The Arizona Redistricting Fight: Round Five

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The U.S. Constitution requires states to redraw their federal and legislative district lines every 10 years.[1] In 1962, the United States Supreme Court held in *Baker v. Carr*[2] that the political question doctrine no longer precluded judicial review of political apportionment plans and firmly established a legal right of action to assure the one-person, one-vote requirement for congressional and legislative districts. As a result, there have been legal challenges to almost every congressional and legislative apportionment plan in Arizona ever since.[3]

In November 2000, Arizona voters passed Proposition 106, a citizen initiative that amended the Arizona Constitution by removing from the state Legislature the power to draw congressional and state legislative districts and reassigning this task to the newly created Arizona Independent Redistricting Commission (IRC).[4] The proponents of Proposition 106 argued that this new system would remove partisan politics from the redistricting process.[5] Whether or not that is the case, it did not remove redistricting from the legal arena.

If round one in the ongoing Arizona redistricting fight began shortly after *Baker v. Carr*, round five began this year before the IRC members were even appointed, when a special action was filed challenging the qualifications of three IRC nominees.[6] It appears we're likely to see yet another decade of court battles over the constitutional validity of the lines. This article provides an overview of the redistricting process in Arizona and discusses where the legal challenges may arise.

New Districts and the Population Explosion

In the last decade, Arizona's population exploded by 1,261,385 new residents,[7] a 24.6 percent increase (from 5,130,632 to 6,392,017 residents) since 2001. But the expansion was felt unevenly around the state, and some results might be surprising. Contrary to popular belief, the population percentages of Maricopa and Pima counties, the state's most populous counties, did not grow. They actually shrank, if ever so slightly.

Pima County's share of Arizona's population fell from 16.44 percent to 15.34 percent, and Maricopa's edged down from 59.98 percent to 59.71 percent. The three big percentage gainers were Pinal County at a 109.1 percent increase (179,727 to 375,770 residents), Mohave County at a 29.1 percent increase (155,032 to 200,186), and Yavapai County at a 26 percent increase (167,517 to 211,033.) No other county kept pace with the overall 24.6 percent statewide expansion, and little Greenlee County got even smaller, actually losing 110 residents (8,547 to 8,437).

Growth rates among Arizona cities were even more disparate. The City of Maricopa bested its sister cities, with a 4,081 percent increase—from 1,040 residents to 42,442. Phoenix still topped all Arizona cities at a

total increase of 124,587 residents (1,321,045 to 1,445,632), but its percentage increase went up only 9.4 percent, and, as a result, its position relative to the state's overall growth slipped. It was relatively worse (or better, depending on your view of growth) for Tucson, which moved up by 33,417 residents or a 6.9 percent bump, but fell far short of the state's overall rate of increase. Mesa added 42,666 residents, or a 10.8 percent upward notch, also below the state's percentage rise. Tempe budged up by only 3,094 souls, and Glendale grew by 7,909. In stark contrast, their neighbors, Chandler and Peoria, experienced much more robust growth, respectively adding 59,542 and 45,701 residents.

The overall trends establish that the state's northwestern quadrant bloomed, central Arizona (especially Pinal County) grew denser, and eastern and southern Arizona lost ground, relatively speaking. In Maricopa County, the East Valley continued its upward march, but the far northwest and southwest parts of the Valley are what really took off.

The ideal population of a legislative district is 213,067 residents. That means Mohave County and Yavapai County each fall just short of such an ideal. It also means Pinal County's population makes one and three fourths of a district; Chandler, Scottsdale, and Glendale all have populations exceeding a full district, though not by much; and Gilbert barely misses a full district.

These all are interesting developments, and may carry some weight when the line-drawing process begins, given the Arizona Constitution's requirement that in drawing district lines the IRC to the extent practicable "shall use … city, town and county boundaries."[8] When all is said and done, however, the 800-pound gorilla remains Maricopa County, the population of which fills out nearly 18 districts.

Arizona's population explosion entitles it to one more seat in the U.S. House of Representatives, making a delegation of nine members. This redistricting cycle, the ideal population of a congressional district in Arizona is 710,224. The 2002 congressional-district map had two districts with Latino majorities, seats currently held by Representatives Ed Pastor and Raúl Grijalva. The legislative map had eight Latino-majority districts. Arizona's Latino population, however, has bulged in the last 10 years, rising from 25.3 percent to 29.6 percent of the state's population.

