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15 *Attorneys for Plaintiffs*

16 **SUPERIOR COURT OF ARIZONA**
17 **MARICOPA COUNTY**

18 VINCE LEACH, KAREN GLENNON and
19 LYNNE ST. ANGELO, qualified electors and
20 residents of Congressional District 1;
21 CAROLYN COX, a qualified elector and
22 resident of Congressional District 2;
23 DONALD SHOOTER, a qualified elector and
24 resident of Congressional District 3; KARYN
25 CUSHING and JAYNE FRIEDMAN,
26 qualified electors and residents of
Congressional District 6; and ELEANOR
CLARK, a qualified elector and resident of
Congressional District 9,

Plaintiffs,

v.

ARIZONA INDEPENDENT
REDISTRICTING COMMISSION, a
legislative body of the State of Arizona;
COLLEEN COYLE MATHIS, in her official
capacity as Chair thereof; JOSE HERRERA, in

COPY



APR 27 2012
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CV2012-007344
No.

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

1 his official capacity as Vice-Chair and
2 Commissioner thereof; SCOTT FREEMAN, in
3 his official capacity as Vice-Chair and
4 Commissioner thereof; LINDA MCNULTY, in
5 her official capacity as Commissioner thereof;
6 RICHARD STERTZ, in his official capacity as
7 Commissioner thereof; and KEN BENNETT, in
8 his official capacity as Secretary of State of the
9 State of Arizona,

10 Defendants.

11 For their Special Action Complaint for Declaratory, Mandamus, and
12 Injunctive Relief (the "Complaint"), Plaintiffs allege as follows:

13 INTRODUCTION

14 Plaintiffs bring this action to challenge the Final Congressional Map (the
15 "Map") certified by the Arizona Independent Redistricting Commission (the "AIRC" or
16 "Commission") on January 17, 2012, on the grounds that the AIRC violated the
17 redistricting process mandated by the Arizona Constitution in multiple ways as alleged
18 below. These violations were foreshadowed by, and the result of, an alliance between the
19 Commission's two Democrats and its so-called Independent Chair to form a voting bloc
20 to achieve a desired result. Many of the factual allegations below are set forth to explain
21 how these three Defendant Commissioners manipulated the redistricting process from
22 day one in order to carry out their agenda. In doing so, inconvenient constitutional and
23 statutory requirements were cast aside. Attempts by the Arizona Attorney General, the
24 Legislature and the Governor to take corrective action were met with full-blown
25 resistance from the AIRC and rejected by courts primarily concerned with protecting the
26 AIRC's independence during the mapping process. As a result, the AIRC's majority
proceeded unchecked in adopting its Final Congressional Map. But now, the validity of

1 that Map depends on whether the AIRC followed the specific, mandatory constitutional
2 procedures for its development. Plaintiffs allege that the AIRC majority did not follow
3 the required process and, therefore, the resulting Map is unconstitutional.

4 5 **THE PARTIES**

6 1. Plaintiffs Vince Leach, Karen Glennon and Lynne St. Angelo are
7 qualified electors residing in the territory designated as Congressional District 1 in the
8 Map certified by the AIRC on January 17, 2012.

9 2. Plaintiff Carolyn Cox is a qualified elector residing in the territory
10 designated as Congressional District 2 in the Map certified by the AIRC on January 17,
11 2012.

12 3. Plaintiff Donald Shooter is a qualified elector residing in the territory
13 designated as Congressional District 3 in the Map certified by the AIRC on January 17,
14 2012.

15 4. Plaintiffs Karyn Cushing and Jayne Friedman are qualified electors
16 residing in the territory designated as Congressional District 6 in the Map certified by the
17 AIRC on January 17, 2012.

18 5. Plaintiff Eleanor Clark is a qualified elector residing in the territory
19 designated as Congressional District 9 in the Map certified by the AIRC on January 17,
20 2012.

21 6. As qualified electors and registered voters in the State of Arizona, all of
22 the Plaintiffs identified in Paragraphs 1 through 5 have a significant interest in the
23 manner in which Arizona's congressional district boundaries are established, including an
24 interest in seeing that the district boundaries are established in a manner that complies
25 with the Arizona Constitution. All have suffered palpable injury because of the failure of
26 the Defendant AIRC to follow the constitutionally mandated process for redistricting.

