistricting within the state, and that in exercising its functions the IRC exercises the state's legislative power.

Id. at 17 (emphasis added). This logic is irreconcilable with the Elections Clause and this Court's precedents because it abandons the specific meaning of "Legislature" and replaces it with "legislative process." As long as a state uses its legislative process it could undertake redistricting in a variety of ways. To take a few examples:

- It could vest redistricting in a particular officer, such as its attorney general, secretary of state, or governor.
- It could undertake redistricting directly through the initiative process by having the people vote on maps directly.

- It could direct that redistricting be conducted by the state's judiciary.
- Or—as Prop. 106 has done in Arizona—it could establish an unelected commission and vest it with all authority to establish congressional lines.

Indeed, in contrast to *Hildebrant* and *Smiley*, Prop. 106 creates a redistricting process that operates ***outside*** Arizona's legislative process. Under Prop. 106, there are no legislative checks on the IRC's district maps, such as referendum or gubernatorial veto. Ariz. Const. art. IV, pt. 2 § 1(16) ("independent redistricting commission shall…establish final district boundaries"); *cf.* Cal. Const. art. XXI, § 6(h)(i) (redistricting maps created by California's redistricting commission are "subject to referendum in the same manner that a statute is subject to referendum;" no such provision exists in Prop. 106). The IRC is fully insulated, and acts as the final authority for district lines. The system created by Prop. 106 is no different than if Arizona amended its constitution to give a single person, such as the Governor, ultimate, unimpeachable redistricting authority. Thus, the problem with Prop. 106 is not that it was enacted through the legislative process, but that it eviscerates the Constitutional redistricting process mandated by the Elections Clause. Past Justices of this Court have twice indicated in dissent that the Elections Clause acts as an affirmative limit on states' ability to remove their state legislatures from congressional redistricting. *Colorado General Assembly v. Salazar*, 541 U.S. 1093 (2004) (Rehnquist, C.J., dissenting from denial of certiorari) ("…there must be some limit on the State's ability to define lawmaking by excluding the

legislature itself…"); *California Democratic Party v. Jones*, 530 U.S. 567, 602 (2000) (Stevens, J. dissenting) (suggesting that redistricting by popular initiative, unreviewable by legislative action, could potentially be unconstitutional). The concerns of these justices are now realized.

The Legislature does not object to subjecting the redistricting process to the legislative checks contained in Arizona's constitution. Under *Hildebrant* and *Smiley*, redistricting plans in Arizona could constitutionally be subject to referendum and gubernatorial veto as part of ordinary Arizona lawmaking. But Proposition 106 violates the Elections Clause because it removes from the Legislature the actual ability to "prescribe."

B. The Arizona Legislature Has No Meaningful Role In Congressional Redistricting

The panel majority states that "Arizona has not ***entirely divested*** the legislature of ***any*** redistricting power." App. 19 n. 4 (emphasis added). "The Legislature retains," the Court continues, "the right to select the IRC commissioners, and the IRC is required to consider the Legislature's suggested modifications to the draft maps." *Id*. Neither of these "rights" comes close to the authority mandated by the Elections Clause—prescribing the time, place, and manner of congressional elections. As this Court observed in *Smiley*, the conferral of authority to state legislatures by the Elections Clause is broad:

> It cannot be doubted that these comprehensive words embrace authority to provide ***a complete***

> ***code for congressional elections***, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns; in short, ***to enact the numerous requirements*** as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved. And these requirements would be nugatory if they did not have appropriate sanctions in the definition of offenses and punishments. ***All this is comprised in the subject of 'times, places and manner of holding elections,' and involves lawmaking in its essential features and most important aspect***.

Smiley, 285 U.S. at 366 (emphasis added). The vestige of redistricting influence now left to the Legislature by Prop. 106 falls far short of the ability to prescribe a "complete code" or engage in the "essential features" of lawmaking.

First, the Legislature does not select the IRC commissioners. Between the House and Senate the Legislature has a total of 90 members. Under Prop. 106, just four members of the Legislature (the majority and minority leaders from each chamber) have the ability to nominate individuals to the IRC. Neither chamber has a vote in the process. Moreover, even the four legislators who do make appointments have a very limited role. They cannot appoint whomever they choose. Their selection (and the ultimate selection of

the IRC's fifth member and chair) must come from a list of ten individuals, pre-selected by the Arizona Commission on Appellate Court Appointments. Ariz. Const. art. IV, pt. 2, § 6, ¶¶ 3-6 (App. 29-31).

Second, the Legislature's limited ability to submit suggestions for changes to the IRC's draft maps is a function without consequence. Ostensibly, the IRC is required to "consider" any legislative suggestions, but there is no consequence if it does not. And it may summarily reject them. *Id*. at ¶¶ 14, 16-17 (App. 33-34). There is no meaningful difference between the Legislature's ability to make suggestions to the IRC, and that of any member of the public. In short, the IRC is called "Independent" because it alone holds the authority to prescribe congressional district lines. Judge Rosenblatt's criticism of the majority panel's logic is correct:

> [S]uch minor procedural influences must be evaluated in light of the fact that Proposition 106 requires Plaintiff to choose IRC members from a list selected not by it but by the state's commission on appellate court appointments, and the fact that the IRC has the complete discretion not to implement any map changes suggested by Plaintiff. What Plaintiff does not have under Proposition 106 is the ability to have any outcome-defining effect on the congressional redistricting process.

App. 22-23 (Rosenblatt, J. dissenting). Indirect influence is a far cry from "outcome-defining effect."

C. The District Court Incorrectly Applied This Court's Remedial-Adjudication Precedents

The panel majority states that this Court has "reaffirmed that a state may place the redistricting authority in entities other than the legislature." App. 16. The decisions cited by the panel majority, however, do not go so far.

This Court's decision in *Growe v. Emison*, 507 U.S. 25 (1993), addressed the extent to which a district court should engage in congressional and legislative redistricting when there is ongoing state-court litigation. This Court reversed an order by a district court that enjoined a state court's redistricting plan after the plan adopted by the Minnesota Legislature was vetoed. 507 U.S. at 30, 42. This Court reiterated the longstanding principle that "the Constitution leaves with the States primary responsibility for apportionment of their federal congressional and state legislative districts." *Id*. at 34.

The panel majority highlights this Court's use of the phrase "legislature or other body" in the *Growe* decision. App. 16. But that language, which this Court quoted from its decision in *Chapman v. Meier*, 420 U.S. 1 (1975), is a summary of a line of cases, all standing for the proposition that when a ***state legislature*** is unable or unwilling to produce a valid redistricting plan ***the courts*** are justified in providing remedial relief. *See*, *Chapman*, 420 U.S. at 27 (citing *Reynolds v. Sims*, 377 U.S. 533, 586 (1964) ("[L]egislative reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional

requisites in a timely fashion after having had an adequate opportunity to do so.") *and Maryland Comm. v. Tawes*, 377 U.S. 656, 676 (1964) (" Since primary responsibility for legislative apportionment rests with the legislature itself and since adequate time exists in which the Maryland General Assembly can act, the Maryland courts need feel obliged to take further affirmative action only if the legislature fails to enact a constitutionally valid state legislative apportionment scheme in a timely fashion after being afforded a further opportunity by the courts to do so.")).

There is an important difference between the authority of judicial officers to remedy legislative failings to conduct proper redistricting and the underlying authority to conduct congressional redistricting itself. The panel majority is incorrect to use this Court's remedial-adjudication precedents to displace the foundational delegation of authority to state legislatures in the Elections Clause.

D. States Have Only Delegated Authority—Not Inherent Power—To Regulate Federal Elections

Arizona's authority over congressional elections derives solely from the Constitution itself. *U.S. Term Limits v. Thornton*, 514 U.S. 779, 805 (1995). "[T]he States may regulate the incidents of…elections…only within the exclusive delegation of power under the Elections Clause." *Cook v. Gralike*, 531 U.S. 510, 523 (2001). The Elections Clause, as a standalone preemption provision, establishes its own balance between state and federal interests and resolves all conflicts in favor of the federal government. *Id.* Thus, the federalism principles that apply to the states' use

of their inherent police powers are limited in the Elections Clause context. *Arizona v. Inter-Tribal Council of Arizona*, __ U.S. __, 133 S.Ct. 2247, 2257 (2013).

As states have no inherent authority over congressional elections, the district court erred by holding that "the relevant inquiry…" in determining whether redistricting is valid under the Elections Clause is simply "whether the state has appropriately exercised its authority in providing for that redistricting." App. 18. A court cannot simply end its inquiry there, because the Elections Clause gave authority to the states to legislate only "within the limitations therein named." *Smiley*, 285 U.S. at 372. Every challenge to delegated state authority under the Elections Clause must therefore be resolved by looking to the Constitution to determine the scope of that authority. And the Constitution requires that the times, places and manner of congressional elections be made by "the Legislature."

Under this reasoning, it is clear that the Elections Clause acts as an explicit limitation on the delegated authority of the states. The Clause's grant of authority to the "Legislature" of each state is but one example of such limitation. *See* II.A *infra*. By removing the Legislature from Arizona's congressional redistricting process, Prop. 106 violates the Elections Clause. By extension, congressional maps created by the IRC, in abrogation of the Legislature's Constitutionally-delegated authority are unconstitutional. Token participation by the Legislature, such as a non-binding recommendation procedure, does not make Arizona's current redistricting process any nearer to being "by

the Legislature." Arizona cannot preempt by state constitutional amendment the Legislature's delegation of authority to regulate congressional elections in the U.S. Constitution. Prop. 106 fails the constitutional scrutiny that this Court applies under the Elections Cause.

II. THE CONTEXT AND HISTORY OF THE ELECTIONS CLAUSE DEMONSTRATE THAT IT IS AN EXPRESS DELEGATION OF AUTHORITY TO STATE LEGISLATURES AND A LIMITATION UPON THE ABILITY OF STATES TO DISSOLVE THAT DELEGATION.

The Framers deliberately involved state legislatures—and not just "the states"—in the process of conducting and regulating federal elections. Both the context of the Elections Clause, in light of the rest of the Constitution, and the history of the framing show a deliberate plan for ensuring that the federal government would be established and maintained through an orderly elections structure. The Framers rested some of the framework upon specific delegations to the agency of the state legislatures in particular. Consequently, states lack the authority to disrupt these express grants of authority by replacing the constitutional role of state legislatures with some other body or person.

A. The Elections Clause Is One Of Several Instances Where The Framers Chose To Delegate Authority To State Legislatures Rather Than Generally To The States

The Constitution reflects the fact that the creation and alignment of federal power took place against the

backdrop of the authority of the pre-existing states. The 1787 Constitution, the Bill of Rights, and the Civil War amendments frequently acknowledge and refer to "the states".

Less frequently, the Constitution specifically references local agencies of government other than the states themselves. Many of these specific references occur in the context of how federal officers who represent the states are to be elected or appointed. For example, Article I, section 2 specifies that vacancies in federal representation of any state should be filled by "the Executive Authority therof. . . ." However, when it comes to the election of representatives of the states in the federal government, the Constitution spells out a prominent role for the state legislatures in particular. Prior to the adoption of the Seventeenth Amendment, Article I, section 3 granted state legislatures the authority to appoint United States Senators. Article II, section 1, gives state legislatures the authority to control the manner of appointment of presidential electors. And the Elections Clause—Article I, section 4—gives state legislatures the authority to prescribe the time, place, and manner of the elections of representatives and senators. Short of a Constitutional amendment, none of these powers are alienable. *See generally*, Mark R. Brown, *Structural Limitations on the Non-Legislative Regulation of Federal Elections*, 7 Dartmouth L. J. 260 (2009).

Because these grants of authority flow directly from the Constitution to the state legislatures, they cannot be displaced by the states themselves. In *McPherson v. Blacker*, for example, this Court struck down a state constitutional provision limiting the ability of the

Michigan Legislature to appoint presidential electors. This Court explained that Article II, section 1 operates as "a limitation upon the state in respect of any attempt to circumscribe the legislative power. . . ." 146 U.S. 1, 25 (1892). Similarly, in *Bush v. Palm Beach County Canvassing Board*, this Court vacated and remanded an order by the Florida Supreme Court for the purpose of determining whether the state court had impermissibly used the state constitution to bypass the state legislature's enactment relating to the selection of Presidential electors. 531 U.S. 70, 76-78 (2000). The *McPherson* decision demonstrates an important principle of constitutional authority—delegations must be enforceable. When the Constitution grants authority specifically to state legislatures, it also creates a limitation of the state to "circumscribe" that authority.[5]

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[5] In *Hawke v. Smith*, this Court voided another attempt in a state constitution to "circumscribe" a delegation of constitutional authority to state legislatures—this time in the context of the constitutional amendment process set forth in Article V. 253 U.S. 221 (1920). "It is true," this Court explained, "that the power to legislate in the enactment of the laws of a state is derived from the people of the state. But the power to ratify a proposed amendment to the federal Constitution has its source in the federal Constitution. The act of ratification by the state derives its authority from the federal Constitution to which the state and its people have alike assented." *Id*. at 230.

