



Arizona State Senate Issue Brief

August 3, 2018

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. Nothing in the Brief should be used to draw conclusions on the legality of an issue.

ARIZONA REDISTRICTING & REAPPORTIONMENT

REAPPORTIONMENT

Reapportionment of Congress every 10 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.¹ 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.² 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 U.S. CENSUS

The first day of April of years ending in zero is designated as National Census Day to encourage completion of the census forms and allow census field representatives to visit households from April through July to collect census forms. The U.S. Census Bureau is required to deliver the population information to the President of the United States by December 31, and when Congress convenes, the President issues a statement specifying the apportionment of Congressional seats. Federal law requires that the redistricting data be delivered to all the states by April 1 of the following year.³

REDISTRICTING

Since the late 1960s, Arizona has been divided into 30 state 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 were redrawn every 10 years after the U.S. Census, initially by the Legislature and now by the Independent Redistricting Commission (IRC).

¹ U.S. Const. art. 1, § 2, cl. 3.

² U.S.C. § 2a

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 U.S. Supreme Court has determined districts must be "substantially equal" in population, which is generally interpreted as having less than a 10 percent difference between the most populous and least populous districts.⁴ 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.⁵

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 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.⁶

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 both the congressional and 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 districts without significant detriment to the other goals.⁷

The IRC adopts congressional and state 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 get input from citizens.

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

³ Public Law 94-171

⁴ *Gaffney v. Cummings*, 412 U.S. 735, (1973).

⁵ *Karcher v. Daggett*, 462 U.S. 725, (1983).

⁶ Ariz. Const. art. 4, pt. 2, § 1

⁷ Ariz. Const. art. 4, pt. 2, § 1

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.⁸ 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 (Superior Court) found that the maps drawn by the IRC failed to meet a constitutional mandate requiring districts to be as politically competitive as possible. The Superior Court found that the IRC's failure to adequately take political 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.⁹ The Superior Court approved a revised 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 revised IRC map was withdrawn from submission to the DOJ.¹⁰

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 2004.¹¹

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 competition 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, 2007.¹²

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.¹³

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

⁸ *Navajo Nation v. Arizona Independent Redistricting Commission*, CV-02-0799-PR, (2002)

⁹ *Arizona Minority Coalition for Fair Redistricting, et al. v. Arizona Independent Redistricting Commission, et al.* CV-2002-004380 & CV-2002-004882, (2004).

¹⁰ *Arizona Minority Coalition for Fair Redistricting et al. v. Arizona Independent Redistricting Commission*

¹¹ *Arizona Minority Coalition for Fair Redistricting et al. v. Arizona Independent Redistricting Commission et al.*, CV-04-0061, (2005)

¹² *Arizona Minority Coalition for Fair Redistricting et al. v. Arizona Independent Redistricting Commission*

¹³ *Arizona Minority Coalition for Fair Redistricting et al. v. Arizona Independent Redistricting Commission*

responsibility to attempt to accommodate all six constitutional goals during its process.¹⁴

Additionally, the Supreme Court concluded that the IRC did not violate the Arizona Constitution by advertising a draft map before the map was adjusted because the IRC later advertised the revised 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 2010.¹⁵

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.¹⁶

¹⁴ *Arizona Minority Coalition for Fair Redistricting, et al. v. Arizona Independent Redistricting Commission, CV-08-0161-PR, (2009).*

¹⁵ *Arizona Supreme Court No. R-10-0011, (2010).*

¹⁶ *Arizona State Legislature v. Arizona Independent Redistricting Commission, et al., CV-12-01211, (2014).*

In October 2014, the U.S. Supreme Court accepted review of the Arizona State Legislature's appeal challenging Arizona's Independent Redistricting Commission's authority over congressional redistricting. On June 29, 2015, the Court issued a 5-4 decision in favor of the IRC, with Justice Ruth Bader Ginsberg delivering the majority opinion. The Court acknowledged that the Legislature did in fact have standing to bring the case, as Proposition 106 removed the Legislature's power of drawing congressional districts. However, the Court held that the Elections Clause of the U.S. Constitution and 2 U.S.C. § 2a(c) does not preclude the use of citizen commissions to adopt congressional districts. While the Elections Clause does state that the power to determine the manner of holding elections resides in the state Legislature, the Court indicated that this includes voters themselves when the state constitution allows for the passage of laws through means such as initiative and referenda. The Court pointed out that the U.S. Constitution was ratified at a time when state constitutions did not allow for citizen initiatives.¹⁷

In March 2013, the U.S. District Court for Arizona heard the case of *Harris v. Arizona Independent Redistricting Commission*, which argued that the population counts of the state's legislative districts contained unconstitutional partisan bias. The U.S. District Court found that the population deviation between the most and least populous districts was 8.8 percent, which complies with the constitutional mandate that deviations not exceed 10 percent. As a result, the U.S. District Court ruled in favor of the IRC. The decision was later appealed to the U.S. Supreme Court on the grounds that the deviation was unconstitutional because it reflected an effort to help one political party over another. The U.S. Supreme Court subsequently affirmed the judgement of the U.S. District Court on April 20, 2016, indicating that the population deviations

were reflective of an effort to comply with the Federal Voting Rights Act.¹⁸

In the case of *Leach v. Independent Redistricting Commission*, several individuals filed against the IRC in the Maricopa County Superior Court, alleging that the IRC violated the procedural and open meeting requirements governing the redistricting process. The case was put on hold initially as the case of *Arizona State Legislature v. Independent Redistricting Commission* had yet to be decided by the U.S. Supreme Court at the time. In February 2017, the Superior Court granted a summary judgement in favor of the IRC. Since the plaintiffs did not file an appeal, the summary judgement serves as the final ruling of the case.¹⁹

With all major litigations against the IRC settled, the congressional and legislative district maps drawn by the IRC will remain valid until the 2022 general election. In 2020, the next decennial U.S. Census will be issued to all citizens to gather updated demographic information across the country. Once the Census is complete by 2021, five new members will be appointed to the IRC for the purpose of drawing new congressional and legislative district maps to reflect population changes in Arizona.

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 U.S. Census
<http://2010.census.gov/2010census/>

¹⁷ *Arizona State Legislature v. Arizona Independent Redistricting Commission et al.*, No. 13-1314, (2015).

¹⁸ *Harris, et al. v. Arizona Independent Redistricting Commission, et al.*, No. 14-232, (2015).

¹⁹ *Leach v. Independent Redistricting Commission*

- 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 U.S. Census
<http://www.census.gov/2020census>