



# Arizona State Senate Issue Brief

December 30, 2014

## Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

## Arizona Redistricting & Reapportionment

### INTRODUCTION

This issue brief addresses redistricting and reapportionment, including the history of Arizona's 2000 and 2010 redistricting plans and the formation of the next Independent Redistricting Commission.

### REAPPORTIONMENT

Redistricting and reapportionment are terms that are often used interchangeably when discussing the process that occurs every ten years across the country. In actuality, "redistricting" is the process of redrawing the specific congressional district and legislative district boundaries, while "reapportionment" is the process of reallocating the 435 seats in Congress among the 50 states, based on each state's population total as determined in the decennial census. Reapportionment of Congress every ten years is mandated in the U.S. Constitution and is the underlying purpose for taking the Census although the population count also affects the allocation of federal funding to local, state and tribal governments. Federal law outlines the mathematical formula for determining how to calculate each state's representation in Congress, based on total population, but with a guarantee that each state will receive at least one seat in the U.S. House of Representatives. As a result of population growth, Arizona's congressional membership increased from six in the 1990s to eight, effective in 2002, and from eight to nine, effective in 2012.

### 2010 Census

The 2010 Census utilized a short form and included questions regarding name, gender, age, origin, race, relationship and housing. In March 2010, the U.S. Census Bureau began mailing and delivering the census forms to households. The first day of April was designated as National Census Day to encourage completion of the census forms and census takers visited households from April through July to collect census forms. The U.S. Census Bureau was required to deliver the population information to the President of the United States by December 31, 2010, and when Congress convenes, the President issued a statement specifying the apportionment of the 435 seats. Federal law required that the

redistricting data be delivered to all the states by April 1, 2011.

## **REDISTRICTING**

Since the late 1960s, the Arizona Legislature has consisted of 30 legislative districts, each of which is represented by two members of the Arizona House of Representatives and one member of the Arizona Senate. The 30 districts have been redrawn every ten years after the Census, generally by passage of a bill by the Legislature that describes the boundaries of the districts.

The U.S. Supreme Court has established two different standards for reviewing population variations for districts within a state, with one standard for state legislative districts and a higher standard for a state's congressional districts. For a state's legislative districts, the Supreme Court has ruled that districts must be "substantially equal" in population, which is generally interpreted as having less than a ten percent difference between the most populous and least populous districts. For a state's congressional districts, the Supreme Court has held that district population totals must be "as nearly equal as practicable," which requires a good-faith effort to achieve precise mathematical equality.

## **Independent Redistricting Commission**

With the approval of Proposition 106 at the 2000 general election, the job of drawing Arizona's congressional and legislative district lines was transferred from the Legislature to the five-member Independent Redistricting Commission (IRC). The Commission on Appellate Court Appointments (Appellate Commission) nominates a pool of 25 applicants who are required to meet specific criteria regarding geographic representation, political affiliation, and political employment and activity. The first four members are selected in succession by each of the four caucus leaders at the Legislature, with those four Commissioners then selecting a fifth person from the pool of applicants to serve as the chair of the IRC.

The IRC begins the mapping process by creating districts of equal population in a grid-

like pattern across Arizona. Adjustments to the districts are made to accommodate compliance with the U.S. Constitution and the Voting Rights Act and to the extent practicable, the following five goals:

1. equal population for the congressional districts and equal population for the state legislative districts;
2. geographic compactness and contiguousness;
3. boundaries that must respect communities of interest;
4. use of visible geographic features, city, town and county boundaries and undivided census tracts; and
5. favoring the creation of competitive district without significant detriment to the other goals.

The IRC adopts congressional and legislative district boundaries after holding hearings and receiving comment from the public and the Legislature, as provided in Proposition 106. On adoption by the IRC, the new district boundaries are subject to review and preclearance by the U.S. Department of Justice (DOJ) under the Voting Rights Act, just like any other change in Arizona's election laws or procedures. Once precleared, the new districts are used for all subsequent legislative and congressional elections.

## **2000 Redistricting Plan**

The IRC adopted the equal population grid for the congressional and legislative districts on June 7, 2001. The grid was required by Proposition 106 as the initial starting point for districts and was based on Arizona's Township, Range and Section Public Land Survey System.

The Commissioners traveled around the state in the summer of 2001 conducting public hearings. The purpose of the hearings was to present information about the redrawing of Arizona's congressional and legislative districts

and to hear input from citizens about redistricting.

Draft district maps were adopted by the IRC in August 2001. The draft maps incorporated modifications to the initial grids to accommodate many of Proposition 106's redistricting goals, such as respect for "communities of interest."

The draft maps were available for public comment for at least 30 days and were adopted and submitted to the DOJ for preclearance.

Following DOJ objections to the legislative maps, the IRC developed an emergency interim legislative plan. On May 29, 2002, the United States District Court ordered the emergency interim maps be used in the fall 2002 legislative elections.

The IRC adjusted the interim plan and advertised the map to the public for 30 days. On August 14, 2002, the IRC adopted a final legislative district map, which was precleared by the DOJ in February 2003.

In January 2004, the Maricopa County Superior Court found that the maps drawn by the IRC failed to meet a constitutional mandate requiring districts to be made politically competitive to the best extent possible. The Superior Court found that the IRC's failure to adequately take competition in the districts into account violated the rights of Arizona voters and resulted in maps that were unfair. The court approved an injunction against using the maps in the 2004 election and ordered the IRC to reconvene within 45 days to adopt a new plan for use in the 2004 election. The Superior Court approved a reworked IRC map in April 2004 and ordered the IRC to submit the new map to the DOJ.