B. The History Of The Elections Clause Demonstrates A Clear Grant Of Authority To State Legislatures, Not To A State's Legislative Process As A Whole

The District Court supports its expansive interpretation of the word "Legislature" in part by repeating the assessment of the Eleventh Circuit in *Brown v. Secretary of State*, that "[t]he Framers…said nothing that would help to resolve…what it means to repose a State's Elections Clause power in 'the Legislature thereof.'" 668 F.3d 1271, 1276 (11th Cir. 2012) (citations and quotations omitted).[6] App. 15. This alleged lack of evidence is vastly overstated. The text of the clause itself is sufficient evidence of its intended meaning. Additionally, the history of the Elections Clause likewise reveals the Framers' intent to specifically delegate authority over the times, places and manner of Congressional elections specifically to the elected legislatures of the states.

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[6] *Brown* involved a voter-initiative that imposed standards the Florida legislature was required to follow in the redistricting process. 668 F.3d at 1272. In upholding the initiative as a valid check on the legislature, the appellate court explicitly reaffirmed that "at the end of the day, Florida's legislature is still responsible for drawing the congressional district lines." *Id*. at 1281. The court further reasoned that "the standards imposed by the text of [the initiative]," could not be said to "so limit the state legislature's discretion as to eviscerate its constitutionally delegated power [i.e. from the Elections Clause] and effectively exclude the legislature from the redistricting process." *Id*. at 1280. In context, *Brown* actually supports the Legislature's argument—not the majority panel opinion—because Prop. 106 ***has*** eviscerated the Legislature's constitutionally delegated power.

1. Text of the Elections Clause

"The Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." *Dist. of Columbia v. Heller*, 554 U.S. 570, 575 (2008) (citations and quotations omitted). "[W]here the intention is clear there is no room for construction and no excuse for interpolation or addition." *United States v. Sprague*, 282 U.S. 716, 731 (1931).

The term "Legislature" was not "one of uncertain meaning when incorporated into the Constitution. What it meant when adopted it still means for the purpose of interpretation. A Legislature was then ***the representative body which made the laws of the people***." *Hawke v. Smith*, 253 U.S. 221, 227 (1920) (emphasis added). "There can be no question that the framers of the constitution clearly understood and carefully used the terms in which that instrument referred to the action of the legislatures of the States." *Id.*; *accord Smiley*, 285 U.S. at 365 ("Legislature" as used in the Elections Clause refers to "the representative body which made the laws of the people"). The district court's distortion, especially in light of historical evidence of the plain meaning of the Elections Clause, impermissibly "strain[s] the constitutional text." *Williams v. Illinois*, __ U.S. __, 132 S. Ct. 2221, 2242 (2012).

2. Founding-Era Historical Record

In crafting the Elections Clause the Framers intentionally singled out state legislatures, as opposed to the general authority of the states, for the delegation of authority. This is borne out by the historical record.

a. Records of the Federal Convention

The genesis of the Elections Clause begins with the debate on the Fourth Resolution of Edmund Randolph's Virginia Plan, which provided that "the members of the first branch of the National Legislature ought to be elected by the people of the Several States…" 1 The Records of the Federal Convention of 1787, 420 (proceedings of May 30, 1787) (Max Farrand ed., 1911), *available at* http://files.libertyfund.org/files/1057/0544-01_Bk.pdf ("Records of the Federal Convention"). The controversy occasioned by this resolution focused primarily on whether it should be the people of the states, or their elected legislatures, that ultimately chose the members of the House of Representatives. James Madison, among others, argued for direct election by the people, stating that if the first branch of the federal legislature were elected by "…an intervening body of electors… the people would be lost sight of altogether." 1 Records of the Federal Convention at 49-50. Put to a vote, election by the people passed, 6 ayes, 2 noes, 2 divided. *Id.* 1 Records of the Federal Convention at 50.

The debate on this issue was reopened on June 6, 1787, by a motion "that the first branch of the national Legislature be elected by the State Legislatures, and not by the people." *Id.* at 132 (proceedings of June 6, 1787). Debate resumed along much the same lines as on May 31, 1787. Election by the people gained support in the intervening week, as the motion was defeated by a vote of 3 ayes, and 8 noes. *Id.* at 138.

On June 21, 1787, Charles Pinckney, a supporter of appointment of Representatives by the state legislatures, tried a new approach. He moved "that the

1st branch, instead of being elected by the people, sh[d] [sic] be elected in such manner as the Legislature of each State should direct." *Id.* at 358 (proceedings of June 21, 1787). Pinckney's proposal would have allowed that each state decide for itself whether the people would elect their representatives, and argued "that this liberty would give more satisfaction, as the Legislature could then accommodate the mode to the conveniency & opinions of the people." *Id.* The Delegates once again debated the balance of power between the people of the states and their elected legislatures, and Pinckney's motion failed—although this time with 4 ayes, 6 noes, and 1 divided. *Id.* at 360.

Perhaps spurred on by his increased support, Pinckney "immediately" made his final motion on the subject: "that the 1st branch ***be elected by the people in such mode as the Legislatures should direct***..." *Id.* (emphasis added). This final motion of June 21 is clearly the germ of the Elections Clause. Pinckney waived this final motion, when it was "hinted that such a provision might be more properly tried in the detail of the plan." *Id.* The motion, Pinckney's final attempt to entrust some part of the election of Representatives in the state legislatures, was in fact "tried in the detail." This compromise—direct election by the people, as directed by the elected state legislatures—was taken up by the Committee of Detail, and the first iteration of the Elections Clause emerged in written form from the Committee of Detail's report of August 6, 1787. William M. Meigs, *The Growth of the Constitution in the Federal Convention of 1787*, 87-89 (1st ed. 1900) available at http://archive.org/stream/growthconstitut00meiggoog#page/n8/mode/2up.

The progression of these motions provides the key to understanding the Founders' intent in composing the Elections Clause. Pinckney and others preferred to elevate the state legislatures' role in the process of Representative elections for two reasons. First, they felt that the people were "less fit Judges," and that by authorizing the state legislatures "more refined, and better men [would] be sent." 1 Records of the Federal Convention at 132, 365. Second, and perhaps more importantly, they hoped to curb the perceived problem that once elected, federal officers forget local concerns and become "strictly federal." *Id.* at 365. They therefore sought to make "State Govts. a part of the General System," in order to protect the interests of less populous states (such as Pinckney's own South Carolina) within the new federal government. *Id.*

When he could not dissuade the majority of delegates from their favored mode of direct election of Representatives by the People, Pinckney suggested the compromise of a popular vote as directed by the state legislatures to ensure some measure of control over Representative elections. The delegation of authority over the "times, places and manner" of elections was thus a compromise between those Convention delegates that felt the need to influence the will of the people and to shore up state interests through the state legislatures, and those that saw the "popular elections of Representatives as essential to the Federal Government of one branch of the national Legislature as essential to every plan of free Government."

When the Committee of Details submitted their draft to the Committee on the Whole, Article VI, § 1 contained the Elections Clause in its essential form. 2

Records of the Federal Convention at 179 (proceedings of August 6, 1787). The Committee of Style and Arrangement gave the Elections Clause its current place in Art. I, § 4, and nearly its current language. *Id.* at 592. The Clause achieved its final form on September 14, 1787, when, apparently without argument, the Convention amended Art. I, § 4 to add "except as to the places of chusing Senators" as an exception to Congress' general oversight authority. *Id.* at 613.

Tracing the history of the elections clause through the Federal Convention reveals that the Clause represents a compromise to satisfy those that favored election of Representatives by the state legislatures by giving the legislatures a baseline of authority over the times, places and manner of elections. Nothing in the historical record supports the district court's opinion that "Legislature" in fact means "general legislative power."

b. The Federalist

The intent of the Founders with regard to their adopted language is apparent from their context and usage of the term "Legislature" when presenting the Elections Clause in their efforts to win support for ratification.

In The FEDERALIST NO. 44, for instance, James Madison discusses why state legislators should be required to swear an oath to uphold the federal constitution. Madison finds the answer to be "obvious and conclusive":

> The members and officers of the State governments…will have an essential agency in

> giving effect to the federal Constitution. The election of the President and Senate will depend, in all cases, on the legislatures of the several States. And the election of the House of Representatives will equally depend on the same authority in the first instance; and will, probably, forever be conducted by the officers, and according to the laws, of the States.

Madison observed that the Constitution specifically grants authority over congressional elections to state legislators, and saw this grant of authority as a justification for requiring state legislators to swear to uphold the Constitution.

Madison makes a similar argument in THE FEDERALIST NO. 45, regarding the degree to which the federal government is beholden to state governments:

> Without the intervention of the State legislatures, the President of the United States cannot be elected at all. They must in all cases have a great share in his appointment, and will, perhaps, in most cases, of themselves determine it. The Senate will be elected absolutely and exclusively by the State legislatures. ***Even the House of Representatives, though drawn immediately from the people, will be chosen very much under the influence of that class of men, whose influence over the people obtains for themselves an election into the State legislatures***. (emphasis added).

The emphasized portion necessarily refers to state legislatures' power under the Elections clause, as that is the only means they possess to influence the

choosing of Representatives. Madison understood that authority over the times, places and manner of Representative elections would cause Representative elections to be conducted "very much under the influence of" the elected state legislators. As with the records of the Federal Convention, THE FEDERALIST supports holding "Legislature" to mean exactly what it says.

The overwhelming textual and historical evidence makes obvious what the District Court mistakenly believed obscure: the word "Legislature" has historically meant, and still means, the elected representative body that makes the laws. The substantive role for state legislatures anticipated by the Elections Clause is clear. Arizona lacks the power to displace its Legislature from that role.

CONCLUSION

In violation of the Elections Clause, Prop. 106 divests the Legislature of its authority to determine the "manner" of congressional elections through redistricting. Congressional district maps created by the IRC pursuant to Prop. 106 are likewise unconstitutional. It took the Seventeenth Amendment to remove the state legislatures' ability to appoint United States Senators to Congress. It would take another ***federal*** constitutional amendment to remove the Legislature's ability to regulate the times, places and manner of congressional elections. Acting on its own, Arizona may not fully remove that authority.

The District Court erred in upholding a state constitutional provision that jettisons the Legislature from its constitutionally-delegated role in congressional

redistricting under the Elections Clause. For the foregoing reasons, this Court should note probable jurisdiction and ultimately reverse the District Court's judgment.

Respectfully submitted,

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APPENDIX

TABLE OF CONTENTS

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. CV-12-01211-PHX-PGR-MMS-GMS

[Filed February 21, 2014]

Arizona State Legislature,	)
	)
Plaintiff,	)
	)
v.	)
	)
Arizona Independent Redistricting Commission, et al.,	)
	)
Defendants.	)

ORDER

Order by Snow. J.

This three-judge statutory court has jurisdiction pursuant to 28 U.S.C. § 2284(a). Pending before it are Defendants' Motion to Dismiss for Failure to State a Claim (Doc. 16), Plaintiff's Motion for Preliminary Injunction (Doc. 33), and Defendants' Motion to Dismiss for Lack of Jurisdiction for Lack of Standing (Doc. 43). For the following reasons, Defendants' Motion to Dismiss for Lack of Jurisdiction is denied, Defendants' Motion to Dismiss for Failure to State a

Claim is granted, and Plaintiff's Motion for Preliminary Injunction is denied as moot.

BACKGROUND

From the first year of its statehood in 1912 until 2000, the Arizona State Legislature ("Legislature") was granted the authority by the Arizona Constitution to draw congressional districts, subject to the possibility of gubernatorial veto. In 2000, Arizona voters, through the initiative power, amended the state Constitution by passing Proposition 106. Proposition 106 removed congressional redistricting authority from the Legislature and vested that authority in a new entity, the Arizona Independent Redistricting Commission ("IRC"). Ariz. Const. art. IV, pt. 2, § 1. Proposition 106 prescribes the process by which IRC members are appointed and the procedures the IRC must follow in establishing legislative and congressional districts. Once this process is complete, the IRC establishes final district boundaries and certifies the new districts to the Secretary of State. *Id.* at ¶¶ 16–17.