1 7. The Defendant AIRC is a legislative body established under Article 4,
2 Part 2, § 1(3) of the Arizona Constitution tasked with drawing Arizona’s congressional
3 and state legislative districts. It has standing in legal actions regarding redistricting plans.
4 Ariz. Const. art. 4, pt. 2, § 1(20).

5 8. Defendant Colleen Coyle Mathis is the appointed Chair of the AIRC, a
6 public officer of this State, and is named in this action in her official capacity only.

7 9. Defendant Jose Herrera is a duly appointed Commissioner of the AIRC
8 and was also selected by the AIRC to serve as one of its two Vice-Chairs. He is a public
9 officer of this State and is named in this action in his official capacity only.

10 10. Defendant Scott Freeman is a duly appointed Commissioner of the
11 AIRC and was also selected by the AIRC to serve as one of its two Vice-Chairs. He is a
12 public officer of this State and is named in this action in his official capacity only.

13 11. Defendant Linda McNulty is a duly appointed Commissioner of the
14 AIRC, a public officer of this State, and is named in this action in her official capacity
15 only.

16 12. Defendant Richard Stertz is a duly appointed Commissioner of the
17 AIRC, a public officer of this State, and is named in this action in his official capacity
18 only.

19 13. Defendants AIRC, Mathis, McNulty, Hererra, Freeman, and Stertz are
20 collectively referred to herein as the “AIRC Defendants.”

21 14. Defendant Ken Bennett is the Arizona Secretary of State, a public
22 officer of this State, and is named as a Defendant in this action in his official capacity
23 only. Pursuant to Article 4, Part 2, § 1(17) of the Arizona Constitution, the AIRC “shall
24 certify to the Secretary of State the establishment of congressional . . . districts.” The
25 Secretary of State is the public officer responsible for the conduct of statewide elections,
26 including the conduct of congressional elections in Arizona.

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JURISDICTION AND VENUE

15. This Court has jurisdiction and venue pursuant to Article 6 § 14 of the Arizona Constitution and A.R.S. §§ 12-123; 12-1801, *et seq.*; 12-1831, *et seq.*; and 12-2021, *et seq.*

GENERAL ALLEGATIONS

Creation and Composition of the AIRC

16. In 2000, Arizona voters approved Proposition 106, a citizen initiative that amended Article 4, Part 2, § 1, of the Arizona Constitution, removed the power to draw congressional and state legislative districts from the elected state legislature, and reassigned this task to the appointed AIRC.

17. The AIRC consists of five volunteer commissioners, including a chair, who are to be appointed in a manner designed to provide for diversity in political party affiliation and county of residence. *See* Ariz. Const. art. 4, pt. 2, § 1(3) to (8).

18. For three years prior to their appointment, Commissioners “shall not have been appointed to, elected to, or a candidate for any other public office, including precinct committeeman or committeewoman but not including school board member or officer, and shall not have served as an officer of a political party, or served as a registered paid lobbyist or as an officer of a candidate’s campaign committee.” Ariz. Const. art. 4, pt. 2, § 1(3).

19. The current AIRC consists of two Democrats (Commissioners Herrera and McNulty), two Republicans (Commissioners Freeman and Stertz) and a Chair (Mathis) who is a registered Independent. Chairwoman Mathis and Commissioners McNulty and Stertz reside in Pima County. Commissioners Herrera and Freeman are residents of Maricopa County.

1 20. Each of the current Commissioner Defendants are serving a ten-year term
2 of office that will end with the appointment of the first member of the next Commission
3 in 2021. *See* Ariz. Const. art. 4, pt. 2, § 1(23). During their term of office and for three
4 years thereafter, Commissioners are “ineligible for Arizona public office or for
5 registration as a paid lobbyist.” Ariz. Const. art. 4, pt. 2, § 1(13).

