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Attorneys for Plaintiffs

**SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY**

VINCE LEACH, KAREN GLENNON and
LYNNE ST. ANGELO, qualified electors and
residents of Congressional District 1;
CAROLYN COX, a qualified elector and
resident of Congressional District 2;
DONALD SHOOTER, a qualified elector and
resident of Congressional District 3; KARYN
CUSHING and JAYNE FRIEDMAN,
qualified electors and residents of
Congressional District 6; and ELEANOR
CLARK, a qualified elector and resident of
Congressional District 9,

Plaintiffs,

v.

ARIZONA INDEPENDENT
REDISTRICTING COMMISSION, a
legislative body of the State of Arizona;
COLLEEN COYLE MATHIS, in her official
capacity as Chair thereof; JOSE HERRERA, in

COPY



APR 27 2012
MICHAEL K. JEANES, CLERK
A. FARIAN
DEPUTY CLERK

CV2012-007344
No.

**VERIFIED SPECIAL ACTION
COMPLAINT FOR
DECLARATORY, MANDAMUS,
AND INJUNCTIVE RELIEF**

1 his official capacity as Vice-Chair and
2 Commissioner thereof; SCOTT FREEMAN, in
3 his official capacity as Vice-Chair and
4 Commissioner thereof; LINDA MCNULTY, in
5 her official capacity as Commissioner thereof;
6 RICHARD STERTZ, in his official capacity as
7 Commissioner thereof; and KEN BENNETT, in
8 his official capacity as Secretary of State of the
9 State of Arizona,

10
11 Defendants.

12
13 For their Special Action Complaint for Declaratory, Mandamus, and
14 Injunctive Relief (the "Complaint"), Plaintiffs allege as follows:

15 INTRODUCTION

16 Plaintiffs bring this action to challenge the Final Congressional Map (the
17 "Map") certified by the Arizona Independent Redistricting Commission (the "AIRC" or
18 "Commission") on January 17, 2012, on the grounds that the AIRC violated the
19 redistricting process mandated by the Arizona Constitution in multiple ways as alleged
20 below. These violations were foreshadowed by, and the result of, an alliance between the
21 Commission's two Democrats and its so-called Independent Chair to form a voting bloc
22 to achieve a desired result. Many of the factual allegations below are set forth to explain
23 how these three Defendant Commissioners manipulated the redistricting process from
24 day one in order to carry out their agenda. In doing so, inconvenient constitutional and
25 statutory requirements were cast aside. Attempts by the Arizona Attorney General, the
26 Legislature and the Governor to take corrective action were met with full-blown
resistance from the AIRC and rejected by courts primarily concerned with protecting the
AIRC's independence during the mapping process. As a result, the AIRC's majority
proceeded unchecked in adopting its Final Congressional Map. But now, the validity of

1 that Map depends on whether the AIRC followed the specific, mandatory constitutional
2 procedures for its development. Plaintiffs allege that the AIRC majority did not follow
3 the required process and, therefore, the resulting Map is unconstitutional.

4 5 **THE PARTIES**

6 1. Plaintiffs Vince Leach, Karen Glennon and Lynne St. Angelo are
7 qualified electors residing in the territory designated as Congressional District 1 in the
8 Map certified by the AIRC on January 17, 2012.

9 2. Plaintiff Carolyn Cox is a qualified elector residing in the territory
10 designated as Congressional District 2 in the Map certified by the AIRC on January 17,
11 2012.

12 3. Plaintiff Donald Shooter is a qualified elector residing in the territory
13 designated as Congressional District 3 in the Map certified by the AIRC on January 17,
14 2012.

15 4. Plaintiffs Karyn Cushing and Jayne Friedman are qualified electors
16 residing in the territory designated as Congressional District 6 in the Map certified by the
17 AIRC on January 17, 2012.

18 5. Plaintiff Eleanor Clark is a qualified elector residing in the territory
19 designated as Congressional District 9 in the Map certified by the AIRC on January 17,
20 2012.

21 6. As qualified electors and registered voters in the State of Arizona, all of
22 the Plaintiffs identified in Paragraphs 1 through 5 have a significant interest in the
23 manner in which Arizona's congressional district boundaries are established, including an
24 interest in seeing that the district boundaries are established in a manner that complies
25 with the Arizona Constitution. All have suffered palpable injury because of the failure of
26 the Defendant AIRC to follow the constitutionally mandated process for redistricting.

1 7. The Defendant AIRC is a legislative body established under Article 4,
2 Part 2, § 1(3) of the Arizona Constitution tasked with drawing Arizona’s congressional
3 and state legislative districts. It has standing in legal actions regarding redistricting plans.
4 Ariz. Const. art. 4, pt. 2, § 1(20).

5 8. Defendant Colleen Coyle Mathis is the appointed Chair of the AIRC, a
6 public officer of this State, and is named in this action in her official capacity only.

7 9. Defendant Jose Herrera is a duly appointed Commissioner of the AIRC
8 and was also selected by the AIRC to serve as one of its two Vice-Chairs. He is a public
9 officer of this State and is named in this action in his official capacity only.

10 10. Defendant Scott Freeman is a duly appointed Commissioner of the
11 AIRC and was also selected by the AIRC to serve as one of its two Vice-Chairs. He is a
12 public officer of this State and is named in this action in his official capacity only.

13 11. Defendant Linda McNulty is a duly appointed Commissioner of the
14 AIRC, a public officer of this State, and is named in this action in her official capacity
15 only.

16 12. Defendant Richard Stertz is a duly appointed Commissioner of the
17 AIRC, a public officer of this State, and is named in this action in his official capacity
18 only.

19 13. Defendants AIRC, Mathis, McNulty, Hererra, Freeman, and Stertz are
20 collectively referred to herein as the “AIRC Defendants.”

21 14. Defendant Ken Bennett is the Arizona Secretary of State, a public
22 officer of this State, and is named as a Defendant in this action in his official capacity
23 only. Pursuant to Article 4, Part 2, § 1(17) of the Arizona Constitution, the AIRC “shall
24 certify to the Secretary of State the establishment of congressional . . . districts.” The
25 Secretary of State is the public officer responsible for the conduct of statewide elections,
26 including the conduct of congressional elections in Arizona.

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JURISDICTION AND VENUE

15. This Court has jurisdiction and venue pursuant to Article 6 § 14 of the Arizona Constitution and A.R.S. §§ 12-123; 12-1801, *et seq.*; 12-1831, *et seq.*; and 12-2021, *et seq.*

GENERAL ALLEGATIONS

Creation and Composition of the AIRC

16. In 2000, Arizona voters approved Proposition 106, a citizen initiative that amended Article 4, Part 2, § 1, of the Arizona Constitution, removed the power to draw congressional and state legislative districts from the elected state legislature, and reassigned this task to the appointed AIRC.

17. The AIRC consists of five volunteer commissioners, including a chair, who are to be appointed in a manner designed to provide for diversity in political party affiliation and county of residence. *See* Ariz. Const. art. 4, pt. 2, § 1(3) to (8).

18. For three years prior to their appointment, Commissioners “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.” Ariz. Const. art. 4, pt. 2, § 1(3).

19. The current AIRC consists of two Democrats (Commissioners Herrera and McNulty), two Republicans (Commissioners Freeman and Stertz) and a Chair (Mathis) who is a registered Independent. Chairwoman Mathis and Commissioners McNulty and Stertz reside in Pima County. Commissioners Herrera and Freeman are residents of Maricopa County.

1 and to upholding public confidence in the integrity of the redistricting process.” Ariz.
2 Const. art. 4, pt. 2, § 1(3).

3 25. The AIRC’s sole task is to establish congressional and legislative districts.
4 “The Arizona Constitution directs the Commission to complete its task by following
5 specified procedures.” *Id.* at 592, ¶ 5, 208 P.3d at 681.