Under the IRC redistricting process, the legislative leadership may select four of the five IRC members from candidates nominated by the State's commission on appellate court appointments. The highest ranking officer and minority leader of each house of the legislature each select one member of the IRC from that list. *Id.* at ¶¶ 4–7. The fifth member, who is the chairperson, is chosen by the four previously selected members from the list of nominated candidates. The governor, with the concurrence of two-thirds of the senate, may remove an IRC member for substantial neglect of duty or other cause. *Id*. at ¶ 10. The IRC is required to allow a period for public comment after it

advertises a draft of its proposed congressional map during which it must review any comments received from either or both bodies of the Legislature. *Id.* at ¶ 16.

On January 17, 2012, the IRC approved a final congressional map to be used in all congressional elections until a new IRC is selected in 2021 and completes the redistricting process for the next decade. Ariz. Const. art. IV, pt. 2, § 1 ¶¶ 5, 17.

On June 6, 2012, the Legislature filed the present suit against the IRC, its current members, and the Arizona Secretary of State. (Doc. 1.) In its First Amended Complaint, the Legislature seeks a judgment declaring that Proposition 106 violates the Elections Clause of the United States Constitution by removing congressional redistricting authority from the Legislature and that, as a result, the congressional maps adopted by the IRC are unconstitutional and void. (Doc. 12 at 9.) The Legislature also asks the Court to permanently enjoin Defendants from adopting, implementing, or enforcing any congressional map created by the IRC, beginning the day after the 2012 congressional elections. (*Id.*) Defendants move to dismiss on the grounds that Plaintiff fails to state a claim (Doc. 16) and lacks standing to bring this action (Doc. 43). Plaintiff moves for a preliminary injunction. (Doc. 33.) The Court held a consolidated hearing before a three-judge panel on these motions on January 24, 2014.

DISCUSSION

I. Legal Standard

Rule 12(b)(6) is designed to "test[] the legal sufficiency of a claim." *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). While "a complaint need not contain detailed factual allegations . . . it must plead 'enough facts to state a claim to relief that is plausible on its face.'" *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1022 (9th Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "However, conclusory allegations of law and unwarranted inferences are not sufficient to defeat a motion to dismiss." *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998). Here, none of the essential facts of Plaintiff's claim are subject to dispute. The parties dispute only the proper legal interpretation of the Elections Clause of the United States Constitution, in light of Supreme Court precedent.

II. Plaintiff's Claim is Justiciable and Not Barred by Laches or by State Law

As preliminary matters Defendants assert that: (1) Plaintiff lacks standing to bring its First Amended Complaint (Doc. 43), (2) Plaintiff's claims should be barred by the doctrine of laches (Doc. 16 at 11), and (3) Plaintiff's First Amended Complaint presents a non-justiciable political question (Doc. 37 at 13). Finally, the Amici assert that this claim is barred by the Arizona Voter Protection Act. (Doc. 42.)

Plaintiff has standing to bring the present action. It has demonstrated that its loss of redistricting power constitutes a concrete injury, unlike the "abstract dilution of institutional legislative power" rejected by

the Supreme Court as a basis for legislature standing. *Raines v. Byrd*, 521 U.S. 811, 826 (1997) (holding that members of Congress lacked standing to challenge the constitutionality of the Line Item Veto Act). Here, Proposition 106 resulted in the Legislature losing its authority to draw congressional districts even if it retains some influence over the redistricting process via other means. In addition, prior Supreme Court precedent strongly suggests that the Plaintiff has suffered a cognizable injury. The Court has twice entertained challenges raised by state officials under the Elections Clause. *See Smiley v. Holm*, 285 U.S. 355 (1932); *Davis v. Hildebrant*, 241 U.S. 565 (1916). In neither did the Court refuse to address the merits for lack of standing.

Nor does laches bar the present action, at least at this stage of the litigation. To establish laches, a "defendant must prove both an unreasonable delay by the plaintiff and prejudice to itself." *Evergreen Safety Council v. RSA Network Inc.*, 697 F.3d 1221, 1226 (9th Cir. 2012) (quoting *Couveau v. Am. Airlines, Inc.*, 218 F.3d 1078, 1083 (9th Cir. 2000)). "[A] claim of laches depends on a close evaluation of all the particular facts in a case" and thus is rarely appropriate for resolution at the motion to dismiss phase. *Kourtis v. Cameron*, 419 F.3d 989, 1000 (9th Cir. 2005) *abrogated on other grounds by Taylor v. Sturgell*, 553 U.S. 880 (2008). In addition, courts are hesitant to apply laches against state entities or agencies to the extent that it would limit a full exploration of the public interest, or governmental or sovereign functions. *See United States v. Ruby Co.*, 588 F.2d 697, 705 (9th Cir. 1978); *Mohave Cnty. v. Mohave-Kingman Estates, Inc.*, 120 Ariz. 417, 421, 586 P.2d 978, 982 (Ariz. 1978). Further, "it would

be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under [an] invalid plan." *Reynolds v. Sims*, 377 U.S. 533, 585 (1964).

In asserting the defense of laches at this stage, "the defendant must rely exclusively upon the factual allegations set forth in the complaint." *Kourtis*, 419 F.3d at 1000. Here, it is unclear based on the facts set forth in the complaint whether Plaintiff's delay in filing this action was unreasonable or whether or to what extent Defendants were prejudiced by this delay. Thus, Defendants have failed to establish a laches claim sufficient to prevail on a motion to dismiss.

Additionally, as will be further explained below, the Court is not barred from determining whether the Elections Clause of the United States Constitution, U.S. Const, art. I § 4, prohibits state voters from amending the Arizona Constitution to place the congressional re-districting function in the IRC. To the extent, however, that the Legislature makes arguments that the IRC cannot be the repository of legislative authority because it is not a representative body, such arguments arise under the republican guarantee clause of the Constitution and, as such, are not justiciable. *Ohio ex. rel. Davis v. Hildebrant*, 241 U.S. 565, 569 (1916) (citing *Pacific States Teleph. & Teleg. Co. v. Oregon*, 223 U.S. 118 (1912)).

Finally, the Amici assert that this action is barred by the Arizona Voter Protection Act ("VPA") which states that the Legislature "shall not have the power to repeal an initiative measure approved by a majority of the votes cast" and "shall not have the power to amend an initiative measure . . . unless the amending

legislation furthers the purposes of such measure and at least three-fourths of the members of each house . . . vote to amend such measure." Ariz. Const., art. IV, pt.1, § 1, ¶¶ 6(B) - (C), The Amici argue that this suit is barred because both houses of the Legislature authorized filing this action, and thus it constitutes legislative action to repeal Proposition 106. (Doc. 42 at 8.) However, the text of the VPA clearly refers to the Legislature passing a bill to repeal or amend a duly approved initiative matter, not the filing of a lawsuit that asserts such an initiative is invalid as it violates the United States Constitution. Thus, Plaintiff's action is not barred by the VPA.

III. The Elections Clause Does Not Prohibit Arizona From Using Its Lawmaking Process to Give Congressional Redistricting Authority to the IRC

No material facts related to the merits of this lawsuit are in dispute. Neither party contests that, since its inception, the Arizona Constitution has reserved the initiative power to its people. Neither party contests that the initiative power is a legislative power. Ariz. Const. art. IV, pt.1, § 1(1) ("[T]he people reserve the power to propose laws and amendments to the constitution and to enact or reject such laws and amendments at the polls, independently of the legislature . . . .").[1] Neither party contests that the

[1] In addition, the initiative power is contained within article IV, the legislative article of the Arizona Constitution. This was also the case with the provisions at issue in *Brown*, *Hildebrant*, and *Smiley*, discussed below. *Smiley v. Holm*, 285 U.S. 355, 363 (1932);

people of Arizona used that legislative power to create the IRC. Neither party contests that the IRC is a separate entity from the Legislature. Neither party can effectively contest that in fulfilling its function of establishing congressional and legislative districts, the IRC is acting as a legislative body under Arizona law. *Ariz. Minority Coal. for Fair Redistricting v. Ariz. Indep. Redistricting Comm'n*, 220 Ariz. 587, 594–95, ¶ 19, 208 P.3d 676, 683–84 (2009). Neither party contests the Legislature's role in selecting the members of the IRC, or in suggesting modifications to the IRC's redistricting plan.

What the parties dispute is the meaning of the Elections Clause of the United States Constitution. That clause states that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." U.S. Const, art. I, § 4, cl.1.

Plaintiff asserts that because the word "legislature" means "the representative body which makes the laws of the people," (Doc. 12 at ¶ 37), and the Clause allows the legislature to prescribe the time, place and manner of holding elections for congresspersons, the Clause specifically grants the power to realign congressional

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Hildebrant, 241 U.S. at 566; *Brown v. Sec'y of State of Fla.*, 668 F.3d 1271, 1279, n.7 (11th Cir. 2012).

districts to the legislature.[2] The Supreme Court, however, has at least twice rejected the notion that when it comes to congressional redistricting the Elections Clause vests only in the legislature responsibilities relating to redistricting. Both cases found that states were not prohibited from designing their own lawmaking processes and using those processes for the congressional redistricting authorized by the Clause. In subsequent cases, the Supreme Court has reaffirmed that a state can place the redistricting function in state bodies other than the legislature.

In the first case, *Ohio ex. rel. Davis v. Hildebrant*, the Ohio state constitution reserved to its voters the legislative power to approve or disapprove by popular vote any law passed by the state legislature. 241 U.S. 565, 566 (1916). Ohio voters used this referendum power to disapprove of a congressional redistricting plan drawn by the state legislature. *Id.* In response, a mandamus action was brought against state election officials to direct them to disregard that vote and proceed as if the redistricting plan passed by the legislature remained valid. *Id.* The petitioner's argument was "based upon the charge that the referendum vote was not and could not be part of the legislative authority of the state, and therefore could have no influence on the subject of the law creating

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[2] It is not clear if any court has explicitly decided that the "Time, Places and Manner of holding Elections" includes authority to conduct congressional redistricting. However, Supreme Court precedent has assumed this authority is included within the Clause, without undertaking a detailed textual analysis of the question. *See*, *e.g.*, *Smiley v. Holm*, 285 U.S. 355 (1932); *Ohio ex. rel. Davis v. Hildebrant*, 241 U.S. 565 (1916).

congressional districts." *Id.* at 567. Specifically, the petitioner argued that to allow the referendum to block the legislature's plan would violate both the Elections Clause and the controlling act of Congress. *Id.* The State Supreme Court "held that the provisions as to referendum were a part of the legislative power of the state, made so by the [state] Constitution, and that nothing in the act of Congress of 1911, or in the constitutional provision, operated to the contrary, and that therefore the disapproved [redistricting] had no existence and was not entitled to be enforced by mandamus." *Id.*

In reviewing this decision, the United States Supreme Court first looked to the power of the state and explained that "the referendum constituted a part of the state Constitution and laws, and was contained within the legislative power," and thus the claim that the rejected plan nonetheless remained valid despite the referendum was "conclusively established to be wanting in merit." *Id.* at 568.

Next, the Court looked to how Congress had spoken on the issue under its own Elections Clause power to make or alter state regulations, remarking that the act of 1911 had "expressly modified the phraseology of the previous acts relating to [redistricting] by inserting a clause plainly intended to provide that where, by the state Constitution and laws, the referendum was treated as part of the legislative power, the power as thus constituted should be held and treated to be the state legislative power for the purpose of creating congressional districts by law." *Id.* at 568. The Court noted that while the earlier federal statute relating to apportionment had described redistricting by "the

legislature" of each state, the 1911 act modified this language, describing redistricting be done by states "in the manner provided by the laws thereof." *Id.* The Court further noted that "the legislative history of this [1911 act] leaves no room for doubt that the prior words were stricken out and the new words inserted for the express purpose, so far as Congress has power to do it, of excluding" the argument made by petitioner. *Id.* at 568–69.

Finally, the Court considered whether the act of 1911 may itself have violated the Elections Clause. In doing so the Court declined to hold that the Clause granted redistricting authority uniquely to the state legislature as opposed to any other entity, including the people, which the state may have endowed with "legislative power." Thus the Court observed that the argument that Congress had violated the Elections Clause by authorizing re-districting to be accomplished "in the manner provided by the laws [of the state]" including referendum as it had been used in Ohio to reject the legislature's redistricting map, "must rest upon the assumption that to include the referendum in the scope of the legislative power is to introduce a virus which destroys that power, which in effect annihilates representative government." *Id.* at 569. The Court further noted that the question of whether legislative procedures such as the referendum that Ohio had adopted violated the republican guarantee clause "presents no justiciable controversy." *Id.* (citing *Pacific States Teleph. & Teleg. Co. v. Oregon*, 223 U.S. 118 (1912)).