6
7 **Arizona’s Constitutional Procedure for Redistricting**

8 21. Publicity pamphlet arguments “for” Proposition 106 complained about the
9 legislature’s self-interested approach to redistricting, noting that “[d]istrict maps are
10 secretly drawn by powerful party leaders, hidden from the public” and that “[e]ven other
11 members of the legislature are barred from viewing the maps until they are essentially
12 complete.” Then-Attorney General Janet Napolitano’s publicity pamphlet argument
13 stated that “[t]hrough open meetings throughout the State—not backroom dealing—we
14 will have a process run by the public” and that the initiative would be “fair to all
15 Arizonans because it opens up the system to public scrutiny.”

16 22. Accordingly, the constitutional provision establishing the AIRC also
17 requires a quorum of three commissioners, including the chair or vice-chair, to conduct
18 business, and the AIRC can take official action only with three or more affirmative votes.
19 Ariz. Const. art. 4, pt. 2, § 1(12).

20 23. Further, “[t]o ensure transparency, the Commission must conduct its
21 business ‘in meetings open to the public, with 48 or more hours public notice provided.’”
22 *Ariz. Minority Coalition for Fair Redistricting v. Ariz. Independent Redistricting*
23 *Comm’n*, 220 Ariz. 587, 591, ¶ 4, 208 P.3d 676, 680 (2009) (quoting Ariz. Const. art. 4,
24 pt. 2, § 1(12)).

25 24. Each Commissioner must be “committed to applying the provisions of [the
26 redistricting section of the constitution] in an honest, independent and impartial fashion

1 and to upholding public confidence in the integrity of the redistricting process.” Ariz.
2 Const. art. 4, pt. 2, § 1(3).

3 25. The AIRC’s sole task is to establish congressional and legislative districts.
4 “The Arizona Constitution directs the Commission to complete its task by following
5 specified procedures.” *Id.* at 592, ¶ 5, 208 P.3d at 681.

6 26. The constitution specifies that the “commencement of the mapping process
7 for both congressional and legislative districts shall be the creation of districts of equal
8 population in a grid-like pattern across the state.” Ariz. Const. art. 4, pt. 2, § 1(14). The
9 AIRC refers to this initial map as the “Grid Map.”

10 27. “Working from that map, the Commission must next adjust the grid ‘as
11 necessary to accommodate’ six listed goals.” *Id.* The constitution’s redistricting goals
12 are:

13 A. Districts shall comply with the United States
14 Constitution and the United States voting rights act;

15 B. Congressional districts shall have equal population to
16 the extent practicable, and state legislative districts shall have
17 equal population to the extent practicable;

18 C. Districts shall be geographically compact and
19 contiguous to the extent practicable;

20 D. District boundaries shall respect communities of
21 interest to the extent practicable;

22 E. To the extent practicable, district lines shall use visible
23 geographic features, city, town and county boundaries, and
undivided census tracts;

24 F. To the extent practicable, competitive districts should
25 be favored where to do so would create no significant
26 detriment to the other goals.

Ariz. Const. art. 4, pt. 2, § 1(14).

1 28. The constitution also requires that “[p]arty registration and voting history
2 data shall be excluded from the initial phase of the mapping process but may be used to
3 test maps for compliance with the above goals.” Ariz. Const. art. 4, pt. 2, § 1(15).

4 29. The AIRC may not identify or consider “[t]he places of residence of
5 incumbents or candidates” at any phase of the mapping process. *Id.*

6 30. Although the constitution allows the AIRC to make sequential
7 “adjustments” to the Congressional Grid Map for specific and identified reasons, it does
8 not authorize the AIRC or its Commissioners to abandon the Congressional Grid Map, or
9 any part of it, to simply draw maps that are not the direct product of adjustments to the
10 Congressional Grid Map.

11 31. After making adjustments to the Congressional Grid Map to accommodate
12 all constitutional goals, Ariz. Const. art. 4, pt. 2, § 1(16) requires that the AIRC
13 “advertise a draft map of congressional districts . . . to the public for comment, which
14 comment shall be taken for at least thirty days.”

15 32. During the public comment period, the Legislature may “make
16 recommendations to the independent redistricting commission by memorial or by
17 minority report, which recommendations shall be considered by the independent
18 redistricting commission.” *Id.* § 1(16).

19 33. After the public comment period has expired, and after considering the
20 Legislature’s recommendations, if any, the AIRC “shall then establish final district
21 boundaries” and “certify to the secretary of state the establishment of
22 congressional . . . districts.” *Id.* § 1(16)-(17).