6 26. The constitution specifies that the “commencement of the mapping process
7 for both congressional and legislative districts shall be the creation of districts of equal
8 population in a grid-like pattern across the state.” Ariz. Const. art. 4, pt. 2, § 1(14). The
9 AIRC refers to this initial map as the “Grid Map.”

10 27. “Working from that map, the Commission must next adjust the grid ‘as
11 necessary to accommodate’ six listed goals.” *Id.* The constitution’s redistricting goals
12 are:

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

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

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

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

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

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

Ariz. Const. art. 4, pt. 2, § 1(14).

1 28. The constitution also requires that “[p]arty registration and voting history
2 data shall be excluded from the initial phase of the mapping process but may be used to
3 test maps for compliance with the above goals.” Ariz. Const. art. 4, pt. 2, § 1(15).

4 29. The AIRC may not identify or consider “[t]he places of residence of
5 incumbents or candidates” at any phase of the mapping process. *Id.*

6 30. Although the constitution allows the AIRC to make sequential
7 “adjustments” to the Congressional Grid Map for specific and identified reasons, it does
8 not authorize the AIRC or its Commissioners to abandon the Congressional Grid Map, or
9 any part of it, to simply draw maps that are not the direct product of adjustments to the
10 Congressional Grid Map.

11 31. After making adjustments to the Congressional Grid Map to accommodate
12 all constitutional goals, Ariz. Const. art. 4, pt. 2, § 1(16) requires that the AIRC
13 “advertise a draft map of congressional districts . . . to the public for comment, which
14 comment shall be taken for at least thirty days.”

15 32. During the public comment period, the Legislature may “make
16 recommendations to the independent redistricting commission by memorial or by
17 minority report, which recommendations shall be considered by the independent
18 redistricting commission.” *Id.* § 1(16).

19 33. After the public comment period has expired, and after considering the
20 Legislature’s recommendations, if any, the AIRC “shall then establish final district
21 boundaries” and “certify to the secretary of state the establishment of
22 congressional . . . districts.” *Id.* § 1(16)-(17).

23 34. Throughout this process, the AIRC is charged with the duty to make a
24 series of value judgments. But the constitution requires that those judgments “be made
25 through a specific process so as to optimize consideration of the listed constitutional
26

1 goals and minimize the partisan concerns that traditionally dominate redistricting
2 efforts.” 220 Ariz. at 601, ¶ 49, 208 P.3d at 690 (Hurwitz, J., concurring).

4 **The AIRC in Action; The Loss of Public Confidence**

5 **A. Selection of the Current AIRC Commissioners**

6 35. On or about December 29, 2010, the Commission on Appellate Court
7 Appointments finalized a pool of 25 candidates for appointment to the AIRC: 10 each
8 from the two largest political parties in Arizona and 5 not registered with either of those
9 parties.

10 36. On or about the following dates, appointments to the AIRC were made in
11 the constitutionally prescribed order: January 31, 2011, the Republican Speaker of the
12 Arizona House of Representatives appointed Defendant Freeman, a registered Republican
13 from Maricopa County; February 2, 2011, the Democratic Minority Leader of the
14 Arizona House of Representatives appointed Defendant Herrera, a registered Democrat
15 from Maricopa County; February 9, 2011, the Republican President of the Arizona State
16 Senate appointed Defendant Stertz, a registered Republican from Pima County; and
17 February 15, 2011, the Democratic Minority Leader of the Arizona State Senate
18 appointed Defendant McNulty, a registered Democrat from Pima County.

19 37. On February 24, 2011, in a meeting called by the Arizona Secretary of
20 State, the first four appointed Commissioners met to select a chairman from among the 5
21 candidates who were not registered with either of Arizona’s two largest political parties.
22 Although they interviewed the 5 candidates and a quorum of the Commission then met in
23 executive session, the Commissioners did not select a chairman that day. To allow time
24 for further reflection, the Commissioners decided to meet again on March 1, 2011.

25 38. On March 1, 2011, after a quorum of the Commission met in executive
26 session for a little over an hour, Defendants Freeman, Herrera, Stertz, and McNulty

1 selected Defendant Mathis, a registered Independent from Pima County, to serve as
2 Commission Chair.

3 39. During the February 24, 2011 interviews, Defendant Freeman indicated to
4 Defendant Mathis that the Commission's political appointee members were looking for a
5 chairman who would bring balance and fairness to the Commission and asked Defendant
6 Mathis whether anything in her background would call into question her ability to be fair.
7 According to the minutes of this meeting, Defendant Mathis answered that "there is
8 nothing in her background that would limit her ability to be fair and as long as she did not
9 have to make decisions about buying heavy equipment she would be okay." In response
10 to questioning from Defendant McNulty about her management style, the meeting
11 minutes report that Defendant Mathis responded that she likes "to create an environment
12 where people feel they can trust her and are comfortable with what she is trying to do"
13 and that it is "important to be open and impartial and achieve the end result by
14 consensus."

15 40. In Defendant Mathis's application dated October 12, 2010, she omitted
16 critical information, which, had it been known, would have identified her as biased in
17 favor of the Democratic Party and not impartial, and would have precluded her inclusion
18 on the list of candidates for Chair and most certainly would have prevented her selection
19 as the Independent Chair of the AIRC. (Exhibit 1, Mathis Application).

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

1 27, 2010, Christopher Mathis donated \$100 to the Nancy Wright legislative campaign; (e)
2 on August 10, 2010, Defendant Mathis donated \$10 to the Arizona List P.A.C., a
3 committee for pro-choice Democratic women in Arizona; and (f) on March 3, 2010 and
4 on August 10, 2010, Christopher Mathis donated \$75 and then another \$10, respectively,
5 to Arizona List P.A.C. (Exhibit 2, Campaign Finance Reports). This consistent pattern
6 of support for Democratic causes and candidates, particularly in the most recent election
7 cycle, reveals that Defendant Mathis at heart is a Democrat, though dressed in
8 Independent clothing.

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

14 43. Although his service as a candidate campaign treasurer in 2010 would have
15 disqualified him from appointment to the AIRC, Mr. Mathis effectively became a "sixth
16 commissioner" by closely counseling Defendant Mathis on every aspect of the
17 redistricting process, including votes taken, and interacting with stakeholders to ascertain
18 their support for various proposals. Mr. Mathis attended virtually every public meeting
19 of the AIRC, often spoke with Democratic operatives during hearings, listened in on
20 many conference calls among the AIRC Defendants, and acted on Defendant Mathis's
21 behalf to round up votes on decisions coming before the Commission. Mr. Mathis even
22 went so far as to propose a deal to establish legislative district boundaries in which the
23 Democrat Commissioners would draw districts in southern Arizona and the Republican
24 Commissioners would draw those in northern Arizona.

25 44. For someone constitutionally barred from service on the Commission, Mr.
26 Mathis was allowed to have unprecedented involvement in and influence on the

1 redistricting process.

2 45. Combined with subsequent concerns about Defendant Mathis's political
3 performance as chairman, her failure to reveal information about her husband's partisan
4 political activity, as well as her own, raised questions about whether any of her fellow
5 Commissioners had been duped into supporting her selection.

6 **B. Among its Very First Acts as a Commission, the AIRC Violated the**
7 **Arizona Constitution**

8 46. With the selection of Defendant Mathis as its chair, the AIRC was fully
9 constituted on March 1, 2011, and it almost immediately violated the Arizona
10 Constitution.

11 47. After selecting a chair, Article 4, Part 2, § 1(9) of the Arizona Constitution
12 mandates that "[t]he five commissioners shall then select by majority vote one of their
13 members to serve as vice-chair."

14 48. But instead of complying with the constitution's mandate, and despite the
15 advice of counsel to the contrary, the Commission selected both Commissioners Herrera
16 and Freeman to serve as co-vice-chairs.

17 **C. The Mathis-McNulty-Herrera Alliance Begins to Wield Power**

18 49. Early on, the stage was set for an outcome-driven redistricting instead of
19 the process-driven redistricting guaranteed by the Arizona Constitution.