Section 5 of the Voting Rights Act (VRA)[9] prohibits any decrease in the number of Latino-majority districts. The more intriguing questions are whether VRA section 2[10] requires the IRC to draw a third Latino-majority congressional district or nine or ten Latino-majority legislative districts. This will likely be one of the first major challenges confronting the newly appointed IRC, which has already begun the process of drawing Arizona's new congressional and legislative district lines. IRC will have to answer these questions before it submits its maps to the Department of Justice for VRA pre-clearance.

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Overview of Redistricting

Arizona has not always drawn its legislative districts every 10 years. There was a time when the county boards of supervisors drew districts for state representatives every two years based on the gubernatorial vote in the preceding general election (governors had two-year terms then.) State senators were elected at large from each county, with a fixed number of seats per county. The advent of the one-person, one-vote rule changed all that, and led to decennial redistricting in Arizona.

In drawing district lines, the IRC exercises a power previously delegated to the Arizona Legislature.[11] The IRC consists of five volunteer commissioners appointed in a manner designed to assure diversity in political party affiliation and county of residence.[12] The Commission on Appellate Court Appointments nominates candidates for the IRC,[13] and commissioners are then appointed from this pool of candidates by the Speaker of the Arizona House of Representatives, followed by the minority leader of the House, the President of the Senate, and the minority leader of the Senate.[14] Then, by majority vote, the four appointed commissioners select the fifth commissioner from the remaining candidates in the nomination pool; that person serves as IRC chair.[15]

The Arizona Constitution permits no more than two members of the IRC to be from the same political party and requires that the fifth commissioner not be registered with any party represented on the IRC at the time of appointment.[16] Candidates must demonstrate a commitment to performing the IRC's charge "in an honest, independent and impartial fashion and to upholding public confidence in the integrity of the redistricting process."[17] All IRC members must be registered Arizona voters who have been "continuously registered with the same political party or registered as unaffiliated with a political party for three or more years immediately preceding appointment."[18]

The sole task of the IRC is to "establish congressional and legislative districts."[19] The Arizona Constitution directs the IRC to complete its task in four phases.[20] During phase one the IRC must create districts of equal population in a grid-like pattern across the state. In phase two the IRC adjusts the grid "as necessary to accommodate" six listed goals:

A. Districts shall comply with the United States Constitution and the United States voting rights act;
B. Congressional districts shall have equal population to the extent practicable, and state legislative districts shall have equal population to the extent practicable;
C. Districts shall be geographically compact and contiguous to the extent

practicable;

D. District boundaries shall respect communities of interest to the extent practicable;
E. To the extent practicable, district lines shall use visible geographic features, city, town and county boundaries, and undivided census tracts;
F. To the extent practicable, competitive districts should be favored where to do so would create no significant detriment to the other goals.[21]

During this phase the IRC may use party registration and voting history data to test maps for compliance with these goals. In phase three, the IRC advertises draft maps of the legislative and congressional districts drawn during the initial phases and takes public and legislative comment for 30 days. Finally, in phase four, the IRC establishes final district boundaries and certifies the new districts to the Secretary of State.[22]

Many Arizona political subdivisions also will need to draw new electoral maps. This includes all counties for supervisor districts, all cities that elect council members from districts, and certain school districts. These jurisdictions are not subject to Proposition 106. They nonetheless must follow the same federal criteria—one-person, one-vote and the VRA—that apply to the IRC.

Equal Protection and the One-Person, One-Vote Rule

The primary requirement set by the United States Constitution for redistricting is the one-person, one-vote rule.[23] The Fourteenth Amendment also prohibits racial or other invidious discrimination, but we take up discrimination primarily under the VRA analysis.