Had the Court interpreted the Elections Clause as requiring that redistricting authority was vested

uniquely in the legislature as opposed to giving the states discretion of where to place such authority within the scope of the "state's legislative power," there would have been no need for the Court to hold that the question of granting the people of Ohio the right to participate in congressional redistricting through the referendum power was not justiciable. Thus, in affirming the State Supreme Court's denial of the writ of mandamus in favor of the validity of the referendum, the Court necessarily held that to the extent that the Elections Clause vested some constitutional authority in a state to re-district national congressional districts, that authority was vested in the operation of a state's legislative power; not necessarily in the state legislature. It further held that questions as to whether the exercise of democratic forms of legislative authority violated the Guarantee Clause were political questions to be directed to Congress and not to the Courts. *Id.*

Sixteen years later, the Court considered this same question in the context of a gubernatorial veto. *Smiley v. Holm*, 285 U.S. 355 (1932). In *Smiley*, the Minnesota legislature approved a redistricting plan and, as permitted under the Minnesota constitution, it was vetoed by the Governor. The Secretary of State asserted that the legislature had the sole authority to redistrict under the Elections Clause and thus its map was valid despite the veto. *Id.* at 362–63. The State Supreme Court agreed, and held that in exercising the redistricting power which had been conferred upon it by the Elections Clause, the legislature was not exercising a legislative power. *Id.* at 364. Rather it was acting as an agent of the federal government with federal power delegated to it by the Elections Clause to redistrict the federal congressional districts within the

state. *Id.* Because the Constitution's delegation was of federal power, the state court held that it did not constitute state legislative power, and the legislature's redistricting decision was thus not subject to gubernatorial veto, as were other state legislative acts. *Id.* at 364–65.

The United States Supreme Court rejected this holding. It explained that "[t]he question then is whether the provision of the Federal Constitution . . . invests the Legislature with a particular [federal] authority . . . and thus renders inapplicable the conditions which attach to the making of state laws." *Id.* at 365. It noted that the function to be performed under the Elections Clause is to prescribe the time, place and manner of holding elections. "As the authority is conferred for the purpose of making laws for the state, it follows, in the absence of an indication of a contrary intent, that the exercise of the authority must be in accordance with the method which the state has prescribed for legislative enactments." *Id.* at 367. The Court found "no suggestion in the federal constitutional provision of an attempt to endow the Legislature of the state with power to enact laws in any manner other than that in which the Constitution of the state has provided that laws shall be enacted." *Id.* at 367–68. Thus, the use of a gubernatorial veto "is a matter of state polity" that the Elections Clause "neither requires nor excludes." *Id.*

The Court went on to explain that while "[g]eneral acquiescence cannot justify a departure from the law," "long and continuous interpretation in the course of official action under the law may aid in removing doubts as to its meaning." *Id.* at 369. Here, "the terms

of the constitutional provision furnish no such clear and definite support for a contrary construction as to justify disregard of the established practices in the states." *Id.* The Court then described its earlier opinion in *Hildebrant*, explaining that "it was because of the authority of the state to determine what should constitute its legislative process that the validity of the requirement of the state Constitution of Ohio, in its application to congressional elections, was sustained." *Id.* at 372. Looking to Minnesota's use of the gubernatorial veto, "[i]t clearly follows that there is nothing in [the Elections Clause] which precludes a state from providing that legislative action in districting the state for congressional elections shall be subject to the veto power of the Governor as in other cases of the exercise of the lawmaking power." *Id.* at 372–73. The Court upheld the use of the veto and reversed the state court. *Id.*

Hildebrant and *Smiley* thus demonstrate that the word "Legislature" in the Elections Clause refers to the legislative process used in that state, determined by that state's own constitution and laws. Other Courts have arrived at the same conclusion. "The Supreme Court has plainly instructed . . . that this phrase ['the Legislature'] encompasses the entire lawmaking function of the state." *Brown v. Sec'y of State of Fla.,* 668 F.3d 1271, 1278-79 (11th Cir. 2012).

The Supreme Court has further made clear that, in appropriate instances, a state court has authority to formulate a congressional redistricting plan. In reinstating an interim congressional redistricting plan that was ordered by a state court to correct flaws in a legislative redistricting plan, the Supreme Court

reaffirmed that a state may place the redistricting authority in entities other than the legislature. "We say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature ***or other body,*** rather than of a federal court." *Growe v. Emison*, 507 U.S. 25, 34 (1993) (quoting *Chapman v. Meier*, 420 U.S. 1, 27 (1975)) (emphasis added). *See also Scott v. Germano*, 381 U.S. 407, 409 (1965) (per curiam) (holding in a state reapportionment case that "[t]he power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged.")

The Arizona Constitution allows multiple avenues for lawmaking and one of those avenues is the ballot initiative, as employed here through Proposition 106. Plaintiff notes that the ballot initiative is not one of the four constitutionally-defined processes by which the Legislature itself may enact laws (Doc. 17 at 11), but it cannot dispute that the Arizona Constitution specifies that the initiative power is legislative. Ariz. Const. art. IV, pt. 1, § 1, ¶ 1 ("The legislative authority of the state shall be vested in the legislature, consisting of a senate and a house of representatives, but the people reserve the power to propose laws and amendments to the constitution and to enact or reject such laws and amendments at the polls, independently of the legislature."). *Cf. Brown,* 668 F.3d at 1279 ("Like the veto provisions at issue in *Hildebrandt* and *Smiley,* Florida's citizen initiative is every bit a part of the state's lawmaking function.").

The Legislature argues that the IRC cannot constitute "the Legislature" as that term is used in the Elections Clause, because the IRC is not a representative body. As *Hildebrant* and *Smiley* both demonstrate, however, the relevant inquiry is not whether Arizona has uniquely conferred its legislative power in representative bodies, it is whether the redistricting process it has designated results from the appropriate exercise of state law. There is no dispute that the IRC was created through the legislative power reserved in the people through the initiative with the specific purpose of conducting the redistricting within the state, and that in exercising its functions the IRC exercises the state's legislative power. *Ariz. Minority Coal.,* 220 Ariz. at 597, ¶ 19, 208 P.3d at 683–84. To the extent that this argument is a veiled assertion that the IRC violates the Guarantee Clause, the argument is not justiciable. *Hildebrant*, 241 U.S. at 569 (citing *Pacific States Teleph. & Teleg. Co. v. Oregon*, 223 U.S. 118 (1912)). Similarly unjusticiable is any argument that the people's exercise of their initiative power in the re-districting setting is not a republican exercise of legislative power.[3]

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[3] The Legislature also includes within its briefing citations to the debates at the Constitutional Convention, and other historical materials, to illustrate that the Framers knew the difference between the legislature and the people. Nevertheless such citations arise from other contexts and do not shed any particular light on the present question. As the court in *Brown* observed, "[t]he Framers said precious little about the first part of the Clause, and they said nothing that would help to resolve the issue now before us: what it means to repose a Sate's Elections Clause power in "the Legislature thereof." *Brown*, 668 F.3d at 1276. None of the legislative history provided by the Legislature in this case changes the *Brown* Court's assessment.

Plaintiff attempts to distinguish this case from *Hildebrant* and *Smiley*. Plaintiff apparently recognizes, in light of *Hildebrant* and *Smiley,* that the Elections Clause does not give unique authority to state legislatures to conduct redistricting. It nevertheless asserts that Arizona has gone too far in excluding the Legislature from congressional redistricting, as opposed to merely placing checks on that power. It argues, without setting forth any authority that would establish such constitutional limits, that "[n]o state can constitutionally divest its Legislature entirely of the redistricting authority conveyed by Article I, Section 4." (Doc. 12 at ¶ 38.) This argument is inconsistent with the Court's observations in *Growe* that states can place redistricting authority in other state entities and appears to be primarily based on dicta in *Brown*. But, in that case, as opposed to this one, Florida voters had only used their initiative power to create binding instructions for the legislature to follow in its congressional redistricting. 668 F.3d at 1273. They did not vest the primary redistricting responsibility in another state entity. Thus, the *Brown* Court observed that in the case of the Florida initiative, the standards imposed on the legislature did not go so far as to "effectively exclude the legislature from the redistricting process." *Id.* at 1280.

Nevertheless, that dicta does not apply to the present case or flow from the analysis adopted in *Hildebrant* and *Smiley*. *Brown* recognized as much. Those cases make it clear that the relevant inquiry is not what role, if any, the state legislature plays in redistricting, but rather whether the state has appropriately exercised its authority in providing for that redistricting. As the Supreme Court stated in

Smiley, the Elections Clause includes no "attempt to endow the Legislature of the state with power to enact laws in any manner other than that in which the Constitution of the state has provided that laws shall be enacted." 285 U.S. at 367–68. Thus, the Elections Clause does not prohibit a state from vesting the power to conduct congressional districting elsewhere within its legislative powers. The *Brown* Court also adopted this analysis, explaining that the Supreme Court's decisions in *Hildebrant* and *Smiley* "provided a clear and unambiguous answer . . . twice explaining that the term 'Legislature' in the Elections Clause refers not just to a state's legislative body but more broadly to the entire lawmaking process of the state." 668 F.3d at 1276.[4]

In Arizona the lawmaking power plainly includes the power to enact laws through initiative, and thus the Elections Clause permits the establishment and use of the IRC. Therefore,

IT IS ORDERED THAT Defendants' Motion to Dismiss for Failure to State a Claim (Doc. 16) is **granted**.

IT IS FURTHER ORDERED THAT Defendants' Motion to Dismiss for Lack of Jurisdiction for Lack of Standing (Doc. 43) is **denied**.

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[4] Arizona has not entirely divested the legislature of any redistricting power. The Legislature retains the right to select the IRC commissioners, and the IRC is required to consider the Legislature's suggested modifications to the draft maps. Ariz. Const. art. IV, pt. 2, § 1 ¶¶ 6, 10, 16.

IT IS FURTHER ORDERED THAT Plaintiff's Motion for Preliminary Injunction (Doc. 33) is **denied as moot**.

Dated this 21st day of February, 2014.

I certify that Circuit Judge Mary M. Schroeder concurs with this Order.

/s/_____
G. Murray Snow
United States District Judge

Rosenblatt, District Judge, concurring in part and dissenting in part:

I concur with the majority's conclusions that the present action is justiciable, that Plaintiff has standing to bring it, and that Plaintiff's claims are not barred by the Arizona Voter Protection Act, and I join in those portions of the majority's opinion. I also concur with the majority's conclusion that Plaintiff's action is not barred by the doctrine of laches, although I believe that the issue can be resolved simply on the ground that laches cannot be appropriately applied to bar this action, no matter its procedural stage, given the public's overriding interest in having the Elections Clause issue litigated and resolved.

I respectfully dissent, however, from the majority's conclusion that the Elections Clause permits Arizona to use its lawmaking process to divest Plaintiff of its redistricting authority in the manner adopted by Proposition 106. I believe that the extent of Arizona's delegation of redistricting authority to the Independent Redistricting Commission ("IRC") extends beyond the state's constitutional authority to do so, and I would

declare that Proposition 106 violates the Elections Clause, art. 1, § 4, cl. 1 of the United States Constitution and that the congressional maps adopted by the IRC under that unconstitutional authority are null and void, and I would enjoin their use.

States have the authority to regulate the mechanics of congressional elections only to the extent delegated to them by the Elections Clause. *Cook v. Gralike*, 531 U.S. 510, 522–23 (2001). Among the powers constitutionally delegated to them is the primary responsibility for the apportionment of their congressional districts. *Growe*, 507 U.S. at 34. The Elections Clause mandates that the times, places, and manner of holding congressional elections "shall be prescribed in each State by the Legislature thereof[.]" It cannot be disputed that the Elections Clause's reference to "the Legislature," as that term has been interpreted by the Supreme Court, refers to the totality of a state's lawmaking function as defined by state law, and that in Arizona a citizen initiative, such as that used to enact Proposition 106 to amend the state constitution, is an integral part of the state's legislative process. But the fact that Arizona has appropriately used its initiative process to establish the IRC cannot be the end of the inquiry under the Elections Clause, as found by the majority, because it also cannot be disputed that any law passed by a state, whether through an initiative or referendum or directly by the legislature, must abide by the United States Constitution.

