

SUPREME COURT OF ARIZONA

ARIZONA INDEPENDENT) Supreme Court No. CV-11-0313
REDISTRICTING COMMISSION, an)
Independent Constitutional Body,)
)
Petitioner,)
) (Oral Argument Requested)
vs.)
)
JANICE K. BREWER, in her official)
capacity as the Governor of the State of)
Arizona; ARIZONA STATE SENATE;)
RUSSELL PEARCE, in his official)
capacity as Senate President,)
)
Respondents.)
_____)

AMENDED PETITION FOR SPECIAL ACTION

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INTRODUCTION

After tiring of decades of incumbent-insulating political horse-trading as the defining characteristic of the redistricting process, the citizens of Arizona amended the Constitution with the goal of “ending the process of gerrymandering and improving voter and candidate participation in elections by creating an independent commission of balanced appointments,” the Independent Redistricting Commission (the “IRC” or “Commission”). Official Title of Proposition 106 (2000) Publicity Pamphlet.¹

The remaining role of the political branches in the redistricting process is slim: the legislature’s leadership appoints four of the five commissioners from a pool established by the Commission on Appellate Court Appointments, and the legislature may provide official comment on the draft redistricting plan. Ariz. Const. art. IV, pt. 2, §§ 1(6)-(8), (16). The Governor, with the consent of the Senate, may remove a commissioner for specific, limited reasons: “substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office.” *Id.* § 1(10). That is it. The legislature cannot amend the redistricting maps and the Governor no longer holds the power to veto them.

Understandably threatened that the voters have shifted an important part of the legislative power out of their hands, the politicians have done all they can to

¹ Petitioner’s Separate Appendix Tab 1 (“App. ___”) (Proposition 106 (2000) Publicity Pamphlet).

intrude on the work of the Commission and exert whatever influence they can on the mapping process. But the Commission has weathered the political storm and continued its work. On November 1, 2011, the Governor nevertheless took the extraordinary step of invoking her removal authority to remove the Chairperson of the Commission because, in her judgment, the Chairperson “failed to conduct . . . business in meetings open to the public, and failed to adjust” the draft redistricting maps as the Governor believes is required.² Without providing evidence, reasoning, or authority, the Governor then declared that, in her judgment, “the foregoing constitutes substantial neglect of duty or gross misconduct in office.”³ This strange logic is applicable only in the world through the looking glass⁴ and does not change that “our courts bear the ultimate responsibility for interpreting” the Constitution. *Forty-Seventh Legislature of the State of Ariz. v. Napolitano*, 213 Ariz. 482, 485 ¶ 8, 143 P.3d 1023, 1026 (2006).

By her own words, the Governor has removed a sitting commissioner and paralyzed the Commission’s ability to continue its work because she disapproves of the manner in which the Commission has deliberated about and decided on its single legislative responsibility, the drawing of congressional and legislative

² App. 21 (11/1/2011 Acting Governor Bennett removal letter).

³ *Id.*

⁴ “‘When *I* use a word,’ Humpty Dumpty said in rather a scornful tone, ‘it means just what I choose it to mean – neither more nor less.’” Lewis Carroll, *Through the Looking Glass and What Alice Found There, in The Annotated Alice: The Definitive Edition* 213 (Martin Gardner ed., Norton Publishers) (2000).

districts. The Commission does not bring this petition to have the Court pass judgment on what is merely shrewd political maneuvering. Rather, the Commission petitions this Court because the political branches' coordinated actions undermine the integrity of Arizona's Constitution; and only this Court is positioned to return the rule of law.

ISSUES PRESENTED

The Constitution affords the Governor, with “concurrence of two-thirds of the Senate,” a limited power to remove appointed commissioners only for three specific causes – “substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office” – and only after serving “written notice and provid[ing] an opportunity to respond.” Ariz. Const. art. IV, pt. 2, § 1 (10). On November 1, 2011, the Secretary of State, as acting Governor, called the legislature to a Special Session, asking the Senate to concur in the removal of a commissioner without specifying the constitutional basis for removal, but stating that one alleged basis for removal was the Governor's opinion that the Commission's draft, incomplete redistricting plan is unlawful. The issues presented are:

1. Is the Governor's decision, and the Senate's vote concurring in her decision, to remove the Commission Chairperson invalid and in excess of their legal authority because they violated the separation-of-powers requirements in Article III of the Arizona Constitution?

2. Is the Governor's decision, and the Senate's vote concurring in her decision, to remove the Commission Chairperson invalid and in excess of their legal authority because they violated the requirements in Article IV, Part 2, Section 1(10) for removing commissioners?

JURISDICTIONAL STATEMENT

A special action to this Court is the appropriate – and only – vehicle that will provide the necessary relief from the Governor's and Senate's unconstitutional actions. Their actions have undermined the independence of the Commission and jeopardized the Commission's ability to complete its work. The Commission attempted unsuccessfully to secure a temporary restraining order from the Superior Court to prevent the Chairperson's unlawful removal.⁵ Now that the Senate has acted, only this Court can provide the relief that is necessary to prevent permanent, irreparable damage to Arizona's independent redistricting process. This Court's intervention is needed because there is no "equally plain, speedy, and adequate remedy by appeal." Ariz. R.P.S.A. 1(a).

The relief the Commission requests is not unprecedented. This Court is the entity with the authority and position to resolve a dispute between branches "over their respective powers." *Brewer v. Burns*, 222 Ariz. 234, 237 ¶ 8, 213 P.3d 671,

⁵ See Maricopa County Superior Court Case No. CV2011-019475. On November 2, 2011, the Commission voluntarily dismissed the Superior Court action without prejudice. App. 24 (Notice of Voluntary Dismissal).

674 (2009); Ariz. Const. art. VI, § 5(1) (granting Supreme Court original jurisdiction over “mandamus, injunction and other extraordinary writs to State officers”). In addition, the scope of the Governor’s and Senate’s removal power under Subsection (10) is an “issue of first impression and statewide importance.” *Burns*, 222 Ariz. at 237 ¶ 8, 213 P.3d at 674. As all parties would readily concede, the importance of the redistricting process to the State of Arizona and the respective powers of the branches of government to influence redistricting cannot be understated. Nor can the need for a speedy resolution; the Commission is under concrete time pressures to complete a redistricting plan in time for the next election.⁶ Moreover, “the relevant facts are undisputed; the merits of this case turn on the meaning of” Article III and Article IV, Part 2, Section 1(10). *Id.* at 237 ¶ 9, 213 P.3d at 674. The Governor’s purported reasons for removal are published and the Senate’s vote is done; the Commission is now in limbo and in need of a Court to say what the law is.

