



# Arizona State Senate Issue Brief

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## 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 *Issue 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 REAPPORTIONMENT & REDISTRICTING**

### **INTRODUCTION**

Federal law requires the U.S. Secretary of Commerce to take a decennial census as of April 1st in any year ending with a zero. April 1 of those years 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 must report the total population, by state, to the U.S. President by December 31 of that year for reapportionment of the U.S. House of Representatives. By April 1 of the following year, data must be delivered to each state for redistricting legislative and congressional seats.<sup>1</sup>

### **REAPPORTIONMENT**

The U.S. Constitution mandates reapportionment of Congress every 10 years. Reapportionment is the underlying purpose for taking the U.S. Census, although the population count also affects the allocation of federal funding to local, state and tribal governments.<sup>2</sup> Federal law outlines the 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.<sup>3</sup> As a result of population growth in the 1990s, Arizona's congressional membership increased from six representatives to eight representatives in 2002, and to nine representatives in 2012.

### **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 are redrawn every 10 years after the U.S. Census, initially by the Legislature and now by the Independent Redistricting Commission (IRC).

<sup>1</sup> [13 U.S.C. 141](#)

<sup>2</sup> [U.S. Const. art. 1, § 2, cl. 3.](#)

<sup>3</sup> [2 U.S.C. § 2a](#)

The U.S. Supreme Court has established two standards for reviewing population variations for districts within a state: a standard for state legislative districts and a higher standard for congressional districts. For 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.<sup>4</sup> For a state’s congressional districts, the Supreme Court held that district population totals must be “as nearly equal as practicable” which requires a good-faith effort to achieve precise mathematical equality.<sup>5</sup>

## *Independent Redistricting Commission*

The approval of Proposition 106 at the 2000 general election transferred the task of drawing Arizona’s congressional and legislative district lines from the Legislature to the five-member IRC. The Commission on Appellate Court Appointments (Appellate Commission) nominates a pool of 25 applicants who 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. Those four Commissioners then select a fifth person from the pool of applicants to serve as the chairperson 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 comply with the U.S. Constitution, the federal Voting Rights Act (VRA) 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 contiguity;
- 3) boundaries that 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.<sup>6</sup>

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.

Prior to 2013, new district boundaries were subject to review and preclearance by the U.S. Department of Justice (DOJ) under the VRA. In 2013, the U.S. Supreme Court held that the formula in Section 4 of the VRA used to determine “covered jurisdictions” subject to preclearance was unconstitutional, which rendered the preclearance process inapplicable.<sup>7</sup>

## *2000 Redistricting Plan*

The IRC adopted the equal population grid for Arizona’s 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 conducted public hearings across Arizona in the summer of 2001 to present information about the redrawing of congressional and legislative districts and to receive public input.

The IRC adopted draft district maps 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 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 U.S.

<sup>4</sup> [Gaffney v. Cummings](#), 412 U.S. 735, (1973)

<sup>5</sup> [Karcher v. Daggett](#), 462 U.S. 725, (1983)

<sup>6</sup> [Ariz. Const. art. 4, pt. 2, § 1](#)

<sup>7</sup> [Shelby County v. Holder](#), 570 U.S. 529 (2013)

District Court ordered the emergency interim maps be used in the fall 2002 legislative elections.<sup>8</sup> 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 into account political competition in the districts violated the rights of Arizona voters and resulted in maps that were unfair. The Superior 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.<sup>9</sup> 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.<sup>10</sup>

In October 2005, the Arizona Court of Appeals rendered a decision regarding the maps. The Court 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 Superior 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.

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 Arizona Supreme Court's analysis began by determining the standard of review for the IRC's process. The Arizona 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 Arizona 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.<sup>11</sup>

Additionally, the Arizona 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.