23 34. Throughout this process, the AIRC is charged with the duty to make a
24 series of value judgments. But the constitution requires that those judgments “be made
25 through a specific process so as to optimize consideration of the listed constitutional
26

1 goals and minimize the partisan concerns that traditionally dominate redistricting
2 efforts.” 220 Ariz. at 601, ¶ 49, 208 P.3d at 690 (Hurwitz, J., concurring).

4 **The AIRC in Action; The Loss of Public Confidence**

5 **A. Selection of the Current AIRC Commissioners**

6 35. On or about December 29, 2010, the Commission on Appellate Court
7 Appointments finalized a pool of 25 candidates for appointment to the AIRC: 10 each
8 from the two largest political parties in Arizona and 5 not registered with either of those
9 parties.

10 36. On or about the following dates, appointments to the AIRC were made in
11 the constitutionally prescribed order: January 31, 2011, the Republican Speaker of the
12 Arizona House of Representatives appointed Defendant Freeman, a registered Republican
13 from Maricopa County; February 2, 2011, the Democratic Minority Leader of the
14 Arizona House of Representatives appointed Defendant Herrera, a registered Democrat
15 from Maricopa County; February 9, 2011, the Republican President of the Arizona State
16 Senate appointed Defendant Stertz, a registered Republican from Pima County; and
17 February 15, 2011, the Democratic Minority Leader of the Arizona State Senate
18 appointed Defendant McNulty, a registered Democrat from Pima County.

19 37. On February 24, 2011, in a meeting called by the Arizona Secretary of
20 State, the first four appointed Commissioners met to select a chairman from among the 5
21 candidates who were not registered with either of Arizona’s two largest political parties.
22 Although they interviewed the 5 candidates and a quorum of the Commission then met in
23 executive session, the Commissioners did not select a chairman that day. To allow time
24 for further reflection, the Commissioners decided to meet again on March 1, 2011.

25 38. On March 1, 2011, after a quorum of the Commission met in executive
26 session for a little over an hour, Defendants Freeman, Herrera, Stertz, and McNulty

1 selected Defendant Mathis, a registered Independent from Pima County, to serve as
2 Commission Chair.

3 39. During the February 24, 2011 interviews, Defendant Freeman indicated to
4 Defendant Mathis that the Commission's political appointee members were looking for a
5 chairman who would bring balance and fairness to the Commission and asked Defendant
6 Mathis whether anything in her background would call into question her ability to be fair.
7 According to the minutes of this meeting, Defendant Mathis answered that "there is
8 nothing in her background that would limit her ability to be fair and as long as she did not
9 have to make decisions about buying heavy equipment she would be okay." In response
10 to questioning from Defendant McNulty about her management style, the meeting
11 minutes report that Defendant Mathis responded that she likes "to create an environment
12 where people feel they can trust her and are comfortable with what she is trying to do"
13 and that it is "important to be open and impartial and achieve the end result by
14 consensus."

15 40. In Defendant Mathis's application dated October 12, 2010, she omitted
16 critical information, which, had it been known, would have identified her as biased in
17 favor of the Democratic Party and not impartial, and would have precluded her inclusion
18 on the list of candidates for Chair and most certainly would have prevented her selection
19 as the Independent Chair of the AIRC. (Exhibit 1, Mathis Application).

20 41. Specifically, she failed to reveal: (a) that Christopher Mathis, Defendant
21 Mathis's husband, served as treasurer for the 2010 campaign of Nancy Young Wright, a
22 Democratic candidate for a seat in the Arizona House of Representatives from Legislative
23 District 26 in Pima County; (b) on May 16, 2010, Defendant Mathis donated \$100 to the
24 campaign of Andrei Cherny, then a candidate for the Democratic Party nomination for
25 the office of Arizona State Treasurer in the 2010 election; (c) on May 4, 2010,
26 Christopher Mathis donated \$250 to the Cherny State Treasurer campaign; (d) on October

1 27, 2010, Christopher Mathis donated \$100 to the Nancy Wright legislative campaign; (e)
2 on August 10, 2010, Defendant Mathis donated \$10 to the Arizona List P.A.C., a
3 committee for pro-choice Democratic women in Arizona; and (f) on March 3, 2010 and
4 on August 10, 2010, Christopher Mathis donated \$75 and then another \$10, respectively,
5 to Arizona List P.A.C. (Exhibit 2, Campaign Finance Reports). This consistent pattern
6 of support for Democratic causes and candidates, particularly in the most recent election
7 cycle, reveals that Defendant Mathis at heart is a Democrat, though dressed in
8 Independent clothing.