Furthermore, this Court has long held that it has jurisdiction to review “[w]hether the Governor, exercising the power of removal, acquired jurisdiction to act and proceeded to a finality without excess of jurisdiction.” *Holmes v. Osborn*, 57 Ariz. 522, 541, 115 P.2d 775, 784 (1941) (quoting approvingly from *People v. Shawver*, 222 P. 11, 30 (Wyo. 1924)). When, as here, the Governor’s removal of a

⁶ See App. 26 (Declaration of R. Bladine ¶ 12).

commissioner “is authorized only for cause or for causes specified in the Constitution” then “the court may inquire into the existence of the jurisdictional facts.” *Id.* Those facts include “[w]hether the charges upon which the removing power acted were legal cause for removal, or whether the cause was sufficiently specified.” *Id.* (internal quotation marks and citation omitted). *See also Forty-Seventh Legislature of State*, 213 Ariz. at 485 ¶ 9, 143 P.3d at 1026 (noting that Supreme Court has, “on many occasions, considered whether particular gubernatorial actions exceeded a governor’s constitutional authority”).

The Commission seeks to have the Court exercise its “power to ensure that the legislature [and the Governor] follow[] the constitutional rules” on removal. *Mecham v. Gordon*, 156 Ariz. 297, 302, 751 P.2d 957, 962 (1988) (citing *Powell v. McCormack*, 395 U.S. 486, 506 (1969)); *see also Fairness & Accountability in Ins. Reform v. Greene*, 180 Ariz. 582, 587, 886 P.2d 1338, 1343 (1994) (noting that the Court has the “duty of insuring that the constitutional and statutory provisions protecting the electoral process . . . are not violated”) (internal quotation marks and citation omitted).

The Governor’s actions and statements, and the Senate’s concurring vote, reflect a belief that the express constitutional causes for removal mean whatever she says they mean, and that the Constitution’s “for-cause” removal provision imposes no limitation on her “oversight” of the Commission so long as she can

muster enough Senate votes.⁷ That cannot be. Consequently, the Commission respectfully asks this Court “to say what the law is.” *Marbury v. Madison*, 5 U.S. [1 Cranch] 137, 177 (1803).

FACTUAL AND PROCEDURAL BACKGROUND

A. The Independent Redistricting Commission Was Created By Voters to End Legislative Self-Interest in Redistricting and Bring Independence to the Redistricting Process.

In November 2000, Arizona voters approved Proposition 106, which amended the Arizona Constitution to create an Independent Redistricting Commission to draw boundaries for legislative and congressional districts. Ariz. Const. art. IV, pt. 2, § 1. Proposition 106 was aimed at “ending the practice of gerrymandering and improving voter and candidate participation in elections by creating an independent commission of balanced appointments.”⁸

Pursuant to the Arizona Constitution, the Commission’s five commissioners are citizen volunteers; they are not candidates or officeholders and are not paid for their service. Ariz. Const. art. IV, pt. 2, § 1 (3). The Commission is currently composed of Commissioners Richard Stertz and Scott Freeman (Republicans) and Jose Herrera and Linda McNulty (Democrats).⁹ These four commissioners

⁷ App. 22 (11/1/2011 Governor’s Press Release).

⁸ App. 1 (Proposition 106 Publicity Pamphlet).

⁹ App. 26 (R. Bladine Decl. ¶ 2).

unanimously selected Colleen Coyle Mathis, an Independent, to serve as the Commission's Chairperson.¹⁰

The Commission's constitutionally endowed independence is its reason for existence. The citizens' initiative that created the Commission tasked it with drawing boundaries for legislative and congressional districts with minimal interference from incumbent officeholders. The qualifications for applicants, the application screening process through the Commission on Appellate Court Appointments, the prohibitions on the commissioners' political involvement after they complete their terms, the limited role of other State officials in Commission operations, and the prohibition against considering incumbent candidate residences during the redistricting process all protect the Commission's independence from politicians. Ariz. Const. art. IV, pt. 2, §§ 1(3)-(5), (10), (13), (15), (16)-(20). The legislature's limited role in the mapping process is to "make recommendations to the independent redistricting commission by memorial or by minority report" during the 30-day public comment period on draft maps. *Id.* § 1(16). The Commission's only obligation is to "consider" those comments. *Id.* Prop. 106 left no role for the Governor in mapping. As a protection against a commissioner's serious misconduct, the Constitution includes a limited removal provision that permits the Governor the limited authority to remove a commissioner, with the

¹⁰ *Id.*

concurrence of two-thirds of the Senate, for “substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office.” *Id.* at § 1(10). The uniquely tailored provisions of Article IV of the Arizona Constitution largely insulate the Commission from interference from the other branches of government, while still ensuring honesty, integrity, and transparency in the redistricting process through a constitutional requirement that the Commission conduct all business “in meetings open to the public.” *Id.* at § 1(12).

B. The Commission’s Hiring of a Mapping Consultant Sets Off a Political Firestorm.

Upon appointment, the present Commission diligently undertook the task of redistricting. In order to perform the complicated work of drawing districts in conformity with constitutional requirements, the Commission immediately hired staff and consultants—including a mapping consultant to assist in the production of the draft maps.¹¹

Before selecting a mapping consultant, the Commission solicited proposals, conducted interviews, and held numerous public meetings.¹² While the initial review of responses to the mapping consultant procurement occurred in executive sessions because the documents were confidential, the names and interviews of the mapping consultants were public and the Commission received extensive public

¹¹ *Id.* ¶ 3.

¹² *Id.*

feedback.¹³ During the public interviews, the Commissioners questioned applicants on a number of issues including political bias and on the protections they would employ, if retained, to ensure a transparent mapping process.¹⁴

On June 29, 2011, the Commission voted 3-2 to hire Strategic Telemetry as the mapping consultant.¹⁵ The very next day, organized opposition began a campaign of attacks on Strategic Telemetry, the Commission, and Chairperson Mathis.¹⁶ The transcript of the Commission’s public meeting on June 30, 2011 reflects roughly 90 pages of public comments criticizing the selection of Strategic Telemetry and the conduct of Chairperson Mathis.¹⁷ The attacks came exclusively from one side of the political spectrum—those, for example, who opposed the mapping consultant because it previously worked for Barack Obama and other “progressive” candidates and feared that the company would inject a political bias into the mapping process.¹⁸ Strategic Telemetry had addressed these concerns in its public interview and made it clear that it would work exclusively at the direction of the Commission.¹⁹ To address concerns, the Commission and

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* ¶ 4.