20 50. After the appointment of the IRC's chairperson, the commissioners quickly
21 polarized along party lines, with the chair, nominally an independent, siding with the
22 Democratic members on every decision of any consequence.

23 51. The alliance among Defendants Mathis, McNulty and Herrera first emerged
24 with the selection of the Commission's Republican legal counsel.
25
26

1 52. On or about April 8, 2011, a request for proposal (“RFP”) for AIRC legal
2 services was issued. Responses to the legal services RFP were due April 28, 2011.

3 53. A quorum of the Commission met in executive session on May 3, 2011 for
4 approximately 5.5 hours; May 6, 2011 (telephonically) for an undisclosed amount of
5 time; and on May 10, 2011 for approximately 1.5 hours before selecting the law firms to
6 be interviewed in public session on May 10, 2011. (Tr. 05/03/11 at 38:3-279:6; 05/06/11
7 Agenda; Tr. 05/10/11 at 59:6-14).

8 54. On May 12, 2011, the AIRC Defendants met in public session and
9 interviewed six of the law firms that responded to the legal services RFP with the goal of
10 procuring the services of a Republican and a Democrat attorney.

11 55. After a quorum of the Commission met in at least two, closed, executive
12 sessions on May 12 and May 13 totaling approximately another 2 hours (Tr. 05/12/12 at
13 195:25-196:20; Tr. 05/13/12 at 4:12-5:1), Defendants Mathis, McNulty and Herrera
14 selected Osborn Maledon, P.A. (Democrat Mary O’Grady) and Ballard Spahr LLP
15 (Republican Joseph Kanefield) as legal counsel. But Mr. Kanefield was a newly minted
16 Republican having changed his registration from Democrat to Republican on July 22,
17 2010, only nine months prior to responding to the RFP. He was a registered Democrat
18 for at least the preceding 17 years (since August 1, 1994).

19 56. Although a majority of the AIRC hired Republican and Democrat counsel
20 to represent them, both lawyers were selected by the Democrat Commissioners,
21 Defendants McNulty and Herrera, and the Chair, Defendant Mathis. The Republican
22 attorney was selected over the objections of the Republican Commissioners, Defendants
23 Freeman and Stertz.

24 57. Both Ms. O’Grady and Mr. Kanefield had been employed in the Arizona
25 Attorney General’s Office under Democrat Attorney General Janet Napolitano, and
26 O’Grady was Solicitor General under Democrat Attorney General Terry Goddard.

1 Although Mr. Kanefield had worked for Republican Secretary of State and then Governor
2 Jan Brewer, there was no reason for the Commission's Democrats to doubt that they had
3 succeeded in selecting a Democrat legal team.

4 58. Further, concerns emerged concerning the outcome-oriented nature of the
5 scoring of the responses to the RFP engaged in by at least one Commissioner who gave
6 perfect scores to the Democrat Commissioners' preferred candidates and an unjustifiably
7 low score to the candidate preferred by the Republican Commissioners. One other
8 Commissioner's written comments during the procurement process reveal concerns about
9 the possibility that the scoring had been rigged.

10 59. Upon information and belief, one or more Defendant Commissioners
11 engaged in a series of separate communications, involving at least two Commissioners at
12 a time, with the ultimate goal of allowing a quorum of Commissioners to gather to
13 conduct the business of discussing, proposing or deliberating with respect to the action of
14 hiring legal counsel outside of properly noticed public meetings in an effort to
15 circumvent the open meeting requirement of Ariz. Const. art. 4, pt. 2, § 1(12) and/or the
16 Arizona Open Meeting Law ("OML"), A.R.S. § 38-431, *et seq.*

17 60. In summary, this first glimpse of Defendants Mathis, McNulty, and Herrera
18 in action raised serious concerns that the selection of counsel might foreshadow a biased
19 redistricting process and little regard for upholding public confidence in the integrity of
20 the redistricting process.

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

1 62. In evaluating Strategic Telemetry's proposal in response to the RFP,
2 Defendants Mathis, McNulty, and Herrera all gave Strategic Telemetry perfect scores
3 despite its complete lack of any prior redistricting experience, its lack of even
4 rudimentary knowledge of Arizona demographics and geography, its submission of the
5 most expensive proposal, and its location in the District of Columbia. Upon information
6 and belief, Defendant Mathis caused the destruction of these individual scoring sheets
7 during the Commission's marathon executive session on June 15, 2011.

8 63. Following presentations by the candidates for mapping consultant on June
9 24, 2011, a quorum of the AIRC Defendants met in executive session to discuss the
10 selection of the mapping consultant.

11 64. Throughout this selection process, concerns were voiced about Strategic
12 Telemetry's highly partisan, pro-Democrat resume. Strategic Telemetry advertised itself
13 as a statistics and data analysis firm that caters to Democrat clients. Strategic
14 Telemetry's president, Ken Strasma, served as the national target director for the 2008
15 Barack Obama presidential campaign. He also worked with the 2004 John Kerry
16 presidential campaign and Michael Bloomberg's 2009 New York City mayoral
17 campaign. Most recently, he worked on efforts to recall Republican officials in
18 Wisconsin, including Governor Scott Walker. Mr. Strasma also has a long history of
19 making substantial monetary contributions to Democrat candidates. According to Federal
20 Election Commission records, Mr. Strasma has contributed almost \$15,000 to Democrat
21 candidates in recent years.

22 65. Strategic Telemetry had no redistricting experience and is not a mapping
23 firm. These facts were highlighted during the AIRC meeting on July 8, 2011 when Ken
24 Strasma indicated that Strategic Telemetry had scheduled training to learn the Maptitude
25 software that is commonly used in redistricting. (Tr. 07/08/11 at 138:4-8, 139:3-5).

26

1 66. Despite Strategic Telemetry’s lack of redistricting or mapping experience,
2 Strategic Telemetry had other skills that would be of use to Defendants Mathis, McNulty
3 and Herrera. As a Democratic campaign strategist, Mr. Strasma specializes in micro
4 targeting and is considered to be a pioneer in the use of high-tech statistical modeling in
5 Democratic campaigns. In the redistricting context, Strategic Telemetry’s ability to go
6 beyond voter registration to analyze voter behavior would allow it to carve out districts
7 that might appear neutral but, in fact, would be solid pro-Democrat districts.

8 67. Commissioner Mathis actively lobbied and negotiated with other
9 Commissioners to select Strategic Telemetry.

10 68. Before the selection of the mapping consultant, Defendant Mathis contacted
11 Defendant Freeman on at least one occasion to ask him to support the selection of
12 Strategic Telemetry as the AIRC’s mapping consultant. Defendant Mathis presented a
13 quid pro quo to Defendant Freeman, stating that “there might be times in the future
14 where, you know, [you] need[] a third vote.” (Attorney General Deposition of S.
15 Freeman at 11:8-9 (Exhibit 3)). Defendant Freeman rejected Defendant Mathis’s
16 overture.

17 69. Before the selection of the mapping consultant, Defendant Mathis contacted
18 Defendant Stertz on at least two occasions to ask him to support the selection of Strategic
19 Telemetry as the AIRC’s mapping consultant. Defendant Mathis presented a quid pro
20 quo to Defendant Stertz, stating that “if I were to vote with her in regards to the selection
21 of Strategic Telemetry, she would provide a favorable vote for me in the future.”
22 (10/29/2011 Letter of R. Stertz to Governor Brewer at 2 (Exhibit 4)). Like Defendant
23 Freeman, Defendant Stertz rejected Defendant Mathis’s offer to exchange his vote in
24 favor of Strategic Telemetry for the promise of a future vote from Mathis.

25 70. Upon information and belief, Defendant Herrera communicated with one or
26 more other AIRC Commissioners before the selection of Strategic Telemetry regarding

1 which firm should be hired. According to remarks made during the June 29, 2011 public
2 meeting, Mr. Herrera stated that his first choice was Research Advisory Services but, “in
3 a spirit of cooperation and negotiation,” decided “to support Strategic Telemetry.” (Tr.
4 06/29/11 at 41:7-21).

