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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

10 ARIZONA INDEPENDENT )  
11 REDISTRICTING COMMISSION, an )  
12 Independent Constitutional Body, )

13 Plaintiff, )

14 vs. )

15 JANICE K. BREWER, in her official )  
16 capacity as the Governor of the State of )  
17 Arizona; ARIZONA STATE SENATE; )  
18 RUSSELL PEARCE, Senate President, )

19 Defendants. )

No. CV 2011-019475

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

20 In November 2000, voters removed the Legislature and Governor from Arizona's  
21 legislative and congressional redistricting process and created the Arizona Independent  
22 Redistricting Commission ("IRC" or the "Commission") to draw Arizona's  
23 congressional and legislative districts in a fair, open, and transparent manner. After each  
24 decennial census, five citizen-volunteers are appointed as Commissioners and they  
25 donate hundreds of hours of time in undertaking the redistricting task.

26 Governor Brewer has unlawfully, and in excess of her constitutional authority,  
27 asked the Senate to concur in her decision to remove Commissioners from office  
28 pursuant to Article IV, Part 2, §1(10) of the Arizona Constitution. Her conduct threatens

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1 the Commission's ability to perform its constitutional responsibilities and violates  
2 separation of powers principles and requirements of Proposition 106. The IRC seeks a  
3 declaration that the Governor's action against the Commission is void and invalid and an  
4 injunction prohibiting the Senate from taking any action based on the Governor's  
5 unlawful order.

6 For its Verified Complaint for Special Action and Preliminary and Permanent  
7 Injunctive Relief, Plaintiff Arizona Independent Redistricting Commission states as  
8 follows:

### 9 **PARTIES, JURISDICTION, AND VENUE**

10 1. Plaintiff IRC is the constitutionally authorized body empowered to draw  
11 Arizona's legislative and congressional district maps pursuant to Arizona Constitution  
12 Article IV, Part 2, § 1.

13 2. Defendant Janice K. Brewer is the Governor of the State of Arizona and is  
14 sued in her official capacity only.

15 3. The Arizona State Senate is a legislative body created by Article IV of the  
16 Arizona Constitution.

17 4. Russell Pearce is the President of the Arizona State Senate and is sued in  
18 his official capacity only.

19 5. This Court has jurisdiction over special actions against bodies, officers,  
20 and persons pursuant to the Arizona Constitution Article VI §18 and Rules 1 through 4  
21 of the Arizona Rules of Procedure for Special Actions.

22 6. This Court has jurisdiction over actions seeking injunctive relief pursuant  
23 to Article VI §14 of the Arizona Constitution, A.R.S. §§ 12-123 and 12-1801, and  
24 Arizona Rule of Civil Procedure 65.

25 7. This Court has jurisdiction over actions seeking declaratory relief pursuant  
26 to A.R.S. §§ 12-1831, -1832.

27 8. Special action relief is appropriate in this case because the Governor's  
28 order to remove any Commissioner from office exceeds her constitutional authority.

1 9. The IRC, and the voters it is constituted to serve, will suffer irreparable  
2 injury unless the requested relief is granted in this action.

3 10. Venue is proper in Maricopa County under A.R.S. § 12-401 and Arizona  
4 Rule of Procedure for Special Actions 4(b).

### 5 FACTUAL BACKGROUND

#### 6 A. Nature of the Action.

7 11. The IRC brings this action to seek judicial review of a constitutional  
8 question of first impression concerning the Governor's authority under Article IV, part  
9 2, § 1(10) of the Arizona Constitution to remove an IRC Commissioner from office.  
10 The IRC seeks declaratory and injunctive relief to invalidate the Governor's  
11 unprecedented and improper political interference in the conduct of the IRC, an  
12 independent constitutional body, and to prevent the illegal removal of an IRC  
13 Commissioner from office.