¹⁶ *Id.* ¶ 5.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* ¶ 3.

Strategic Telemetry subsequently agreed to additional contract amendments to limit its political work in Arizona and require the company to log all contacts to or from third parties regarding the redistricting work.²⁰

On the morning of July 21, 2011, Attorney General Tom Horne issued a press release announcing an investigation of the Commission for alleged violations of Arizona's procurement rules and Open Meeting Law ("OML").²¹ As part of his investigation, the Attorney General issued Civil Investigative Demands ("CIDs") to all five Commissioners.²² The investigation raised questions concerning the applicability of the OML to the Commission, which has a specific constitutional mandate of openness different from the OML, is an issue of first impression in Arizona. Despite efforts to avoid litigation, the Attorney General sued three of the commissioners in Superior Court to enforce the CIDs.²³ To seek clarity on the legal question and to protect the independence of the body, the Commission brought a declaratory judgment and special action seeking to resolve the constitutional questions presented by the Attorney General's actions.²⁴ The Commission's action

²⁰ *Id.* ¶ 6.

²¹ App. 2. (07/21/11 Attorney General press release); App. 26 (R. Bladine Decl. ¶ 7).

²² App. 26 (R. Bladine Decl. ¶ 8).

²³ *See* Maricopa County Superior Court Case No. CV2011-016442.

²⁴ App. 26 (R. Bladine Decl. ¶ 8); App. 4 (10/19/11 Plaintiff Arizona Independent Redistricting Commission's Consolidated Response to Motion to

was consolidated with Attorney General Horne's action and is presently pending in the Superior Court.²⁵

Notwithstanding the political firestorm over the hiring of Strategic Telemetry that threatened to engulf the Commission, its five commissioners continued working diligently, in dozens of public meetings, to adopt congressional and legislative maps that comply with state and federal legal requirements.²⁶ The Commission held public hearings across the state, developed a comprehensive program for public input, and, based on constitutional requirements, data, and public input, has drawn draft legislative and congressional districts.²⁷ On October 3 and 10, 2011, respectively, the Commission adopted the draft congressional and legislative maps, which are currently in a 30-day public-comment period.²⁸ When statewide hearings are completed, the Commission will begin its deliberations to develop and approve final maps.

Dismiss and Motion for Summary Judgment); App. 5 (10/18/11 Plaintiff Arizona Independent Redistricting Commission's Separate Statement of Facts).

²⁵ Attorney General Horne was disqualified from the action because of his conflict of interest and Maricopa County Attorney Bill Montgomery is now representing the State. App. 9 (10/27/2011 Minute Entry in CV2011-016442).

²⁶ App. 26 (R. Bladine Decl. ¶ 9-10).

²⁷ *Id.* ¶ 9.

²⁸ *Id.* ¶ 10.

C. The Governor, Dissatisfied With the Commission’s Draft Maps, Takes the Extraordinary and Unprecedented Step of Removing the Chairperson in a Manner Evading Judicial Review.

On October 26, 2011, in the midst of the current 30-day public comment period on the draft maps and with summary judgment briefing on the OML dispute pending on an accelerated schedule in Superior Court, Governor Brewer sent a letter (the “October 26 Letter”) to the Commission and to all five commissioners purporting to provide “notice” pursuant to Article IV, Part 2, § 1(10) of allegations that **all five** commissioners had committed substantial neglect of duty and gross misconduct in office.²⁹ The commissioners were asked to individually respond to the allegations by Monday, October 31, 2011 at 8:00 a.m., less than three business days after they received the letter.³⁰ The Governor simultaneously sent a separate letter to the Chairperson providing her comments on the draft congressional map.³¹

The October 26 Letter vaguely alleges that the commissioners wrongfully conducted non-public deliberations and that the *draft* congressional district maps did not, in the Governor’s view, meet constitutional requirements. The Governor wrote that she is “duty bound to ensure that Arizona’s redistricting process is constitutionally sound and worthy of the full faith and confidence of Arizona

²⁹ App. 6 (10/26/2011 Letter).

³⁰ *Id.*

³¹ App. 7 (10/26/2011 Letter to Mathis).

voters.”³² The letter alleges that the Commission abandoned the required grid-like pattern during the initial process of drawing the congressional districts and that competitiveness was the Commission’s “first or primary factor” in drafting Congressional District 9 in Maricopa County.³³ The letter also touches on allegations of non-public meetings and claims that the expenditure of Commission monies to hire attorneys for its unpaid, volunteer commissioners was also improper.³⁴ The letter was not directed towards any single commissioner and provided no *individualized* notice to the commissioners of substantial neglect or gross misconduct. But even before responses were due, President Pearce and Speaker Tobin wrote to Commissioners Stertz and Freeman, telling them that the President and Speaker “stand with them” and “are confident that both [commissioners] are faithfully following the law.”³⁵

Despite the short time for responses, the Commission, and all five commissioners, responded to the Governor’s letter by her established deadline of 8:00 a.m. on October 31, 2011.³⁶ The Commission denied the allegation that state

³² App. 6 (10/26/2011 Letter).

³³ *Id.*

³⁴ *Id.*

³⁵ App. 8 (10/27/2011 Pearce-Tobin letter).

³⁶ App. 11 (10/31/2011 Commission response); App. 12 (10/31/2011 Chair Mathis’s Response); App. 13 (10/31/2011 Commissioner McNulty’s Response); App. 14 (10/31/2011 Commissioner Herrera’s Response); App. 15 (10/31/2011

and federal constitutional requirements had been abandoned in the creation of the draft maps and conveyed its belief that the Governor was exceeding her authority in suggesting that the Commission's mapping work could justify removal.³⁷ The Commission urged the Governor not to participate in "further efforts to prevent the Commission from completing its work and to end any consideration of removing any Commissioners from office."³⁸ The commissioners individually responded as well and denied knowingly deliberating or acting on a Commission matter with a quorum of commissioners outside of a public meeting.³⁹

Throughout the day on Tuesday, November 1, one day after the commissioners submitted their lengthy and sincere responses, there were frequent public reports that the Governor would call a Special Session and that removal of one or more commissioners was imminent.⁴⁰ Shortly after delivering a letter purportedly removing the Chairperson to the Commission office, Acting Governor Bennett called a Special Session of the legislature to begin at 4:45 p.m., seeking to remove

Commissioner Stertz's Response); App. 16 (10/31/2011 Commissioner Freeman's Response).