9 42. Defendant did not disclose this information on her application in response
10 to question number 6: "Is there any possible conflict of interest or other matter that would
11 create problems or prevent you from fairly and impartially discharging your duties as an
12 appointee to the Independent Redistricting Commission? Yes () No () If your answer
13 is 'Yes,' attach an explanation." Defendant Mathis answered "No."

14 43. Although his service as a candidate campaign treasurer in 2010 would have
15 disqualified him from appointment to the AIRC, Mr. Mathis effectively became a "sixth
16 commissioner" by closely counseling Defendant Mathis on every aspect of the
17 redistricting process, including votes taken, and interacting with stakeholders to ascertain
18 their support for various proposals. Mr. Mathis attended virtually every public meeting
19 of the AIRC, often spoke with Democratic operatives during hearings, listened in on
20 many conference calls among the AIRC Defendants, and acted on Defendant Mathis's
21 behalf to round up votes on decisions coming before the Commission. Mr. Mathis even
22 went so far as to propose a deal to establish legislative district boundaries in which the
23 Democrat Commissioners would draw districts in southern Arizona and the Republican
24 Commissioners would draw those in northern Arizona.

25 44. For someone constitutionally barred from service on the Commission, Mr.
26 Mathis was allowed to have unprecedented involvement in and influence on the

1 redistricting process.

2 45. Combined with subsequent concerns about Defendant Mathis's political
3 performance as chairman, her failure to reveal information about her husband's partisan
4 political activity, as well as her own, raised questions about whether any of her fellow
5 Commissioners had been duped into supporting her selection.

6
7 **B. Among its Very First Acts as a Commission, the AIRC Violated the
8 Arizona Constitution**

9 46. With the selection of Defendant Mathis as its chair, the AIRC was fully
10 constituted on March 1, 2011, and it almost immediately violated the Arizona
11 Constitution.

12 47. After selecting a chair, Article 4, Part 2, § 1(9) of the Arizona Constitution
13 mandates that "[t]he five commissioners shall then select by majority vote one of their
14 members to serve as vice-chair."

15 48. But instead of complying with the constitution's mandate, and despite the
16 advice of counsel to the contrary, the Commission selected both Commissioners Herrera
17 and Freeman to serve as co-vice-chairs.

18 **C. The Mathis-McNulty-Herrera Alliance Begins to Wield Power**

19 49. Early on, the stage was set for an outcome-driven redistricting instead of
20 the process-driven redistricting guaranteed by the Arizona Constitution.

21 50. After the appointment of the IRC's chairperson, the commissioners quickly
22 polarized along party lines, with the chair, nominally an independent, siding with the
23 Democratic members on every decision of any consequence.

24 51. The alliance among Defendants Mathis, McNulty and Herrera first emerged
25 with the selection of the Commission's Republican legal counsel.

26

1 52. On or about April 8, 2011, a request for proposal (“RFP”) for AIRC legal
2 services was issued. Responses to the legal services RFP were due April 28, 2011.

3 53. A quorum of the Commission met in executive session on May 3, 2011 for
4 approximately 5.5 hours; May 6, 2011 (telephonically) for an undisclosed amount of
5 time; and on May 10, 2011 for approximately 1.5 hours before selecting the law firms to
6 be interviewed in public session on May 10, 2011. (Tr. 05/03/11 at 38:3-279:6; 05/06/11
7 Agenda; Tr. 05/10/11 at 59:6-14).

8 54. On May 12, 2011, the AIRC Defendants met in public session and
9 interviewed six of the law firms that responded to the legal services RFP with the goal of
10 procuring the services of a Republican and a Democrat attorney.