That the Supreme Court has concluded that the Election Clause properly permits a state to include some other state entity or official in the redistricting

process as a limiting check on its legislature's role in that process does not mean that the Elections Clause places no limit on a state's authority to define the legislative process it uses to regulate redistricting. I find it instructive that the scant case law permitting non-legislature entities to participate in the redistricting process, for example *Hildebrant*, 241 U.S. 565, *Smiley* 285 U.S. 355, and *Brown*, 668 F.3d 1271, all involved situations in which the state legislature participated in the redistricting decision-making process in some very significant and meaningful capacity. For example, in *Hildebrant*, the state legislature's congressional redistricting act was rejected by the voters through a referendum; in *Smiley*, the state legislature's congressional districts maps were vetoed by the governor; and in *Brown*, the state legislature created the congressional district maps based on guidelines for redistricting enacted through an initiative. In short, these cases all involved constraints on the ability of the state legislature to redistrict, and none directly held that the Elections Clause can be so broadly interpreted as to permit a state to remove all substantive redistricting authority from its legislature. Proposition 106 overreaches under the Elections Clause because the initiative's acknowledged and undisputed purpose was to supplant Plaintiff's constitutionally delegated authority to redistrict by establishing the IRC as Arizona's sole redistricting authority.

The majority notes that Proposition 106 does not entirely divest Plaintiff of its redistricting participation inasmuch as it permits Plaintiff to retain some ability to influence the redistricting process. The majority points out that Plaintiff's majority and minority leaders

pick four of the five IRC members and that the IRC is required to consider any modifications to its draft redistricting maps suggested by Plaintiff. But such minor procedural influences must be evaluated in light of the fact that Proposition 106 requires Plaintiff to choose IRC members from a list selected not by it but by the state's commission on appellate court appointments, and the fact that the IRC has the complete discretion not to implement any map changes suggested by Plaintiff. What Plaintiff does not have under Proposition 106 is the ability to have any outcome-defining effect on the congressional redistricting process. I believe that Proposition 106's evisceration of that ability is repugnant to the Elections Clause's grant of legislative authority.

Dated this 21st day of February, 2014.

/s/_____
Paul G. Rosenblatt
United States District Judge

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. CV 12-1211-PHX-PGR-MMS

[Filed February 24, 2014]

Arizona State Legislature,	)
	)
Plaintiffs,	)
	)
v.	)
	)
Arizona Independent Redistricting Commission, et al,	)
	)
Defendants.	)

JUDGMENT IN A CIVIL CASE

XX **Decision by Court**. This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that pursuant to the Court's Order of February 21, 2014, granting Defendants' Motion to Dismiss, judgment is hereby entered for Defendants. Plaintiff shall take nothing by way of the Amended Complaint. The Amended Complaint and this action are hereby dismissed.

February 24, 2014
Date

BRIAN D. KARTH
DCE/Clerk of Court

s/ Ruth E. Williams
By Ruth E. Williams
Deputy Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. 2:12-CV-01211-PGR-MMS-GMS

[Filed February 26, 2014]

Arizona State Legislature,	)
	)
Plaintiff,	)
	)
v.	)
	)
Arizona Independent Redistricting Commission, et al.,	)
	)
Defendants.	)

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PLAINTIFF'S NOTICE OF APPEAL PURSUANT TO 28 U.S.C. § 1253

NOTICE IS HEREBY GIVEN that Plaintiff, Arizona State Legislature, hereby appeals to the Supreme Court of the United States from the Judgment [Dkt. 53] of the three-judge statutory court comprised of the Honorable Paul G. Rosenblatt, the Honorable Mary M. Schroeder, and the Honorable G. Murray Snow, entered in this action on the 24th day of February, 2014, granting Defendants' Motion to Dismiss for Failure to State a Claim and denying Plaintiff's Motion for Preliminary Injunction. This appeal is taken pursuant to 28 U.S.C. § 1253.

RESPECTFULLY SUBMITTED this 26th day of February, 2014,

ARIZONA STATE LEGISLATURE

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* * * Certificate of Service omitted in printing this appendix * * *

APPENDIX D

RELEVANT CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. Art. I, § 4, cl. 1

The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

Ariz. Const. art. IV, pt. 2 § 1(3) - (23)

1. Senate; house of representatives; members; special session upon petition of members; congressional and legislative boundaries; citizen commissions

Section 1. * * *

(3) By February 28 of each year that ends in one, an independent redistricting commission shall be established to provide for the redistricting of congressional and state legislative districts. The independent redistricting commission shall consist of five members. No more than two members of the independent redistricting commission shall be members of the same political party. Of the first four members appointed, no more than two shall reside in the same county. Each member shall be a registered Arizona voter who has been continuously registered with the same political party or registered as unaffiliated with a political party for three or more

years immediately preceding appointment, who is committed to applying the provisions of this section in an honest, independent and impartial fashion and to upholding public confidence in the integrity of the redistricting process. Within the three years previous to appointment, members shall not have been appointed to, elected to, or a candidate for any other public office, including precinct committeeman or committeewoman but not including school board member or officer, and shall not have served as an officer of a political party, or served as a registered paid lobbyist or as an officer of a candidate's campaign committee.

(4) The commission on appellate court appointments shall nominate candidates for appointment to the independent redistricting commission, except that, if a politically balanced commission exists whose members are nominated by the commission on appellate court appointments and whose regular duties relate to the elective process, the commission on appellate court appointments may delegate to such existing commission (hereinafter called the commission on appellate court appointments' designee) the duty of nominating members for the independent redistricting commission, and all other duties assigned to the commission on appellate court appointments in this section.

(5) By January 8 of years ending in one, the commission on appellate court appointments or its designee shall establish a pool of persons who are willing to serve on and are qualified for appointment to the independent redistricting commission. The pool of candidates shall consist of twenty-five nominees, with

ten nominees from each of the two largest political parties in Arizona based on party registration, and five who are not registered with either of the two largest political parties in Arizona.

(6) Appointments to the independent redistricting commission shall be made in the order set forth below. No later than January 31 of years ending in one, the highest ranking officer elected by the Arizona house of representatives shall make one appointment to the independent redistricting commission from the pool of nominees, followed by one appointment from the pool made in turn by each of the following: the minority party leader of the Arizona house of representatives, the highest ranking officer elected by the Arizona senate, and the minority party leader of the Arizona senate. Each such official shall have a seven-day period in which to make an appointment. Any official who fails to make an appointment within the specified time period will forfeit the appointment privilege. In the event that there are two or more minority parties within the house or the senate, the leader of the largest minority party by statewide party registration shall make the appointment.

(7) Any vacancy in the above four independent redistricting commission positions remaining as of March 1 of a year ending in one shall be filled from the pool of nominees by the commission on appellate court appointments or its designee. The appointing body shall strive for political balance and fairness.

(8) At a meeting called by the secretary of state, the four independent redistricting commission members shall select by majority vote from the nomination pool a fifth member who shall not be registered with any

party already represented on the independent redistricting commission and who shall serve as chair. If the four commissioners fail to appoint a fifth member within fifteen days, the commission on appellate court appointments or its designee, striving for political balance and fairness, shall appoint a fifth member from the nomination pool, who shall serve as chair.

(9) The five commissioners shall then select by majority vote one of their members to serve as vice-chair.

(10) After having been served written notice and provided with an opportunity for a response, a member of the independent redistricting commission may be removed by the governor, with the concurrence of two-thirds of the senate, for substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office.

(11) If a commissioner or chair does not complete the term of office for any reason, the commission on appellate court appointments or its designee shall nominate a pool of three candidates within the first thirty days after the vacancy occurs. The nominees shall be of the same political party or status as was the member who vacated the office at the time of his or her appointment, and the appointment other than the chair shall be made by the current holder of the office designated to make the original appointment. The appointment of a new chair shall be made by the remaining commissioners. If the appointment of a replacement commissioner or chair is not made within fourteen days following the presentation of the nominees, the commission on appellate court appointments or its designee shall make the

appointment, striving for political balance and fairness. The newly appointed commissioner shall serve out the remainder of the original term.

(12) Three commissioners, including the chair or vice-chair, constitute a quorum. Three or more affirmative votes are required for any official action. Where a quorum is present, the independent redistricting commission shall conduct business in meetings open to the public, with 48 or more hours public notice provided.

(13) A commissioner, during the commissioner's term of office and for three years thereafter, shall be ineligible for Arizona public office or for registration as a paid lobbyist.

(14) The independent redistricting commission shall establish congressional and legislative districts. The commencement of the mapping process for both the congressional and legislative districts shall be the creation of districts of equal population in a grid-like pattern across the state. Adjustments to the grid shall then be made as necessary to accommodate the goals as set forth below:

A. Districts shall comply with the United States Constitution and the United States voting rights act;

B. Congressional districts shall have equal population to the extent practicable, and state legislative districts shall have equal population to the extent practicable;

C. Districts shall be geographically compact and contiguous to the extent practicable;

D. District boundaries shall respect communities of interest to the extent practicable;

E. To the extent practicable, district lines shall use visible geographic features, city, town and county boundaries, and undivided census tracts;

F. To the extent practicable, competitive districts should be favored where to do so would create no significant detriment to the other goals.

(15) Party registration and voting history data shall be excluded from the initial phase of the mapping process but may be used to test maps for compliance with the above goals. The places of residence of incumbents or candidates shall not be identified or considered.

(16) The independent redistricting commission shall advertise a draft map of congressional districts and a draft map of legislative districts to the public for comment, which comment shall be taken for at least thirty days. Either or both bodies of the legislature may act within this period to make recommendations to the independent redistricting commission by memorial or by minority report, which recommendations shall be considered by the independent redistricting commission. The independent redistricting commission shall then establish final district boundaries.

(17) The provisions regarding this section are self-executing. The independent redistricting commission shall certify to the secretary of state the establishment of congressional and legislative districts.

(18) Upon approval of this amendment, the department of administration or its successor shall

make adequate office space available for the independent redistricting commission. The treasurer of the state shall make $6,000,000 available for the work of the independent redistricting commission pursuant to the year 2000 census. Unused monies shall be returned to the state's general fund. In years ending in eight or nine after the year 2001, the department of administration or its successor shall submit to the legislature a recommendation for an appropriation for adequate redistricting expenses and shall make available adequate office space for the operation of the independent redistricting commission. The legislature shall make the necessary appropriations by a majority vote.

(19) The independent redistricting commission, with fiscal oversight from the department of administration or its successor, shall have procurement and contracting authority and may hire staff and consultants for the purposes of this section, including legal representation.

(20) The independent redistricting commission shall have standing in legal actions regarding the redistricting plan and the adequacy of resources provided for the operation of the independent redistricting commission. The independent redistricting commission shall have sole authority to determine whether the Arizona attorney general or counsel hired or selected by the independent redistricting commission shall represent the people of Arizona in the legal defense of a redistricting plan.

(21) Members of the independent redistricting commission are eligible for reimbursement of expenses pursuant to law, and a member's residence is deemed

to be the member's post of duty for purposes of reimbursement of expenses.

(22) Employees of the department of administration or its successor shall not influence or attempt to influence the district-mapping decisions of the independent redistricting commission.

(23) Each commissioner's duties established by this section expire upon the appointment of the first member of the next redistricting commission. The independent redistricting commission shall not meet or incur expenses after the redistricting plan is completed, except if litigation or any government approval of the plan is pending, or to revise districts if required by court decisions or if the number of congressional or legislative districts is changed.

APPENDIX E

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

No. CV-12-01211-PHX-PGR

[Filed July 20, 2012]

Arizona State Legislature,	)
	)
Plaintiff,	)
	)
v.	)
	)
Arizona Independent Redistricting Commission, and Colleen Mathis, Linda C. McNulty, José M. Herrera, Scott D. Freeman, and Richard Stertz, members thereof, in their official capacities; Ken Bennett, Arizona Secretary of State, in his official capacity,	)
	)
Defendants.	)

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FIRST AMENDED COMPLAINT

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

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

NATURE OF THE ACTION

1. The Elections Clause of the United States Constitution delegates the authority over the redistricting of congressional districts to the Legislatures of the States. Contrary to this constitutional delegation, Proposition 106 (adopted in 2000) amended the Arizona Constitution – removing that authority from the Arizona State Legislature ("Legislature") and vesting it instead with the "Independent Redistricting Commission" ("IRC"). The

Legislature brings this action requesting the Court to a) declare that Proposition 106 is unconstitutional to the extent it removes congressional-redistricting authority from the Legislature, b) declare that the congressional district maps adopted by the IRC are unconstitutional, and c) enjoin the Defendants from enforcing or implementing any congressional redistricting plan from the IRC beginning the day after the 2012 congressional election is held in Arizona. Though the Legislature seeks permanent injunctive relief, it does not seek immediate relief as to the 2012 congressional election because the current IRC plan has already been certified and the 2012 election cycle is already well underway.