³⁷ App. 11 (10/31/2011 Commission response).

³⁸ *Id.* at 1.

³⁹ App. 12 (10/31/2011 Chair Mathis's Response); App. 13 (10/31/2011 Commissioner McNulty's Response); App. 14 (10/31/2011 Commissioner Herrera's Response); App. 15 (10/31/2011 Commissioner Stertz's Response); App. 16 (10/31/2011 Commissioner Freeman's Response).

⁴⁰ *See, e.g.*, App. 17.

Chairperson Mathis from the IRC.⁴¹ This call was issued without further fact finding, without providing any kind of response to any of the commissioners regarding their individual letters, without advance notice to Commission counsel, and without even providing sufficient notice for senators from rural districts to reach the Capitol. Why Acting Governor Bennett? Because Governor Brewer, who had no compunction about demanding responses from five constitutional officers over a weekend, was in New York on a press junket to promote her new book.

The threats of removal – a removal unabashedly based on the substance of the *draft* maps – undermine the independence of the Commission and threaten to cast the once-a-decade redistricting process into damaging, irreparable uncertainty. The Commission therefore proceeded to court late Tuesday afternoon with an application for a Temporary Restraining Order. The Commission was compelled to move quickly because any disruption in its redistricting work will make it extremely difficult to meet the deadlines it faces to complete a redistricting plan in advance of the next election cycle.⁴² Although the Governor sent no finding of substantial neglect or gross misconduct to the Commission in advance of the Special Session, the Commission applied for the Temporary Restraining Order, notified counsel for both the Senate and Governor of the application, and attempted to see a judge to prevent the Senate from taking action pending further judicial review. The assigned judge

⁴¹ App. 26 (R. Bladine Decl. ¶ 11).

⁴² *Id.* ¶ 12.

declined to take any action immediately. Within minutes of being turned away at the Superior Court, the Commission proceeded to the Arizona Supreme Court and filed its action with this Court, including a request for emergency injunctive relief.

While the Commission was applying for judicial relief, the Fourth Special Session of the Fiftieth Legislature was being gavelled to order. The Special Session convened at 5:20 pm.⁴³ Within the first 10 minutes, the Senate suspended its rules and truncated debate to two minutes per member.⁴⁴ In a party-line vote, the Senate concurred in the Governor's decision to remove Commissioner Mathis.⁴⁵ The Senate adjourned sine die at 6:35 p.m., having done what it was called to do. The accelerated voting foreclosed any opportunity for judicial review of the Governor's action before the Senate acted to remove Commissioner Mathis.

Hours after the Senate concurred in the removal, the Commission's counsel received copies of the documents underlying and authorizing the Senate's session. In a letter to Secretary Bennett, the Governor explained that she has "a duty to act when a commission member (commissioner) has committed, in [her] judgment, substantial neglect of duty, gross misconduct in office, or an inability to discharge the duties of office."⁴⁶ Secretary Bennett was authorized by the Governor to

⁴³ App. 19 (11/1/2011 e-mail from Chief Clerk).

⁴⁴ Video of the Special Session is available at http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=9535.

⁴⁵ App. 20 (Senate Vote report).

⁴⁶ App. 18 (11/1/2011 Governor Brewer letter to K. Bennett).

“execute a removal letter for Commissioner Colleen Mathis” and to “Call the Legislature into Special Session” so that the Senate might consider concurrence in the removal of a commissioner.⁴⁷ The letter to Secretary Bennett did not identify the cause for removal of Commissioner Mathis.

The removal letter executed by Acting Governor Bennett stated that “the Constitution expressly confers on [the Governor] the authority to remove a commission member, when in [the Governor’s] judgment, and with the concurrence of two-thirds of the Arizona Senate, there has been substantial neglect of duty, gross misconduct in office, or an inability to discharge the duties of office.”⁴⁸ The removal letter stated the cause as: having “failed to conduct the Arizona Independent Redistricting Commission’s business in meetings open to the public, and failed to adjust the map as necessary to accommodate all of the goals set forth in Arizona Constitution Art. 4, pt. 2 § 1(14).”⁴⁹

The Governor, in a statement released following the Special Session, stated that the “Arizona Constitution provides that the Governor has **direct oversight** of the Independent Redistricting Commission, as well as the ability to remove any member due to ‘substantial neglect of duty’ or ‘gross misconduct in office.’”⁵⁰

⁴⁷ *Id.*

⁴⁸ App. 21 (11/1/2011 Acting Governor Bennett removal letter).

⁴⁹ *Id.*

⁵⁰ App. 22 (11/1/2011 Governor’s Press Release) (emphasis added).

Moreover, speaking of the maps, the Governor stated that “[a] flawed redistricting process has resulted in a flawed product.”⁵¹ Senate leadership has similarly stated that the “State Senate concurred in an overwhelming vote” to remove Commissioner Mathis because “she led a commission that failed . . . to produce Constitutional maps.”⁵²

Although the Senate and the Governor have been eager to speak publicly, in generalities, about the reasons for removal, they have failed to provide any formal, specific justification for it. Aside from the bare-bones letters described above, neither the Commission, the commissioners, nor the public have been provided with any explanation for the Governor’s claims of misconduct. It is clear, though, that the Governor believes that the removal provision of Article IV, Part 2 Section 1(10) of the Arizona Constitution gives her an “oversight” role in the mapping process, authority to determine the constitutionality of the draft maps, and the power to remove a citizen-volunteer commissioner from office for drafting allegedly unconstitutional maps. The Governor’s statements make it abundantly clear that Commissioner Mathis was removed for one, and only one, reason—the *draft maps* were flawed in the Governor’s eyes.

⁵¹ *Id.*

⁵² App. 23 (11/2/2011 Press Release of Majority Whip S. Pierce).

ARGUMENT

Through Prop 106, the voters of Arizona created a uniquely independent constitutional entity whose purpose is drawing Arizona's congressional and legislative districts. The resulting amendment to the Constitution reflects a desire for independence of the Commission and insulation from the political branches. *See* Ariz. Const. art. IV, pt. 2, §§ 1(3)-(22). The Constitution affords the Governor a specific but limited authority to remove an appointed commissioner but otherwise excludes the office from the Commission's work:

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

Id. § 1(10).