5 71. Upon information and belief, prior to the selection of the mapping
6 consultant, Defendant Mathis contacted Defendant McNulty on at least one occasion to
7 ask her to support the selection of Strategic Telemetry as the AIRC’s mapping consultant.

8 72. On June 29, 2011, the AIRC Defendants met to consider the mapping
9 consultant RFP. Despite having used the State Procurement Office (“SPO”), Arizona
10 Department of Administration, to handle the legal counsel and mapping RFPs, the AIRC
11 made an abrupt change in the middle of the mapping procurement process. Immediately
12 following an executive session with State Procurement officials at which a quorum of the
13 Commission was present, the Commission’s counsel announced that SPO was no longer
14 working on the mapping consultant procurement and that the project was now delegated
15 to the AIRC. (Tr. 06/29/11 at 31:5-13). Upon information and belief, SPO renounced
16 any role in the process because the process clearly was diverging from long-standing
17 practices under Arizona procurement law.

18 73. The Commission then proceeded to select Strategic Telemetry as its
19 mapping consultant by a vote of 3-2, with the Mathis-McNulty-Herrera coalition voting
20 “yes,” and Defendants Stertz and Freeman voting “no.” (Tr. 06/29/11 at 35:8-47:16).

21 74. In explaining her vote for Strategic Telemetry, Defendant Mathis read from
22 computer-generated remarks obviously prepared in advance of the meeting, which
23 suggests some advance knowledge of the outcome of the Commission’s vote.

24 75. Upon information and belief, the pro-Democrat voting bloc of Defendants
25 Mathis, McNulty, and Herrera coordinated their efforts to guarantee that Strategic
26 Telemetry would be selected as the AIRC’s mapping consultant by, among other actions,

1 agreeing that they each would award Strategic Telemetry a perfect score and engaging in
2 various non-public communications designed to achieve the support of a majority of
3 Commissioners in advance of a public meeting. These efforts to achieve majority
4 consensus violated both the letter and spirit of Ariz. Const. art. 4, pt. 2, § 1(12), which
5 requires that the conduct of Commission business, such as the selection and hiring of a
6 mapping consultant, occur in a public meeting if a quorum of the Commission is present.

7 76. Upon information and belief, one or more Defendant Commissioners
8 engaged in a series of separate communications, involving at least two Commissioners at
9 a time, with the ultimate goal of allowing a quorum of Commissioners to gather to
10 conduct the business of discussing, proposing or deliberating with respect to the action of
11 hiring Strategic Telemetry outside of properly noticed public meetings in an effort to
12 circumvent the open meeting requirement of Ariz. Const. art. 4, pt. 2, § 1(12) and/or the
13 OML, A.R.S. § 38-431, *et seq.*

14 77. Coming on the heels of the selection of legal counsel, the Mathis-McNulty-
15 Herrera decision to hire the highly-partisan Strategic Telemetry proved to be a flashpoint
16 that irreparably damaged public confidence in the AIRC. Subsequent AIRC meetings
17 featured scores of citizens expressing concerns about the ability of Strategic Telemetry to
18 remain impartial. The transcript of the Commission's public meeting on June 30, 2011,
19 reflects roughly 90 pages of public comments criticizing the selection of Strategic
20 Telemetry and the conduct of Defendant Mathis. (Tr. 06/30/11 at 3:21-115:19 (all public
21 comment and Commissioners' responses).

22 **D. The Commission Asserts that it is Not Subject to the Open Meeting**
23 **Law**

24 78. Additional concerns were raised about Defendants Mathis, McNulty and
25 Herrera discussing Commission business with each other outside of open meetings and
26

1 about the Commission improperly conducting business during closed-door or executive
2 sessions.

3 79. On the morning of July 21, 2011, Attorney General Tom Horne issued a
4 press release announcing an investigation of the Commission for alleged violations of
5 Arizona's procurement rules and Open Meeting Law ("OML"), which is codified at
6 A.R.S. §§ 38-431 through 38-431.09.

7 80. As part of this investigation, the Attorney General issued Civil
8 Investigative Demands ("CIDs") to all five Commissioners.

9 81. Commissioners Freeman and Stertz cooperated with the Attorney General's
10 investigation and submitted to depositions under oath.

11 82. Defendants Mathis, McNulty, and Herrera each received separate legal
12 counsel at the IRC's expense, which violated A.R.S. § 38-431.07(B), and each refused to
13 cooperate with the Attorney General's investigation. The Attorney General sued these
14 Commissioners in Maricopa County Superior Court to enforce the CIDs.

15 83. In response to the Attorney General's action, the Defendant AIRC argued
16 that the Commission is subject only to the constitutional public meeting requirement in
17 Ariz. Const. art. 4, pt. 2, § 1(12), not the specific provisions of the statutory OML. But
18 the AIRC's own counsel provided training to the Commissioners on open meeting law
19 compliance, noticed AIRC meetings by citing to the open meeting law's provisions, and
20 freely utilized the open meeting law's exceptions allowing public bodies to meet in
21 closed session. And if the AIRC is only subject to the constitution's open meeting
22 provision, which contains no exceptions to the public meeting requirement, it had no
23 legal justification for the more than 40 hours spent in executive sessions.

24 84. The AIRC brought a declaratory judgment and special action in Maricopa
25 County Superior Court to resolve the question of whether the Commission is subject to
26 the open meeting law and to protect the Commission from what it argued was the

1 Attorney General's politically-motivated investigation and attempt to interfere with the
2 Commission's independence.

3 85. The trial court ultimately removed the Attorney General from the
4 investigation based on a conflict of interest arising from the Attorney General's
5 representation of the AIRC prior to the hiring of the Commission's private legal counsel.
6 The investigation was then transferred to the Maricopa County Attorney's Office.

7 86. The trial court later determined that (a) the IRC is subject only to the
8 constitutional public meeting requirement in Ariz. Const. art. 4, pt. 2, § 1(12), and (b) that
9 the IRC is not subject to the open meeting law. The Maricopa County Attorney's Office
10 has appealed, and the matter is now pending in Division One of the Arizona Court of
11 Appeals.

12 87. Upon information and belief, Defendants Mathis, McNulty and Herrera
13 engaged in a practice of serial, non-public communications or other methods by which a
14 quorum of Commissioners could seek consensus or otherwise conduct Commission
15 business in order to circumvent the OML and then took the position that they are not
16 subject to the OML in order to avoid its consequences. Even if the trial court is affirmed
17 and the OML is inapplicable to the AIRC, the AIRC Defendants cannot avoid the
18 constitution's open meeting requirement.

19 88. Specifically, Ariz. Const. art. 4, pt. 2, § 1(12) provides that "[w]here a
20 quorum is present, the Independent Redistricting Commission shall conduct business in
21 meetings open to the public, with 48 or more hours public notice provided." Although
22 noting that the issue of the application of the OML to the AIRC is on appeal in another
23 matter, the Arizona Supreme Court recently looked to the OML definition of "meeting"
24 in A.R.S. § 38-431(4) for guidance in interpreting Ariz. Const. art. 4, pt. 2, § 1(12). *Ariz.*
25 *Independent Redistricting Comm'n. v. Brewer*, ___ P.3d ___, ¶44, 2012 WL 1366362
26

1 (Ariz. Apr. 20, 2012) (the “Removal Opinion”). The Court noted that a “meeting” under
2 the OML is the “gathering of a quorum.” *Id.*

3 89. The Removal Opinion concludes that “[a]t no point, however, did the
4 Governor allege or find that a non-public meeting of a quorum of the IRC occurred.” *Id.*
5 at ¶ 43. Accordingly, the Court did not examine what constitutes a “gathering” or the
6 “presence” of a quorum under the constitution or the OML. For example, the Court did
7 not address the fact that the OML definition of “meeting” includes a gathering of a
8 quorum “in person or through technological devices” or that the OML “does not
9 specifically address whether all members of the body must participate simultaneously to
10 constitute a ‘gathering’ or a meeting.” *Id.*; Ariz. Att’y Gen. Op. I05-004.