For legislative districts, until the last decade, a presumption of compliance with the Fourteenth Amendment's one-person, one-vote requirement was made if the variance from the ideal among districts did not exceed 10 percent.[24] An even greater deviation than 10 percent could be made if the state can prove a compelling need for the variation.[25]

In 2004, a three-judge panel, summarily affirmed by the Supreme Court, cast doubt on the continuing validity of the 10-percent presumption. The panel found that any deviation from absolute equality among legislative districts must be justified by legitimate state interests, and held that "where population deviations are not supported by such legitimate interests but, rather, are tainted by arbitrariness or discrimination, they cannot withstand constitutional scrutiny."[26] However the issue is resolved under the Fourteenth Amendment, Proposition 106 requires state legislative districts to "have equal population to the extent practicable," and thus may require greater equality among legislative districts than does the Fourteenth Amendment.[27]

The equalization rule is stricter for congressional districts. Art. I, § 2, of the United States Constitution requires mathematical equality of population among congressional districts, if possible. If that is not possible, it requires substantial justification for any deviation from precise equality.[28]

The rules regarding population equality have been settled for more than a generation.[29] What has not yet been settled is what populations must be equalized. Does equal protection require equalization among districts of eligible voters, voting age residents, or all residents, regardless of age, whether here legally or whether they have a disability such as a felony conviction preventing them from voting? For its part, the Census Bureau counts all persons residing within a state, irrespective of whether such persons reside legally within the United States or the particular state, or are children, felons, or others not entitled to vote.

Thus, registered voters residing in a district overrepresented by persons not eligible to vote will have more heft behind their votes if it is actual population that must be equalized. The United States Supreme Court has not yet explicitly resolved this issue. The Fourth, Fifth and Ninth Circuits all have approved the use of actual population, as opposed to voter-age population, for purposes of satisfying the one-person, one-vote requirement of equal protection under the Fourteenth Amendment.[30] This stands in contrast, however, with the Department of Justice's voting-rights review, where, as developed below, supermajorities of minority-eligible voters may be required to satisfy the VRA.

The Voting Rights Act: Section 5

VRA Section 5[31] applies "only to proposed changes in voting procedures."[32] If no changes are made in voting procedures, the VRA is not invoked. Because Arizona must redistrict every 10 years with the new census, Arizona must comply with the VRA when it redistricts.

Arizona is a "covered jurisdiction" under VRA Section 5, and 28 C.F.R., Part 51, App., and therefore the IRC must submit its redistricting plans to the Attorney General for preclearance under the VRA before they can become effective.

Section 5 voting-rights review entails a two-step process.[33] First, the "bench-mark" plan must be identified.[34] Second, the proposed redistricting plan must be compared to the bench-mark plan to determine whether the proposed plan "causes a retrogression in minority voting strength."[35] The bench-mark plans are the plans currently in effect—that is, the congressional plan precleared in 2002 and the legislative plan precleared in 2003.[36]

To determine whether a plan is retrogressive, a court looks at whether it was adopted with a retrogressive intent, and if not, whether it nonetheless has a retrogressive effect.[37] The agency submitting a proposed redistricting plan has the burden of proving voting-rights compliance.[38] DOJ uses several factors to evaluate a proposed redistricting plan. These include racial gerrymandering, denying or abridging the right to vote of minority citizens, reducing minority voting strength, fragmenting minority voters among different districts, or concentrating minority voters in one or more districts.[39] In redistricting jargon, these defects are known as *retrogression, diluting* and *packing*.

Given Proposition 106's requirements regarding population equality and the use of the neutral criteria of compactness, contiguity and communities of interest,[40] DOJ's focus in determining whether to preclear any proposed Arizona plan likely will center on retrogression, packing, and dilution.

The 2001 experience was bumpy. The IRC submitted its congressional and legislative redistricting plans to DOJ for preclearance. In 2002, DOJ precleared the IRC's congressional plan but rejected its legislative plan.[41] That left Arizona without a legislative plan going into the 2002 primary election. Legislative candidates had no idea of the shapes of the districts they would be able to run in, and thus faced difficulty in collecting nominating-petition signatures. Ultimately, a three-judge district court approved an emergency plan of its own to get Arizona through 2002.[42] The

IRC continued working on its own legislative plan and approved an alternative on August 14, 2002.[43] DOJ precleared this plan in 2003, and it is the plan currently in effect.[45]

What caused DOJ to reject the IRC's initial legislative plan? In its May 20, 2002, rejection letter, DOJ identified the bench-mark plan as the Legislature's 1992 plan that was pre-cleared by DOJ,[45] and found that the IRC plan retrogressed from the bench-mark by three districts. In contrast, the IRC argued its plan created 10 Latino-majority districts, an increase of two.

