

Legal Alert

April 27, 2012

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Constitutionality of Legislative and Congressional Boundaries Challenged; Court filings show Districts Reflect Partisan Bias

Two groups of concerned Arizona voters filed suit today seeking a court order to invalidate the unconstitutional and partisan legislative and congressional district boundaries approved by the Arizona Independent Redistricting Commission.

Legislative Map

Both the U.S. and Arizona Constitution require that legislative districts be equal in population -- or as nearly equal as practicable. Yet, the legislative districts created by the IRC are unjustifiably unequal.

In fact, more than half the districts are “over-populated” and virtually all of the rest are “under-populated.” Although limited deviations can be tolerated if based on legitimate reasons, the extent of these deviations alone should render the district boundaries illegal. But it is the IRC’s pattern of overpopulating some districts and under-populating others that proves the IRC (i) operated with an improper partisan bias, (ii) flagrantly violated its legal obligation to be “independent,” (iii) and intentionally violated the U.S. and Arizona Constitutions.

As created by the Commission’s Democrat majority, almost every district that leans Republican is over-populated – or “packed” – with Republican voters and, in some cases, significantly so. And, almost every single district that leans Democratic is underpopulated.

A chart showing this pattern of over-populating Republican-leaning districts and underpopulating Democrat-leaning districts is attached.

Manipulating districts in this manner gives Democrats an unfair advantage, despite them being far outnumbered in registration numbers across the State by Republicans and Independents. It dilutes the voting rights of everyone in the overpopulated districts and unfairly gives the voters in the under-populated districts more voting strength than the rest of the people in the state.

This kind of partisan manipulation is exactly what the Commission was not supposed to do and exactly what the voters of Arizona were told wouldn’t happen when the Commission was created in November 2000, when Arizona voters passed Proposition 106.

The suit alleges that this pattern violates the equal protection clause of the U.S Constitution, the “one man one vote” rulings of the United States Supreme Court, and the requirements of the Arizona Constitution. And, the U.S. Supreme Court has already found this type of partisan overpopulating and under-populating of districts unconstitutional in *Larios v. Cox*.

“It can’t be an accident,” said Wesley W. Harris, one of the plaintiffs in the lawsuits.*

“How does this happy coincidence for Democrats just happen that almost every one of the Republican districts has been hyper-packed and every one of their districts has too few people in it? If this isn’t proof that the Commission worked to help the Democrats and hurt Republicans, I don’t know what is,” he continued.

“This Commission owed it to the people of Arizona to be fair and independent. It clearly wasn’t either fair or independent and flagrantly violated its public trust. These districts should be thrown out, the Commission Members who violated their duty should be ashamed of themselves and they should resign in disgrace.”

Congressional Map

The case against the congressional districts also accuses the Commission of acting in a partisan, result-oriented manner. The plaintiffs allege that the Commission ignored the constitution’s mandatory procedures for developing the congressional map.

The Arizona Supreme Court has already ruled that courts may examine whether the Commission followed the mandated procedure. “If it did not, the Commission violated the constitution as clearly as if it had violated the Equal Protection Clause by adopting legislation that lacks a reasonable basis,” wrote then-Chief Justice Ruth McGregor in 2009 in *Arizona Minority Coalition for Fair Redistricting v. Arizona Independent Redistricting Commission*.

But this congressional redistricting process was influenced by partisan motives leading to violations of the constitutional procedures for developing and adjusting the Grid Map, developing the Draft Map, holding the public comment period, considering the legislative comments, and developing and adopting the Final Map.

Just last week the Arizona Supreme Court concluded that the November 2011 removal of Commission Chair Colleen Mathis by Governor Brewer, with the concurrence of 2/3 of the Arizona State Senate, was not based on an allegation that any non-public meeting of a quorum of the Commission occurred. Today, the plaintiffs make such allegations.

In considering Mathis’s removal, the Supreme Court also found that the issue of whether the Commission properly adjusted the Grid could not be judged until the Commission completed its work. That time is now.

“For many months the IRC has dodged accountability by claiming that its critics were trying to interfere with its independence. Well, they had their independence and now it is time for the courts to make sure the constitution is followed,” said Plaintiff Vince Leach.**

Named as defendants in both suits are Arizona Independent Redistricting Commission, and Commissioners Colleen Mathis, Linda C. McNulty, José M. Herrera, Scott D. Freeman, and Richard Stertz and Arizona Secretary of State Ken Bennett. All of these individuals are sued only in their official capacities.

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REPUBLICAN-LEANING DISTRICTS

As shown below, all Republican-leaning Districts, except one, are over-populated. The ideal population per legislative district is 213,067.

Legislative District	Population	Over the Ideal	Republican Registration Percentage	Democrat Registration Percentage
12	221,735 8	668 (+4.1%)	47.0%	20.6%
17	221,174 8	107 (+3.8%)	39.3	25.4
25	220,795	7728 (+3.6%)	45.9	22.7
16	220,157	7090 (+3.3%)	38.7	23.6
5	219,040	5973 (+2.8%)	39.7	23.7
28	218,713	5646 (+2.6%)	40.2	29.2
18	218,677	5610 (+2.6%)	36.9	29.3
20	218,167	5100 (+2.4%)	36.8 2	8.8
14	217,693	4626 (+2.2%)	39.0	29.7
1	216,451	3384 (+1.6%)	47.1	20.2
21	216,242	3175 (+1.5%)	37.7	28.9
22	215,912 2	845 (+1.3%)	44.9	23.0
15	214,941 1	874 (+0.9%)	42.8	23.5
6	214,244	1177 (+0.6%)	37.8	29.0
23	213,451	384 (+0.2%)	45.2	21.7
11	213,377	310 (+0.1%)	38.9	27.9
13	211,701 (1,366) (-0.6%)	41.2	25.3

DEMOCRAT-LEANING DISTRICTS

As shown below, all Democrat-leaning Districts, except two, are under-populated. The ideal population per legislative district is 213,067.

Legislative District	Population	Under the Ideal	Democrat Registration Percentage	Republican Registration Percentage
7	203,026 1	0,041 (-4.7%)	53.8% 1	9.3%
4	204,143	8924 (-4.2%)	40.4	24.5
27	204,195	8872 (-4.2%)	47.8	14.6
3	204,613	8454 (-4.0%)	50.1 1	7.7
2	204,615	8452 (-4.0%)	42.3	24.5
24	206,659	6408 (-3.0%)	39.1	24.8
19	207,088	5979 (-2.8%)	39.9	19.8
30	207,763	5304 (-2.5%)	38.6	24.0
8	208,422	4695 (-2.2%)	38.1	28.5
29 2	11,067	2000 (-0.9%)	39.5	21.5
10	211,073 1	994 (-0.9%)	37.0	33.5
9	213,224 +	156 (+0.1%)	37.0	33.2
26 2	13,659	+591 (+0.3%)	33.0	25.8