11 90. The Legislature commands that “[a]ny person or entity charged with the
12 interpretation [of the OML] shall construe any provision [of the OML] in favor of open
13 and public meetings.” A.R.S. § 38-431.09(A). Given this rule of construction, the
14 question of whether simultaneous participation by a quorum is required to constitute a
15 gathering or a meeting has been answered by concluding that “simultaneous interaction is
16 not required for a ‘meeting’ or ‘gathering’ within the OML” and that “[p]ublic officials
17 may not circumvent public discussion by splintering the quorum and having separate or
18 serial discussions.” Ariz. Att’y Gen. Op. I05-004. Further, it is the long-standing
19 interpretation of those charged with enforcing the OML that the splintering of a quorum
20 into smaller than quorum-sized groups, but ultimately involving a quorum, violates the
21 statutory open meeting requirement. *See Public Service Orientation: A Guidebook for*
22 *Statewide Elected Officials and State Agency Heads* at 13 (Rev. 2011); *Arizona Agency*
23 *Handbook* § 7.5.2. (Ariz. Att’y Gen. 2011); Ariz. Att’y Gen. Op. I05-004.

24 91. A similar ambiguity exists in Article 4, Part 2, § 1(12) of the Arizona
25 Constitution, which provides that the members of the AIRC must meet in public when “a
26

1 quorum is present.” The constitution is silent about what is required for a quorum of the
2 IRC to be “present” in order to trigger the constitution’s open meeting requirement.

3 92. When a constitutional provision is unclear, courts are instructed to consider
4 “the history behind the provision, the purpose sought to be accomplished by its
5 enactment, and the evil sought to be remedied.” *Cain v. Horne*, 220 Ariz. 77, 80, ¶ 10,
6 202 P.3d 1178, 1181 (2009). The legislative history of Proposition 106 (2000) to remove
7 redistricting from the secretive, back-rooms of the legislature in favor of a public process
8 argues against construing the constitution to allow the members of the AIRC to
9 communicate with each other at any time and on any subject so long as three of them are
10 not in the same room. There is no indication that the framers of this provision intended
11 the AIRC to conduct more of its business in secret than the OML allows. In fact, the
12 legislative history of this provision and the framers’ doubling of the meeting notice
13 requirement from 24 to 48 hours suggests otherwise.

14 93. The Ariz. Const. art. 4, pt. 2, § 1(12) open meeting requirement, properly
15 construed, prohibits the circumvention techniques employed by Defendants Mathis,
16 McNulty and Herrera.

17
18 **The Congressional Grid Map is Adopted in Violation**
19 **of the Arizona Constitution**

20 94. On June 18, 2011, the AIRC considered two possible congressional grid
21 maps and chose the map that it referred to as “Grid Map No. 2.”

22 95. Although the constitution requires that the AIRC begin the mapping
23 process by creating “districts of equal population in a grid-like pattern across the state”
24 before making any adjustments to accommodate the six constitutional goals, the AIRC
25 violated the constitution by considering factors other than equal population in creating the
26 Congressional Grid Map. (Exhibit 5; Congressional Grid Map.)

1 96. The AIRC's adopted Congressional Grid Map was based not only on equal
2 population; the AIRC admittedly took the goals of compactness and contiguity into
3 account in developing this Congressional Grid Map. (Tr. 08/18/11 at 5:24-6:2).

4 97. In addition, instead of adopting a Congressional Grid Map that would serve
5 as a neutral, unbiased starting point for redistricting, the AIRC's Congressional Grid Map
6 was adopted based on subjective considerations, including consideration of which
7 Congressional Grid Map might be most likely to lead to a Commissioner's desired
8 outcome, in violation of Ariz. Const. art. 4, pt. 2 § 1(14). (Tr. 08/18/11 at 6:24-51:19).

9
10 **The Mathis-McNulty-Herrera Alliance Abandons the Congressional Grid
11 Map by Failing to Make the Constitutionally Required Adjustments**

12 98. After adopting its Congressional Grid Map, the AIRC considered the
13 impact of various "what if" scenarios to accommodate one or more of the six
14 constitutional redistricting goals. (Tr. 08/22/11 at 174:24-192:5).

15 99. The AIRC members and the Commission's mapping consultant discussed
16 the fact that the Arizona Constitution requires adjustments to the Congressional Grid Map
17 to accommodate the constitution's six redistricting goals. (Tr. 08/22/11 at 193:16-
18 198:24).

19 100. After weeks of bogging down in debating various options for the
20 congressional map, Defendant Mathis worked at home over the weekend of September
21 24-25, 2011, to draw a congressional map. She took concepts from both the "whole
22 counties" map and the "River District" map and some additional concepts that had been
23 presented in public hearings. (Tr. 09/26/11 at 56-108).

24 101. Defendant Mathis presented this partial congressional district map referred
25 to as the "Everything Map," the "Everything Bagel," or the "Donut Hole Map" at the
26 AIRC's September 26, 2011 public meeting. This map proposed boundaries for five
congressional districts generally surrounding Maricopa County. It obliterated the Grid

1 Map and left only a blank space for approximately half of the geographic area of
2 Maricopa County and the Apache Junction portion of Pinal County. (Exhibit 6; Donut
3 Hole Map). Defendant Mathis explained, “you’ll notice there’s a spot in the middle
4 that’s blank. That’s the unassigned area, which would ultimately have four districts
5 drawn into it. So that’s the hole, so to speak.” (Tr. 9/26/2011 at 57:12-15).

6 102. Upon information and belief, Defendant Mathis shared this map with the
7 other AIRC Commissioners before it was presented at the Commission’s September 26,
8 2011 meeting and communicated with a quorum of Commissioners to conduct
9 Commission business outside of a public meeting of the AIRC. (Tr. 9/26/2011 at 56:15-
10 16 (“I sent this to you late yesterday afternoon.”)).

11 103. During several subsequent meetings of the AIRC, including meetings from
12 September 26, 2011 to September 30, 2011, Defendant McNulty, with assistance from
13 Defendants Mathis and Herrera, proceeded to assign district boundaries to the
14 congressional district that would become Congressional District (“CD”) CD 9 in the
15 Congressional Draft Map and, eventually, the Final Congressional Map. The districts,
16 including CD 9, created within the donut hole were drawn by the AIRC Defendants from
17 scratch and without making adjustments to the Congressional Grid Map as required by
18 Article 4, Part 2, § 1(14) of the Arizona Constitution.

19 104. On or about September 27, 2011, Defendant McNulty provided the
20 mapping consultant with an electronic file that contained the initial district boundaries for
21 CD 9. Defendant McNulty said, “I gave Mr. Desmond [the mapping consultant] two
22 files. One is what I view as the Tempe – I’ll call it the Tempe competitive district for
23 shorthand and I think it would fit into the – pretty much the same area.” (Tr. 9/27/2011 at
24 71:19-22).

25 105. During that same September 27, 2011 meeting, Defendant McNulty
26 demanded that that her proposed district lines be accepted by the other AIRC

1 Commissioners. She stated, "I've already proposed my changes for this map, and I'll say
2 right now it's the only way I'll support this map, is if there's – a competitive district – if
3 that competitive district is part of it." (Tr. 9/27/2011 at 108:9-13).

4 106. During the AIRC's October 3, 2011 meeting, Defendant Mathis presented a
5 new congressional map that she had developed over the weekend. (Exhibit 7; October 3
6 Map). In her October 3 map, Defendant Mathis changed several district boundaries
7 across the State but left Defendant McNulty's proposed CD 9 intact, stating:

8
9 And Ms. McNulty did last week propose . . . I'm sure you
10 recall, that District Number 9 was one that she came up with
11 in terms of developing a straight-up, 50/50, no built-in
12 inherent advantage for Republicans or Democrats, and that
13 district is District 9 on this map.