What explains such a variance in positions?

Taking a practical view, DOJ focused on districts with voting-age minority populations sufficiently high to assure the election of minority-choice candidates. In contrast, the IRC seemed to focus on creating districts of minority voting-age populations slightly more than 50 percent. DOJ implicitly took the position that supermajorities of minority voting-age populations were required to avoid retrogression. At a minimum, DOJ found that the IRC failed to carry its burden of proving no retrogression.

The practical take-away from the DOJ rejection letter is that a redistricting plan needs supermajorities of minority voters to prove no retrogression in a minority group's ability to elect a similar-sized representation in the Legislature compared to what existed in the bench-mark plan. The trick is to figure out just enough of a supermajority percentage to avoid retrogression, while at the same time not packing Latinos into districts.

This task is made even harder to accomplish by Proposition 106's mandate that the IRC start phase 1 of the redistricting process with a grid-like plan of districts of equal population and without any regard for incumbency or voter registration figures.[46] Thus, the "clean slate" required by Proposition 106 is bound to put the initial map at variance from the bench-mark plan. As a three-judge panel commented, "The IRC's compliance with this demand resulted in new districts with lines that were drastically different from their predecessors and created from portions of many benchmark districts."[47]

Fortunately, the VRA looks at the overall plan. As a result, as DOJ acknowledged in the rejection letter, where a plan retrogresses in one area, it can make up for it by adding majority-minority districts elsewhere in the plan. Thus, whether a plan retrogresses is judged by viewing the plan as a whole.

The Voting Rights Act: Section 2

Section 2(a) of the Voting Rights Act restates the Fifteenth Amendment's prohibition on voting qualifications or prerequisites to voting by the government that result in the denial or abridgement of the right to vote on account of race or color.[48] Subsection (b)[49] provides:

> A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

The United States Supreme Court has devised a multi-part analysis to determine whether a redistricting plan violates section 2. First is the *Gingles* test, which itself has three prongs. That is, whether:

1. the racial group is sufficiently large and geographically compact to constitute a majority in a single-member district,
2. the racial group is politically cohesive, and
3. the majority vot[es] sufficiently as a bloc to enable it … usually to defeat the minority's preferred candidate.[50]

If this test is satisfied, a court's attention turns to whether the map drawers intended to racially gerrymander the map's districts. For this purpose, a court looks at compactness, because it is difficult to gerrymander a compact district. There is no precise rule for compactness, and the inquiry takes into account such factors as maintaining communities of interest and traditional boundaries.[51]

If a district fails the *Gingles* test and is found not to be compact, a court next applies the totality-of-the-circumstances test.[52] That involves consideration of the following non-exclusive set of factors:

- The history of voting-related discrimination in the state or political subdivision;
- The extent to which voting in the elections of the state or political subdivision is racially polarized;
- Whether the state or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination;
- Whether minority group members bear the effects of past discrimination in areas such as education, employment and health that hinder their ability to participate effectively in the political process;
- Whether members of the minority group have been elected to public office in the jurisdiction;
- The use of overt or subtle racial appeals in political campaigns;
- The extent to which elected officials have been unresponsive to the particularized needs of the members of the minority group; and
- The policy underlying the state's or political subdivision's use of the contested practice or structure.[53]

Last, and of particular importance to Arizona, given the increase of Arizona's Latino population from 25.3 percent to 29.6 percent, nearly a third of Arizona's total population, is whether the number of districts in which the minority group forms an effective majority is roughly proportional to its share of the population in the relevant area.[54] This raises the questions of whether, to satisfy VRA Section 2, the IRC must draw three Latino-majority congressional districts or nine or ten Latino-majority legislative districts. The pure numbers suggest IRC should, but it first must work through the *Gingles*, compactness, and totality-of-the-circumstances tests before getting to population percentages.