11 55. After a quorum of the Commission met in at least two, closed, executive
12 sessions on May 12 and May 13 totaling approximately another 2 hours (Tr. 05/12/12 at
13 195:25-196:20; Tr. 05/13/12 at 4:12-5:1), Defendants Mathis, McNulty and Herrera
14 selected Osborn Maledon, P.A. (Democrat Mary O’Grady) and Ballard Spahr LLP
15 (Republican Joseph Kanefield) as legal counsel. But Mr. Kanefield was a newly minted
16 Republican having changed his registration from Democrat to Republican on July 22,
17 2010, only nine months prior to responding to the RFP. He was a registered Democrat
18 for at least the preceding 17 years (since August 1, 1994).

19 56. Although a majority of the AIRC hired Republican and Democrat counsel
20 to represent them, both lawyers were selected by the Democrat Commissioners,
21 Defendants McNulty and Herrera, and the Chair, Defendant Mathis. The Republican
22 attorney was selected over the objections of the Republican Commissioners, Defendants
23 Freeman and Stertz.

24 57. Both Ms. O’Grady and Mr. Kanefield had been employed in the Arizona
25 Attorney General’s Office under Democrat Attorney General Janet Napolitano, and
26 O’Grady was Solicitor General under Democrat Attorney General Terry Goddard.

1 Although Mr. Kanefield had worked for Republican Secretary of State and then Governor
2 Jan Brewer, there was no reason for the Commission's Democrats to doubt that they had
3 succeeded in selecting a Democrat legal team.

4 58. Further, concerns emerged concerning the outcome-oriented nature of the
5 scoring of the responses to the RFP engaged in by at least one Commissioner who gave
6 perfect scores to the Democrat Commissioners' preferred candidates and an unjustifiably
7 low score to the candidate preferred by the Republican Commissioners. One other
8 Commissioner's written comments during the procurement process reveal concerns about
9 the possibility that the scoring had been rigged.

10 59. Upon information and belief, one or more Defendant Commissioners
11 engaged in a series of separate communications, involving at least two Commissioners at
12 a time, with the ultimate goal of allowing a quorum of Commissioners to gather to
13 conduct the business of discussing, proposing or deliberating with respect to the action of
14 hiring legal counsel outside of properly noticed public meetings in an effort to
15 circumvent the open meeting requirement of Ariz. Const. art. 4, pt. 2, § 1(12) and/or the
16 Arizona Open Meeting Law ("OML"), A.R.S. § 38-431, *et seq.*

17 60. In summary, this first glimpse of Defendants Mathis, McNulty, and Herrera
18 in action raised serious concerns that the selection of counsel might foreshadow a biased
19 redistricting process and little regard for upholding public confidence in the integrity of
20 the redistricting process.

21 61. On or about June 15, 2011, the AIRC Defendants met in public session to
22 select four candidates to interview for the position of mapping consultant: Strategic
23 Telemetry, National Demographics, Research Advisory Services, and Terra Systems
24 Southwest. Before making their selection, a quorum of the Commission held one or more
25 closed, non-public sessions to discuss the business of selecting a mapping consultant,
26 including an almost five-hour executive session on June 15, 2011.

1 62. In evaluating Strategic Telemetry's proposal in response to the RFP,
2 Defendants Mathis, McNulty, and Herrera all gave Strategic Telemetry perfect scores
3 despite its complete lack of any prior redistricting experience, its lack of even
4 rudimentary knowledge of Arizona demographics and geography, its submission of the
5 most expensive proposal, and its location in the District of Columbia. Upon information
6 and belief, Defendant Mathis caused the destruction of these individual scoring sheets
7 during the Commission's marathon executive session on June 15, 2011.

8 63. Following presentations by the candidates for mapping consultant on June
9 24, 2011, a quorum of the AIRC Defendants met in executive session to discuss the
10 selection of the mapping consultant.

11 64. Throughout this selection process, concerns were voiced about Strategic
12 Telemetry's highly partisan, pro-Democrat resume. Strategic Telemetry advertised itself
13 as a statistics and data analysis firm that caters to Democrat clients. Strategic
14 Telemetry's president, Ken Strasma, served as the national target director for the 2008
15 Barack Obama presidential campaign. He also worked with the 2004 John Kerry
16 presidential campaign and Michael Bloomberg's 2009 New York City mayoral
17 campaign. Most recently, he worked on efforts to recall Republican officials in
18 Wisconsin, including Governor Scott Walker. Mr. Strasma also has a long history of
19 making substantial monetary contributions to Democrat candidates. According to Federal
20 Election Commission records, Mr. Strasma has contributed almost \$15,000 to Democrat
21 candidates in recent years.