14 (Tr. 10/3/2011 at 7:25, 8:1-6).

15 107. Defendants Mathis, McNulty and Herrera approved Defendant Mathis's
16 revised map as the Congressional Draft Map on October 3, 2011. (Exhibit 8;
17 Congressional Draft Map).

18 108. Upon information and belief, the Congressional Draft Map was the product
19 of a predetermined goal and was created without making the required adjustments to the
20 Congressional Grid Map.

21 109. Upon information and belief, adjustments, if any, to the Congressional Grid
22 Map were made after the Congressional Draft Map was created. The AIRC's
23 consideration of the constitutional redistricting criteria and the rationale for the
24 Congressional Draft Map's district configurations were supplied after the fact.

25 **The AIRC Failed to Provide a Meaningful Public Comment Period for the**
26 **Draft Congressional Map**

110. Following the AIRC's October 3, 2011 adoption of the Congressional Draft
Map, the AIRC Defendants advertised the Congressional Draft Map for thirty days of

1 public and legislative comment. This was the only such 30-day period offered by the
2 AIRC.

3 111. A racial bloc voting analysis is an essential and critical element to
4 satisfying the requirements of sections 2 and 5 of the Voting Rights Act. Without a racial
5 bloc voting analysis, it is impossible to know whether any redistricting plan complies
6 with the Voting Rights Act.

7 112. By the time the IRC had approved the Congressional Draft Map, it had not
8 conducted a racial bloc voting analysis of that map.

9 113. As a result, the AIRC's purported effort to comply with the Voting Rights
10 Act was incomplete, and its implicit representation to the public that its Congressional
11 Draft Map included adjustments necessary to comply with the Voting Rights Act was
12 fraudulent by material omission.

13 114. What's more, by the time the AIRC had approved its Congressional Draft
14 Map, it had not obtained the data needed to evaluate the competitiveness of districts, and
15 thus could not have made the adjustments necessary to satisfy the competitiveness
16 criterion of Ariz. Const. art. 4, pt. 2, § 1(14)(F).

17 115. Further, to the extent the Congressional Draft Map was developed without
18 making adjustments to the Congressional Grid Map, the Congressional Draft Map did not
19 contain the Grid adjustments required to accommodate all constitutional goals. As a
20 result, the Commission's Congressional Draft Map was insufficient to trigger the required
21 30-day public comment period.

22 116. Ariz. Const. art. 4, pt. 2, § 1(16) requires that the AIRC advertise a
23 Congressional Draft Map that results from the Commission's efforts to accommodate all
24 constitutional goals. 220 Ariz. at 598-99, ¶¶ 39-42, 208 P.3d at 687-88. The AIRC's
25 incomplete data did not allow it to accommodate all constitutional goals in the
26

1 Congressional Draft Map. As a result, the Commission failed to provide a meaningful
2 public comment period when it advertised its Congressional Draft Map.

3 117. Even if the Commission accommodated and considered all criteria before
4 between the adoption of the Congressional Draft Map and the adoption of its Final
5 Congressional Map, the AIRC never published any draft map resulting from the
6 Commission's efforts to accommodate all constitutional goals and never offered that map
7 for 30 days of public comment in violation of Ariz. Const. art. 4, pt. 2, § 1(16). 220 Ariz.
8 at 599-600, ¶ 43, 208 P.3d at 688-89.

9 10 **The Failed Attempt to Remove Commissioner Mathis**

11 118. Concerned about the IRC's patent violation of the map-drawing process
12 mandated by Ariz. Const. art. 4, pt. 2, §§ 1(14) -- (16), the Governor gave notice to the
13 AIRC Chair and Commissioners of the alleged misconduct and requested a response by
14 October 31, 2011. (Exhibit 9, Governor's Notice).

15 119. Finding the response of the Chairperson inadequate, on November 1, 2011,
16 the Governor announced her intent to remove Ms. Mathis as AIRC Chair, and called a
17 special session of the Arizona Legislature for the purpose of obtaining concurrence from
18 the Arizona Senate.

19 120. On November 1, 2011, the Arizona Senate concurred with the Governor's
20 removal of the Chairperson by a two-thirds majority.

21 121. The AIRC filed a special action petition in the Arizona Supreme Court to
22 reverse the Governor's removal of Ms. Mathis, the Arizona Supreme Court accepted
23 jurisdiction, and by order dated November 17, 2011, the Arizona Supreme Court reversed
24 the removal and ordered Ms. Mathis reinstated to her office as IRC Chair. *Arizona*
25 *Independent Redistricting Comm'n. v. Brewer*, ___ P.3d ___, 2012 WL 1366362.

1 **The AIRC Violated the Constitutional Requirement that it Consider**
2 **the Legislature's Recommendations**

3 122. Article 4, Part 2, § 1(16) of the Arizona Constitution provides that either or
4 both bodies of the Legislature may act within the 30-day public comment period “to
5 make recommendations to the independent redistricting commission by memorial or
6 minority report, which recommendations shall be considered by the independent
7 redistricting commission.”

8 123. On October 31, 2011, the Arizona Joint Legislative Redistricting
9 Committee issued its final report in which it recommended that the Senate and House of
10 Representatives recommend to the AIRC that it begin the mapping process anew because
11 the process used to arrive at the draft congressional and legislative maps was so
12 fundamentally flawed that the resulting maps were unconstitutionally created.

13 124. On November 1, 2011, the Legislature approved House Concurrent
14 Memorial (“HCM”) 1001, containing the recommendation of both bodies of the
15 Legislature to the AIRC that it immediately commence a new mapping process due to
16 extensive constitutional violations, including problems associated with adopting parts of
17 maps presented from outside sources; the publication of draft maps without giving the
18 public and the Legislature the benefit of the voting history data necessary to evaluate the
19 effectiveness of minority districts; the failure to adjust the Grid Maps to comply with the
20 six constitutional criteria; the failure to evaluate the draft districts for compliance with the
21 Voting Rights Act; the failure to respect the criteria of compactness and contiguity;
22 violating communities of interest; unnecessarily dividing municipal, county and census
23 tract lines; creating a draft map that is, overall, less competitive than the 2002 districts;
24 creating a draft CD 9 that disregards all constitutional criteria except competitiveness;
25 improper consideration of party registration and voting history data; and improper
26 consideration of places of residence of candidates and incumbents.

1 125. With their hand strengthened by the Arizona Supreme Court's reversal of
2 the Chair's removal, Defendants Mathis, McNulty, and Herrera abandoned all pretense of
3 impartiality and gave no consideration to the recommendations of the Legislature in
4 violation of Article 4, Part 2, §1(16) of the Arizona Constitution.

5 126. The Legislative recommendations were placed on the Commission's
6 November 29, 2011 agenda. At that meeting, Commission attorney Mary O'Grady
7 advised the Commissioners that the Legislative recommendations were in the packet of
8 materials provided to each Commissioner for their review. Ms. O'Grady stated, "I don't
9 know that it makes sense now to sort of read through [the Legislature's
10 recommendations], but maybe commit it to the Commission to makes [sic] sure that you
11 review those. And as the mapping process proceeds, you may want to – you can take
12 those into account as the work goes on." She also stated that the Commission "might
13 want to consider" the Legislature's comments and that "if the Commission is concerned
14 about anything [raised by the Legislature], they can consider those as they propose
15 recommended changes to the draft map." (Tr. 11/29/11 at 144:18-146:22).

16 127. Defendant Herrera stated his understanding of Ms. O'Grady's advice: "I
17 think as Ms. O'Grady said, we're free to read this information and take it into account
18 when we are making changes to the draft map. So I think she was pretty clear." (Tr.
19 11/29/11 at 148:12-15).

20 128. The Commission merely made a record that it had received HCM 1001,
21 which is insufficient to satisfy the constitutional requirement that the Commission
22 "consider" the recommendations of the Legislature. (Tr. 11/29/11 at 145:9-16).