The Neutral Criteria: Compactness, Contiguity and Communities Of Interest

After satisfying the requirements of population equality and the VRA, the IRC takes up the "neutral criteria" of compactness, contiguity and communities of interest.[55] Courts are fond of these concepts, for they form a restraint on political gerrymandering.[56] Courts have defined compactness and contiguity as follows:

> "Compactness" refers to length of the district's borders. The shorter the distance around the district, the more compact the district. "Contiguity" refers to the geographic connection uniting the entirety of a district. A district that is geographically separated is not contiguous.[57]

Communities of interest represent "distinctive units which share common concerns with respect to one or more identifiable features such as geography, demography, ethnicity, culture, socio-economic status or trade."[58]

The Fourteenth Amendment does not require use of the neutral criteria.[59] Nonetheless, in Proposition 106, Arizona voters constitutionalized the neutral criteria for purposes of drawing Arizona congressional and legislative redistricting plans. In their wisdom, however, the voters did not define the meaning of compactness, contiguity or communities of interest, and they devised no standards for the use of these concepts in district map drawing. The lack of constitutional definitions of these terms and standards for evaluating them formed the basis of opposition to the IRC's legislative plan adopted on August 14, 2002, for the 2004 election and the rest of the decade.

Plaintiffs argued that the IRC had a duty to define these concepts and establish rules for their application. Otherwise, any map drawn by the IRC necessarily would result in unequal application of their requirements.[60] The trial court agreed, and enjoined the plan. The Court of Appeals, however, rejected the argument and deferred to the IRC's judgment.[61]

Later, the Arizona Supreme Court held that, owing to the inherent political nature of the evaluation of compactness, contiguity and communities of interest, it would limit judicial review to two issues: whether the IRC considered these factors in its map-drawing;[62] and if so, whether "the party challenging the redistricting plan demonstrated that no reasonable redistricting commission could have adopted the redistricting plan at issue."[63]

The conclusion to be drawn from all this is that the neutral criteria can form a shield to defend a plan, but they do not forge a sword to strike at it.

Does equal protection require equalization among districts of eligible voters, voting age residents, or all residents?

Competitiveness

The last of Proposition 106's criteria is competitiveness. As with the neutral criteria, Proposition 106 does not define the meaning of competitiveness. Judicial review accordingly is circumscribed, as with the neutral criteria, and is limited to whether the IRC considered the goal procedurally in its deliberations.[64] If so, the IRC's decision will be upheld unless no rational person could have reached such a decision.[65]

As noted above, the Court of Appeals found this criterion to be subordinate to the other stated goals,[66] but the Arizona Supreme Court declined to describe the relationship of competitiveness to the other Proposition 106 goals so starkly,[67] and it obviously gets the last word.[68] The Supreme Court explained how competitiveness fits in relation to the other goals, as follows:

> The constitution directs the Commission to favor competitiveness when doing so is practicable and will not cause "significant detriment" to the other goals. *Id.* art 4, pt. 2, § 1(14)(F). … The direction that competitiveness should be favored unless one of two conditions occurs does not, contrary to the Commission's assertion, mean that the competitiveness goal is less mandatory than the other goals, can be ignored, or should be relegated to a secondary role. The constitutional language means what it says: The Commission should favor creating more competitive districts to the extent practicable when doing so does not cause significant detriment to the other goals.[69]

County, City and School District Redistricting

The primary limitations on the map drawing for districts below the state level are the Fourteenth Amendment's one-person, one-vote requirement, and the VRA.[70]

County supervisors are elected from districts, and A.R.S. § 11-212 requires the board of supervisors to redraw supervisorial districts no later than December 1 of the year in which the Census Bureau releases its results. This statute allows the board a leeway of up to 10 percent variance in population among districts. It allows the board to redraw the maps "as often as deemed necessary between each United States decennial census." By charter or ordinance, several Arizona cities, including Phoenix, also elect council members from districts.

Most school board members are elected at large, but Arizona law recognizes two exceptions.

First, A.R.S. § 15-431 allows a district with a minority population exceeding 25 percent to switch from an at-large to a single-member-district system. Phoenix Union has done so. Second, A.R.S. § 15-393 requires a joint technical district to adopt a single-member-district election system, although the same statute vests authority in the governing boards of the school districts forming the district to adopt an alternative plan.