22 65. Strategic Telemetry had no redistricting experience and is not a mapping
23 firm. These facts were highlighted during the AIRC meeting on July 8, 2011 when Ken
24 Strasma indicated that Strategic Telemetry had scheduled training to learn the Maptitude
25 software that is commonly used in redistricting. (Tr. 07/08/11 at 138:4-8, 139:3-5).

26

1 66. Despite Strategic Telemetry's lack of redistricting or mapping experience,
2 Strategic Telemetry had other skills that would be of use to Defendants Mathis, McNulty
3 and Herrera. As a Democratic campaign strategist, Mr. Strasma specializes in micro
4 targeting and is considered to be a pioneer in the use of high-tech statistical modeling in
5 Democratic campaigns. In the redistricting context, Strategic Telemetry's ability to go
6 beyond voter registration to analyze voter behavior would allow it to carve out districts
7 that might appear neutral but, in fact, would be solid pro-Democrat districts.

8 67. Commissioner Mathis actively lobbied and negotiated with other
9 Commissioners to select Strategic Telemetry.

10 68. Before the selection of the mapping consultant, Defendant Mathis contacted
11 Defendant Freeman on at least one occasion to ask him to support the selection of
12 Strategic Telemetry as the AIRC's mapping consultant. Defendant Mathis presented a
13 quid pro quo to Defendant Freeman, stating that "there might be times in the future
14 where, you know, [you] need[] a third vote." (Attorney General Deposition of S.
15 Freeman at 11:8-9 (Exhibit 3)). Defendant Freeman rejected Defendant Mathis's
16 overture.

17 69. Before the selection of the mapping consultant, Defendant Mathis contacted
18 Defendant Stertz on at least two occasions to ask him to support the selection of Strategic
19 Telemetry as the AIRC's mapping consultant. Defendant Mathis presented a quid pro
20 quo to Defendant Stertz, stating that "if I were to vote with her in regards to the selection
21 of Strategic Telemetry, she would provide a favorable vote for me in the future."
22 (10/29/2011 Letter of R. Stertz to Governor Brewer at 2 (Exhibit 4)). Like Defendant
23 Freeman, Defendant Stertz rejected Defendant Mathis's offer to exchange his vote in
24 favor of Strategic Telemetry for the promise of a future vote from Mathis.

25 70. Upon information and belief, Defendant Herrera communicated with one or
26 more other AIRC Commissioners before the selection of Strategic Telemetry regarding

1 which firm should be hired. According to remarks made during the June 29, 2011 public
2 meeting, Mr. Herrera stated that his first choice was Research Advisory Services but, “in
3 a spirit of cooperation and negotiation,” decided “to support Strategic Telemetry.” (Tr.
4 06/29/11 at 41:7-21).

5 71. Upon information and belief, prior to the selection of the mapping
6 consultant, Defendant Mathis contacted Defendant McNulty on at least one occasion to
7 ask her to support the selection of Strategic Telemetry as the AIRC’s mapping consultant.

8 72. On June 29, 2011, the AIRC Defendants met to consider the mapping
9 consultant RFP. Despite having used the State Procurement Office (“SPO”), Arizona
10 Department of Administration, to handle the legal counsel and mapping RFPs, the AIRC
11 made an abrupt change in the middle of the mapping procurement process. Immediately
12 following an executive session with State Procurement officials at which a quorum of the
13 Commission was present, the Commission’s counsel announced that SPO was no longer
14 working on the mapping consultant procurement and that the project was now delegated
15 to the AIRC. (Tr. 06/29/11 at 31:5-13). Upon information and belief, SPO renounced
16 any role in the process because the process clearly was diverging from long-standing
17 practices under Arizona procurement law.

18 73. The Commission then proceeded to select Strategic Telemetry as its
19 mapping consultant by a vote of 3-2, with the Mathis-McNulty-Herrera coalition voting
20 “yes,” and Defendants Stertz and Freeman voting “no.” (Tr. 06/29/11 at 35:8-47:16).