23 129. The Commission treated its responsibility to consider the Legislative
24 recommendations as discretionary, violating Ariz. Const. art. 4, pt. 2, § 1(16).

25 130. At no time did a quorum of the Commission consider acting upon the
26 Legislature's recommendations, in whole or in part, and never considered accepting or

1 rejecting any or all of its recommendations. Upon information and belief, the
2 Commission ignored the Legislature's recommendations and, by doing so, ignored the
3 constitutional requirement that it consider them.

4
5 **Adoption of the Final Congressional Map**

6 131. On or about January 17, 2012, a majority of the AIRC Defendants voted to
7 certify the Final Congressional Map to the Secretary of State for use in Arizona's
8 congressional elections beginning with the 2012 election cycle and continuing through
9 the 2020 elections. (Exhibit 10; Final Congressional Map).

10 132. On or about February 28, 2012, the AIRC Defendants transmitted the Final
11 Congressional Map to the United States Department of Justice for review under Section 5
12 of the Voting Rights Act.

13 133. On April 9, 2012, the United States Department of Justice notified the
14 AIRC that it has no objection to the 2012 Congressional Redistricting Plan under Section
15 5 of the Voting Rights Act.

16 **Special Action Relief**

17 134. If the AIRC Defendants' Final Congressional Map—developed in violation
18 of the Arizona Constitution's mandatory redistricting process—is allowed to stand,
19 irreparable harm will result to Plaintiffs, and all citizens and voters of the State of
20 Arizona.

21 135. By failing to comply with the redistricting procedures mandated by Article
22 4, Part 2, § 1 of the Arizona Constitution, the AIRC Defendants have:

- 23 A. Failed to perform duties required by law as to which they have no
24 discretion; and
25 B. Proceeded or are threatening to proceed without or in excess of their
26 jurisdiction or legal authority.

1 **FIRST CLAIM FOR RELIEF**

2 **Declaratory Judgment; Adoption of the Congressional Grid Map**
3 **(Violation of Ariz. Const. art. 4, pt. 2, § 1(14))**

4 136. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs of
5 this Complaint as if fully set forth herein.

6 137. Plaintiffs' rights, status or other legal relations are affected by the mapping
7 procedure established in Article 4, Part 2, § 1(14) of the Arizona Constitution that
8 requires the AIRC to establish an equal population grid as the neutral first step in the
9 mapping process.

10 138. Plaintiffs' rights to the constitutionally-mandated mapping process were
11 denied by the AIRC when it considered factors other than equal population in creating the
12 Congressional Grid Map.

13 139. Plaintiffs are entitled to a determination that the AIRC's Congressional
14 Grid Map, and any and all subsequent maps derived from the Congressional Grid Map,
15 are invalid due to the AIRC's failure to follow the constitutionally mandated procedures
16 for adoption of the Congressional Grid Map.

17 140. There is an actual and justiciable controversy, and such judgment or decree
18 will terminate the controversy giving rise to this proceeding as required by A.R.S. § 12-
19 1836.

20 141. There is no adequate remedy at law.

21 **SECOND CLAIM FOR RELIEF**

22 **Declaratory Judgment; Abandoning the Congressional Grid Map**
23 **(Violation of Ariz. Const. art. 4, pt. 2, § 1(14))**

24 142. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs of
25 this Complaint as if fully set forth herein.
26

1 requires the AIRC to advertise a Congressional Draft Map that results from the
2 Commission's efforts to accommodate all constitutional goals.

3 150. The AIRC's incomplete data did not allow it to conduct the analysis
4 required to comply with the Voting Rights Act or to make the adjustments necessary to
5 satisfy the competitiveness criterion in the Congressional Draft Map. As a result, the
6 Commission failed to provide a meaningful public comment period when it advertised its
7 Congressional Draft Map.

8 151. Plaintiffs are entitled to a determination that the Commission failed to
9 provide a meaningful public comment period when it advertised its Congressional Draft
10 Map in violation of Ariz. Const. art. 4, pt. 2, § 1(16).

11 152. Plaintiffs are entitled to a determination that as a result of the AIRC's
12 failure to provide a meaningful public comment period when it advertised its
13 Congressional Draft Map in violation of Ariz. Const. art. 4, pt. 2, § 1(16), the Final
14 Congressional Map and certification of that map to the Secretary of State are also invalid.

15 153. There is an actual and justiciable controversy, and such judgment or decree
16 will terminate the controversy giving rise to this proceeding as required by A.R.S. § 12-
17 1836.

18 154. There is no adequate remedy at law.

19
20 **FOURTH CLAIM FOR RELIEF**

21 **Declaratory Judgment; Failure to Consider Legislative Recommendations**
22 **(Violation of Ariz. Const. art. 4, pt. 2, § 1(16))**

23 155. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs of
24 this Complaint as if fully set forth herein.

25 156. Plaintiffs' rights, status or other legal relations are affected by the
26 procedure established in Article 4, Part 2, § 1(16) of the Arizona Constitution that

1 requires the AIRC to consider Legislative recommendations before establishing final
2 district boundaries.

3 157. Plaintiffs' rights to the constitutionally-mandated mapping process were
4 denied by the AIRC when it merely made a record that it had received HCM 1001, failed
5 to consider Legislative recommendations before establishing final district boundaries, and
6 treated its responsibility to consider the Legislative recommendations as discretionary, all
7 in violation of Ariz. Const. art. 4, pt. 2, § 1(16).

8 158. Plaintiffs are entitled to a determination that because a quorum of the
9 Commission did not act upon the Legislature's recommendations in HCM 1001, in whole
10 or in part, and never considered whether to accept or reject any or all of those
11 recommendations, the Commission ignored the Legislature's recommendations and, by
12 doing so, ignored the constitutional requirement that it consider them in violation of Ariz.
13 Const. art. 4, pt. 2, § 1(16).

14 159. Plaintiffs are entitled to a determination that as a result of the AIRC's
15 failure to consider the Legislature's recommendations in violation of Ariz. Const. art. 4,
16 pt. 2, § 1(16), the Final Congressional Map and certification of that map to the Secretary
17 of State are also invalid.

18 160. There is an actual and justiciable controversy, and such judgment or decree
19 will terminate the controversy giving rise to this proceeding as required by A.R.S. § 12-
20 1836.

21 161. There is no adequate remedy at law.
22
23
24
25
26

1 **FIFTH CLAIM FOR RELIEF**

2 **Declaratory Judgment; Open Meeting Provision**
3 **(Violation of Ariz. Const. Art. 4, Pt. 2, § 1(12))**

4 162. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs of
5 this Complaint as if fully set forth herein.

6 163. Plaintiffs' rights, status or other legal relations are affected by the public
7 meeting and notice provisions in Article 4, Part 2, § 1(12) of the Arizona Constitution
8 that requires that if three or more members of the AIRC—a quorum— conduct business
9 they must do so in a meeting open to the public with 48 or more hours public notice
10 provided.

11 164. Upon information and belief, substantial portions of the Congressional
12 Draft Map were crafted, negotiated and agreed upon by a quorum of Commissioners
13 outside of meetings open to the public with 48 hours or more public notice provided.
14 Specifically, the Donut Hole Map developed by Defendant Mathis and the congressional
15 district boundaries developed by Defendant McNulty to fill the donut hole blank space
16 were crafted, negotiated and agreed upon outside of properly noticed public meetings in
17 violation of Article 4, Part 2, § 1(12) of the Arizona Constitution.

18 165. Plaintiffs' rights to the constitutionally-mandated open meeting provision
19 were denied by this conduct.

20 166. Plaintiffs are entitled to a determination that the AIRC's Congressional
21 Draft Map is invalid due to the AIRC's failure to follow the constitutionally mandated
22 open meeting procedures in connection with its creation, as well as a determination that
23 the resulting public comment period, Final Congressional Map and certification of that
24 map to the Secretary of State are invalid because they are derived from the AIRC's
25 invalid Congressional Draft Map.