PARTIES

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

3. Defendant IRC is a commission established "to provide for the redistricting of congressional and state legislative districts." Ariz. Const. art IV, pt. 2, § 1 (¶ 3). The IRC can sue and be sued in "legal actions regarding [its] redistricting plan." *Id*. § 1 (¶ 20). The IRC consists solely of unelected appointees.

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

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

JURISDICTION

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

VENUE

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

THREE-JUDGE PANEL REQUESTED

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

FACTS

Redistricting Prior to Proposition 106

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

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

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

a. Redistricting measures were introduced as proposed legislation.

b. The proposed redistricting legislation was reviewed, and debated in a bi-partisan, joint committee on redistricting.

c. The proposed redistricting legislation, along with any recommended committee amendments, was recommended to the body as a whole, which had the power to either approve the recommendations of the joint committee or make any other changes.

d. Proposed redistricting legislation was read on three separate days on the floor, and after final passage, it was sent to the Governor for approval or disapproval, in accordance with Article IV, part 2, section 12 of the Arizona Constitution.

e. The Governor had the authority to approve, disapprove, or take no action on redistricting legislation. Ariz. Const. art. IV, pt. 2, § 12; art. V, § 7.

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

In 2000, Proposition 106 Removed the Legislature and the Governor from the Redistricting Process

13. On September 13, 1999, an organization identified as "Fair Districts, Fair Elections c/o Arizona Common Cause, Inc." filed an application with the Office of the Arizona Secretary of State to circulate initiative petitions.

14. On July 6, 2000, "Fair Districts, Fair Elections" successfully filed its eponymous initiative petition with the Arizona Secretary of State. Arizona Secretary of State, 2000 General Election: Ballot Measures, "Fair Districts, Fair Elections" http://www.azsos.gov/election/2000/General/ballotmeasures.htm (last visited June 4, 2012).

15. The application included the following short title:

> This citizen-sponsored Arizona Constitutional amendment will create a new "citizens' independent redistricting commission" to draw

> new legislative and congressional district boundaries after each U.S. Census. This amendment takes the redistricting power away from the Arizona Legislature and puts it in the hands of a politically neutral commission of citizens who are not active in partisan politics and who will serve without pay to create fair districts that are not "gerrymandered" for any party's or incumbent's advantage.

Id.

16. The Arizona Secretary of State designated the measure as Proposition 106 ("Prop. 106") and placed Prop. 106 on the 2000 general election ballot.

17. The measure passed with 56% of applicable votes cast. Arizona Secretary of State, *State of Arizona Official Canvass* (2000), http://www.azsos.gov/election/2000/General/Canvass2000GE.pdf (last visited June 7, 2012).

18. Prop. 106 amends Article IV, part 2, § 1 of the Arizona Constitution by striking language, adding language to pre-existing paragraphs, and inserting twenty-one new paragraphs. *See* Arizona Secretary of State, Ballot Propositions & Judicial Performance Review: November 7, 2000 General Election 54-55 (2000), http://www.azsos.gov/election/2000/Info/pubpamphlet/english/prop106.pdf (last visited June 7, 2012).

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

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

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

a. An opportunity to submit nonbinding recommendations to the IRC (Ariz. Const. art. IV, pt. 2, § 1 (¶ 16)); and

b. The obligation to make appropriations for the operation of the IRC (*Id*. at § 1 (¶ 18)).

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

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

24. If a legislative leader fails to make an appointment in the prescribed time frame, the Appellate Commission makes the appointment instead. Ariz. Const art. IV, pt. 2, § 1 (¶ 7).

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

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

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

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

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

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

2012 Election Deadlines

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

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

32. By law, the last day to transmit ballots to registered absent uniformed services voters and overseas voters is 45 days before the Primary Election, or July 14, 2012. Ariz. Rev. Stat. § 16-543.

CLAIM FOR RELIEF

33. Plaintiff adopts herein by reference all allegations of all preceding paragraphs.

34. An actual controversy exists within this Court's jurisdiction that would be resolved by a declaration of the rights and other legal relations of the parties in this action – namely, that Prop. 106 violates the Elections Clause of the United States Constitution.

35. The authority to prescribe the times, places, and manner of congressional elections arises exclusively under the Elections Clause of the United States Constitution. The States do not have the inherent authority to regulate federal elections.

36. The Constitution delegates and conveys the authority to prescribe the times, places, and manner of congressional elections only to "the Legislature" of "each state." U.S. Const. art. I, § 4, cl. 1. This delegation is a broad grant of power to the Legislature to prescribe the means by which congressional elections are held.

37. The word "Legislature" in the Elections Clause means the representative body which makes the laws of the people.

38. No State can constitutionally divest its Legislature entirely of the redistricting authority conveyed by Article I, Section 4.

39. Yet Prop. 106 removes entirely the constitutionally-delegated authority over prescribing the boundaries of congressional districts from the Arizona Legislature. In so doing, Prop. 106 conflicts directly with the United States Constitution and is therefore preempted, null and void.

40. Plaintiff is therefore entitled to judgment declaring that the provisions of Proposition 106 concerning congressional redistricting are null and void.

41. Plaintiff is therefore further entitled to judgment declaring that the congressional district maps adopted by the IRC are null and void.

42. Plaintiff is further entitled to a permanent injunction restraining adoption, implementation, or enforcement of any congressional district map created under Prop. 106, beginning the day after the 2012 general election.

RELIEF REQUESTED

The Legislature respectfully requests that the Court award it the following relief against all Defendants by:

A. Declaring that Proposition 106 violates the Elections Clause of the United States Constitution insofar as it removes the authority to prescribe the times, places, and manner of congressional elections from the Arizona Legislature, and therefore is preempted, null and void;

B. Declaring that the congressional district maps adopted by the IRC are unconstitutional and therefore null and void;

C. Enjoining Defendants and each of them permanently from adopting, implementing or enforcing any congressional map created under Proposition 106 beginning the day after the 2012 congressional election in Arizona, and

D. Awarding Plaintiff such other relief as is just, proper, or equitable under the facts and circumstances of this case.

DATED on July 20, 2012.

ARIZONA STATE LEGISLATURE

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* * * Certificate of Service omitted in printing this appendix * * *

EXHIBIT A

JOURNAL OF THE SENATE
Wednesday, May 2, 2012
One Hundred Fifteenth Day

The Senate session convened at 10:00 a.m. with President Pierce presiding.

Senator McComish offered prayer.

Pledge of Allegiance to the Flag was led by Senator Barto.

The following Senators answered on roll call:

PRESENT: Aboud, Allen, Antenori, Barto, Biggs, Burges, Cajero Bedford, Crandall, Gallardo, Gould, Gray, Griffin, Jackson, Landrum Taylor, Lewis, Lopez, McComish, Melvin, Meza, Reagan, Schapira, Shooter, Smith, Yarbrough, President Pierce--25

EXCUSED: Driggs, Klein, Lujan, Murphy, Nelson--5

Senator Lujan was seated at 11:21 a.m.
Senators Klein and Nelson were seated at 1:34 p.m.
Senator Murphy was seated at 1:37 p.m.
Senator Driggs was seated at 1:42 p.m.

JOURNAL

The President announced that without objection, reading of the Journal of Tuesday, May 1, 2012 was dispensed with and approved as recorded by the Secretary.

MESSAGES FROM THE HOUSE

President Pierce announced that without objection, Messages from the House as listed on the calendar would not be read. The messages would be entered in the Journal.

(May 1, 2012)
House concurred in Senate amendments and passed on Final Reading House Bills 2466 (60-0-0); 2713 (60-0-0); 2794 (58-2-0)

COMMITTEE OF THE WHOLE

Upon motion of Senator Biggs and agreed to, the Senate at 10:08 a.m. resolved itself into Committee of the Whole for consideration of the bill on the calendar with Senator Crandall in the chair.

Senator Biggs moved that during Committee of the Whole the debate be limited to no more than three minutes per Senator, speaking once per motion. The motion carried.

At 11:21 a.m., the Committee of the Whole was dissolved and Senator Crandall submitted the following recommendation:

House Bill 2571, do pass amended

Senator Crandall moved the report of the Committee of the Whole be adopted and the bill be properly assigned. The motion carried and House Bill 2571 was placed under Third Reading of Bills.

MESSAGES FROM THE HOUSE

President Pierce announced that without objection, Messages from the House as listed on the calendar

would not be read. The messages would be entered in the Journal.

(May 2, 2012)
House acceded to the Senate request and appointed Free Conference Committees to the following:

Senate Bill 1442 – Members Mesnard, Farley, Vogt
Senate Bill 1449 – Members Montenegro, Farley, Quezada

RECESS

At 11:24 a.m. the Senate stood at recess subject to the sound of the gavel.

RECONVENE

The President called the Senate to order at 1:39 p.m.

MESSAGES FROM THE HOUSE

President Pierce announced that without objection, Messages from the House as listed on the calendar would not be read. The messages would be entered in the Journal.

(May 2, 2012)
House adopted the Conference Committee Report on Senate Bill 1153

House passed on Third Reading Senate Bill 1407 (58-0-2) amended

House concurred in Senate amendments and passed on Final Reading House Bill 2503

(38-20-2); House Concurrent Resolution 2004 (38-20-2)

MOTION TO AUTHORIZE PRESIDENT PIERCE AND SPEAKER TOBIN LITIGATION

Senator Biggs made the following motion:

Whereas, even though the Senate believes it is clear under the Senate Rules, the Arizona Constitution, and case law, that the President of the Senate is authorized to represent the entire body in various matters, including litigation, but nevertheless the Arizona Supreme Court in Bennett v. Napolitano did not recognize this authority;

Therefore, I move that the Senate, Fiftieth Legislature, join with the House to file suit, and join or intervene in any suit in both state and federal court to defend the authority of the Senate related to redistricting under the Constitutions of both the United States and the State of Arizona. To accomplish this purpose the Senate authorizes the President to represent the interests of the Senate and take all appropriate action, including the retention of outside counsel, on its behalf in any matter related to redistricting, including acting jointly with the Speaker of the House to act on behalf of the Legislature as a whole.

Senator Schapira requested a roll call vote. Request for a roll call vote was supported by Senator Landrum Taylor. The motion passed by the following vote:

AYES 21: Allen, Antenori, Barto, Biggs, Burges, Crandall, Driggs, Gould, Gray, Griffin, Klein, Lewis, McComish, Melvin, Murphy, Nelson,

Reagan, Shooter, Smith, Yarbrough, President Pierce S

NOES 9: Aboud, Cajero Bedford, Gallardo, Jackson, Landrum Taylor, Lopez, Lujan, Meza, Schapira

THIRD READING OF BILLS

The following bill was read on Third Reading by number and title, passed on roll call and signed in open session:

House Bill 2571: An Act amending sections 3-107, 3-1003, 3-1003.02, 3-1211, 4-111, 4-112, 5-101.01, 5-105, 5-112, 5-224, 5-556, 5-604, 6-111, 6-112, 15-182, 15-203 and 15-543, ARS; repealing section 15-1331, ARS; amending sections 15-1626, 15-1852, 15-2002, 17-211, 17-231, 20-141, 20-148, 23-108, 23-108.02, 23-391, 23-406, 23-1501, 26-101, 26-102, 26-305, 27-122, 27-151, 28-363, 30-103, 30-108, 30-652, 31-401, 31-402, 32-106, 32-304, 32-503, 32-703, 32-802, 32-905, 32-1103, 32-1104, 32-1205, 32-1305, 32-1307, 32-1405, 32-1509, 32-1605.01, 32-1673, 32-1704, 32-1804, 32-1903, 32-1904, 32-2003, 32-2063, 32-2109, 32-2206, 32-2207, 32-2304, 32-2904, 32-2905, 32-3003, 32-3253, 32-3403, 32-3504, 32-3506, 32-3605, 32-3903, 32-3904, 35-196.01, 36-102, 36-103, 36-273, 36-446.03, 36-450.02, 36-1943, 36-2903.01, 36-2926, 37-132, 37-623.01, 37-1122, 38-401, 38-448, 38-532, 38-610.01, 38-610.02 and 38-611, ARS; amending title 38, chapter 4, article 1, ARS, by adding sections 38-611.01 and 38-611.02; amending sections 38-612, 38-654, 38-715, 38-848, 40-105, 40-108, 40-464, 41-121.02, 41-151.04, 41-151.05, 41-172, 41-192, 41-511.02, 41-511.05, 41-531, 41-542, 41-619.53 and 41-701, ARS; amending

title 41, chapter 4, article 1, ARS, by adding sections 41-709, 41-710 and 41-711; amending title 41, chapter 4, ARS, by adding article 4; repealing title 41, chapter 4, article 5, ARS; amending title 41, chapter 4, ARS, by adding a new article 5; changing the designation of title 41, chapter 4, article 6, ARS, to "state personnel board"; amending sections 41-781 and 41-782, ARS; repealing sections 41-783 and 41-784, ARS; transferring and renumbering section 41-785, ARS, for placement in title 41, chapter 4, article 6, as section 41-783; amending section 41-783, ARS, as transferred and renumbered by this act; repealing section 41-786, ARS; amending sections 41-821, 41-832, 41-902, 41-903, 41-941, 41-982, 41-1009, 41-1051, 41-1092.01, 41-1604, 41-1711, 41-1830.11, 41-1830.12 and 41-1830.13, ARS; repealing section 41-1830.14, ARS; amending section 41-1830.15, ARS; amending title 41, chapter 12, article 10, ARS, by adding section 41-1830.16; amending sections 41-1952, 41-1954, 41-2061, 41-2065, 41-2147, 41-2305, 41-2405, 41-2513, 41-2804, 41-2831, 41-3016.06, 41-3451, 41-3503, 41-3505, 41-3952, 41-4253, 41-4301, 41-4801, 42-1002, 42-1004, 42-1252, 42-16155, 45-104, 45-418, 49-103 and 49-1203, ARS; relating to the state personnel system.

