AMERICAN CONSTITUTIONALISM

VOLUME I: STRUCTURES OF GOVERNMENT

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Supplementary Material

Chapter 11: The Contemporary Era – Federalism

**Arizona State Legislature v. Arizona Independent Redistricting Commission, No. CV-12-01211** (U.S.D.C. AZ, 2014)

*In 2000, the voters of the state of Arizona approved an initiative that amended the state constitution. Proposition 106 established an Independent Redistricting Commission (IRC), whose members were to be politically appointed to lengthy terms and insulated from removal, that would henceforth draw district maps for state legislative and congressional elections. In January 2012, the IRC adopted a new congressional map for Arizona. In June of that year, the Arizona state legislature filed suit in a special three-judge panel of the federal district court seeking to have Proposition 106 declared in violation of the federal constitution. The Elections Clause of the U.S. Constitution provides that the “Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.” A majority of the district court ruled that “the word ‘Legislature” in the Elections Clause refers to the legislative process used in that state, determined by that state’s own constitution and laws.” The IRC was the state-designated “legislative process” for purposes of redistricting. The state legislature appealed to the U.S. Supreme Court.*

SNOW, JUDGE.

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What the parties dispute is the meaning of the Elections Clause of the United States Constitution. That clause states that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."

Plaintiff asserts that because the word "legislature" means "the representative body which makes the laws of the people," and the Clause allows the legislature to prescribe the time, place and manner of holding elections for congresspersons, the Clause specifically grants the power to realign congressional districts to the legislature. The Supreme Court, however, has at least twice rejected the notion that when it comes to congressional redistricting the Elections Clause vests only in the legislature responsibilities relating to redistricting. Both cases found that states were not prohibited from designing their own lawmaking processes and using those processes for the congressional redistricting authorized by the Clause. . . .

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. . . . [In *Smiley v. Holm* (1932), the Court] found "no suggestion in the federal constitutional provision of an attempt to endow the Legislature of the state with power to enact laws in any manner other than that in which the Constitution of the state has provided that laws shall be enacted." . . .

. . . . *Smiley* thus demonstrate[s] that the word "Legislature" in the Elections Clause refers to the legislative process used in that state, determined by that state's own constitution and laws. . . .

The Supreme Court has further made clear that, in appropriate instances, a state court has authority to formulate a congressional redistricting plan. In reinstating an interim congressional redistricting plan that was ordered by a state court to correct flaws in a legislative redistricting plan, the Supreme Court reaffirmed that a state may place the redistricting authority in entities other than the legislature. "We say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature *or other body,* rather than of a federal court." *Growe v. Emison* (1993). . .

The Arizona Constitution allows multiple avenues for lawmaking and one of those avenues is the ballot initiative. . . .

The Legislature argues that the IRC cannot constitute "the Legislature" as that term is used in the Elections Clause, because the IRC is not a representative body. As *. . .* *Smiley* . . . demonstrate[s], however, the relevant inquiry is not whether Arizona has uniquely conferred its legislative power in representative bodies, it is whether the redistricting process it has designated results from the appropriate exercise of state law. There is no dispute that the IRC was created through the legislative power reserved in the people through the initiative with the specific purpose of conducting the redistricting within the state, and that in exercising its functions the IRC exercises the state's legislative power. . . .

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. . . . [T]he relevant inquiry is not what role, if any, the state legislature plays in redistricting, but rather whether the state has appropriately exercised its authority in providing for that redistricting. As the Supreme Court stated in *Smiley,* the Elections Clause includes no "attempt to endow the Legislature of the state with power to enact laws in any manner other than that in which the Constitution of the state has provided that laws shall be enacted." Thus, the Elections Clause does not prohibit a state from vesting the power to conduct congressional districting elsewhere within its legislative powers. . . .

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In Arizona the lawmaking power plainly includes the power to enact laws through initiative, and thus the Elections Clause permits the establishment and use of the IRC. . . . *dismissed*.

DISTRICT JUDGE PAUL G. ROSENBLATT, concurring in part and dissenting in part.

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I respectfully dissent . . . from the majority's conclusion that the Elections Clause permits Arizona to use its lawmaking process to divest Plaintiff of its redistricting authority in the manner adopted by Proposition 106. I believe that the extent of Arizona's delegation of redistricting authority to the Independent Redistricting Commission ("IRC") extends beyond the state's constitutional authority to do so, and I would declare that Proposition 106 violates the Elections Clause. . . .

States have the authority to regulate the mechanics of congressional elections only to the extent delegated to them by the Elections Clause. Among the powers constitutionally delegated to them is the primary responsibility for the apportionment of their congressional districts. . . . It cannot be disputed that the Elections Clause's reference to "the Legislature," as that term has been interpreted by the Supreme Court, refers to the totality of a state's lawmaking function as defined by state law, and that in Arizona a citizen initiative, such as that used to enact Proposition 106 to amend the state constitution, is an integral part of the state's legislative process. But the fact that Arizona has appropriately used its initiative process to establish the IRC cannot be the end of the inquiry under the Elections Clause, as found by the majority, because it also cannot be disputed that any law passed by a state, whether through an initiative or referendum or directly by the legislature, must abide by the United States Constitution.

That the Supreme Court has concluded that the Election Clause properly permits a state to include some other state entity or official in the redistricting process as a limiting check on its legislature's role in that process does not mean that the Elections Clause places no limit on a state's authority to define the legislative process it uses to regulate redistricting. . . . In short, these cases all involved constraints on the ability of the state legislature to redistrict, and none directly held that the Elections Clause can be so broadly interpreted as to permit a state to remove all substantive redistricting authority from its legislature. Proposition 106 overreaches under the Elections Clause. . . .

. . . . What Plaintiff does not have under Proposition 106 is the ability to have any outcome-defining effect on the congressional redistricting process. I believe that Proposition 106's evisceration of that ability is repugnant to the Elections Clause's grant of legislative authority.