#### 14 B. The Independent Redistricting Commission.

15 12. In November 2000, Arizona voters approved Proposition 106, amending  
16 the state constitution to create the IRC. Proposition 106 removed the task of  
17 redistricting from the Legislature and Governor and placed it into the hands of the IRC,  
18 an independent commission comprised of five citizen-volunteers.

19 13. Pursuant to the Arizona Constitution, the Commissioners are selected from  
20 a pool of twenty-five persons nominated by the Commission on Appellate Court  
21 Appointments. Ariz. Const. art. IV, pt. 2 §1 (4), (5).

22 14. To protect the Commission's independence, Commissioners are subject to  
23 strict limits on prior political involvement. No paid lobbyists, persons elected or  
24 appointed to public office, candidates for public office, officers in political parties, or  
25 officers on a candidate's campaign, or people who held such positions within the past  
26 three years, may serve on the Commission. *Id.* at (3). Commissioners are prohibited  
27 from holding public office or working as a paid lobbyist for three years after their term  
28 in office ends. *Id.* at (13).

1           15.    The Arizona Constitution requires that all applicants for appointment to  
2 the IRC demonstrate a commitment to performing the Commission's charge in an  
3 honest, independent and impartial fashion and to upholding public confidence in the  
4 integrity of the redistricting process. Ariz. Const. art. IV, pt. 2, § 1(3).

5           16.    From the Commission on Appellate Court Appointments' list of nominees,  
6 the highest ranking officer of the Arizona House of Representatives, the House minority  
7 leader, the highest ranking officer of the Arizona Senate, and the Senate minority leader  
8 each appoints one person to serve on the IRC. *Id.* § 1 (6). The four Commissioners  
9 appoint the fifth and final Commissioner, who cannot be a member of any party already  
10 represented on the IRC. *Id.* § 1 (8). The Commission can have no more than two  
11 members of the same political party. *Id.* § 1(6).

12           17.    The IRC is currently composed of Commissioners Richard Stertz and Scott  
13 Freeman (Republicans), Jose Herrera and Linda McNulty (Democrats), and Chairperson  
14 Colleen Coyle Mathis, who was unanimously selected by the other Commissioners. All  
15 five Commissioners are citizen volunteers.

16           18.    Redistricting is a time-sensitive process. County officials must adopt new  
17 precinct lines by December and would like to know the congressional and legislative  
18 district boundaries before completing this work. Candidates must know where the new  
19 districts are so they can determine whether to seek office and do what is necessary to  
20 qualify for the ballot. Because Arizona is covered by Section 5 of the Voting Rights  
21 Act, the new boundaries cannot be used until they are precleared by the Department of  
22 Justice.

23           19.    The IRC has been working diligently to adopt congressional and  
24 legislative maps that comply with state and federal legal requirements and that will be  
25 precleared by the United States Department of Justice in time for the 2012 election  
26 cycle.

27           20.    The business of the IRC is constitutionally required to be conducted in  
28 public; the IRC has always done that:

1           a.     Before a single line was drawn, the IRC held 23 public hearings  
2 throughout the state and developed a comprehensive public input program.

3           b.     Its meetings are transcribed by a certified court reporter and  
4 available on the Commission's website.

5           c.     Its meetings are, whenever possible, streamed live via the internet  
6 on the Commission's website.

7           d.     Meeting transcripts, proposed maps, and recordings are archived  
8 and available to the public continually on the Commission's website.

9     After the Commission is appointed, it must immediately begin hiring the staff and  
10 consultants necessary to complete their constitutional responsibilities. The Arizona  
11 Attorney General's Office served as the Commission's counsel until it selected other  
12 counsel in May, following a procurement process. One of the critical decisions was  
13 retaining a mapping consultant to assist with the production of the maps.

14         21.     The Commission met June 15, 2011 to conduct its initial review of the  
15 responses to the mapping consultant procurement with representatives from the  
16 Department of Administration procurement office. At that time, the responses were  
17 confidential and, therefore, the Commission had a lengthy executive session to review  
18 and discuss the confidential documents.