The Governor removed Commissioner Mathis purportedly because she “determined that [Commissioner Mathis] failed to conduct . . . meetings open to the public, and failed to adjust the grid map as necessary to accommodate all of the goals set forth in Arizona Constitution Art. 4, Pt. 2, § 1(14).”⁵³ The stated grounds for removal, and the manner in which the Governor conducted the removal, far outstripped the limited removal authority provided in the Constitution.

⁵³ App. 21 (11/1/2011 Acting Governor Bennett removal letter).

The Governor’s actions to remove Commissioner Mathis and the Senate’s concurring vote should be annulled because these actions exceeded the limited removal authority under Article IV, Part 2, Section 1(10) in two respects: (1) the Governor (with the Senate’s ratification) impermissibly usurped the legislative power of the Commission to draw congressional and legislative districts and arrogated to herself the judicial power to pass on the legality of draft, unfinished maps; and (2) the written notice and stated reasons for removal failed to meet the constitutional requirements listed in Subsection (10).

I. The Governor’s Actions and the Senate’s Concurring Vote to Remove Commissioner Mathis Premised on the Legality of the Draft Maps Violated Separation of Powers By Impermissibly Usurping the Power of the Commission and the Judiciary.

The branches of Arizona’s government are “separate and distinct, and no one of such departments shall exercise the powers properly belonging to either of the others.” Ariz. Const. art. III. Although the constitutional command of separation of powers allows some flexibility, Article III prevents one branch of government from usurping the functions properly belonging to another. *See State ex rel. Woods v. Block*, 189 Ariz. 269, 276, 942 P.2d 428, 435 (1997).

A. The Commission is a Uniquely Independent Constitutional Entity That is Entitled to Judicial Protection From Usurpation of Its Powers.

“The legislative authority of the state shall be vested in the legislature . . . but the people reserve the power to propose laws and amendments” Ariz.

Const. art. IV, pt. 1, § 1(10). “The first of these reserved powers is the initiative.”
Id. at § 1(2).

And in November 2000, Arizona voters exercised their power by passing Prop. 106 and creating the Commission to remove the task of redistricting from the control of the political branches and place it into the hands of an independent group of citizen-volunteers. To do so, the electorate not only amended the Constitution to remove the task of mapping districts from the legislature, but also to remove the Governor’s role in the legislative process by stripping the office of its power to veto redistricting plans. *See* Ariz. Const. art. IV, pt. 2, § 1(17) (declaring that the provisions governing the Commission and its legislative action are “self-executing” and that the Commission “shall certify to the secretary of state the establishment of congressional and legislative districts”); *see also* *Goddard v. Babbitt*, 536 F. Supp. 538, 541 (D. Ariz. 1982) (describing Governor Babbitt’s veto of redistricting bills after 1980 census).

“Independent” is thus not merely a convenient moniker. From top to bottom, Prop. 106 enshrines in the Constitution an independent constitutional body that entirely occupies the field of redistricting that formerly was the province of the legislature and executive. Consequently, the Commission is due the same respect for the boundaries of its powers as is any other branch of government. This Court has already held as much in *Arizona Minority Coalition for Fair Redistricting v. Arizona Independent Redistricting Commission*. There, the Court held that the

Commission “acts as a legislative body” whose “redistricting plan receives the same deference as [the Court] afford[s] to other legislation.” 220 Ariz. 587, 595 ¶¶ 19-22, 208 P.3d 676, 684 (2009). Indeed, the Court was careful to cabin the reach of its review of the Commission’s redistricting work, noting that “the commissioners perform legislative tasks of the sort [the Court] make[s] every effort not to pre-empt.” *Id.* at 596 ¶ 28, 208 P.3d at 685. The Governor and Senate have not discharged their duties with the same caution and the power the Constitution reserves to the Commission is at risk.

B. The Removal of Commissioner Mathis For Reasons Related to the Commission’s Deliberations and Substantive Mapping Choices Usurps the Power That Voters Expressly Removed From the Hands of the Governor and the Legislature.

In passing Prop 106, the Arizona voters unequivocally placed the power and responsibility of redistricting in the hands of the Commission. The Governor and Senate have used the removal process set forth in the Constitution as a means to reconstitute the veto power and obtain an overriding vote on the Commission. Such an expansion of the removal power renders the “for-cause” language in the Constitution meaningless and is a usurpation of the Commission’s authority.

When deciding if legislative action is a “usurpation,” courts evaluate: “(1) the nature of the power being exercised; (2) the degree of control of another branch; (3) the purpose of the legislation; and (4) the practical consequences of the action.” *Citizens Clean Elections Comm’n v. Myers*, 196 Ariz. 516, 523-24 ¶ 30, 1

P.3d 706, 713-14 (2000) (quoting *Woods*, 189 Ariz. at 276, 942 P.2d at 435).

There can be little question that the removal of Commissioner Mathis qualifies as a usurpation.

First, although “removal” is nominally an executive function, the exercise of power to remove “for cause” is a “quasi judicial” function. *Holmes*, 57 Ariz. at 541, 115 P.2d at 784 (internal quotation marks and citation omitted). The reasons given for Commissioner Mathis’ removal include substantive mapping issues, the evaluation of which is typically reserved for the judiciary, *see, e.g., Ariz. Minority Coal. for Fair Redistricting*, 220 Ariz. at 596-600 ¶¶ 34-45, 208 P.3d at 685-89 (considering legality of redistricting plan), and alleged violations of the OML. The Governor well knows that the Commission, the commissioners, and the State are currently parties to an ongoing lawsuit in which the parties dispute the scope and meaning of the Commission’s obligation to “conduct business in meetings open to the public.”⁵⁴ *See* Ariz. Const. art. IV, pt. 2, § 1(12). The Governor’s removal hijacks that judicial process. The Governor’s invocation of her removal authority for reasons other than those expressly listed in the Constitution “show[s her] intent to take over” a legislative and judicial function “by eliminating” the Commission and the judiciary from having “any semblance of control.” *Woods*, 189 Ariz. at 277, 942 P.2d at 436.

⁵⁴ App. 3 (Verified Compl. For Declaratory, Injunctive and Special Action Relief).