Conclusion

Federal limitations on redistricting are found in the mathematical-equality rule for congressional districts derived from Art. I, § 2, of the United States Constitution; in the Fourteenth Amendment's one-person, one-vote rule for state and local redistricting, which can tolerate up to a 10 percent variation among districts; and in the VRA for both congressional and legislative redistricting.

To the extent practicable, Proposition 106 requires equal population among legislative districts, as well as congressional districts. It also constitutionalizes the neutral criteria and competitiveness, but vests nearly unassailable discretion in the IRC for implementing these criteria. The primary limitations on local redistricting are found in equal protection and the VRA.

endnotes

1. U.S. CONST., art. I, § 2, cl. 3. ARIZ. CONST., art. IV, Pt. 2, § 1.
2. 369 U.S. 186 (1962).
3. *See Klahr v. Goddard*, 250 F. Supp. 537 (D. Ariz. 1966); *Klahr v. Williams*, 289 F. Supp. 829 (D. Ariz. 1967); *Klahr v. Williams*, 303 F. Supp. 224 (D. Ariz. 1969); *Klahr v. Williams*, 313 F. Supp. 148 (D. Ariz. 1970); *Ely v. Klahr*, 403 U.S. 108 (1971); *Klahr v. Williams*, 339 F. Supp. 922 (D. Ariz. 1972); *Goddard v. Babbitt*, 536 F. Supp. 538 (D. Ariz. 1982); *Goddard v. Babbitt*, 547 F. Supp. 373 (D. Ariz. 1982); *Arizonans for Fair Representation, Inc. v. Symington*, 828 F. Supp. 684 (D. Ariz. 1992); *Arizonans for Fair Representation v. Symington*, No. CIV 92-256-PHX-SMM, 1993 WL 375329 (D. Ariz. June 19, 1992); *Navajo Nation v. Ariz. Indep. Redistricting Comm'n*, 230 F. Supp. 2d 998 (D. Ariz. 2002); *Arizona Minority Coal. for Fair Redistricting v. Ariz. Indep. Redistricting Comm'n*, 208 P.3d 676 (Ariz. 2009) (en banc).
4. *See* ARIZ. CONST., art. 4, pt. 2, § 1(3).
5. Ariz. Sec'y of State, 2000 Publicity Pamphlet 56-58 (2000) (Arguments "For" Proposition 106), *available at* www.azsos.gov/election/2000/Info/pubpamphlet/english/prop106.pdf.
6. *See Adams v. Commission on Appellate Court Appointments*, No. CV-10-0405-SA (Ariz., Jan. 19, 2011).The Court ruled in a 3–2 opinion on July 8 that two appointees were precluded, as they had served in a "public office" when they were irrigation district directors; a third was permitted although he had served as a tribal judge.
7. All population statistics are taken from the Census Bureau's Mar. 10, 2011, release of Arizona data, found at 2010.census.gov/news/releases/operations/cb11-cn76.html.
8. ARIZ. CONST., art. 4, pt. 2, § 1(14)(E).
9. 42 U.S.C. § 1973(c).
10. *Id.* § 1973(b).
11. *Arizona Coalition v. Redistricting Com'n*, 208 P.3d 676, 683-84 (Ariz. 2009).
12. ARIZ. CONST., art. 4, pt. 2, §§ 1(3)-(8).
13. *Id.*, art. 4, pt. 2, § 1(4).
14. *Id.*, art. 4, pt. 2, § 1(6).
15. *Id.*, art. 4, pt. 2, § 1(8); *id.* art. 4, pt. 2, §§ 1(6), (8).
16. *Id.*, art. 4, pt. 2, §§ 1(3), (8).
17. *Id.*, art. 4, pt. 2, § 1(3).
18. *Id.*
19. *Id.*, art. 4, pt. 2, § 1(14).
20. *Minority Coalition v. Independent Com'n,* 121 P.3d 843, 858-59 (Ariz. Ct. App. 2005).
21. *Id.*
22. *Id.* (internal quotation marks and citations omitted).
23. *Arizonans for Fair Representation v. Symington*, 828 F. Supp. 684, 687 (D. Ariz. 1992).