19         22.     In addition, although the responses to the mapping consultant procurement  
20 were confidential, the names of the businesses that responded were public, and the  
21 Commission began receiving public comments supporting or opposing certain  
22 businesses based on whom they had worked for in the past and suspected partisan bias.

23         23.     The Commission interviewed four businesses that submitted proposals in a  
24 day-long public meeting on June 24, 2011. That meeting was live-streamed and a video  
25 of the meeting was available on the Commission's website. During the interviews, the  
26 Commissioners questioned applications on a number of issues including political bias  
27 and what protections were in place to ensure a transparent mapping process.  
28

1           24.    At a public meeting on June 29, 2011, the Commission voted 3-2 to select  
2 Strategic Telemetry as its mapping consultant in accordance with the constitutional  
3 authority vested in the IRC. The Republican Commissioners opposed this selection.

4           25.    The very next day, the organized campaign of attacks on Strategic  
5 Telemetry, the IRC, and Chairperson Mathis escalated. The attacks came exclusively  
6 from one side of the political spectrum—those, for example, who opposed the mapping  
7 consultant because it previously worked for Barack Obama and other “progressive”  
8 candidates and feared that the company would inject a political bias into the mapping  
9 process. Strategic Telemetry had addressed these concerns in its public interview and  
10 made it clear that it would work exclusively at the direction of the Commission. To  
11 address the concerns of the Republican Commissioners, the Commission and Strategic  
12 Telemetry subsequently agreed to additional contract amendments limiting its political  
13 work in Arizona and logging all contacts it has about the draft maps.

14           26.    From the hiring of Strategic Telemetry, strident criticism of the  
15 Commission’s decision to hire the mapping consultant continued from the right, while  
16 others supported the decision and the Commission’s action. Amid this debate about the  
17 Commission’s decisions in July, it began the substantive work necessary to complete its  
18 constitutional responsibilities by planning its first round of statewide public hearings to  
19 get input regarding the issues relevant to drawing new legislative and congressional  
20 districts.

21           27.    Over the past several months, the Commissioners have worked  
22 purposefully to fulfill their constitutional responsibilities and to develop legislative and  
23 congressional districts for the next election cycle. The Commissioners have held public  
24 hearings throughout the state and solicited public input to help inform the Commission’s  
25 decisions.

26           28.    On the morning of July 21, 2011, the first day of the first public hearing,  
27 the Attorney General issued a press release announcing an investigation of the IRC for  
28 alleged violations of Arizona’s procurement rules and open meeting law, A.R.S. § 38-

1 431 *et seq.* As part of his investigation, the Attorney General issued Civil Investigative  
2 Demands (“CIDs”) to all five Commissioners.

3 29. On September 7, 2011, the Attorney General filed a Petition for  
4 Enforcement of Written Investigative Demand and Application to Show Cause in  
5 Maricopa County Superior Court, case number CV2011-016442.

6 30. On September 27, 2011, the IRC filed a Verified Complaint for  
7 Declaratory, Injunctive, and Special Action Relief asking the Court to determine  
8 whether the IRC is subject to the statutory provisions of Arizona’s Open Meeting Law in  
9 light of the constitutional requirements of openness found in Article 4, Part 2, § 1(12).

10 31. The cases contain common questions of law and fact and have been  
11 consolidated, case number CV2011-016442.

12 32. On October 27, 2011, the Court ordered the Disqualification of the  
13 Attorney General granting a Commissioner’s Motion for Disqualification. The Court  
14 found that the Attorney General’s Office advised the Commissioners on their legal  
15 obligations under the Open Meeting Law and that for the Attorney General to then  
16 conduct “an official investigation of how well they complied with that advice, can be  
17 justly regarded as a changing of sides.” The Court’s order of disqualification is attached  
18 as Exhibit 1.