It is likewise clear from the Governor's stated reasons for removal that she exercised the Commission's exclusive legislative power by acting to assert influence on the substance of the redistricting maps. Indeed, the Governor contends that she has "direct oversight" of the Commission and she is "duty bound to ensure that Arizona's redistricting process is constitutionally sound."⁵⁵

The second and third factors ask whether the "degree of control" asserted renders the Governor's and Senate's exercise of power a "cooperative venture or a coercive influence" and whether the "intent" is to "establish[] . . . superiority" in another branch's area. *Woods*, 189 Ariz. at 277, 942 P.2d at 436 (internal quotation marks and citations omitted).

There can be little doubt that the Governor's use of the removal process to influence the outcome of the mapping process is an intentionally "coercive influence." Under her expansive theory that the removal provision gives full discretion to decide what qualifies as "substantial neglect" or "gross misconduct," the Governor views her removal power as limited only by the number of votes her office can line up in support of removal, effectively giving the political branches a controlling sixth seat on the Commission, empowered to overrule the redistricting choices authorized by duly appointed commissioners. Neither the Governor, through her removal power, nor the Senate, through its limited power of

⁵⁵ See App. 6 (10/26/2011 Letter).

concurrence, can declare what the law is. Such a position offends the principles of separation of powers and frustrates the purpose for which “for-cause” removal provisions exist. *Cf. Humphrey’s Ex’r v. United States*, 295 U.S. 602, 629 (1935) (upholding Congress’s power to condition the President’s authority to remove independent commissioners in part because “it is quite evident that one who holds his office only during the pleasure of another cannot be depended upon to maintain an attitude of independence against the latter’s will”).

Finally, “the practical result” of leaving the Governor’s and Senate’s current course of action unchecked cannot be overstated. If the Commission is decapitated, by removal of its Chairperson at this point in the redistricting process, Arizona voters of all political preferences face the very real possibility of being deprived of the Commission-based redistricting process they voted for. Instead, the next decade of Arizona elections could be governed by lines drawn by three federal judges. *See, e.g., Arizonans for Fair Representation v. Symington*, 828 F. Supp. 684 (D. Ariz. 1992). Additionally, even if a new Chairperson is appointed and the Commission somehow manages to complete its work on-time, this new Commission would still be operating under the threat of an un-checked removal power, thus creating a chilling effect on the decisions made.

Under *Woods* or any other separation of powers rubric, a removal premised expressly on the Governor’s opinion that the Commission’s draft maps are not legal is nothing short of a claim that the removal provision, despite its limiting

language, is actually a re-constituted veto power – power intentionally stripped from the Governor in Prop. 106. The Commission was created to prevent just this sort of political power-grab. The Court’s intervention is urgently needed to prevent the political branches from annexing authority over redistricting that voters wisely took out of their hands.

II. The Governor Exceeded Her Limited “For-Cause” Removal Authority by Failing to Meaningfully Follow the Constitution’s Express Requirements.

The removal power entrusted by the Constitution to the Governor is a vital check on an otherwise independent commission. To be clear, that power is substantial. But that power is not, as Acting Governor Bennett’s letter implies, unqualified.⁵⁶ The facts of this case indicate why that must be so – without meaningful limits on executive power, the independence of the Commission would be shattered, as it has been here. By specifically providing that the Governor may act only in cases of “substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office,” Article IV, Part 2, Section 1(10) of the Constitution makes plain that the removal power is not a power the Governor may exercise simply at her will. And when, as here, an executive entrusted with for-cause removal power attempts to exercise that power capriciously and without

⁵⁶ See App. 21 (11/1/2011 Acting Governor Bennett removal letter) (“[T]he Constitution expressly confers on me the authority to remove a commission member when, **in my judgment**,...there has been substantial neglect...”) (emphasis added).

legal cause, the power and duty of the judiciary to intervene, void those actions, and restore the rule of law is long-recognized by this Court and by the United States Supreme Court.

A. The Constitution’s Legal Causes for Removal in Subsection (10) are Substantive Limitations on the Governor’s Power to Remove Independent Commissioners.

The United States Supreme Court has previously recognized that meaningful limits must exist on the power of the Executive to remove independent officers. In 1931, President Hoover nominated William Humphrey to fill the President’s old seat as a commissioner of the Federal Trade Commission (“FTC”). *Humphrey’s Ex’r*, 295 U.S. at 618; *accord Morrison v. Olson*, 487 U.S. 654, 694-96 (1988) (confirming that executive’s power of appointment and removal can be limited). Much like the Commission, the FTC’s founding legislation and debates “all combine to demonstrate the congressional intent to create ... a body which shall be independent of executive authority, except in its selection, and free to exercise its judgment without the leave or hindrance of any other official or any department of the government.” *Id.* at 625-26.

Humphrey was appointed and served as an FTC commissioner but soon the new President Roosevelt asked for his resignation because Roosevelt wanted to appoint “personnel of [his] own selection” who agreed with his point of view. *Id.* at 618 (citation omitted). The Commissioner refused to resign. President

Roosevelt then declared that Humphrey was removed and ceased paying his salary, even though the FTC Act permitted removal only for “inefficiency, neglect of duty, or malfeasance in office.” *Id.* at 619 (internal citation omitted).

Humphrey, and after his death his executor, challenged the President’s actions at the Supreme Court, arguing that although the FTC Act (like the Arizona Constitution) did not define the “for-cause” provisions, and the President’s power to remove could not be unfettered, otherwise the FTC’s independence would be lost. The Supreme Court agreed, recognizing that “illimitable power of removal is not possessed by the President in respect of officers of the [independent] character just named.” *Id.* at 629. As the Court unambiguously explained, “it is quite evident that one who holds his office only during the pleasure of another cannot be depended upon to maintain an attitude of independence against the latter's will.” *Id.*

That an independent constitutional officer cannot be removed by another without valid reasons, and that the validity of those reasons is judged by the Courts, has also been previously and explicitly confirmed by this Court. In *Holmes v. Osborn*, this Court considered the Governor’s putative removal of commissioners of the Industrial Commission of Arizona (“ICA”). 57 Ariz. at 539-40, 115 P.2d at 784. The ICA statute, much like the FTC Act at issue in *Humphrey’s Executor*, and much like the Constitution’s removal provisions for the Commission, provided that the “Governor at any time may remove any members

of the commission for inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.” *Id.* at 535, 115 P.2d at 781 (internal quotation marks and citation omitted). The commissioners removed in *Holmes* protested that they did not know the specifics of the misconduct of which they were accused nor did they have proper notice and time to prepare a defense. *Id.* at 539, 115 P.2d at 783. This Court agreed and annulled the removal order, even though the Governor had conducted some trial-like procedures, including the cross-examination of certain witnesses. *Id.* at 533-34, 557-58, 115 P.2d at 780-81, 790.