26

1 167. There is an actual and justiciable controversy, and such judgment or decree
2 will terminate the controversy giving rise to this proceeding as required by A.R.S. § 12-
3 1836.

4 168. There is no adequate remedy at law.
5

6 SIXTH CLAIM FOR RELIEF

7 **Special Action: Mandamus; Violation of Constitutional Duty** 8 **(Violation of Ariz. Const. art. 4, pt. 2, §§ 1(12), (14), & (16)-(17))**

9 169. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs of
10 this Complaint as if fully set forth herein.

11 170. “[W]hen the voters adopted Proposition 106, they not only transferred the
12 redistricting task from the legislature to the Commission, but also imposed a specific
13 process that the Commission must follow in performing this task.” 220 Ariz. at 596, ¶
14 26, 208 P.3d at 685.

15 171. The redistricting procedures set forth in Article 4, Part 2, § 1 of the Arizona
16 Constitution are mandatory. Although Article 4, Part 2, § 1(14) of the Arizona
17 Constitution entrusts the AIRC with discretion in balancing the competing redistricting
18 goals as it makes adjustments to the grid, the AIRC has no discretion when it comes to
19 compliance with the constitution’s mandatory procedures.

20 172. Courts may properly inquire into whether the AIRC followed the mandated
21 procedure. “If it did not, the Commission violated the constitution as clearly as if it had
22 violated the Equal Protection Clause by adopting legislation that lacks a reasonable
23 basis.” *Id.*

24 173. The AIRC failed to perform its mandatory duties under Article 4, Part 2, §
25 1(14) of the Arizona Constitution by its consideration of factors other than equal
26

1 population in creating the Congressional Grid Map and its abandonment of the
2 Congressional Grid Map during the creation of the Congressional Draft Map.

3 174. The AIRC failed to perform its mandatory duties under Article 4, Part 2, §
4 1(12) of the Arizona Constitution by crafting, negotiating and agreeing upon the Donut
5 Hole Map—and the creation of districts to fill the donut hole—outside of properly
6 noticed public meetings.

7 175. The AIRC failed to perform its mandatory duties under Article 4, Part 2, §
8 1(16) of the Arizona Constitution by failing to provide a meaningful public comment
9 period when it advertised its Congressional Draft Map, which map was not adjusted for
10 all constitutional goals due to incomplete data.

11 176. The AIRC failed to perform its mandatory duties under Article 4, Part 2, §
12 1(16) of the Arizona Constitution by failing to consider the recommendations of the
13 Legislature before adopting or certifying its Final Congressional Map.

14 177. By their conduct, the AIRC Defendants have failed to perform duties
15 required by law as to which they have no discretion and proceeded, or are threatening to
16 proceed, without or in excess of their jurisdiction or legal authority.

17 178. Plaintiffs have no plain, adequate and speedy remedy at law to compel
18 Defendants to comply with the Arizona Constitution and statutes.

19
20 **SEVENTH CLAIM FOR RELIEF**

21 **Injunction**

22 **(Violation of Ariz. Const. art. 4, pt. 2, §§ 1(12), (14), & (16)-(17))**

23 179. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs of
24 this Complaint as if fully set forth herein.

25 180. The impact of the AIRC Defendants' unconstitutional conduct is
26 widespread and long lasting. Arizona voters have been placed into congressional districts

1 that are illegally drawn. Prospective candidates must make decisions about running for
2 office based on the configuration of districts that are illegally drawn. Candidates for
3 office must run in districts that have been illegally drawn. The illegal configuration of
4 congressional districts affects the choices that voters of all political persuasions will have
5 when choosing their United States Representative in Congress. But perhaps no impact is
6 more damaging than the loss of public confidence in the redistricting process that results
7 from the AIRC Defendants' flagrant constitutional violations.

8 181. The impact of the AIRC Defendants' illegal actions and unconstitutional
9 maps will be felt for the next 10 years, until the next census and AIRC is empanelled to
10 begin the redistricting process anew.

11 182. Unless enjoined, Defendants will continue to treat the Final Congressional
12 Map as valid and will use it to conduct Arizona's congressional elections through 2020.

13 183. No adequate remedy exists at law for the violations alleged herein.

14
15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs pray for:

17 A. Pursuant to the Uniform Declaratory Judgment Act, A.R.S. § 12-1831, *et*
18 *seq.*, Plaintiffs are entitled to and request a judicial determination and declaratory
19 judgment that the Final Congressional Map violates Article 4, Part 2, § 1 of the Arizona
20 Constitution and is therefore unconstitutional, illegal, and unenforceable because the
21 AIRC:

- 22 i. Failed to comply with the process for creating the Congressional Grid Map
23 in violation of Ariz. Const. art. 4, pt. 2, § 1(14);
24 ii. Failed to make adjustments to the Congressional Grid Map as the basis for
25 its Congressional Draft Map in violation of Ariz. Const. art. 4, pt. 2,
26 § 1(14);

- 1 iii. Failed to provide a meaningful public comment period when it advertised a
2 Congressional Draft Map that did not accommodate all constitutional
3 criteria in violation of Ariz. Const. art. 4, pt. 2, § 1(16);
4 iv. Failed to consider the recommendations of the Legislature before adopting
5 the Final Congressional Map in violation of Ariz. Const. art. 4, pt. 2,
6 § 1(16); and
7 v. Failed to comply with the open meeting provision of in violation of Ariz.
8 Const. art. 4, pt. 2, § 1(12).
- 9 B. An order mandating that the AIRC perform its mandatory duties and create
10 a new Congressional Map that is the product of all of the procedures set forth in Ariz.
11 Const. art. 4, pt. 2, § 1, including:
- 12 i. Compliance with the Ariz. Const. art. 4, pt. 2, § 1(14) process for creating
13 the Congressional Grid Map;
14 ii. Compliance with the Ariz. Const. art. 4, pt. 2, § 1(14) requirement to create
15 the Congressional Draft Map by making adjustments to the Congressional
16 Grid Map;
17 iii. Compliance with the Ariz. Const. art. 4, pt. 2, § 1(16) requirement that the
18 Commission provide a meaningful public comment period by advertising a
19 Congressional Draft Map that accommodates all constitutional criteria;
20 iv. Compliance with the requirement of Ariz. Const. art. 4, pt. 2, § 1(16) that
21 the Commission shall consider the recommendations of the Legislature
22 before adopting the Final Congressional Map; and
23 v. Compliance with the open meeting provision of Ariz. Const. art. 4, pt. 2,
24 § 1(12).
- 25 C. Because it was created in violation of the procedures mandated by the
26 Arizona Constitution, an order permanently enjoining all Defendants from enforcing or

1 otherwise using the AIRC's Final Congressional Map as the congressional district
2 boundaries in any election for United States Representative in Congress;

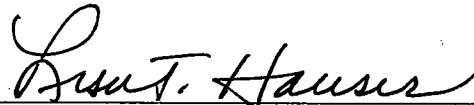
3 D. An order against the AIRC Defendants awarding to Plaintiffs their
4 attorneys' fees and expenses as required by A.R.S. § 12-2030;

5 E. An order against the AIRC Defendants awarding Plaintiffs their attorneys'
6 fees and costs incurred in this action pursuant to A.R.S. §§ 12-341 and 12-1840 under the
7 private attorney general doctrine as established in *Arnold v. Ariz. Dep't of Health Serv's.*,
8 160 Ariz. 593, 775 P.2d 521 (1989) because the rights sought to be vindicated here (i)
9 benefit a large number of people, (ii) require private enforcement, and (iii) are of societal
10 importance; and awarding Plaintiffs their attorneys fees and costs under any other
11 applicable law; and

12 F. An award of other and further relief for Plaintiffs as may be appropriate.


13 DATED this 27th day of April, 2012.

14 GAMAGE & BURNHAM, P.L.L.C.

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