AYES 21: Allen, Antenori, Barto, Biggs, Burges, Crandall, Driggs, Gould, Gray, Griffin, Klein, Lewis, McComish, Melvin, Murphy, Nelson, Reagan, Shooter, Smith, Yarbrough, President Pierce S

NOES 9: Aboud, Cajero Bedford, Gallardo, Jackson, Landrum Taylor, Lopez, Lujan, Meza, Schapira

ORDER OF BUSINESS

The President announced that without objection, the Senate would revert to the Order of Business, Committee of the Whole

COMMITTEE OF THE WHOLE

Upon motion of Senator Biggs and agreed to, the Senate at 2:33 p.m. resolved itself into Committee of the Whole for consideration of bills on the calendar with Senator Gray in the chair.

Senator Biggs moved that during Committee of the Whole the debate be limited to no more than three minutes per Senator, speaking once per motion. The motion carried.

At 2:55 p.m., the Committee of the Whole was dissolved and Senator Gray submitted the following recommendations:

House Bill 2745, do pass amended
House Concurrent Resolution 2060, do pass

Senator Gray moved the report of the Committee of the Whole be adopted and the bills be properly assigned. The motion carried and the bills reported do pass and do pass amended were placed under Third Reading of Bills.

CONFERENCE COMMITTEE REPORTS

Senator Biggs moved on behalf of the Chairman that the Senate adopt the following conference committee report:

Senators Biggs, McComish and Meza, Senate conferees, and Representatives Ugenti, Dial and

Tovar, House conferees, submitted the following conference report on Senate Bill 1153:

That the Senate accept the House amendments with exceptions and the bill be further amended.

The motion carried and the Secretary notified the House.

FINAL READING OF BILLS

The following bill was read on Final Reading by number and title, passed on roll call and signed in open session:

Senate Bill 1153: An Act amending section 28-2166, ARS; relating to vehicle rental liability.

AYES 29: Allen, Antenori, Barto, Biggs, Burges, Cajero Bedford, Crandall, Driggs, Gallardo, Gould, Gray, Griffin, Jackson, Klein, Landrum Taylor, Lewis, Lopez, Lujan, McComish, Melvin, Meza, Murphy, Nelson, Reagan, Schapira, Shooter, Smith, Yarbrough, President Pierce S

NOES 1: Aboud

RECESS

At 3:04 p.m. the Senate stood at recess subject to the sound of the gavel.

RECONVENE

The President called the Senate to order at 3:26 p.m.

THIRD READING OF BILLS

The following bill was read on Third Reading by number and title, passed on roll call and signed in open session:

House Bill 2745: An Act amending sections 38-711, 38-714, 38-715 and 38-718, ARS; repealing section 38-719, ARS; amending sections 38-721, 38-740, 38-743, 38-744, 38-745 and 38-760, ARS; providing for the delayed repeal of section 38-761, ARS; amending sections 38-762, 38-783, 38-797.07 and 38-843.05, ARS; making an appropriation; relating to retirement systems.

AYES 30: Aboud, Allen, Antenori, Barto, Biggs, Burges, Cajero Bedford, Crandall, Driggs, Gallardo, Gould, Gray, Griffin, Jackson, Klein, Landrum Taylor, Lewis, Lopez, Lujan, McComish, Melvin, Meza, Murphy, Nelson, Reagan, Schapira, Shooter, Smith, Yarbrough, President Pierce S

CONCURRENCE OF BILLS

Senator Biggs moved that the Senate concur in the House amendments to Senate Bill 1407. The motion carried.

The bill was placed under Final Reading of Bills.

FINAL READING OF BILLS

The following bill was read on Final Reading by number and title, passed on roll call and signed in open session:

Senate Bill 1407: An Act amending sections 48-261, 48-262, 48-266, 48-851 and 48-853 ARS; relating to fire districts.

AYES 29: Aboud, Allen, Antenori, Barto, Biggs, Burges, Cajero Bedford, Crandall, Driggs, Gallardo, Gray, Griffin, Jackson, Klein,

Landrum Taylor, Lewis, Lopez, Lujan, McComish, Melvin, Meza, Murphy, Nelson, Reagan, Schapira, Shooter, Smith, Yarbrough, President Pierce S

NOES 1: Gould

OTHER BUSINESS OF THE SENATE

EXECUTIVE CONFIRMATIONS

President Pierce announced that a group motion would be made for the confirmations unless a Senator requested a nomination to be considered separately.

The Committee on Commerce and Energy, Senator Melvin, Chairman, having had under consideration the matter of the Governor's appointment of Terry R. Gleeson as a member of the Board of Manufactured Housing for the term of office expiring January 19, 2015 submitted the following report: Your Committee recommends to the Senate the confirmation.

The Committee on Commerce and Energy, Senator Melvin, Chairman, having had under consideration the matter of the Governor's appointment of Sharon L. Henry as a member of the Arizona Sports and Tourism Authority for the term of office expiring July 1, 2014 submitted the following report: Your Committee recommends to the Senate the confirmation.

The Committee on Commerce and Energy, Senator Melvin, Chairman, having had under consideration the matter of the Governor's appointment of Zeek Ojeh as a member of the Board of Manufactured Housing for the term of office expiring January 19, 2015 submitted

the following report: Your Committee recommends to the Senate the confirmation.

The Committee on Commerce and Energy, Senator Melvin, Chairman, having had under consideration the matter of the Governor's appointment of Nicholas P. Scutari as a member of the Arizona State Lottery Commission for the term of office expiring January 16, 2017 submitted the following report: Your Committee recommends to the Senate the confirmation.

The President asked if the Senate would advise and consent to the nominations and it was agreed to.

The Committee on Education, Senator Crandall, Chairman, having had under consideration the matter of the Governor's appointment of Eldon E. Hastings as a member of the Commission for Postsecondary Education for the term of office expiring January 19, 2015 submitted the following report: Your Committee recommends to the Senate the confirmation.

The Committee on Education, Senator Crandall, Chairman, having had under consideration the matter of the Governor's appointment of Todd A. Juhl as a member of the State Board for Charter Schools for the term of office expiring January 19, 2015 submitted the following report: Your Committee recommends to the Senate the confirmation.

The Committee on Education, Senator Crandall, Chairman, having had under consideration the matter of the Governor's appointment of Patricia J. Leonard as a member of the State Board for Private Postsecondary Education for the term of office expiring January 15, 2015 submitted the following report: Your Committee recommends to the Senate the confirmation.

The Committee on Education, Senator Crandall, Chairman, having had under consideration the matter of the Governor's appointment of Jason D. Pistillo as a member of the State Board for Private Postsecondary Education for the term of office expiring January 19, 2015 submitted the following report: Your Committee recommends to the Senate the confirmation.

The Committee on Education, Senator Crandall, Chairman, having had under consideration the matter of the Governor's appointment of Kathleen Player as a member of the Commission for Postsecondary Education for the term of office expiring January 21, 2013 submitted the following report: Your Committee recommends to the Senate the confirmation.

The Committee on Education, Senator Crandall, Chairman, having had under consideration the matter of the Governor's appointment of Kathryn L. Senseman as a member of the State Board for Charter Schools for the term of office expiring January 20, 2014 submitted the following report: Your Committee recommends to the Senate the confirmation.

The Committee on Education, Senator Crandall, Chairman, having had under consideration the matter of the Governor's appointment of Jeffrey J. Smith as a member of the School Facilities Board for the term of office expiring January 18, 2016 submitted the following report: Your Committee recommends to the Senate the confirmation.

The President asked if the Senate would advise and consent to the nominations and it was agreed to.

The Committee on Finance, Senator Yarbrough, Chairman, having had under consideration the matter

of the Governor's appointment of Thomas J. Connelly as a member of the Arizona State Retirement System Board for the term of office expiring January 21, 2013 submitted the following report: Your Committee recommends to the Senate the confirmation.

The Committee on Finance, Senator Yarbrough, Chairman, having had under consideration the matter of the Governor's appointment of William C. Davis as a member of the Public Safety Personnel Retirement System Board of Trustees for the term of office expiring January 16, 2017 submitted the following report: Your Committee recommends to the Senate the confirmation.

The Committee on Finance, Senator Yarbrough, Chairman, having had under consideration the matter of the Governor's appointment of Derrick R.E. Doba as a member of the State Board of Tax Appeals for the term of office expiring January 21, 2013 submitted the following report: Your Committee recommends to the Senate the confirmation.

The Committee on Finance, Senator Yarbrough, Chairman, having had under consideration the matter of the Governor's appointment of Gregory S. Ferguson as a member of the Public Safety Personnel Retirement System Board of Trustees for the term of office expiring January 16, 2017 submitted the following report: Your Committee recommends to the Senate the confirmation.

The Committee on Finance, Senator Yarbrough, Chairman, having had under consideration the matter of the Governor's appointment of Steven R. Matthews as a member of the Family College Savings Program

Oversight Committee for the term of office expiring January 18, 2016 submitted the following report: Your Committee recommends to the Senate the confirmation.

The Committee on Finance, Senator Yarbrough, Chairman, having had under consideration the matter of the Governor's appointment of Michael J. Smarik as a member of the Arizona State Retirement System Board for the term of office expiring January 19, 2015 submitted the following report: Your Committee recommends to the Senate the confirmation.

The President asked if the Senate would advise and consent to the nominations and it was agreed to.

The Committee on Government Reform, Senator Murphy, Chairman, having had under consideration the matter of the Governor's appointment of Patrick J. Quinn as a member of the State Personnel Board for the term of office expiring January 19, 2015 submitted the following report: Your Committee recommends to the Senate the confirmation.

The Committee on Government Reform, Senator Murphy, Chairman, having had under consideration the matter of the Governor's appointment of James V. Thompson as a member of the State Personnel Board for the term of office expiring January 19, 2015 submitted the following report: Your Committee recommends to the Senate the confirmation.

The President asked if the Senate would advise and consent to the nominations and it was agreed to.

The Committee on Healthcare and Medical Liability Reform, Senator Barto, Chairman, having had under

consideration the matter of the Governor's appointment of James M. Gillard as a member of the Arizona Medical Board for the term of office expiring July 1, 2015 submitted the following report: Your Committee recommends to the Senate the confirmation.

The Committee on Healthcare and Medical Liability Reform, Senator Barto, Chairman, having had under consideration the matter of the Governor's appointment of Harold Magalnick as a member of the Arizona Medical Board for the term of office expiring July 1, 2012 submitted the following report: Your Committee recommends to the Senate the confirmation.

The President asked if the Senate would advise and consent to the nominations and it was agreed to.

The Committee on Judiciary, Senator Gould, Chairman, having had under consideration the matter of the Governor's appointment of Charles A. Brown III as a member of the Commission on Trial Court Appointments, Maricopa County for the term of office expiring January 20, 2014 submitted the following report: Your Committee recommends to the Senate the confirmation.

The Committee on Judiciary, Senator Gould, Chairman, having had under consideration the matter of the Governor's appointment of Nicholas Basil Simonetta as a member of the Urban Land Planning Oversight Committee for the term of office expiring January 18, 2016 submitted the following report: Your Committee recommends to the Senate the confirmation.

The President asked if the Senate would advise and consent to the nominations and it was agreed to.

The Committee on Natural Resources and Transportation, Senator Nelson, Chairman, having had under consideration the matter of the Governor's appointment of James V. Christensen as a member of the Arizona State Veterinary Medical Examining Board for the term of office expiring January 19, 2015 submitted the following report: Your Committee recommends to the Senate the confirmation.