This Court explained that the specifics of the removal requirements, including the “common fairness” required in the removal process, were not up to the Governor alone to interpret. To the contrary, “all these grounds, except the first, imply wrongdoing, some act of omission or commission in office the law required to be done which was not done or if done was done in an unlawful manner.” *Id.* at 539-540, 115 P.2d at 783. Applying this principle, the Court held that “[n]o act, therefore...is ground for removal unless that act so affects [a commissioner’s] conduct in office as to constitute inefficiency, neglect of duty, misfeasance, malfeasance or nonfeasance in the discharge of his official duties.” *Id.* at 540, 115 P.2d at 783. Moreover, the Court explained that “[u]nless there is **some evidence** showing the petitioners to be guilty of inefficiency, neglect of duty, malfeasance, misfeasance or nonfeasance in office...**the respondent had no**

power or jurisdiction to remove the petitioners.” *Id.* at 557-58, 115 P.2d at 790 (emphasis added).

Said differently, this Court must decide “[w]hether the charges upon which the removing power acted were legal cause for removal, or whether the cause was sufficiently specified.” *Id.* at 541, 115 P.2d at 784 (internal quotation marks and citation omitted). Not unlike a complaint in court, to adequately invoke the removal power, the Governor’s stated basis for removal must at least facially show that, if believed, the alleged conduct would qualify as a constitutional reason for removal.

B. Governor Brewer’s Removal of Chairperson Mathis was Unlawful, Lacking Both Legal Cause and Sufficient Specificity.

Although Governor Brewer has wide discretion to determine what procedures to follow absent constitutional direction, “[i]t is . . . absolutely essential to [the Governor’s] jurisdiction to remove that there be evidence to sustain the grounds” of removal. *Id.* at 540, 115 P.3d at 783 (emphasis added). She did not do so here.

i. The Constitution’s Express Legal Causes for Removal Mean Something More Than What the Governor Says They Mean.

Although Article IV, Part 2, Section 1 does not separately define the meaning of “substantial neglect” or “gross misconduct,” these constitutional provisions are not mere placeholders for whatever the Governor deems them to

mean; they are constitutional text that limit the scope of the removal power.

“Substantial neglect” requires the failure to act with even the slightest degree of care, and “misconduct in office” generally refers to the common-law misdemeanor of malfeasance, misfeasance, or nonfeasance in office. *See* Bryan A. Garner, A dictionary of Modern Legal Usage 564 (2d ed. 1995). This Court has previously said that malfeasance, misfeasance, and nonfeasance all “imply wrongdoing, some act of omission or commission in office the law required to be done which was not done or if done was done in an unlawful manner.” *See Holmes*, 57 Ariz. at 539-40, 115 P.2d at 783. And Subsection (10) requires not just “misconduct” – it limits the removal to situations involving *gross* misconduct. Accordingly, the Governor must have “sufficiently specified” the “charges upon which the” Governor and those charges must qualify as *gross* or *very* wrongful conduct, not simply a technical omission or commission.

ii. The Propriety of the Commission’s Draft Maps is Not a “Legal Cause” Justifying Removal; the Constitution Explicitly Removed the Governor from That Role in Redistricting.

Governor Brewer has removed Commissioner Mathis from office over a substantive difference of opinion on the merits of the Commission’s decision. In other words, Governor Brewer has done here precisely what the U.S. Supreme Court said that President Roosevelt could not do in *Humphrey’s Executor* and what this Court said the Governor could not do in *Holmes*. *See Humphrey’s Ex’r*, 295

U.S. at 619 (quoting President Roosevelt’s saying that he sought resignation and removal because he “[did] not feel that [Humphrey’s] mind and [his own] mind go along together on either the policies or the administering [of the commission]”); *Holmes*, 57 Ariz. at 553-54, 115 P.2d at 789 (“Any acts arising out of proceedings before the commission in making awards may be reviewed by the courts and if wrongful may be corrected in a judicial manner. **It was never contemplated that errors of judgment on the part of the commission** ... should be a ground of removal but that they should be corrected by the courts.”) (emphasis added).

The Commission’s mapping work is legislative work, by a legislative body, comprised of legislators who hold legislative immunity for that work. *Ariz. Minority Coal. for Fair Redistricting*, 220 Ariz. at 594-95 ¶ 19, 208 P.3d at 683-84 (holding “the Commission acts as a legislative body”); *Ariz. Indep. Redistricting Comm’n v. Fields*, 206 Ariz. 130, 138-39 ¶¶ 22-24, 75 P.3d 1088, 1096-97 (App. 2003). Although legislative immunity may have somewhat less relevance in a gubernatorial removal proceeding, it stands to reason that the same actions unequivocally covered by the legislative privilege -- the Commission’s mapping decisions⁵⁷ -- cannot be the source of charges of misconduct, much less “gross misconduct.” Such decisions could no more be a basis for removal for “gross misconduct” or “substantial neglect” than could a House Bill of questionable

⁵⁷ In some cases, maps were (including the map of Maricopa County) unanimously adopted and in all cases adopted by a majority of the Commission.

constitutional validity be a basis for impeachment of a legislator. The legality of the maps or of any legislative enactment is properly for the judiciary and not a subject of “punish[ment] by the executive department.” *Holmes*, 57 Ariz. at 554, 115 P.2d at 789.

iii. The Vague Allegations of Open-Meeting Violations Are Not a “Legal Cause” Capable of Justifying Removal.

Although plainly not the gravamen of the Governor’s charges (or of the Senate’s concurrence), the Governor’s October 26 Letter alleges in a general fashion that “IRC commissioners had conversations with other IRC commissioners, outside of a meeting open to the public” regarding the selection of the mapping consultant.⁵⁸ These allegations, which were leveled at *all five* commissioners, were hopelessly vague, providing no specificity as to the dates on which the alleged conversations occurred or to which commissioners the allegations were directed. Acting Governor Bennett’s removal letter includes a similarly vague assertion that Chairperson Mathis was removed, in part, because of a failure to conduct business of the Commission in “meetings open to the public.”⁵⁹

⁵⁸ App. 6. (10/26/2011 letter). The contours of the Commission’s constitutional mandate of openness is, as the Governor well knows, the subject of an ongoing, expedited judicial action in Maricopa County Superior Court from which Attorney General Horne was just disqualified because of a conflict of interest. App. 9 (10/27/2011 Minute Entry in CV2011-016442).