24. *Brown v. Thomson*, 462 U.S. 835, 842-43 (1983); *Navajo Nation v. Arizona Independent Redistricting Com'n*, 230 F. Supp. 2d 998, 1009 (D. Ariz. 2002).
25. *Id.*
26. *Cox v. Larios*, 300 F. Supp. 2d 1320, 1338 (N.D. Ga.), *summarily aff'd*, 542 U.S. 947 (2004). *See also* n. 43, *infra.*
27. ARIZ. CONST., art. 4, pt. 2, § 1(14)(B).
28. *Karcher v. Daggett*, 462 U.S. 725, 731 (1983); *Navajo Nation*, 230 F. Supp. 2d at 1009; *Symington*, 828 F. Supp. at 697.
29. *See Chen v. City of Houston*, 532 U.S. 1046 (2001) (Thomas, J., dissenting from the denial of *certiorari*).
30. *Daly v. Hunt*, 93 F.2d 1212 (4th Cir. 1996); *Chen v. City of Houston*, 206 F.3d 502 (5th Cir. 2000); *Garza v. City of Los Angeles*, 918 F.2d 763 (9th Cir. 1992).
31. 42 U.S.C. § 1973(c).
32. *Beer v. United States*, 425 U.S. 130, 138 (1976).
33. *Navajo Nation*, 230 F. Supp. 2d. at 1015.
34. *Id.*
35. *Id. See also Beer*, 425 U.S. at 140-41 ("Section 5 was intended to insure that [the gains thus far achieved in minority political participation] shall not be destroyed through new [discriminatory] procedures and techniques") (internal quotation marks omitted).
36. *Navajo Nation*, 230 F. Supp. 2d at 1015.
37. *Id.*
38. *Reno v. Bossier Parish School Bd.*, 528 U.S. 320, 328 (2000).
39. 28 C.F.R. § 51.59.
40. ARIZ. CONST., art. 4, pt. 2, § 1(14).
41. *Navajo Nation*, 230 F. Supp. 2d at 1003.
42. *Minority Coalition*, 211 Ariz. at 342, ¶ 6, n. 5, 121 P.3d at 848. Current legislation anticipates the same scenario and provides candidate may rely on the prior districts in collecting their nomination petition signatures. House Bill 2304, § 30 (Senate Engrossed), 50th Leg., 1st Reg. Sess. (Ariz.2011).
43. *Id.*
44. *Id.*
45. 828 F. Supp. 684, 686 n.2 (D. Ariz. 1992).
46. *See Navajo Nation*, 230 F. Supp. 2d at 1015.
47. *Id.*
48. 42 U.S.C. § 1973(a).
49. *Id.* § 1973(b).
50. *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986).
51. *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 433-34 (2006).
52. *Id.* at 426.
53. *Id.*
54. *Id.*
55. ARIZ. CONST., art. 4, pt. 2, § 1(14)(C)-(E).
56. *Carstens v. Lamm*, 543 F.Supp. 68, 87 (D. Colo. 1982).
57. *Minority Coalition*, 121 P.3d at 869.
58. *Carstens*, 543 F. Supp. at 91.
59. *Symington*, 828 F.Supp. at 688-89. The neutral criteria, however, can form state interests justifying deviations among legislative districts up to the ten percent presumption. *Cox*, 300 F. Supp. 2d at 1337.
60. *Minority Coalition*, 121 P.3d at 856.
61. *Id.* at 857.
62. *Arizona Coalition*, 208 P.3d at 686.
63. *Id.* at 689.
64. *Arizona Coalition*, 208 P.3d at 686.
65. *Id.* at 689.
66. *Minority Coalition*, 121 P.3d at 860.
67. *Arizona Coalition*, 208 P.3d at 687.
68. *See Brown v. Allen*, 344 U.S. 443, 540 (1953) (Jackson, J., concurring) ("We are not final because we are infallible, but we are infallible only because we are final").
69. *Arizona Coalition*, 208 P.3d at 687.
70. *See, e.g.*, ARIZ. ATTY. GEN. OP. No. I08-013 (Dec. 30, 2008) (Districting performed by joint technical districts is subject to one-person, one vote and the Voting Rights Act).