21 74. In explaining her vote for Strategic Telemetry, Defendant Mathis read from
22 computer-generated remarks obviously prepared in advance of the meeting, which
23 suggests some advance knowledge of the outcome of the Commission’s vote.

24 75. Upon information and belief, the pro-Democrat voting bloc of Defendants
25 Mathis, McNulty, and Herrera coordinated their efforts to guarantee that Strategic
26 Telemetry would be selected as the AIRC’s mapping consultant by, among other actions,

1 agreeing that they each would award Strategic Telemetry a perfect score and engaging in
2 various non-public communications designed to achieve the support of a majority of
3 Commissioners in advance of a public meeting. These efforts to achieve majority
4 consensus violated both the letter and spirit of Ariz. Const. art. 4, pt. 2, § 1(12), which
5 requires that the conduct of Commission business, such as the selection and hiring of a
6 mapping consultant, occur in a public meeting if a quorum of the Commission is present.

7 76. Upon information and belief, one or more Defendant Commissioners
8 engaged in a series of separate communications, involving at least two Commissioners at
9 a time, with the ultimate goal of allowing a quorum of Commissioners to gather to
10 conduct the business of discussing, proposing or deliberating with respect to the action of
11 hiring Strategic Telemetry outside of properly noticed public meetings in an effort to
12 circumvent the open meeting requirement of Ariz. Const. art. 4, pt. 2, § 1(12) and/or the
13 OML, A.R.S. § 38-431, *et seq.*

14 77. Coming on the heels of the selection of legal counsel, the Mathis-McNulty-
15 Herrera decision to hire the highly-partisan Strategic Telemetry proved to be a flashpoint
16 that irreparably damaged public confidence in the AIRC. Subsequent AIRC meetings
17 featured scores of citizens expressing concerns about the ability of Strategic Telemetry to
18 remain impartial. The transcript of the Commission's public meeting on June 30, 2011,
19 reflects roughly 90 pages of public comments criticizing the selection of Strategic
20 Telemetry and the conduct of Defendant Mathis. (Tr. 06/30/11 at 3:21-115:19 (all public
21 comment and Commissioners' responses).

22 **D. The Commission Asserts that it is Not Subject to the Open Meeting**
23 **Law**

24 78. Additional concerns were raised about Defendants Mathis, McNulty and
25 Herrera discussing Commission business with each other outside of open meetings and
26

1 about the Commission improperly conducting business during closed-door or executive
2 sessions.

3 79. On the morning of July 21, 2011, Attorney General Tom Horne issued a
4 press release announcing an investigation of the Commission for alleged violations of
5 Arizona's procurement rules and Open Meeting Law ("OML"), which is codified at
6 A.R.S. §§ 38-431 through 38-431.09.

7 80. As part of this investigation, the Attorney General issued Civil
8 Investigative Demands ("CIDs") to all five Commissioners.

9 81. Commissioners Freeman and Stertz cooperated with the Attorney General's
10 investigation and submitted to depositions under oath.

11 82. Defendants Mathis, McNulty, and Herrera each received separate legal
12 counsel at the IRC's expense, which violated A.R.S. § 38-431.07(B), and each refused to
13 cooperate with the Attorney General's investigation. The Attorney General sued these
14 Commissioners in Maricopa County Superior Court to enforce the CIDs.

15 83. In response to the Attorney General's action, the Defendant AIRC argued
16 that the Commission is subject only to the constitutional public meeting requirement in
17 Ariz. Const. art. 4, pt. 2, § 1(12), not the specific provisions of the statutory OML. But
18 the AIRC's own counsel provided training to the Commissioners on open meeting law
19 compliance, noticed AIRC meetings by citing to the open meeting law's provisions, and
20 freely utilized the open meeting law's exceptions allowing public bodies to meet in
21 closed session. And if the AIRC is only subject to the constitution's open meeting
22 provision, which contains no exceptions to the public meeting requirement, it had no
23 legal justification for the more than 40 hours spent in executive sessions.

24 84. The AIRC brought a declaratory judgment and special action in Maricopa
25 County Superior Court to resolve the question of whether the Commission is subject to
26 the open meeting law and to protect the Commission from what it argued was the