The Committee on Natural Resources and Transportation, Senator Nelson, Chairman, having had under consideration the matter of the Governor's appointment of Janet Kay Daggett as a member of the Arizona State Parks Board for the term of office expiring January 15, 2018 submitted the following report: Your Committee recommends to the Senate the confirmation.

The Committee on Natural Resources and Transportation, Senator Nelson, Chairman, having had under consideration the matter of the Governor's appointment of Rory S. Goree as a member of the Arizona Racing Commission for the term of office expiring January 16, 2017 submitted the following report: Your Committee recommends to the Senate the confirmation.

The Committee on Natural Resources and Transportation, Senator Nelson, Chairman, having had under consideration the matter of the Governor's appointment of Donald R. Johnson as a member of the Arizona Game and Fish Commission Appointment Recommendation Board for the term of office expiring July 29, 2014 submitted the following report: Your Committee recommends to the Senate the confirmation.

The Committee on Natural Resources and Transportation, Senator Nelson, Chairman, having had under consideration the matter of the Governor's appointment of Joseph E. La Rue as a member of the State Transportation Board for the term of office expiring January 15, 2018 submitted the following report: Your Committee recommends to the Senate the confirmation.

The President asked if the Senate would advise and consent to the nominations and it was agreed to.

The Committee on Veterans, Military and Government Affairs, Senator Driggs, Chairman, having had under consideration the matter of the Governor's appointment of Richard A. Kochanski as a member of the State Fire Safety Committee for the term of office expiring January 21, 2013 submitted the following report: Your Committee recommends to the Senate the confirmation.

The Committee on Veterans, Military and Government Affairs, Senator Driggs, Chairman, having had under consideration the matter of the Governor's appointment of Russell H. Louman as a member of the State Fire Safety Committee for the term of office expiring January 21, 2013 submitted the following report: Your Committee recommends to the Senate the confirmation.

The Committee on Veterans, Military and Government Affairs, Senator Driggs, Chairman, having had under consideration the matter of the Governor's appointment of Patrick N. Moore as a member of the State Fire Safety Committee for the term of office expiring January 20, 2014 submitted the following report: Your

Committee recommends to the Senate the confirmation.

The Committee on Veterans, Military and Government Affairs, Senator Driggs, Chairman, having had under consideration the matter of the Governor's appointment of Rick Alan Southey as a member of the State Fire Safety Committee for the term of office expiring January 21, 2013 submitted the following report: Your Committee recommends to the Senate the confirmation.

The President asked if the Senate would advise and consent to the nominations and it was agreed to.

The Secretary notified the Governor and the Secretary of State of the confirmations.

CONFERENCE COMMITTEE REPORTS

Senator Biggs moved on behalf of the Chairman that the Senate adopt the following conference committee report:

> Senators Gray, Lopez and Yarbrough, Senate conferees, and Representatives Harper, Meyer and Yee, House conferees, submitted the following corrected conference report on House Bill 2093:
>
> That the House accept the Senate amendments with exceptions and the bill be further amended.

The motion carried and the Secretary recorded the action and notified the House.

RECESS

At 3:48 p.m. the Senate stood at recess subject to the sound of the gavel.

RECONVENE

President Pro Tempore Allen assumed the chair and called the Senate to order at 4:46 p.m.

ADJOURNMENT

Upon motion of Senator Biggs and agreed to, the Senate adjourned at 4:46 p.m. until Thursday, May 3, 2012 at 10:00 a.m.

SYLVIA ALLEN
President Pro Tempore of the Senate

ATTEST:

CHARMION BILLINGTON
Secretary of the Senate

JOURNAL OF THE HOUSE

Wednesday, May 2, 2012

One Hundred Fifteenth Day

The session scheduled to convene at 10:00 a.m. was called to order at 10:40 a.m., Speaker Andrew M. Tobin presiding.

Attendance roll call was as follows:

PRESENT: Alston, Arredondo, Ash, Barton, Campbell, Chabin, Court, Crandell, Dial, Fann, Farley, Farnsworth, Fillmore, Fontana, Forese, Gallego, Gonzales, Goodale, Gowan, Gray R, Hale, Harper,

Heinz, Hobbs, Jones, Judd, Kavanagh, Lesko, Lovas, McLain, Meyer, Miranda C, Montenegro, Olson, Pancrazi, Pierce, Pratt, Quezada, Reeve, Robson, Saldate, Seel, Smith D, Stevens, Tovar, Urie, Vogt, Weiers Jerry P, Wheeler, Williams, Yee, Speaker Tobin–52

ABSENT: Mesnard, Ugenti, Weiers Jim–3

EXCUSED: Ableser, Brophy McGee, Carter, McCune Davis, Proud–5

Members Ableser, Brophy McGee, Carter, McCune Davis and Proud were excused on personal business.

Members McCune Davis and Mesnard were seated at 11:15 a.m. Mrs. Ugenti was seated at 11:19 a.m. Mr. Jim Weiers was seated at 11:48 a.m. Mrs. Carter was seated at 11:50 a.m. Mrs. Brophy McGee was seated at 11:51 a.m.

Prayer was offered by Member Tom Forese.

The Pledge of Allegiance to the Flag was led by Member John Fillmore.

Without objection the reading of the Journal of Tuesday, May 1S, 2012, was dispensed with and approved as written.

PERSONAL PRIVILEGE

Mrs. Yee expressed appreciation to staff, members and leadership of the House.

REPORTS OF SELECT COMMITTEES

The Free Conference Committee on Senate Bill 1153 reported:

That the Senate accept the House amendments with exceptions and the bill be further amended.

HOUSE CONFEREES:	SENATE CONFEREES:
Michelle Ugenti	Andy Biggs
Jeff Dial	John McComish
Anna Tovay	Robert Meza

Motion by Mr. Court that the House adopt the Conference Committee Report on Senate Bill 1153. Carried.

BUSINESS ON THE SPEAKER'S DESK

Certificates of appreciation were presented to the following House pages:

Daniel Briggin	Kyle Briggin	Tara Chapman
Carissa Cortez	Rose Estes	Daniel Frank
Samantha Franklin	William Fry	Anadela Hogan
Bethany Hunter	Frank (Taylor) Larson	Esther Linkey
Adrian Luth	Brendan Melander	Megan O'Brien
Micah Palich	Devon Romo	Ben Scheel

Jessica Sornsin	Charissa Wright

Certificates of appreciation were presented to the following House interns:

Christopher Adams	Alexis Burkhart	Virginia Carico
Patrick Devine	Thomas Drogaris	Yijee Jeong
Bethan Jones	Tom Kwon	Traci Long
Stuart Luther	Kate Sommerville	
Chelsea Rubin	Casaundra Wallace	Katherine Adler
Elizabeth Bixby	Daniel Dominguez	Brian Holly
Lourdes Pena	Kimberley Pope	Tameka Spence
Nathan Wade	Krystle Fernandez	Paul Gales
Ryan McCarthy	Kyle LaRose	

UNFINISHED BUSINESS

Motion by Mr. Mesnard that the House accede to the Senate request and appoint a Free Conference Committee to consider the disagreement on House

amendments to Senate Bill 1442. Carried, and Speaker Tobin appointed Members Mesnard, Farley and Vogt

Motion by Mr. Harper that the House accede to the Senate request and appoint a Free Conference Committee to consider the disagreement on House amendments to Senate Bill 1449. Carried, and Speaker Tobin appointed Members Montenegro, Farnsworth and Quezada

BUSINESS ON THE SPEAKER'S DESK

Motion by Mr. Farnsworth that , whereas, even though the House of Representatives believes it is clear under the House Rules, the Arizona Constitution, and case law, that the Speaker of the House of Representatives is authorized to represent the entire body in various matters, including litigation, but nevertheless the Arizona Supreme Court in Bennett v. Napolitano did not recognize this authority; therefore, I move that the House of Representatives, Fiftieth Legislature, join with the Senate to file suit, and join or intervene in any suit in both state and federal court to defend the authority of the House related to redistricting under the Constitutions of both the United States and of the State of Arizona. To accomplish this purpose the House authorizes the Speaker to represent the interests of the House of Representatives and take all appropriate action, including the retention of outside counsel, on its behalf in any matter related to redistricting, including acting jointly with the Senate President to act on behalf of the Legislature as a whole. Carried.

Speaker Tobin announced pursuant to House Rule 17E, that permission was granted for conference committees to meet through today, May 2, 2012.

THIRD READING OF BILLS

The following bills were read the third time by number and title, passed on roll call vote and signed in open session by Speaker Tobin:

Senate Bill 1407: An Act amending sections 48-261, 48-262, 48-266, 48-851 and 48-853 ARS; relating to fire districts.

AYES 58: Alston, Arredondo, Ash, Barton, Brophy Mcgee, Campbell, Carter, Chabin, Court, Crandell, Dial, Fann, Farley, Farnsworth, Fillmore, Fontana, Forese, Gallego, Gonzales, Goodale, Gowan, Gray R, Hale, Harper, Heinz, Hobbs, Jones, Judd, Kavanagh, Lesko, Lovas, McCune Davis, McLain, Mesnard, Meyer, Miranda C, Montenegro, Olson, Pancrazi, Pierce, Pratt, Quezada, Reeve, Robson, Saldate, Seel, Smith D, Stevens, Tovar, Ugenti, Urie, Vogt, Weiers J, Weiers Jp, Wheeler, Williams, Yee, Speaker Tobin

NOT VOTING 2: Ableser, Proud

UNFINISHED BUSINESS

Motion by Mrs. Yee that the House concur in the Senate amendments to House Bill 2503. Carried.

FINAL PASSAGE

The following bill, as amended by the Senate, was read the final time by number and title, passed on roll call vote and signed in open session by Speaker Tobin:

House Bill 2503: An Act amending title 12, chapter 6, article 9, ARS, by adding section 12-689; relating to product liability.

AYES 38: Barton, Brophy Mcgee, Carter, Chabin, Court, Crandell, Dial, Fann, Farnsworth, Fillmore, Forese, Goodale, Gowan, Gray R, Harper, Jones, Judd, Kavanagh, Lesko, Lovas, McLain, Mesnard, Montenegro, Olson, Pierce, Pratt, Reeve, Robson, Seel, Stevens, Ugenti, Urie, Vogt, Weiers J, Weiers Jp, Williams, Yee, Speaker Tobin

NAYS 20: Alston, Arredondo, Ash, Campbell, Farley, Fontana, Gallego, Gonzales, Hale, Heinz, Hobbs, McCune Davis, Meyer, Miranda C, Pancrazi, Quezada, Saldate, Smith D, Tovar, Wheeler

NOT VOTING 2: Ableser, Proud

UNFINISHED BUSINESS

Motion by Mr. Crandell that the House concur in the Senate amendments to House Concurrent Resolution 2004. Carried.

FINAL PASSAGE

The following bill, as amended by the Senate, was read the final time by number and title, passed on roll call vote and signed in open session by Speaker Tobin:

House Concurrent Resolution 2004: A Concurrent Resolution proposing an amendment to the Constitution of Arizona; amending the Constitution of Arizona by adding article II.I; amending article XX,

paragraphs 4 and 12, Constitution of Arizona; relating to state sovereignty.

AYES 38: Ash, Barton, Brophy Mcgee, Carter, Court, Crandell, Dial, Fann, Farnsworth, Fillmore, Forese, Goodale, Gowan, Gray R, Harper, Jones, Judd, Kavanagh, Lesko, Lovas, McLain, Mesnard, Montenegro, Olson, Pierce, Pratt, Robson, Seel, Smith D, Stevens, Ugenti, Urie, Vogt, Weiers J, Weiers Jp, Williams, Yee, Speaker Tobin

NAYS 20: Alston, Arredondo, Campbell, Chabin, Farley, Fontana, Gallego, Gonzales, Hale, Heinz, Hobbs, McCune Davis, Meyer, Miranda C, Pancrazi, Quezada, Reeve, Saldate, Tovar, Wheeler

NOT VOTING 2: Ableser, Proud

Motion by Mr. Court that the House stand at recess subject to the sound of the gavel. Carried at 12:45 p.m.

Speaker Tobin called the House to order at 3:54 p.m.

BILLS AND OTHER BUSINESS FROM THE SENATE

HB 2571, passed amended, 21-9-0
SB 1153, passed on Final Passage, 29-1-0

Motion by Mr. Court that the House stand adjourned until 10:00 a.m., Thursday, May 3, 2012. Carried at 3:55 p.m.

ANDREW M. TOBIN
Speaker of the House

ATTEST:

CHERYL LAUBE
Chief Clerk of the House