19 **C. The Governor’s Letter and Commission’s Response.**

20 1. After months of public hearings and deliberations, on October 3 and 10,  
21 2011, respectively, the Commission adopted draft congressional and legislative maps.  
22 The maps are currently in a 30-day public comment period. When statewide hearings  
23 are completed, the Commission will begin its deliberations to develop and approve final  
24 maps.

25 2. On October 26, 2011, in the midst of the current 30-day public comment  
26 period on the draft maps and summary judgment briefing on the open meeting law  
27 dispute pending before Judge Fink, Governor Brewer sent a letter to the IRC and to all  
28 five Commissioners to provide “notice” pursuant to Article IV, Part 2, § 1(10) of

1 allegations that the Commissioners committed substantial neglect of duty and gross  
2 misconduct in office. The letter sent on Wednesday, October 26, 2011, is attached as  
3 Exhibit 2.

4 3. Without providing individualized notice of substantial neglect or gross  
5 misconduct, the Governor's letter blankly alleges that the IRC violated constitutional  
6 requirements during the initial process of drawing the *draft* congressional districts.

7 4. The letter further alleges misconduct insofar as the "IRC has refused to  
8 cooperate with the Arizona Attorney General's investigation" of the Open Meeting Law  
9 and "even refus[ed] to answer questions when someone innocent of wrongdoing should  
10 be willing to respond."

11 5. The Governor demanded the five Commissioners respond individually to  
12 the blanket allegations by Monday, October 31, 2011 at 8:00 a.m., less than three  
13 business days after they received the letter.

14 6. Despite the short time for responses, the Commission, and all five  
15 Commissioners, responded to the Governor's letter by 8:00 a.m. on October 31, 2011.  
16 The IRC explained why nothing in her letter justified removing any Commissioner and  
17 urged the Governor not to participate in "further efforts to prevent the Commission from  
18 completing its work and to end any consideration of removing any Commissioners from  
19 office." The Commission's response is attached as Exhibit 3.

20 7. The Commissioners all individually denied knowingly deliberating or  
21 acting on a Commission matter with a quorum of Commissioners outside of a meeting  
22 open to the public. The individual Commissioner's letters are attached as Exhibit 4.

23 8. On Tuesday, November 1, 2011, there were frequent reports that the  
24 Governor would call a special session and removal of one or more Commissioners was  
25 imminent. Any removal risks serious harm, and so any delay in filing this action risks  
26 irreparable harm to the Commission.



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Count I

**Separation of Powers Violation – Declaratory Relief**

9. The IRC incorporates all of the foregoing allegations.

10. The Arizona Constitution provides a uniquely tailored constitutional body that is both open to the public and independent of partisanship.

11. Pursuant to Arizona Constitution art. IV, pt. 2 §1(10), the Governor may, with two-thirds concurrence of the Senate, remove members of the Commission only if specific constitutional requirements are satisfied. The Commissioners may be removed by the Governor only for “substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office.” Ariz. Const. art. IV, pt. 2, §1(10). With exception to an inability to discharge the duties of the office, the grounds for removal imply some wrongdoing or act of omission that the Commissioners are constitutionally bound to perform.

12. The Governor may take the extraordinary step to remove a Commissioner only after a Commissioner has “been served written notice and provided with an opportunity for a response.” *Id.*

13. The Governor’s letter sent on October 26, 2011, to all five Commissioners, does not allege any conduct that supports removal under Article IV, pt. 2, §1(10). Instead, the Governor attempts to use her removal authority to usurp the role of the judiciary.

14. The Governor does not have the legal authority to declare what the open meeting requirements are that apply to members of the IRC and, therefore, the Governor cannot remove a Commissioner for “substantial neglect” or “gross misconduct” based on open meeting law violations until a court resolves that issue. That issue is pending in superior court before Judge Fink.