The Arizona 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

<sup>8</sup> [Navajo Nation v. Arizona Independent Redistricting Commission](#), 30 F. Supp 998 (D. Ariz. 2002)

<sup>9</sup> [Arizona Minority Coalition for Fair Redistricting, et al. v. Arizona Independent Redistricting Commission, et al.](#), CV-2002-004380 & CV-2002-004882 (Ariz. Super. Ct. Jan. 16, 2004)

<sup>10</sup> [Arizona Minority Coalition for Fair Redistricting et al. v. Arizona Independent Redistricting Commission et al.](#), 211 Ariz. 337 (App. 2006)

<sup>11</sup> [Arizona Minority Coalition for Fair Redistricting, et al. v. Arizona Independent Redistricting Commission](#), 220 Ariz. 587 (2009)

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.<sup>12</sup>

The IRC approved and adopted the equal population grid for the congressional and legislative district maps on August 18, 2011, and the Commissioners held public hearings throughout Arizona that summer.

The IRC adopted draft district maps in October 2011 which 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 IRC 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 IRC argued that the Elections Clause defers to the lawmaking process of a particular state and is subject to congressional preemption.

<sup>12</sup> [Arizona Supreme Court No. R-10-0011 \(2010\)](#)

The Legislature sought a judgment declaring that Proposition 106 violates the Elections Clause of the U.S. 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 District 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 election.

The District Court held a hearing before a three-judge panel on January 24, 2014. In February 2014, the District 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 District 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.<sup>13</sup>

In October 2014, the U.S. Supreme Court accepted review of the Legislature’s appeal challenging the IRC’s authority over congressional redistricting. On June 29, 2015, the U.S. Supreme Court issued a 5-4 decision in favor of the IRC, with Justice Ruth Bader Ginsberg delivering the majority opinion. The U.S. Supreme Court acknowledged that the Legislature did 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 federal law do 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 Supreme 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 U.S. Supreme Court pointed out that the U.S. Constitution was ratified

<sup>13</sup> *Arizona State Legislature v. Arizona Independent Redistricting Commission*, et al., 997 F. Supp. 1047 (D. Ariz., 2014)

at a time when state constitutions did not allow for citizen initiatives.<sup>14</sup>

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 Arizona'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 VRA.<sup>15</sup>

Several individuals filed against the IRC in the 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 2015 case, *Arizona State Legislature v. Independent Redistricting Commission*, had yet to be decided by the U.S. Supreme Court. 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.

With all major litigations against the IRC settled, the congressional and legislative district maps drawn by the IRC remained valid until the 2022 general election.

## 2020 REDISTRICTING PLAN

In 2020, complications relating to the COVID-19 pandemic led to delays in the delivery

of census data to the U.S. President and the states. As a result of the delay and statutory redistricting deadlines, Arizona's timeline for reapportionment and redistricting was compressed. In 2021, the Legislature granted each county board of supervisors a seven-month extension, to July 1, 2022, to divide the county into supervisorial districts. Legislation was also passed in 2021 and 2022 to: 1) clarify which districts candidates for election could use to file nomination petitions; and 2) determine the number of signatures required for candidate nomination petitions.<sup>16</sup>

The first four commissioners of the 2021-2030 IRC were sworn into office on January 14, 2021, and selected a fifth member to serve as chairperson on January 21, 2021. The IRC received census data in a legacy format on August 12, 2021, and approved and adopted the equal population grid for the congressional and legislative district maps on September 14, 2021. Following the adoption of the grid map, the IRC held public hearings throughout Arizona during the winter of 2021. The IRC adopted final district maps on January 21, 2022, which were certified on January 24, 2022.<sup>17</sup>

## ADDITIONAL RESOURCES

- Independent Redistricting Commission  
<http://www.azredistricting.org/>  
[2022 IRC Report: Overview of Decennial Redistricting Process and Maps](#)
- U.S. Census Bureau  
[2010 Census](#)  
[2020 Census](#)  
[Decennial Census by Decade](#)
- Arizona Judicial Branch  
[News & Meetings: Appellate Commission IRC Nominations](#)
- U.S. Department of Justice  
Civil Rights Division  
[Voting Section](#)

<sup>14</sup> [Arizona State Legislature v. Arizona Independent Redistricting Commission et al.](#), 576 US \_ (2015)

<sup>15</sup> [Harris, et al. v. Arizona Independent Redistricting Commission, et al.](#), 578 US \_ (2016)

<sup>16</sup> [Laws 2021, Chapter 155E; Laws 2022, Chapter 3E](#)

<sup>17</sup> [IRC January 21, 2022, Meeting Minutes](#)