

June 29, 2015

## Supreme Court Upholds Authority of Redistricting Commissions

This morning in *Arizona State Legislature v. Arizona Independent Redistricting Commission*, the U.S. Supreme Court rejected a constitutional challenge to the Arizona Independent Redistricting Commission (“IRC”). The U.S. Constitution permits voters to delegate map-drawing power, for both state-level and federal-level offices, to redistricting commissions. [The decision](#) likely benefits Democrats in Arizona, but Republicans nationally.

### Legal Issue

The Elections Clause of the U.S. Constitution provides that “[t]he Times, Places and Manner of holding Elections . . . Representatives, shall be prescribed in each State by the Legislature thereof.” The issue in the case was whether the IRC is “the Legislature” within the meaning of the Elections Clause and, by extension, whether the IRC may draw congressional district maps in Arizona. (Although the IRC draws maps for state-level offices as well, the case challenged only the IRC’s authority to draw maps for federal-level offices.)

### The Parties’ Arguments

The Arizona State Legislature argued that the term “Legislature” unambiguously means “the representative lawmaking body of a state.” The Arizona State Legislature further argued that the use of the IRC to draw and adopt Arizona’s congressional district map ran afoul of the Elections Clause because it completely divested the Arizona State Legislature of its constitutional authority to prescribe congressional districts. The Arizona State Legislature pointed out that, under the IRC’s redistricting process, the Arizona State Legislature could not modify or reject the IRC’s maps or pass any law repealing the creation or use of the IRC. During oral argument, counsel for the Arizona State Legislature, Paul D. Clement, insisted that “[i]f the Election Clause means anything, it means that you can’t completely cut out of the process the State legislature entirely on a permanent basis.”

In response, the IRC argued that the Elections Clause does not prohibit the people of Arizona from allocating map-drawing power to the IRC. The IRC argued that “the Legislature” means “the power that makes the laws”—and the IRC was duly created by Arizona’s initiative petition process. During oral argument, counsel for the IRC, Seth P. Waxman, explained that “Arizona defines its legislature in its Constitution to include both the people and two representative bodies” and that the Arizona State Legislature’s “argument hinges on the premise that in drafting the Elections Clause, the framers intended to ignore a State’s definition of its own legislature.”

The United States, in support of the IRC, argued that the U.S. Constitution gives Congress authority to regulate federal elections—and Congress in turn passed a law giving states the authority to determine their own redistricting processes. The United States argued that Arizona was, therefore, entitled to delegate the map-drawing power to the IRC.

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## Decision

In a 5-4 opinion authored by Justice Ruth Bader Ginsburg, the U.S. Supreme Court held that Arizona voters were permitted to delegate to the IRC authority to draw congressional district maps. The court concluded that “the Legislature” means the lawmaking authority of a state and, because the IRC was duly created under Arizona law, it was constitutionally permitted to draw district maps in federal elections. Justice Ginsburg explained that “redistricting is a legislative function, to be performed in accordance with the State’s prescriptions for lawmaking, which may include the referendum . . . . [W]e see no constitutional barrier to a State’s empowerment of its people by embracing that form of lawmaking.”

In dissent, Justice Antonin Scalia wrote that the majority opinion was “outrageously wrong, . . . utterly devoid of textual or historic support, . . . flatly in contradiction of prior Supreme Court cases, [and] . . . obviously the willful product of hostility to districting by state legislatures.” He would have empowered the Arizona State Legislature, rather than the voter-created commission, to draw congressional district lines.

## Implications

Under this decision, Arizona’s current congressional district map remains valid. The Arizona State Legislature cannot adopt a new congressional district map for the 2016 election cycle and thereafter.

There is a silver lining for Republicans. While Arizona Republicans likely would have picked up two to three congressional seats if the redistricting authority were shifted back to the Arizona State Legislature, California Republicans might have lost as many as eight or nine congressional seats if the California redistricting authority had shifted from its redistricting commission back to the Democratic state legislature. So while Arizona Republicans sought a different outcome in this case, many Republicans outside Arizona preferred this outcome

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