15. The Governor does not have the authority to determine whether the maps and the mapping process satisfy constitutional requirements. That too is the judiciary’s responsibility. Therefore, a Governor cannot remove a Commissioner for “substantial

1 neglect” or “gross misconduct” because she believes the maps or the mapping process is  
2 unconstitutional.

3 16. The Governor’s effort to remove Commissioners by making decisions  
4 reserved for the courts violates the separation of powers requirements of the Arizona  
5 Constitution and is invalid.

6 17. The IRC is entitled to special action relief to restrain the Governor’s  
7 threatened unlawful exercise of power and prevent the Governor from removing the  
8 Commissioners from office.

9 **Count II**

10 **Violation of Proposition 106, Ariz. Const. Art IV, pt. 2,1(10)**

11 **Declaratory Relief**

12 18. The IRC incorporates all the foregoing allegations.

13 19. The Constitution establishes significant substantive and procedural  
14 requirements before a Commissioner can be removed from office. A Commissioner is  
15 entitled to notice and a reasonable opportunity to respond, and may only be removed for  
16 “substantial neglect,” “gross misconduct” of failure to perform the duties of office.

17 20. The notice to all five Commissioners without identifying who allegedly  
18 committed what misconduct and providing less than three business days to respond does  
19 not satisfy the purposes of the notice requirement in the Constitution.

20 21. The notice requirement does not satisfy constitutional requirements  
21 because it fails to include any allegations that support the removal of any Commissioner  
22 under Proposition 106. The issues raised in the Governor’s letter either usurp judicial  
23 review or are simply wrong.

24 22. The inadequate timing and substance of the Governor’s effort to remove  
25 the Commission reveals that this rush to remove the Commissioners is a transparent  
26 effort to prevent the Commission from adopting final maps. The open meeting  
27 allegations in the Governor’s letter are presently in court and have been the source of a  
28 highly publicized Attorney General’s investigation since July 21, 2011. The

1 Commissioner's actions regarding the mapping consultant contract have been public  
2 record since late June. The only new development is that the Commission is progressing  
3 with its work and may adopt draft maps soon.

4 23. The IRC was formed by citizen-initiative and designed to be independent  
5 from political pressure and partisan influence. The Governor's threat to remove  
6 Commissioners without adequate notice violates Proposition 106 and eviscerates the  
7 Commission's independence and ability to fulfill its constitutional duties—to carry out  
8 the redrawing of congressional and legislative districts in an honest, independent and  
9 impartial fashion and to uphold public confidence in the redistricting process.

10 24. The Governor's actions to remove Commissioners from office violate the  
11 requirements of Proposition 106.

### 12 Count III

#### 13 **Injunctive Relief**

14 25. The IRC incorporates all the foregoing allegations.

15 26. The principles of equity entitle the IRC to an injunctive relief to prevent  
16 the unlawful removal of any Commissioners from office.

17 27. The Governor's authority with respect to the Independent Redistricting  
18 Commission extends only as far as the Arizona Constitution specifies. Nothing in the  
19 Constitution authorizes the Governor to remove a Commissioner without cause and  
20 without adequate notice and opportunity to respond.

21 28. The IRC and the Arizona electorate would suffer irreparable harm if the  
22 Commission's work came to a halt. Removing Commissioners now threatens the risks  
23 preventing the Commission from fulfilling its constitutional responsibilities to adopt  
24 legislative and congressional districts.

25 WHEREFORE, the IRC prays for the following relief:

26 A. A temporary restraining order prohibiting the Senate in concurring with  
27 Governor's decision to remove the Commissioners from office;

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B. A preliminary and permanent injunction prohibiting the Senate from removing the Commissioners from office based on the October 26, 2011 notice.

C. A declaration that the Governor's order removing the Commissioners from office is void and ineffective

D. Other relief as the Court may deem just and appropriate

RESPECTFULLY SUBMITTED this 1st day of November, 2011.

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