⁵⁹ App. 21 (11/1/2011 Acting Governor Bennett removal letter).

No factual support was provided for this conclusion. Neither letter satisfies the requirements of Proposition 106 for removing a commissioner.

This Court has the authority to review whether “the charges upon which the removing power acted were legal cause for removal, or whether the cause was sufficiently specified.” *Holmes*, 57 Ariz. at 541, 115 P.2d at 784 (quoting approvingly from *Shawver*, 222 P. at 30).

Among the many constitutional minima explained in *Holmes* as applying to Arizona gubernatorial removal proceedings is that the Governor may not use her power to remove for cause unless the “cause [is] sufficiently specified.” *Id.* at 541, 115 P.2d at 784 (internal quotation marks and citation omitted). Without “some evidence” of enumerated misconduct, the Governor cannot invoke her removal powers. *Id.* at 557-58, 115 P.2d at 790. Indeed, an important part of the basis for the holding in *Holmes* was that “[t]he petitioners very justly complain[ed] of the indefiniteness and uncertainty of the charges. They were entitled to know in advance what they were charged with in order to prepare their defense.” *Id.* at 539, 115 P.2d at 783. By its terms, the Constitution requires the same from the Governor here. *See* Ariz. Const. art. IV, pt. 2, § 1(10) (requiring written notice and an opportunity to respond).

Just as the notice provided in *Holmes* was constitutionally inadequate, it was similarly inadequate for the Governor here to simply ask all commissioners to respond to a vague set of allegations that there had been conversations outside of

public meetings and that the draft, unfinished maps did not comply with law. At a minimum, the Governor was required to explicitly state the legal cause for each alleged violation as to each individual commissioner, and the acts or omissions that support the finding that cause exists. *See Holmes*, 57 Ariz. at 539-540, 115 P.2d at 785-860. As the Court in *Holmes* made clear, the notice and hearing required must have substantive content beyond the mere formality the Governor has offered the Commission's commissioners here. *Id.* at 539, 115 P.2d at 783; *cf. Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (in due process context, the most "fundamental requirement" is "the opportunity to be heard at a meaningful time and in a meaningful manner" (internal quotation marks and citation omitted)). The constitutional inadequacy of the Governor's October 26 letter unfairly hindered the commissioners' ability to meaningfully respond.

Moreover, Acting Governor Bennett's letter removing Mathis as Chairperson provides only the conclusory statement that either substantial neglect of duty or gross misconduct in office occurred (the letter did not specify which) and that Commissioner Mathis "failed to conduct the Arizona Independent Redistricting Commission's business in meetings open to the public."⁶⁰ The letter gives no factual support for any of its conclusions. Because of the unresolved legal issues concerning the Commission's public meeting requirements, any good faith

⁶⁰ *Id.*

analysis of an alleged public meeting violation should await the resolution of the court proceeding. On its face, the letter fails to establish that removal from office was justified under Proposition 106.

For Proposition 106's removal provision to have meaning, the Governor must provide the factual basis supporting the conclusion that "substantial neglect of duty" or "gross misconduct" occurred. The Senate would need this information to meaningfully concur in the decision, but there is no evidence that the Senate was provided anything other than Acting Governor Bennett's letter.⁶¹ Without establishing the factual basis for the Governor's decision, the high standards that Proposition 106 establishes to remove Commissioners are meaningless. The Governor's power to remove becomes unchecked, provided that she has the votes in the Senate.

Finally, even if the alleged violations of the constitutional mandate of openness were factually supported, such a violation would not suffice as a basis for the exercise of the Governor's for-cause removal power. As this Court in *Holmes* held, simply because a requirement appears in the statute does not mean that its violation provides cause for removal. 57 Ariz. at 542, 115 P.2d at 784 (holding that even though "it is provided that 'no commissioner shall hold any office of trust or profit, or engage in any occupation or business other than his duties as such

⁶¹ App. 19 (11/1/2001 e-mail from Chief Clerk).

commissioner,' if he does, it is not made a ground of removal”) (citation omitted). To qualify as a “gross misconduct,” a violation of public meeting requirements would need to be particularly egregious. The Commission’s independence is undermined if a Governor may use the slightest error to justify removing a commissioner from office.

CONCLUSION

The political branches’ exploitation of a narrow removal power cannot be allowed to wrest from the Commission its constitutional authority to independently manage the redistricting of Arizona’s congressional and legislative districts. Because the Governor and the Senate have acted far outside their jurisdictional bounds, the Commission respectfully urges this Court to nullify the removal of Commission Chairperson Colleen Coyle Mathis.

Respectfully submitted this 4th day of November, 2011.

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SUPREME COURT OF ARIZONA

ARIZONA INDEPENDENT) Supreme Court No. CV-11-0313
REDISTRICTING COMMISSION, an)
Independent Constitutional Body,)
)
)
Petitioner,)
)
vs.)
)
JANICE K. BREWER, in her official)
capacity as the Governor of the State of)
Arizona; ARIZONA STATE SENATE;)
RUSSELL PEARCE, Senate President,)
)
)
Respondents.)
_____)

CERTIFICATE OF SERVICE

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I hereby certify that on November 4, 2011, Petitioner's Amended Petition for Special Action was electronically filed with the Clerk's Office and pursuant to ARCAP Rule 4(c), copies of the Petition were sent via e-mail (as agreed) to:

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SUPREME COURT OF ARIZONA

ARIZONA INDEPENDENT) Supreme Court No. CV-11-0313
REDISTRICTING COMMISSION, an)
Independent Constitutional Body,)
)
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JANICE K. BREWER, in her official)
capacity as the Governor of the State of)
Arizona; ARIZONA STATE SENATE;)
RUSSELL PEARCE, Senate President,)
)
Respondents.)
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Pursuant to RPSA 7(e), the undersigned certifies that Petitioner's Amended Petition for Special Action filed this date complies with that Rule. The Petition is double spaced, utilizes 14-point proportionally spaced Times New Roman typeface, and contains 8,548 words.

Respectfully submitted this 4th day of November, 2011.

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