In May 2004, the Arizona Court of Appeals granted a stay of the Superior Court injunction to allow the 2002 maps to be used in the 2004 election, finding that it was too late into the election cycle to redraw the maps. The reworked IRC map was withdrawn from submission to the DOJ.

In October 2005, the Arizona Court of Appeals rendered a decision regarding the maps. It reversed the portion of the January 2004 judgment that invalidated the legislative redistricting map and remanded the case to the Superior Court for further review. It directed the

Superior Court to apply another standard of review to the case and to determine whether a new trial or additional evidence or arguments were warranted. The Court of Appeals vacated the Superior Court's judgment that approved the reworked IRC map in April 2004.

The Superior Court utilized a more deferential standard of review but again found that the IRC's plan violated the Arizona Constitution. Specifically, the court found that the IRC did not sufficiently favor competitiveness because the IRC never found that competitive districts were not practicable or would cause significant detriment to the other constitutional goals. Since the plan violated the Constitution, the IRC could not utilize the plan in any upcoming elections, effective on March 7, 2007. The IRC appealed and in April 2008, the Arizona Court of Appeals reversed the trial court's findings and held that the IRC properly considered competitiveness as required by the Arizona Constitution. The Court of Appeals concluded that the IRC's findings were supported by substantial evidence that a more competitive plan would cause a significant detriment to the other five constitutional goals.

The Arizona Supreme Court accepted the petition to review and issued a decision in May 2009. The Supreme Court's analysis began by determining the standard of review for the IRC's process. The Supreme Court found that the IRC acts as a legislative body since the IRC exercises discretion and makes policy decisions when drawing district boundaries, the IRC's enactments carry the "force of law" and the IRC's function is traditionally a legislative task. The Supreme Court applied the standard afforded to legislative acts and determined that the IRC fulfilled its responsibility to attempt to accommodate all six constitutional goals during its process.

Additionally, the Supreme Court concluded that the IRC did not violate the Arizona Constitution by advertising a draft map before the map was adjusted to accommodate competitiveness because the IRC later advertised an adjusted draft map.

Finally, the Supreme Court held that the redistricting plan had a reasonable basis because there was no showing that a reasonable commission would not have adopted the plan. Therefore, the IRC complied with substantive constitutional requirements. The Arizona Supreme Court vacated the opinion of the Court of Appeals, reversed the judgment of the trial court and remanded the case to the trial court with instructions to enter a judgment in favor of the IRC.

## **2010 Redistricting Plan**

In 2011, Arizona was required to utilize the 2010 census data to redistrict the congressional and legislative districts for the next decade. In November 2009, the Appellate Commission discussed the nomination process for the new commissioners and adopted a motion to submit the “Procedures for Nominations for the IRC” to the Arizona Supreme Court for review and public comment. The nomination procedures for the IRC were approved and became effective in September, 2010.

The IRC approved and adopted the equal population grid for the congressional and legislative district maps on August 18, 2011, as required by Prop 106. The Commissioners held public hearings throughout the state during the summer of 2011 to present information with regard to the redistricting process and to hear public comment.

Draft district maps were adopted by the IRC in October 2011 and were available for public comment for at least 30 days. The IRC adopted and approved final congressional and legislative maps on January 17, 2012 and submitted the final drafts to the DOJ for preclearance in February, 2012. The maps were approved by the DOJ in April, 2012.

In June, 2012, after the Commission had adopted new districts for use through the 2020 election the Arizona Legislature filed a lawsuit in U.S. District Court challenging the authority of the IRC with regard to congressional redistricting. The Legislature argued that the Elections Clause of the U.S. Constitution requires that the Legislature

maintain responsibility for congressional redistricting and prohibits voters from transferring this responsibility to a citizen commission. The Commission argued that the Elections Clause defers to the lawmaking process of a particular state and is subject to Congressional preemption.

The Legislature sought a judgment declaring Proposition 106 violates the Elections Clause of the United States Constitution by removing congressional redistricting authority from the Legislature and that, as a result, the congressional maps adopted by the IRC were unconstitutional and void. Additionally, the Legislature asked the Court to permanently enjoin the IRC from adopting, implementing, or enforcing any congressional map created by the IRC, beginning the day after the 2012 congressional elections.

The Court held a hearing before a three-Judge panel on January 24, 2014. In February 2014, the Court issued an order denying a preliminary injunction against using the maps created by the IRC and granting a motion to dismiss the complaint. The Court found, in short, that the lawmaking power in Arizona includes the power to enact laws through initiative, and the Elections Clause permits the establishment and use of the IRC.

In October, 2014, the United States Supreme Court accepted review of the Arizona State Legislature’s appeal challenging the Arizona’s Independent Redistricting Commission’s authority over congressional redistricting. The Court will decide whether the Elections Clause of the U.S. Constitution and 2 U.S.C. §2a(c) permit the use of citizen commissions to adopt congressional districts.

## **ADDITIONAL RESOURCES**

- Independent Redistricting Commission  
<http://www.azredistricting.org/>
- Arizona Judicial Nominating Commissions  
(for agendas, minutes and notices regarding  
the Appellate Commission)  
<http://www.supreme.state.az.us/jnc/default.htm>
- Arizona Court Rules Forum (to review and  
comment on the “Procedures for  
Nominations for the IRC”)  
<http://www.supreme.state.az.us/rules/>
- 2010 Census  
<http://2010.census.gov/2010census/>
- National Conference of State Legislatures,  
Elections  
<http://www.ncsl.org/programs/legismgt/elect/elect.htm>
- U.S. Department of Justice, Civil Rights  
Division, Voting Section  
<http://www.usdoj.gov/crt/voting/>
- Arizona Redistricting Law: Ariz. Const.  
Art. IV, part 2, § 1
- 2020 Census  
<http://www.census.gov/2020census>